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October 29, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Attached for filing please find the Reply Exceptions on behalf of Duquesne Light Company in the above-referenced proceeding. Copies will be provided per the Certificate of Service.

Respectfully submitted,



Anthony D. Kanagy

ADK/kl
Attachment

cc: Honorable Joel H. Cheskis (w/att.)
Honorable John M. Coogan (w/att.)
Office of Special Assistants (w/att.)
Certificate of Service

CERTIFICATE OF SERVICE

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2021-3024750
Office of Consumer Advocate	:		C-2021-3025538
Office of Small Business Advocate	:		C-2021-3025462
Nationwide Energy Partners	:		C-2021-3026057
Sean Ferris	:		C-2021-3026365
Jan Vroman	:		C-2021-3026521
Diane Buzzard	:		C-2021-3027067
	:		
v.	:		
	:		
Duquesne Light Company	:		

**REPLY EXCEPTIONS OF
DUQUESNE LIGHT COMPANY**

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I. INTRODUCTION

On October 12, 2021, the Recommended Decision (“RD”) of Administrative Law Judges Joel H. Cheskis and John M. Coogan (the “ALJs”) was issued by the Pennsylvania Public Utility Commission (“Commission”). Therein, the ALJs recommended that the Commission approve the Joint Petition for Settlement that was entered into or not opposed by all parties in the proceeding and also denied Nationwide Energy Partners LLC’s (“NEP”) proposed tariff which would allow master metering and resale of electricity to residential tenants in multi-family buildings.

NEP is the only party that filed Exceptions to the RD and is the only party in the proceeding that supports its proposal. Duquesne Light Company (“Duquesne Light”), along with the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”) all oppose NEP’s proposal.

Herein, Duquesne Light files Replies to NEP’s Exceptions.

II. SUMMARY OF REPLY EXCEPTIONS

NEP’s Exceptions to the RD should be denied. The ALJs carefully considered NEP’s proposal, its alleged benefits, the significant harms that would result to residential customers from being deprived of regulated electric service, and the caselaw upholding Duquesne Light’s prohibition against master metering with resale to residential customers in determining that NEP failed to meet its burden of proof in this proceeding.

NEP’s primary argument is that the Commission should require Duquesne Light to adopt its proposal because PECO allows master metering with resale to residential customers. NEP cites no law in support of this argument, and for good reason. NEP’s proposal is a voluntary

program, and all utilities are not required to offer the same or any voluntary program. NEP also does not cite to any statute, regulation or Commission Order requiring utilities to offer master metering with resale to residential customers. Again, for good reason, because no such law, regulation or Commission Order exists. In fact, the Commission has upheld Duquesne Light's ban on master metering with resale to residential customers in several cases.

NEP also alleges that its proposal provides benefits to property owners, tenants, Duquesne Light and the general public. Duquesne Light demonstrated that property owners can achieve many of these benefits without NEP's proposal, and that Duquesne Light's Energy Efficiency & Conservation Program provides substantial benefits to property owners of multifamily buildings. As to tenants, many of NEP's alleged benefits result from the ability of NEP to provide unregulated service. Duquesne Light, OCA and CAUSE-PA demonstrated that the harms that will arise to residential tenants from being deprived of regulated electric service significantly outweigh any of NEP's alleged benefits. As to NEP's alleged benefits to Duquesne Light, NEP's statements should be summarily dismissed. NEP alleges that it is beneficial for Duquesne Light to have fewer customers. Duquesne Light is in the business of providing electric service to customers, and it is not a benefit for Duquesne Light to have fewer customers. As to the public generally, NEP made general statements regarding climate impacts in support of its proposal but did not attempt to quantify these benefits. In addition, property owners can achieve many of these benefits without NEP's proposal.

When viewed in total, it is clear that the harms of NEP's proposal to residential customers from being deprived of the ability to take regulated electric service, including the protections provided by Chapter 14 of the Public Utility Code and Chapter 56 of the

Commission's regulations, significantly outweigh any alleged benefits. NEP's proposal should be denied for the reasons stated herein and in the Company's Main and Reply Briefs.

III. REPLY EXCEPTIONS

1. THE FACT THAT PECO ALLOWS MASTER METERING WITH RESALE TO RESIDENTIAL TENANTS IS IRRELEVANT. (NEP EXC. NO. 1)

In Exception Number 1, NEP argues that the RD failed to adequately consider that PECO allows master metering with resale to residential tenants. NEP argues that it is "illogical and not good policy" for the Commission to have different approaches to master metering for different jurisdictional electric utilities. NEP Exc. p. 9.

NEP's lead argument is that Duquesne Light should be required to adopt NEP's proposal because PECO allows it. This is not a valid or even reasonable basis to require Duquesne Light to adopt NEP's proposal. There is no basis in law to support NEP's position. As an initial matter, all jurisdictional electric utilities in Pennsylvania do not offer the same terms and conditions of service, the same rate structures, the same programs or the same rates. Each utility is managed separately and the Commission does not require all utilities to offer the same programs and services, especially when such programs are not required by statute or regulation. For example, Duquesne Light offers certain electric vehicle programs and incentives that are not offered by other electric utilities. Columbia Gas of Pennsylvania has a weather normalization clause while other utilities do not. *Pa. PUC et al. v. Columbia Gas of Pennsylvania*, Docket Nos. R-2012-231748, et al., 2013 Pa. PUC LEXIS 251 (Recommended Decision dated April 4, 2013), *approved without modification*, Docket Nos. R-2012-231748, et al. (Order entered May 13, 2013). Some gas utilities offer energy efficiency programs and others do not. The Commission often allows utilities to offer different programs and services, consistent with the

discretion of utility management. The Commission is not a super board of directors for utilities and does not require uniform programs across the Commonwealth. *See Met. Ed. Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981). The management of a utility is left to its owners in the first instance, unless such management is shown to be an abuse of discretion or arbitrary. *Id.*

It is quite telling that NEP does not cite to any statutes, regulations, Commission Orders or even Commission policy requiring Duquesne Light to offer NEP's proposal and tariff conditions. The reason for that is because there is no such authority. As to the case law, all of the cases cited by NEP in support of its proposal actually rule against parties that request master metering with resale to residential tenants. *Crown America Corp v. PUC*, 463 A. 2d 1257 (1983) ("*Crown America*"); *Pennsylvania Public Utility Commission v. West Penn Power Company*, 1979 Pa. PUC LEXIS 37, 32 PUR 4th 245 (August 27, 1979) ("*West Penn*"); *Motheral, Inc. v. Duquesne Light Company*, 2001 Pa. PUC LEXIS 4 (March 23, 2001) ("*Motheral*"); *Tiffany Associates v. Duquesne Light Company*, 1998 Pa. PUC LEXIS 206 (November 20, 1998) ("*Tiffany Associates*") In *Motheral* and *Tiffany Associates*, the Commission specifically upheld Duquesne Light's tariff prohibiting master metering with resale to residential customers.

Moreover, as Duquesne Light explained in its Brief, NEP's proposal is a voluntary program. If other utilities want to allow such voluntary programs in their service territory and the programs are approved by this Commission, then utilities are free to offer the programs. However, utilities are not required to offer voluntary programs to benefit unregulated third parties. *Pa. PUC, et. al v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2018-2647577, et al., 2018 Pa. PUC LEXIS 432 (Order entered Dec. 6, 2018).

The ALJs also noted that while the history of Duquesne Light's prohibition on master

metering was addressed during the proceeding, NEP did not provide any historical context regarding PECO's limited exception to master metering or identify whether the issues addressed in this proceeding were reviewed by the Commission with regard to PECO's tariff. RD, p. 83, fn 2. NEP does not cite to any Order approving PECO's submetering tariff. NEP also cites to no Order where the Commission has reviewed NEP's services that are provided in PECO's service territory. NEP implies that the Commission has expressly reviewed and approved NEP's services but has not cited or provided any Order demonstrating such review.

In addition, NEP cites to its alleged success in offering master metering with resale to residential tenants in PECO's service territory as evidenced by no demonstrated adverse consequences. NEP Exc. p. 8. Beauty is in the eye of the beholder in this instance. The Commission need look no further than the testimony of Duquesne Light, CAUSE-PA and OCA's witnesses to see the negative consequences of NEP's proposal, including lack of Commission oversight, lack of rate regulation, lack of individual choice in selecting a competitive supplier and the likelihood of paying higher overall charges. See Duquesne Light St. No. 6-R; OCA St. No. 4-R; CAUSE-PA St. No. 1-R. NEP cites to a lack of complaints in PECO's service territory; however, a lack of complaints is not synonymous with receipt of benefits.

NEP alleges that there have been no adverse consequences to tenant customers in PECO's service territory. NEP Exc., p. 8. However, this is based on NEP's conclusory statement in testimony. NEP presented no analysis of how tenant customers have been affected by lack of customer assistance programs in PECO's service territory or how lack of Commission regulation has affected service termination. It is also unclear to what extent these tenants are aware of their rights, if any, and many tenants may not file complaints or civil lawsuits against landowners or third-party providers. However, the record in this proceeding is clear that

residential tenants lose vital protections by not being able to take regulated electric service.

The fact that PECO allows NEP's voluntary program in its service territory provides no legal requirement or other basis for requiring Duquesne Light to offer a similar voluntary program in its service territory.

2. THE ALJs CORRECTLY DETERMINED THAT NEP HAD THE BURDEN TO DEMONSTRATE DUQUESNE LIGHT'S EXISTING TARIFF IS UNREASONABLE. (NEP EXC. NO. 2)

NEP admits that it has the burden of proving that its proposal is reasonable. NEP Exc. p. 11. However, it then argues that it did not have the burden of proving Duquesne Light's existing tariff is unreasonable. NEP Exc. p. 11.

The basis of NEP's argument is that Duquesne Light's existing tariff does not expressly outright ban master metering and resale to residential customers and that NEP's proposal can be adopted within the context of Duquesne Light's existing tariff. NEP Exc. p. 13.

In Exception Number 2, NEP itself demonstrates why its argument is wrong. NEP states on page 13:

As was proposed by NEP, Duquesne Tariff Rule 18 must be explicitly amended to permit redistribution of electricity when it couples with proposed Tariff Rule 41.2.

NEP admits that Duquesne Light's existing tariff must be revised to accommodate NEP's proposal. Therefore, NEP bears the burden of proving that the Company's existing tariff is unjust and unreasonable. As explained in the Company's Main Brief, Commission-approved tariffs are just and reasonable until proven otherwise. *Kossmann v. Pa. PUC*, 694 A.2d 1147, 1151 (Pa. Cmwlth. 1997); *Shenango Twp. Bd. Of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) *pet. for allowance of appeal denied*, 698 A.2d 597 (Pa. 1997); *Zucker v. Pa. PUC*, 401 A.2d 1377, 1380 (Pa. Cmwlth. 1979). Moreover, the Commission has previously upheld Duquesne Light's prohibition against residential master metering in *Motheral*. The ALJs

are correct that NEP carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provisions unreasonable. *Id.*; *Brockway Glass*, 437 A.2d at 1071-72.

NEP has both the burden of proving that Duquesne Light's current prohibition on master metering and resale to residential customers is unreasonable and that NEP's proposed tariff conditions are just and reasonable.

In this Exception, NEP also states that there is no way to harmonize what is allowed in PECO's service territory with Duquesne Light's ban on master metering and resale to residential tenants. NEP Exc., p. 13. This statement is incorrect. There is an easy way to harmonize it. Master metering with resale to residential customers is a voluntary program allowed by PECO and not allowed by Duquesne Light. *See* Reply Exception Number 1 above. Duquesne Light is not required to offer a voluntary program just because PECO allows it.

3. THE HARMS TO CUSTOMERS FROM NEP'S PROPOSAL FAR OUTWEIGH ANY ALLEGED BENEFITS. (NEP EXC. NO. 3)

In Exception Number 3, NEP argues that the RD understates the benefits of its proposal to property owners, tenants, Duquesne Light and the public interest. NEP Exc. p. 13. NEP then proceeds to list the alleged benefits to all of these groups.

NEP overstates the benefits to these groups and does not consider the harms to customers that will result from its proposal. The harms significantly outweigh any alleged benefits. These harms include:

- Paying more for overall utility service
- Losing access to Commission regulation of rates
- Losing important customer protections such as long-term payment arrangements, customer assistance programs, and budget billing
- Losing statutory and regulatory limitations on service termination

- Losing the right to file a complaint with the Commission regarding unreasonable service
- Losing the right to select an EGS for competitive supply

See Duquesne Light St. No. 6-R, pp. 13-25.

These harms alone clearly demonstrate that NEP's proposal is not just and reasonable.

NEP's list of alleged benefits is also severely flawed. NEP first lists alleged benefits to Property Owners/Commercial customers. NEP Exc. p. 15. Notably, no property owner or commercial customer has intervened in this proceeding to support NEP's proposal. In addition, NEP does not represent property owners in this proceeding. NEP represents its own private business interests. Moreover, property owners can receive many of the alleged benefits cited by NEP without master metering and resale to residential customers. *See* Duquesne Light MB, pp. 20 – 24. As also noted by the ALJs, "... there is no clear evidence that property owners would tend to use any net monetary gain for energy efficiency and conservation purposes." RD p. 79. Likewise, there is no evidence that NEP-managed building owners in PECO's territory were actually more able to get "green financing" or LEED status, or reduce their construction or operation costs.

NEP then cites alleged benefits to tenants. NEP Exc. p. 16. NEP presented no evidence of any actual benefits to tenants in PECO's service territory. NEP provided no evidence demonstrating that those customers pay lower utility bills or realize more energy savings through NEP's programs than they would if individually-metered by PECO. Again, no tenant has intervened in this proceeding in support of NEP's proposal, and NEP does not represent tenants' interests. Further, the harms listed above to residential tenants from no longer receiving access to regulated utility service far outweigh any of NEP's alleged benefits. In effect, NEP is arguing

that unregulated electric service is more beneficial for residential tenants than regulated service. This clearly is not the case and is contrary to decades of public utility regulation.

NEP also makes the bold assertion that master metering and resale to residential customers will benefit Duquesne Light by decreasing its residential customer base. This is particularly disingenuous given that Duquesne Light is in the business of providing electric service to customers. These statements should be summarily disregarded.

Even worse, NEP's proposal would deprive Duquesne Light of revenues from residential customers yet still require Duquesne Light to incur costs of implementing NEP's tariff provisions and defending complaints by tenants when property owners or third-party providers such as NEP fail to follow the tariff conditions. NEP expressly admits this in its Exceptions where it states that the tariff will provide tenants with "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." NEP Exc. p. 5.

NEP also claims that its proposal benefits the "public interest" by allowing property owners to establish green buildings and to obtain loans. As noted above, NEP provided no actual evidence to support these claims. Contrary to NEP's assertions, property owners can still combat climate changes without participating in NEP's proposal and the record demonstrates that the Company's EE&C program has provided significant assistance to buildings with residential tenants. Duquesne Light St. No. 6-R, pp. 7-9; Duquesne Light MB, pp. 20-21. Again, no property owner intervened in this proceeding in support of NEP's proposal.

NEP's alleged benefits are significantly outweighed by the harms to residential customers that will result from NEP's proposal.

4. IT IS REASONABLE AND APPROPRIATE TO COMPARE THE HARMS AND BENEFITS OF NEP'S PROGRAM TO REGULATED SERVICE. (NEP EXC. NO. 4)

NEP argues that it is not a public utility and its proposed program should not be compared with regulated service. NEP Exc. pp. 21-22. This argument defies logic. NEP's program will deprive residential tenant customers of the benefits of regulated service. Therefore, comparing NEP's proposal to regulated service is absolutely necessary to determine the harms that will result from NEP's proposal.

NEP states that it is not a public utility and should not be deprived of an opportunity to offer its services. NEP Exc. p. 22. To the contrary, NEP should not be permitted to deprive residential tenants of their right to receive regulated utility service and all of the benefits and protections resulting from such service.

NEP argues that tenants do not need Chapter 56 protections under the Commission's regulations or Chapter 14 protections under the Public Utility Code because tenants have protection under Section 1313 of the Code, 66 Pa. C.S. § 1313, against being charged higher rates than they would pay for regulated service. NEP Exc. p. 24. Section 1313 of the Public Utility Code is not an adequate substitute for residential customers for the protections that they receive under Chapter 14 of the Public Utility Code or Chapter 56 of the Commission's regulations, particularly for low-income customers.

NEP also argues that its proposed tariff conditions are a substitute for Commission protections under Chapter 56 and Chapter 14. NEP Exc. p. 25. As explained below, through its proposed tariff conditions, NEP is attempting to require Duquesne Light to monitor and enforce these protections and be subject to complaints before the Commission in order to implement NEP's program for NEP's benefit. Duquesne Light does not agree to implement these tariff requirements and does not agree with monitoring or enforcing them for NEP. *Pa. PUC, et. al v.*

Columbia Gas of Pennsylvania, Inc., Docket Nos. R-2018-2647577, et al., 2018 Pa. PUC LEXIS 432 (Order entered Dec. 6, 2018). In addition, NEP’s proposed tariff conditions in no way provide comparable protections that residential customers have under Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations.

Furthermore, it is not at all clear that the Commission can acquire jurisdiction over services to be provided by a landlord to a non-utility tenant by inserting standards in a utility tariff where the Commission has no clear statutory jurisdiction to regulate these services. This will be of no concern of NEP and beyond the control of NEP, because it will be the landlords that will challenge the Commission’s jurisdiction. *See e. g. Delmarva Power & Light Co. v. Commonwealth*, 870 A.2d 901 (Pa. 2005) (“The Code’s definition of ‘public utility’ states plainly and clearly that ‘the term does not include . . . (vi) [EGSs], except for the limited purposes as described in sections 2809 (relating to requirements for electric generation suppliers) and 2810 (relating to revenue neutral reconciliation).’ 66 Pa. C.S. § 102 (emphasis added). Based on this unambiguous language, it is clear that the General Assembly did not intend for EGSs to be characterized as public utilities for most purposes...”). As a result, NEP invites the Commission to take the risk of attempting to so expand its jurisdiction to protect master-metered tenants so that NEP may finance its business by shifting costs to the Company and its remaining customers.

5. NEP’S PROPOSED TARIFF IS UNREASONABLE AND SHOULD NOT BE PERMITTED AS A PILOT PROGRAM. (NEP EXC. NO. 5)

In Exception Number 5, NEP argues that its proposed tariff can exist in conjunction with an amended Duquesne Light tariff and be considered as a “pilot program.” NEP Exc. p. 27. NEP’s arguments should not be accepted.

First, NEP’s proposal is clearly contrary to Duquesne Light’s existing tariff, and the existing tariff would have to be amended to allow master metering with resale to residential

customers. See NEP Exc. p. 13. NEP's proposal cannot co-exist with Duquesne Light's prohibition against master metering and resale to residential customers.

Likewise, NEP's proposal should not be accepted as a "pilot program." In the case cited by NEP in support of its "pilot program" argument, the pilot was not approved by the Commission. This is like the cases cited by NEP in support of its proposal – they all denied requests by third parties to allow master metering with resale to residential customers, yet NEP cites these cases as supporting its proposal.

In addition, NEP invites a "pilot" that will last forever. Once master meters with resale to residential tenants is allowed, the revisions to remove the Company's meters and install landlord-owned meters will be in place. Landlords will argue that their meters must stay in place to allow them to recover their investment over 20 years or more. For this reason, NEP asks in its Exceptions that the pilot customers be grandfathered. NEP Exc. p. 28. It is simply not reasonable to create a pilot under such circumstances, particularly with the demonstrated flaws of the NEP proposal.

Duquesne Light and the other parties have clearly demonstrated the harms to customers that will result from NEP's proposal. NEP's proposal should not be adopted in any form – even a pilot.

6. THE ALJS PROPERLY DETERMINED THAT NEP FAILED TO DEMONSTRATE THAT ITS PROPOSAL BENEFITS THE PUBLIC. (NEP EXC, NO. 6)

NEP takes issue with the RD's statement that NEP failed to make clear what constitutes the "public generally" and what interest of the public NEP's proposal serves. NEP Exc. p. 29. NEP's quibbling over this statement should be disregarded. The ALJs addressed NEP's alleged benefits and determined that NEP failed to meet its burden of proof that its proposal was

reasonable and in the public interest. The ALJs also noted that customers would lose important protections and benefits under NEP's proposal. RD at 81 – 82.

NEP provided broad statements about the various alleged benefits of its proposal to property owners and to the public in general from climate improvements. *See* NEP Exc. p. 29. There are many flaws with NEP's statements. First, NEP did not ever attempt to quantify these alleged benefits. Second, no property owner is in the case advocating for these alleged benefits. Third, as explained above, all of NEP's alleged benefits are outweighed by the significant harms to residential customers from depriving them of regulated utility services and offset by the benefits of the Company's EE&C plan.

7. DUQUESNE LIGHT CANNOT BE REQUIRED TO IMPLEMENT AND ENFORCE NEP'S PROPOSED TARIFF CONDITIONS. (NEP EXC. NO. 7)

NEP's solution to the RD's concerns about tenant protections is to simply require Duquesne Light to implement and enforce its proposed tariff conditions. NEP Exc. p. 30. As explained above, Duquesne Light cannot be required to implement and enforce voluntary tariff or service conditions for the benefit of unregulated third parties. *Pa. PUC, et. al v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2018-2647577, et al., 2018 Pa. PUC LEXIS 432 (Order entered Dec. 6, 2018); *See also, Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502, 2009 Pa. PUC LEXIS 266 (Order entered Nov. 19, 2009).

Moreover, NEP's proposal to have Duquesne Light monitor and enforce tariff provisions for residential tenants that are not Duquesne Light customers is particularly egregious because these tenants will not be paying Duquesne Light for service. Duquesne Light would be incurring costs to implement and enforce NEP's tariff conditions while at the same time NEP and/or property owners are pocketing the difference between the revenues that Duquesne Light would

have received from multiple residential customers and the actual revenues that would be received from one commercial customer (for each building). This revenue differential normally offsets costs Duquesne Light incurs to provide additional services to residential customers including universal service costs. Now under NEP's proposal, Duquesne Light would be required to provide services for residential tenants that are not customers but not receive the revenue differential to offset costs.

In addition, under current tariff provisions, master metered tenant buildings are not charged the universal service charge. Adopting NEP's proposal would shift recovery of those costs to the Company's remaining residential customers while generating increased profits for NEP. Clearly, this is not a reasonable result.

NEP then makes the bold assertion that if a property owner is not complying with the tariff, Duquesne Light can simply withdraw its master metering approval. NEP Exc. p. 31. Of course, NEP fails to mention that this action would be subject to litigation and the costs thereof. NEP's proposal to keep the revenue differential and stick Duquesne Light with the compliance obligation and associated costs is unlawful, unreasonable and cannot be accepted.

In this Exception, NEP also argues that the *Coggins* case demonstrates that the Commission has jurisdiction over property owners that violated Section 1313 of the Code. *Coggins v. PPL Electric Utilities Corporation*, Docket No. C-2012-2312785 (Order entered July 18, 2013); NEP Exc. pp. 31-32. This argument should be disregarded for several reasons. First, as explained above, Section 1313 is no substitute for the statutory protections provided to residential customers in Chapter 14 of the Public Utility Code or the regulatory protections provided to residential customers in Chapter 56 of the Commission's regulations. In addition, Duquesne Light would still be liable for ensuring compliance and enforcement of all of NEP's

tariff conditions and could be subject to complaints for violations of those conditions by landlords. As noted earlier in these Exceptions, the Commission's jurisdiction over landlords as to services is uncertain and potentially subject to challenge. Further, the NEP proposal creates increased burdens on both the Commission and the Company without bearing the costs of those burdens.

NEP's attempts to require Duquesne Light to monitor and enforce its proposed tariff conditions so that NEP can expand its business cannot be accepted.

8. NEITHER PURPA NOR THE CASES CITED BY NEP SUPPORT ITS PROPOSAL. (NEP EXC. NO. 8)

NEP misconstrues the RD and claims that the RD asserted that the parties' concerns about consumer protections trump the Public Utility Regulatory Policies Act of 1978 ("PURPA") and case law, which NEP states supports its proposal. NEP Exc. p. 33.

NEP misstates the real point of the RD's findings. In the RD, the ALJs stated:

Although use of submetering may mitigate concerns regarding price signals, we disagree with NEP that PURPA, *Crown America, supra*, or *West Penn Power, supra*, support NEP's proposal.

RD at 82.

In its Exceptions, NEP continues to argue that PURPA, *West Penn Power, Motheral, Crown America* and *Tiffany Associates* all support its proposal. A simple review of PURPA and these cases clearly demonstrates that this conclusion misstates and misapplies the law.

As to PURPA, master metering of electric service in new buildings is generally prohibited and separate metering is required with limited exceptions. 16 U.S. Code §§ 2623, 2625. PURPA does not require master metering. Duquesne Light's tariff rules comply with PURPA because they require all individual units in new residential buildings to be separately metered. This gives individual tenants control over their electric usage and encourages

conservation, which is one of PURPA's primary goals. The Commission has previously determined that Duquesne Light's Tariff Rule 41 complies with PURPA. *Pa. PUC v. Duquesne Light Co.*, 1981 Pa. PUC LEXIS 89 *191 – 192 (vacated in part on other grounds, *Duquesne Light Co. v. Pa. PUC*, 507 A.2d 433 (Pa. Cmwlth. 1986)). PURPA does not support NEP's proposal.

The cases cited by NEP also do not and cannot support NEP's proposal because all of them actually deny master metering with resale to residential customers. Several of these cases specifically address and uphold Duquesne Light's prohibition against master metering and resale to residential customers.

In *West Penn*, the Commission limited master metering to then-current locations. 1979 Pa. PUC Lexis *156. This is consistent with Duquesne Light's current tariff. NEP claims that its proposal incorporates smart sub-meters and therefore is distinguishable from *West Penn*. NEP Exc. p. 36. However, this distinction cannot be read to mean that the Commission's *West Penn* decision supports NEP's proposal.

Likewise, in *Motheral*, the Commission rejected a building owner's request to waive Rule 41 of Duquesne Light's tariff to allow master metering of an apartment building. The Commission upheld the justness and reasonableness of Rule 41. Duquesne Light MB at 19.

In *Crown America*, an owner of several shopping malls challenged a Commission decision approving a ban on master metering at new multi-tenancy commercial service locations. The Commonwealth Court upheld the ban against master metering and concluded that the Commission's duty was to protect customers and the public and not to advance private interests. The Commonwealth Court stated as follows:

Crown's argument is untenable as a basis for the rejection of Rule 5F. Any economic disadvantage which may be the result of the rule is not

unreasonable, because the protection of Crown's economic interests and competitive position, and of those similarly situated, is neither an objective of Section 1502 nor of the regulatory scheme of the Code in general.

Crown America at 1260.

NEP argues that *Motheral*, and therefore *Crown America*, are distinguishable from NEP's request because "NEP is not solely seeking personal economic advantage...". NEP Exc. p. 37. NEP's attempts to distinguish itself from these cases fall flat, as it is clear that Duquesne Light is well within its legal right to disallow master metering with resale to residential customers. These cases, which deny master metering proposals, do not support NEP's proposal.

In *Tiffany Associates*, the Commission again denied a request of a building owner to master meter a senior citizen apartment building in Duquesne Light's service territory. 1998 Pa. PUC Lexis at *14. Therein, the Commission explained that the prohibition on residential master metering not only applied in order to promote conservation but to ensure the "optimization of the efficiency of use of facilities and resources, and equitable rates to consumers." *Id.*

NEP attempts to distinguish *Tiffany Associates* on the basis that its proposal provides energy conservation benefits. NEP Exc. p. 38. However, NEP fails to address the fact that the Commission also denied the master metering proposal in order to ensure the efficient use of facilities and resources and equitable rates to consumers. NEP's proposal will not provide for the efficient use of facilities and resources nor provide for equitable rates for consumers because it will deprive Duquesne Light of the revenue differential while still requiring the Company to incur costs to monitor and enforce NEP's proposal and also require Duquesne Light to incur litigation costs in the event complaints are filed. Duquesne Light MB at pp. 17-19.

9. THERE WAS NO NEED FOR THE RD TO ADDRESS COST/REVENUE SHIFTING ISSUES. (NEP EXC. NO. 9)

NEP argues that the RD erred by not considering cost and/or revenue shifting impacts of its proposal. NEP Exc. p. 39. The ALJs correctly did not address this issue. First, NEP's proposal is not in the public interest and should not be approved. Therefore, it is not necessary to address cost and/or revenue shifting issues. Second, even if NEP's proposal was adopted over Duquesne Light's, OCA's, CAUSE-PA's and OSBA's objections, it is premature to resolve cost and/or revenue shifting issues in this proceeding.

IV. CONCLUSION

For all the foregoing reasons, Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission adopt the Recommended Decision of Administrative Law Judges Joel H. Cheskis and John M. Coogan, approve the Joint Petition for Approval Settlement that was entered into or not opposed by all parties without modification, and deny the Exceptions and the relief requested by Nationwide Energy Partners, LLC related to its master metering and electricity redistribution proposal.

Respectfully submitted,



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