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October 29, 2018

VIA eFILING

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

Re: Pennsylvania Public Utility Commission v. Duquesne Light Company
Docket Nos. R-2018-3000124 and C-2018-3001152

Dear Secretary Chiavetta:

Enclosed for filing on behalf of **Duquesne Light Company** are its **Exceptions to the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale** in the above-referenced proceedings ("Exceptions").

As evidenced by the enclosed Certificate of Service, copies of the Exceptions are being served on the Administrative Law Judge and all parties to this proceeding. Additionally, a courtesy copy of the Exceptions is being sent via e-mail to the Commission's Office of Special Assistants as instructed in your October 18, 2018 transmittal letter.

Very truly yours,



Anthony C. DeCusatis

ACD/ap
Enclosures

c: Per Certificate of Service (w/encls.)
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	Docket Nos. R-2018-3000124
v.	:	C-2018-3001152
	:	
DUQUESNE LIGHT COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of **Duquesne Light Company’s Exceptions to the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale** have been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

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Dated: October 29, 2018

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
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	:	Docket Nos. R-2018-3000124
v.	:	C-2018-3001152
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DUQUESNE LIGHT COMPANY	:	

**EXCEPTIONS OF
DUQUESNE LIGHT COMPANY**

**To The Recommended Decision Of
Administrative Law Judge Katrina L. Dunderdale**

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I. INTRODUCTION AND OVERVIEW

This proceeding was initiated on March 27, 2018, when Duquesne Light Company (“Duquesne Light,” “DLC” or the “Company”) filed Supplement No. 174 to Tariff Electric – Pa. P.U.C. No. 24 to become effective on May 29, 2018, proposing rates designed to produce an increase in annual operating revenues of \$133.8 million.¹ On September 14, 2018, a Joint Petition for Approval of Settlement Stipulation (“Joint Petition”) was filed,² which resolved all issues in this case except one, which was reserved for decision. A detailed procedural history is provided in the Joint Petition and in the Company’s Initial Brief filed on September 6, 2018. The Company also filed a Reply Brief on September 14, 2018.

On October 18, 2018, the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale (“ALJ”) was issued. The ALJ recommended approving the Joint Petition, with one exception, and also recommended that the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) decide the reserved issue by adopting the proposal of certain members of the Duquesne Industrial Intervenors (“DII”)³ to drastically reduce DLC’s existing, previously-approved rate for service under Rider No. 16 to its tariff. As explained hereafter, the Recommended Decision erred in concluding that Duquesne Light bears the burden of proof as to DII’s proposal to reduce an existing, Commission-approved rate based on a new, usage-based

¹ The proposed increase in base rates included \$52.2 million of revenues billed under surcharges the Company proposed to “roll-in” to base rates. The net proposed increase was \$81.6 million.

² The settlement provides that DLC will be permitted to charge rates designed to produce an increase in annual base distribution operating revenues of \$92.7 million, inclusive of \$52.2 million currently recovered from customers in surcharges (i.e., a net increase of \$40.5 million). Duquesne Light will also refund to customers \$24 million inclusive of interest to resolve the parties’ positions on the recognition of 2018 federal income tax expense savings. Joint Petition ¶¶ 30-31. Duquesne Light notes that the Recommended Decision contains a typographical error in Ordering Paragraph No. 3, stating that the increase in annual base operating revenues is \$90.7 million. The correct number is \$92.7 million.

³ DII is an *ad hoc* group of five large-use customers consisting of the Allegheny County Airport Authority, Duquesne University, Linde Energy Services Corporation, United States Steel Corporation, and the University of Pittsburgh (Complaint of DII, Appendix A (Revised)).

approach to establishing distribution rates. That error requires the Commission to reassess the totality of the evidence presented by the Company in this case, which was not given proper weight in the Recommended Decision's analysis.

The issue reserved for decision is a challenge by certain members of DII (excluding Duquesne University⁴) to the existing rate for "back-up" distribution service available to eligible customers that meet a portion of their load with their own generating facilities and elect to receive service on Rider No. 16 to the Company's tariff. Although Duquesne Light initially requested an increase in that rate, it withdrew its request.⁵ Subsequently, Peoples Natural Gas Company LLC ("Peoples"), which had opposed increasing the Rider No. 16 rate, withdrew its opposition to the Joint Petition.

If the Recommended Decision is adopted, Rider No. 16 customers would only pay 5% of Duquesne Light's fixed costs to provide them service which would be available 100% of the time. Even though Rider No. 16 customers may only take service from Duquesne Light on a limited basis, Duquesne Light must still invest in the facilities, such as transformers, poles and wires, to be able to serve them 100% of the time. The Commission may make a policy decision to not charge back-up customers 100% of their cost of service, and, in fact, Duquesne Light's current rate of \$2.50 per kW does not reflect 100% of the cost of service. However, from Duquesne Light's perspective, it is unreasonable to only charge Rider No. 16 customers 5% of their fixed costs for back up service.

⁴ Duquesne University entered into a Memorandum of Understanding (MOU) with Duquesne Light pursuant to which it does not challenge the existing terms of Rider No. 16. See DLC Initial Brief, pp. 8-9, 11 and 12; DLC Exhibit No. CJD-1-R. Hereafter, "DII" refer to the members of DII excluding Duquesne University.

⁵ Tr. at 646. See DLC Initial Brief, pp. 10-12.

The existing Rider No. 16 rate of \$2.50 per kW is lower than the demand charges under the Company's general service rate schedules for customer classes that are eligible for Rider No. 16.⁶ This rate has been in effect since May 1, 2014, which was the effective date of rates established in DLC's last base rate case (Docket No. R-2013-2372129). In that case, the Company proposed to *reduce* the Rider No. 16 rate from the previously-approved rates of \$6.45 per kW (for contract demand less than 5,000 kW) and \$6.04 per kW (for contract demand of 5,000 kW or more) to \$2.50 per kW.⁷ No party opposed the Company's proposal. That case was resolved by a settlement that included the current Rider No. 16 rate but did not specify the derivation of the rate. The settlement was approved by the Commission.

DII has no members (other than Duquesne University, which does not contest Rider No. 16) that receive service under Rider No. 16 or anticipate seeking service thereunder when rates established in this case are likely to be in effect.⁸ DII took issue with Rider No. 16 because it claims the existing rate could, in theory, influence cost-benefit analyses certain DII members may conduct to assess whether to pursue CHP projects in the future, despite its own witness' testimony that there are many costs that have a much greater impact on the economics of CHP.⁹

DII contended that the existing, previously-approved back-up service rate of \$2.50 per kW should be reduced to 35¢ per kW for unplanned outages and 24¢ per kW for planned

⁶ By comparison, under the Company's existing general service Rate GL, the applicable demand charge is over \$9.00 per kW for the first 300 kW of demand and over \$8.00 per kW for all additional demand. Duquesne Light Tariff Electric – Pa. P.U.C. No. 24, p. 47.

⁷ See Peoples Natural Gas Company LLC Cross-Exam. Exhibit No. 1, Attachment 1, pp. 5-6.

⁸ See DLC Initial Brief, pp. 12-13.

⁹ DII Statement No. 1-S, p. 26. DII's witness identified a wide array of factors that must be considered and quantified to determine if a distributed generation project would be cost-justified, including the capital investment required, financing rates, current and future natural gas prices, operating and maintenance expenses and, for CHP projects, whether there is a beneficial, cost-effective use for excess thermal energy. These factors far outweigh the cost of back-up distribution service that, under Rider No. 16, would be less than 3%-4% of a Duquesne Light customer's total bill. See DLC Initial Brief, p. 13 and DLC Statement No. 16-R, p. 39, n.45.

“maintenance” outages, with both rates applied only on an “as used” basis.¹⁰ Thus, a customer with, for example, a 2 MW generator could place 2 MW of demand on the distribution system during an unplanned outage and pay \$700 (2,000 kW x \$0.35 per kW) only in the month it imposes that demand.

DII’s proposal was opposed by the Company for the reasons set forth at length in its Initial and Reply Briefs. In addition, the Office of Small Business Advocate’s (“OSBA”) witness, Brian Kalcic, opposed DII’s proposal because his analysis showed that DII’s proposal “would result in subsidized back-up service.”¹¹

DII’s proposed Rider No. 16 rates are designed to reflect how *frequently* a customer may impose peak demand on the distribution system (a measure of usage or consumption, not demand). DII’s proposal directly conflicts with the Commission’s prior determination that “the costs of the distribution system” do not vary “in proportion to a consumer’s daily or monthly level of consumption.”¹² DII’s proposal confuses principles of rate design that apply only to back-up *generation* service (for which costs vary with a customer’s consumption¹³) with the rate design principles that properly apply to distribution service.¹⁴ These fundamental conceptual and factual errors demonstrate that DII did not meet its burden to show that its proposal is just and reasonable.

Duquesne Light presented substantial evidence showing that there is a sound cost basis for the existing Rider No. 16 rate. As explained hereafter, DLC assembled, analyzed and

¹⁰ DII Statement No. 1, p. 25; Tr. at 60, lines 16-17.

¹¹ OSBA Statement No. 1-R, pp. 4-7.

¹² *Fixed Utility Distribution Rates Policy Statement*, Docket No. M-2015-2518883 (May 3, 2018), p. 16 (“Alternative Ratemaking Policy Statement”). See also *Alternative Ratemaking Policy Statement*, p. 14.

¹³ *Id.*

¹⁴ DLC Reply Brief, pp. 4-5 and 21-25.

presented for the record actual historical operating data demonstrating that the peak demands Rider No. 16 customers can (and did) impose are not materially different from those of customers *without* on-site generation.¹⁵ DLC also showed that its back-up distribution rate is better than the benchmark for “best practices” in back-up rate design the most ardent supporters of combined heat and power (“CHP”) have proposed.¹⁶ The Company’s evidence shows that DII did not meet its burden to establish by substantial evidence that the existing, approved Rider No. 16 rate should be reduced by any amount, let alone the dramatic reduction DII proposed.

II. THE COMMISSION SHOULD REJECT THE ALJ’S RECOMMENDATION TO ADOPT DII’S PROPOSED RIDER NO. 16 RATE

The ALJ recommends that the Commission approve all but one of the terms of the Joint Petition.¹⁷ In addition, the ALJ recommends that the Commission accept the massive reduction of the Company’s existing Rider No. 16 rate proposed by DII, subject to one explicit and another possible exception. Specifically, the ALJ rejected DII’s proposal to reduce the Rider No. 16 rate to 24¢ per kW for “maintenance” outages.¹⁸ Also, the ALJ did not offer a recommendation regarding DII’s proposal that even its 35¢ per kW rate apply only on an “as used” basis and, therefore, that issue is addressed in these Exceptions.

Subject to the qualifications noted above, the ALJ accepted DII’s position because she believed that the Company did not “meet its burden of proof that the rate charged to customers under Tariff Rider No. 16 is based on facts and is just and reasonable.”¹⁹ The ALJ made this

¹⁵ DLC Statement No. 14-R, pp. 28-31.

¹⁶ See DLC Reply Brief, p. 12.

¹⁷ The ALJ rejected the settling parties’ agreement regarding the terms for installation of a generation meter for net metered facilities (Recommended Decision, pp. 87-90 and 161-164). Although the Company does not agree with the ALJ’s conclusion or rationale, it is not taking exception to this portion of the Recommended Decision.

¹⁸ Recommended Decision, p. 178.

¹⁹ *Id.*

finding notwithstanding the extensive evidence the Company presented; the testimony of OSBA witness Kalcic (not mentioned in the Recommended Decision); the PUC's approval of the existing Rider No. 16 rate in DLC's last base rate case; and the fact that the existing rate is not opposed by the only current Rider No. 16 customer (Duquesne University), and the only customer with a CHP project that intends to apply for service under Rider No. 16 (Peoples).

The ALJ's recommendation to accept DII's proposed rate of 35¢ per kW should be rejected. As explained hereafter, that recommendation is contrary to the record evidence and is in conflict with explicit Commission findings and conclusions about the nature of distribution service and the appropriate principles of distribution rate design. Additionally, the ALJ improperly assigned to the Company the burden of proof with regard to DII's entirely new proposal for back-up service rate design. As explained hereafter, a new, alternative proposal made by another party cannot be adopted without requiring the proponent to meet the burden of showing by a preponderance of substantial evidence that its proposal is "just and reasonable."²⁰

While these Exceptions address the principal errors in the Recommended Decision, the Commission should carefully consider the Company's Initial and Reply Briefs. Doing so is particularly important in this case because the Recommended Decision's eight-page summary of the Company's position²¹ and approximately six-page analysis²² do not discuss significant record

²⁰ See *Petition of Metropolitan Edison Co. et al.*, Docket Nos. P-2015-2508942, P-2015-2508948, P-2015-2508936; P-2015-2508931 (Final Order entered Apr. 19, 2018) pp. 16-17 ("A utility does not have the burden of proving the legality/illegality or reasonableness/unreasonableness of a proposal it did not include in its filing. . . . [T]he OCA had the burden to prove that one of its proposed methods should be adopted to incorporate that impact into the Companies' DSIC calculations." (Internal citations omitted.)).

²¹ Recommended Decision, pp. 116-124. The Recommended Decision's discussion of DII's position appears at pages 124-145.

²² Recommended Decision, pp. 173-178.

evidence the Company presented that demonstrates Rider No. 16 is not excessive and should not be reduced.

III. EXCEPTIONS

The Company respectfully takes the following Exceptions to the Recommended Decision:

Exception No. 1. The Recommended Decision Errs In Assigning To Duquesne Light The Burden Of Proof With Regard To DII's Proposal To Reduce The Existing, Approved Rider No. 16 Rate To 35¢ Per kW.

Exception is taken to the ALJ's assignment to the Company of the burden of disproving the reasonableness and legality of DII's entirely new proposal to reduce the existing, approved Rider No. 16 rate to 35¢ per kW. Placing the burden of proof on the Company with regard to another party's proposal is contrary to well-established Commission precedent.²³ As the proponent of a new, usage-based approach to designing back-up distribution rates, DII has the burden of proving the reasonableness and legality of substantially reducing the existing, Commission-approved Rider No. 16 rate in the manner it proposed.

Exception No. 2. The Recommended Decision Errs In Not Expressly Recommending That DII's Proposal To Apply The Rider No. 16 On An "As Used" Basis Should Be Rejected.

Exception is taken to the ALJ's failure to make an express recommendation that the Commission reject DII's proposal to revise the terms of the existing Rider No. 16 rate to apply on an "as used" basis. Applying the Rider No. 16 rate to the level of demand designated in a customer's service agreement (as Rider No. 16 provides) is consistent with best practices for

²³ *Petition of Metropolitan Edison Co., supra; Pa. PUC v. Duquesne Light Co.*, Docket No. R-2013-2372129 (Order entered Apr. 23, 2014) pp. 19-21.

back-up rate design, and none of the purported reasons advanced by DII for applying the rate on an “as used” basis is valid.

Exception No. 3. The Recommended Decision Errs In Recommending Adoption Of DII’s Proposed Rider No. 16 Rate Of 35¢, Which Is Contrary To The Record Evidence And Commission-Approved Principles Of Distribution Rate Design

Exception is taken to the ALJ’s recommendation to adopt DII’s proposed Rider No. 16 rate of 35¢ per kW. Under the Recommended Decision, Rider No. 16 customers would only pay for less than 5% of the costs of facilities that must be available for these customers 100% of the time. Duquesne Light incurs these costs regardless of how often the customer takes service. DII’s proposal to employ a usage-based measure of distribution costs to set a back-up distribution rate is conceptually wrong and conflicts with this Commission’s findings that the costs of distribution service do not vary with customers’ energy usage. The authorities that DII relied upon contradict its position; those authorities hold that a forced outage rate may properly be applied *only* in determining generation capacity reservation costs – not the costs of distribution service. DII has not met its burden of proof to show the reasonableness of its entirely new proposal to depart from Commission-approved principles of rate design to substantially reduce an existing, approved back-up service rate.

Exception No. 4. The Recommended Decision Errs In Recommending That The Commission Find Duquesne Light’s Existing, Approved Rider No. 16 Rate Is Not Supported By Substantial Evidence.

Exception is taken to the ALJ’s recommendation that the Commission find the Company did not present substantial record evidence to support the cost basis for a rate at least as high as its existing Rider No. 16 rate of \$2.50 per kW. The Company presented substantial evidence that back-up distribution service, like distribution service generally, is a function of the peak demand that the customer places on the distribution system, not usage (as the Commission itself has

previously determined). Back-up service customers impose peak demands that do not differ materially from the demands imposed by general service distribution customers. Therefore, the cost of back-up distribution service is not materially less than the fully-allocated cost of general distribution service (over \$7.00 per kW), which fully supports a back-up distribution rate of at least \$2.50 per kW. The ALJ also ignored additional, highly relevant evidence presented by DLC that confirms the existing Rider No. 16 rate is clearly not excessive and should not be reduced.

Exception No. 5. The Recommended Decision Errs In Recommending That Service Under Rider No. 16 Should Be Treated As A “Distinct Class.”

Exception is taken to the ALJ’s recommendation that Rider No. 16 customers should be treated as a “distinct class” in preparing a cost-of-service allocation study. None of the major Pennsylvania EDCs treat back-up service as a “distinct class,” and there is no valid cost-of-service justification for doing so. Additionally, even DII’s witness, whose testimony the ALJ cites to support her recommendation, testified that there are currently too few customers on Rider No. 16 to treat that service as a separate class.

IV. ARGUMENT

A. The Recommended Decision Errs In Assigning To Duquesne Light The Burden Of Proof With Regard To DII’s Proposal To Reduce The Existing, Approved Rider No. 16 Rate To 35¢ Per kW (Exception No. 1)

This Commission has repeatedly held that, while a utility has the burden to prove that a proposed rate (or an existing rate that is the subject of a Commission investigation) is just and reasonable,²⁴ “a party that advances a proposal that the utility did not include in its filing carries

²⁴ 66 Pa.C.S. § 315(a).

the burden of proof as to that contrary proposal.”²⁵ The authority furnished by those precedents conforms to the reasonable principle that a party should not have to “prove the negative.” The Commission reaffirmed and summarized the extensive precedent on this issue in *Petition of Metropolitan Edison Co.*²⁶

In *Petition of Metropolitan Edison Co.*, the FirstEnergy companies (“FE”) filed petitions seeking approval of riders to their tariffs to establish distribution system improvement charges (“DSIC”). The Office of Consumer Advocate (“OCA”) argued that Federal accumulated deferred income taxes and certain state tax deductions should be included in the quarterly calculations of the DSIC. The OCA also presented testimony describing changes to FE’s proposed riders it believed should be made to reflect Federal and state tax effects in the formula for computing quarterly changes in the DSIC. FE opposed including any of the OCA-proposed tax effects in the DSIC calculation. It also opposed the specific changes to the DSIC formula the OCA proposed to implement its position. FE explained that it should not have the burden to disprove the reasonableness or legality of amendments to the DSIC formula needed to implement OCA’s principal proposal. The Commission agreed, holding as follows:

Although the utility bears the burden of proving that its proposed rate surcharge is just and reasonable, a party that advances a proposal that the utility did not include in its filing carries the burden of proof as to that contrary proposal. *Petition of Duquesne Light Company*, Docket No. P-2012-2301664 (Order entered January 25, 2013); *Joint Default Service Plan for Citizens’ Electric Company and Wellsboro Electric Company (Citizens’ Electric)*, Docket Nos. P-2009-2110798, et al. (Order entered February 25, 2010); *Met-Ed, supra*. Section 315(a) cannot reasonably be read to place the burden of proof on the utility regarding an issue the utility did not include in its filing and which, frequently, the utility

²⁵ *Petition of Metropolitan Edison Co. et al., supra*, at 16, citing *Petition of Duquesne Light Co.*, Docket No. P-2012-2301664 (Final Order entered Jan. 25, 2013).

²⁶ *Id.* at 16-17.

would oppose. *Met-Ed* at 67. A utility does not have the burden of proving the legality/illegality or reasonableness/unreasonableness of a proposal it did not include in its filing. *Citizens' Electric* at 9. Had we reached the issue regarding the OCA's proposed calculations, this is the standard we would have applied to that evidentiary issue. In this vein, we agree with the ALJ that the OCA had the burden to prove that one of its proposed methods should be adopted to incorporate that impact into the Companies' DSIC calculation.

Applying the principle articulated in *Petition of Metropolitan Edison Co.* and its predecessors, DII has the burden of proving in this case that the Commission should depart from its own prior precedent to adopt a usage-based approach to setting a distribution rate for back-up distribution service and, on that basis, reduce the existing, approved Rider No. 16 rate from \$2.50 per kW to 35¢ per kW. Thus, even if there were any validity to the ALJ's claim that the existing, approved Rider No. 16 was not supported by "substantial evidence," the ALJ erred in assuming that the Company had the burden of proof (in reality a burden to disprove) with regard to the 35¢ per kW rate that DII proposed based on its new usage-based approach to establishing distribution rates. See also *Pa. PUC v. Duquesne Light Co.*, Docket No. R-2013-2372129 (Order entered April 23, 2014) pp. 19-21.

B. The Recommended Decision Errs In Not Expressly Recommending That DII's Proposal To Apply The Rider No. 16 On An "As Used" Basis Should Be Rejected (Exception No. 2)

Rider No. 16 provides that the existing \$2.50 per kW rate applies to the back-up contract demand a customer designates in its service agreement with the Company. As previously explained, DII contended that the Rider No. 16 rate should apply only on an "as used" basis. The Recommended Decision did not offer a recommendation on this point. DII's proposal to alter the terms of the existing Rider No. 16 to apply on an "as used" basis should be rejected.

Applying a back-up distribution rate to a customer's contracted level of back-up demand is entirely consistent with the "best practices" for designing back-up distribution rates that were

advanced by witnesses in this case who are strong proponents of CHP. Specifically, the EPA Standby Rates Study that Peoples’ witness, Jamie Scripps,²⁷ offered as evidence of “best practices” explicitly provides that back-up rates for distribution service properly may be applied to “an agreed-on contract demand”:

The distribution demand charge is multiplied by the customer’s billing demand, which is one of several quantities (or some variation on them): the customer’s monthly noncoincident peak demand, its maximum potential demand, or *an agreed-on contract demand*. . . . [T]he *negotiated contract demand* might be accompanied by the customer’s promise not to exceed it . . .²⁸

Consequently, Rider No. 16 fully conforms to applicable, and accepted, design criteria for back-up *distribution* rates.

DII advanced three purported reasons why the Rider No. 16 demand charge should be applied only on an “as used” basis. First, it contended that the as-used application “encourages efficient operation of the CHP system” by incenting customer-generators to “avoid outages.” This argument clutches at straws. Irrespective of back-up distribution charges, CHP customers have to replace the *generation* their generating units do not provide when they experience outages. Generation replacement costs are substantial – over \$49 per MWH as DLC witness Neil S. Fisher calculated (and no party contested).²⁹ Back-up distribution charges (calculated based on contract demand), in contrast, are only a small fraction (less than 3%-4%) of a

²⁷ Ms. Scripps is a partner in 5 Lakes Energy LLC. Ms. Scripps submitted direct and surrebuttal testimony on behalf of Peoples in this case. Peoples Statement Nos. 3 and 3-SR. Ms. Scripps’ testimony discussed, *inter alia*, “best practices” for the design of back-up service rates.

²⁸ Peoples Exhibit No. JWS-9, p. B-6 (emphasis added) (U.S. EPA, *Standby Rates for Customer-Sited Resources: Issues, Considerations and the Elements of Model Tariffs* (2009) (“EPA Standby Rates Study”). Notably, the EPA Standby Rates Study (p. B-6) also provides that the back-up distribution demand rate can properly be applied to a customer’s “maximum potential demand,” which would require a back-up customer to pay the back-up rate on the sum of the maximum demands of all of the electrical equipment it operates. Allowing a customer to choose a back-up *contract* demand (as Rider No. 16 does) gives the customer the flexibility to select a billing demand that is less than its “maximum potential demand” and then adjust its operations to remain within its designated contract level.

²⁹ DLC Statement No. 16-R, p. 30 (Revised Figure 4). *See also* DLC Statement No. 16-R, p. 28 (Figure 3).

representative self-generating customer's total electric bill at the Company's existing rates.³⁰

The cost of purchasing electricity to replace what a customer would otherwise generate provides all the incentive a customer needs to operate its generator efficiently and "avoid outages."

DII also contends that back-up demand charges should be applied on an "as used" basis because that is the way demand charges are applied for general service rates.³¹ This argument overlooks several important facts. First, because they are applied on an "as used" basis, the demand rates for general service are much higher than the \$2.50 per kW rate under Rider No. 16.³² Second, if a customer with CHP or other distributed generation believes it can operate its generator efficiently, avoid outages occurring during on-peak periods, and, therefore, benefit from an "as used" application of a demand, it has the flexibility to remain on its general service rate without electing Rider No. 16 and achieve the savings DII claims would be realized from the "as used" approach.³³ Third, the "spikes and dips" in *usage* that general service customers exhibit – which DII alluded to as a reason to apply a back-up rate on an "as used" basis – are not a measure of the peak demand that the system must be designed to meet.³⁴

Finally, DII argued that applying the demand charge to "as used" demand is necessary to conform Rider No. 16 to the billing practice for the existing Rider No. 16 customer. That argument ignores the fact that under the MOU with Duquesne University, the demand charge will apply to the university's *contracted* demand charge.³⁵ Revising Rider No. 16 to change the

³⁰ DLC Initial Brief, p. 13 and n.54.

³¹ DII Initial Brief, p. 46.

³² For existing Rate GL demand charge are over \$9.00 for the first 300 kW of demand and over \$8.00 per kW for all additional demand. Duquesne Light Tariff Electric – Pa. P.U.C. No. 24, p. 47.

³³ DLC Statement No. 16-RJ, pp. 6-7. *See* DLC Initial Brief, p. 27; DLC Reply Brief, pp. 27-29.

³⁴ DLC Statement No. 14-R, p. 30.

³⁵ DLC Initial Brief, pp. 8-9; DLC Exhibit No. CJD-1-R; DLC Statement No. 1-R, p. 11.

application of the rate from contract demand to “as used” demand would depart from the terms of the MOU. Currently, the terms of Rider No. 16 and the MOU are consistent, and both should be approved.

C. The Recommended Decision Errs In Recommending Adoption Of DII’s Proposed Rider No. 16 Rate Of 35¢, Which Is Contrary To The Record Evidence And Commission-Approved Principles Of Distribution Rate Design (Exception No. 3)

The reserved issue involves distribution service, *not* generating capacity.³⁶ Throughout this case, DII and its witness have tried to impose criteria appropriate *only* for designing standby *generation* rates to the rates for back-up *distribution* service.³⁷ And, in so doing, DII has misstated the findings and conclusions of the authorities on which it attempted to rely,³⁸ as explained hereafter.

The service that DLC provides to eligible customers electing Rider No. 16 ensures that capacity is available on the *distribution* system up to the level of kW demand for which those customers contract with the Company. If a customer-generator expects the Company to provide back-up distribution service whenever its generator is not operating, then the contracted level of capacity must be available 24 hours per day, 365 days per year, because, as DII witness Crist acknowledged³⁹ and as operating data for the existing Rider No. 16 customer confirm,⁴⁰ outages of customers’ generators occur at any time, including during class and system peak periods.

³⁶ Rider No. 16 (like the Company’s general service distribution rates) does not govern the provision of energy and generating capacity that would be used to meet a customer-generator’s load when its generator is not operating. In an “unbundled” state like Pennsylvania, energy and capacity are obtained at market-based prices either from electric generation suppliers (for shopping customers) or from market-priced, competitively-procured default service made available by the default service provider. DLC Statement No. 16-R, pp. 12-13. Rates for energy and generation capacity are, therefore, not at issue in this case.

³⁷ See DLC Initial Brief, pp. 19-30; DLC Reply Brief, pp. 14-27.

³⁸ See DLC Reply Brief, pp. 21-26.

³⁹ Tr. 612, lines 9-22.

⁴⁰ DLC Statement No. 14-R, pp. 29-30. See DLC Initial Brief, pp. 21-22; DLC Reply Brief, pp. 13-14.

The Commission has found that, unlike “the supply costs of energy . . . [that] vary as [customers’] consumption varies,” “distribution service costs do not vary, in the short run . . . in proportion to a customer’s daily or monthly levels of consumption.”⁴¹ Despite those Commission decisions, DII contends that the fully-allocated cost of providing distribution service to Rider No. 16-eligible customers calculated by DLC witness Howard S. Gorman’s cost of service study⁴² should be discounted by multiplying that cost by 5% (i.e., a 95% discount) to reflect how *often* Mr. Crist estimates a back-up customer may use the distribution system. While Mr. Crist tried to call his proposed multiplier a “load factor” (and persuaded the ALJ to do the same⁴³), his description (e.g., “unplanned outage hours”)⁴⁴ confirms that 5% is an estimate of the “forced outage rate” of customers’ on-site generation.⁴⁵ Mr. Crist mislabeled his multiplier a “load factor” to create the misimpression that he was replicating the approach the Company’s witness used in DLC’s 2013 base rate case⁴⁶ to judgmentally reduce the over \$6.00 per kW rate to \$2.50 per kW.⁴⁷

In contrast to Mr. Crist’s mischaracterizations, Peoples’ witness, James W. Daniel, accepted the fully-allocated cost of distribution service Mr. Gorman calculated and applied a 30% multiplier to derive his recommended rate of \$2.41 per kW,⁴⁸ which, for all practical rate

⁴¹ Alternative Ratemaking Policy Statement, p. 16.

⁴² DLC Statement No. 14 and accompanying exhibits. Mr. Crist accepted Mr. Gorman’s cost of service study. Tr. 588, lines 5-7 (“You’re getting into Mr. Gorman’s stuff. I didn’t refute his cost of service allocation for the class cost of service whatsoever.”).

⁴³ See, e.g., Recommended Decision, p. 177 (“Mr. Crist elected to use 5% as the load factor . . .”).

⁴⁴ DII Statement No. 1, p. 25, lines 18-20. See also DII Statement No. 1-SR, p. 11, lines 16-18 (describing the same figure as the “percentage of the annual hours” that back-up customers would allegedly “need back-up service.”).

⁴⁵ See DLC Reply Brief, pp. 17-21.

⁴⁶ See Tr. at 323-324.

⁴⁷ *Id.* (Explaining that “load factor” and “forced outage rate” are two entirely different concepts.).

⁴⁸ Peoples Statement No. 2, p. 10. Mr. Daniel also presented an alternative rate design for back-up service that used his \$2.41 per kW rate to create seasonally differentiated rates of \$3.41 per kW for service during the months of June

design purposes, is the equivalent of the existing Rider No. 16 rate. This evidence from Peoples' expert is also in the record, but was not discussed in the ALJ's analysis of the reserved issue.⁴⁹

Initially, Mr. Crist alluded to the allegedly few "unplanned outage hours" customer-generators would experience⁵⁰ and the allegedly "small percentage of annual hours" that customer-generators "would need back-up service"⁵¹ as the reason for discounting the fully-allocated cost of providing back-up service by 95%. In other words, Mr. Crist was attempting to justify a large discount for back-up service because he contended that customers' generators are highly reliable and would rarely, if ever, need to use back-up service during on-peak periods.

Mr. Crist substantially altered his original position, however, after Mr. Fisher showed that a distributed generation customer with the operating characteristics Mr. Crist attributed to it⁵² could remain on its general service rate without Rider No. 16 and obtain back-up service at no cost⁵³ or could experience an outage at its average demand level in any given month and effectively pay only a small additional amount (about \$3.75 per kW) in distribution charges to have power delivered during that outage.⁵⁴ In short, customers with generators as reliable as Mr. Crist claimed would not need to elect Rider No. 16, and could pay either nothing or a very small

through September and \$1.71 per kW for service during the months of October through May. *See* Peoples Exhibit No. JWD-5.

⁴⁹ Recommended Decision, pp. 173-178.

⁵⁰ DII Statement No. 1, p. 25, line 19.

⁵¹ DII Statement No. 1-SR, p. 11, lines 17-18.

⁵² In his direct testimony, Mr. Crist cited, and relied upon, a 2014 report by Duquesne University that its CHP facility could maintain an approximately 97.5% availability rate, which is equivalent to a forced outage rate of 2.5%. DII Statement No. 1, p. 25, lines 1-3 and 20. Peoples' witness Scripps suggested an availability rate of 95%. Peoples Statement No. 3, p. 19, lines 3-4.

⁵³ DLC Statement No. 16-RJ, pp. 6-7 (Explaining that such a customer "would get a 'free pass' and pay nothing (\$0) to Duquesne Light for having to stand ready to serve those 2.0 MW [of back-up demand] in the event of an unplanned outage.").

⁵⁴ DLC Statement No. 16-RJ, p. 8, lines 5-10.

additional amount to have electricity from external sources delivered when their generators were out of service.

Faced with Mr. Fisher’s analysis, Mr. Crist altered his argument and contended that customer-generators were not so reliable after all and that the representative operating scenarios that Peoples’ witness Scripps ascribed to CHP projects in calculating the customer impact of Rider No. 16⁵⁵ were “absolutely not a realistic case.”⁵⁶ Based on his reappraisal of the availability and reliability of distributed generation, Mr. Crist testified that distributed generation, including CHP units, can – and will – experience outages at any time: “I don’t know when the unpredicted outages are, that is why they’re called unpredicted.”⁵⁷

Mr. Crist acknowledged what actual historic usage data for the current Rider No. 16 customer confirmed⁵⁸ – customers can, and do, experience outages of their on-site generators, and require back-up distribution service, at any time, including during class and system peak periods. The practical effect of Mr. Crist’s position is that, even if a customer’s generator operated with 95% availability (the complement of a 5% forced outage rate), the Company would still need to have sufficient distribution system capacity to meet peak demands of customers with on-site generation that do not differ from the peak demands those customers would impose if they did not have on-site generation.

According to Mr. Crist and DII, customer-generators should receive back-up service at a rate that absolves them from paying all but a small fraction (5%) of the costs to have distribution

⁵⁵ Peoples Statement No. 3, p. 8.

⁵⁶ Tr. at 619, lines 8-9. *See also* Tr. at 620 at lines 6-7 (“He [Mr. Fisher] did say he used the Peoples Gas case, and I just want to be clear, that’s not a realistic case.”).

⁵⁷ Tr. at 612, lines 9-22.

⁵⁸ DLC Statement No. 14-R, pp. 29-30.

capacity available 24-7-365 to meet their needs.⁵⁹ Thus, Mr. Crist’s recommendation would exempt back-up customers from costs that all other Duquesne Light distribution customers pay, even though customers with generation could (and did) impose the same peak demands that they would have if they had not installed on-site generation.⁶⁰

Significantly, the 5% multiplier that Mr. Crist proposed is not a measure of the peak demands a back-up service customer can impose on the distribution system, and Mr. Crist’s methodology does not calibrate DII’s proposed back-up service rate to a back-up service customer’s peak demand. Rather, Mr. Crist’s proposed 5% multiplier measures the *frequency* with which a customer-generator imposes its demands, which is a measure of usage or consumption.⁶¹ Therefore, applying a 5% multiplier to the fully-allocated cost of distribution service calculates charges that are proportional to a back-up customer’s energy usage. The Recommended Decision (pp. 174-175) accepts this proposition, as evidenced by its mistaken belief that the Company is providing distribution “service” only when electricity from external sources is actually being delivered by DLC to a customer’s meter during its generator outages.⁶²

DII’s position is entirely incorrect, and the Recommended Decision errs in giving it any weight. As previously explained, the cost of *distribution* service does not vary with energy usage – as the Commission has repeatedly stated. Back-up service provided under Rider No. 16

⁵⁹ Tr. at 619-620.

⁶⁰ *Id.*

⁶¹ How frequently demand is imposed is a measure of demand over time. It is comparable to demand (kW) per a given unit of time (e.g., hours) and, as such, is comparable to kWh (kilowatts per hour or kWh) which is, of course, a measure of *usage*, not demand.

⁶² The ALJ’s assumption that distribution “service” is only being provided when back-up electricity is actually being delivered by the Company’s distribution system to a back-up customer’s meter is incorrect and conflicts with the Public Utility Code’s definition of “service” as including “any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities . . . in the performance of their duties under this part to their patrons . . .” 66 Pa.C.S. § 102.

is *distribution* service, and its costs do not vary with energy usage either. Therefore, there is no valid cost-of-service justification for discounting the fully-allocated cost of distribution service by a usage-based multiplier, which is what a 5% “forced outage rate” represents.

Because Mr. Crist and DII began with the faulty premise that distribution costs are a function of usage, they repeatedly confused cost-of-service principles that apply only to *generation* service (for which costs vary with energy usage) with cost-of-service principles that properly apply to distribution service (for which costs do not vary with energy usage). This confusion was conspicuously displayed by DII’s attempt to rely on findings and recommendations of a study prepared by Brubaker & Associates, Inc. and the Regulatory Assistance Project for the Oak Ridge National Laboratory⁶³ to try to support its position that the fully-allocated costs of furnishing distribution service should be multiplied by a “forced outage rate” to determine an appropriate back-up distribution rate.⁶⁴ However, the portions of the Brubaker/RAP Study that DII tried to rely upon have nothing to do with rates for distribution service. To the contrary, the Brubaker/RAP Study itself clearly states that forced outage rates should be used *only* to calculate “generation reservation charges:”

The appropriate percentage of the *demand charge for generation for full-requirements customers* to be assessed to standby customers could be developed using historical data, if available, regarding the FORs [forced outage rates] of standby customers in the utility’s service area. Specifically, *the standby generation reservation charge* would be calculated as the product of the FOR and the demand related *generation costs underlying the applicable full-requirements electricity rate*.⁶⁵

⁶³ James Selecky, Kathryn Iverson, Ali Al-Jabir, *Standby Rates for Combined Heat and Power Systems – Economic Analysis and Recommendations for Five States* (Feb. 2014) (“Brubaker/RAP Study”). The Brubaker/RAP Study was submitted by Peoples’ witness Jamie W. Scripps as Peoples Exhibit No. JWS-6.

⁶⁴ DII Initial Brief, pp. 36-38.

⁶⁵ Brubaker/RAP Study, p. 13 (emphasis added).

The very same point is repeated throughout the Brubaker/RAP Study.⁶⁶ Moreover, the Brubaker/RAP Study also finds that even the need for *generation* reservation charges is entirely eliminated in states (like Pennsylvania) that have “unbundled” generation from T&D services.⁶⁷

DII repeated this error – confusing generation costs and distribution costs – in its attempt to rely upon decisions of the Michigan Public Service Commission (“Michigan PSC”) and the Minnesota Public Utility Commission (“Minnesota PUC”) that DII also claimed support the application of a forced outage rate to the fully-allocated cost of service.⁶⁸ As explained in DLC’s Reply Brief, the portions of the decisions DII tried to rely upon all pertained to *generation* reservation charges and not charges for back-up distribution service.⁶⁹ In fact, a portion of one Michigan PSC case (which DII did not discuss) affirmed a methodology for calculating back-up distribution charges that is indistinguishable from the methodology Mr. Gorman used in this case to calculate the Company’s originally proposed (and subsequently withdrawn) increase in the Rider No. 16 rate.⁷⁰ These authorities do not support DII’s position.⁷¹

⁶⁶ *E.g.*, Brubaker/RAP Study, p. 18 (“This standby generation charge can be calculated by multiplying the best FOR by the demand charge in the customer’s otherwise applicable full-requirements tariff.”); p. 18 (“standby generation charge” for AEP Ohio should be set based on FOR and fully-allocated generation demand charge).

⁶⁷ Brubaker/RAP Study, p. 11: “In competitive electricity markets, market prices determine the charges for standby service from electricity suppliers. Generally, the electricity costs of back-up power (distinct from the delivery costs) is determined by the market price at the time of the customer-generator’s outage.”

⁶⁸ DII also cited an unpublished decision of the Rhode Island Public Utilities Commission accepting a settlement regarding a back-up service rate. That decision – in addition to its questionable value as a mere acceptance of a compromise and settlement – is not applicable for other reasons that are set forth in detail in DLC’s Reply Brief (pp. 25-26).

⁶⁹ See DLC Reply Brief, pp. 22-25, analyzing and quoting the relevant part of each decision.

⁷⁰ *In the Matter of the Application of Consumers Energy Company for Authority to Increase its Rates for the Generation and Distribution of Electricity and for Other Relief*, Case No. U-18322, 2018 Mich. PSC LEXIS 70, *175 (Mar. 29, 2018) (“*Application of Consumers Energy Company*”). The decision explains that Consumers Energy measures its customers’ use of the distribution system by their “non-coincident peak demand” and the “class demand was used to allocate costs to each class.” The Michigan PSC accepted its Staff’s recommendation that the “distribution charges for GSG-2 [the standby rate for a customer with on-site generation] continue to be charged in the manner that they historically have been.”

⁷¹ DII and Mr. Crist made the even more facially erroneous argument that their position is mandated by the Federal Energy Regulatory Commission’s regulations implementing the Public Utility Regulatory Policy Act of 1978 (“PURPA”). As explained in DLC’s Initial Brief (pp. 30-34), the PURPA regulations only apply to certified

In summary, DII has not provided any valid basis to support a finding that the fully-allocated cost of distribution service should be discounted by the application of a 5% “forced outage rate”:

- DII proposes an entirely new, usage-based measure of distribution costs, which is conceptually wrong and conflicts with this Commission’s findings that the costs of providing distribution service do not vary with customers’ energy usage.
- DII’s attempt to rely upon the Brubaker/RAP Study and decisions of the Michigan PSC and Minnesota PUC is unavailing. Those authorities hold that applying a forced outage rate as DII proposes is only appropriate in determining generation capacity reservation costs – not the costs of distribution service.
- DII confuses cost-of-service principles that only apply to generation service with the cost-of-service principles that properly apply to distribution service.
- DII does not come close to carrying the burden of proof that well-established Commission precedent imposes on parties – like DII in this case – that are advancing “a proposal the utility did not include in its filing.”⁷²

The Commission should reject the ALJ’s recommendation to adopt DII’s proposed Rider No. 16 rate of 35 ¢ per kWh.

The Commission may decide as a policy matter that back-up service customers not be required to pay for the full cost to provide service to them. In fact, Duquesne Light’s current rate of \$2.50 per kW provides a significant discount to the full cost of service. However, 5% of the full cost of service is entirely too low.⁷³ .

“qualifying facilities.” And, in any event, the rate criteria DII and Mr. Crist cite only apply to “energy and capacity,” which the PURPA regulations themselves and other relevant authorities make clear pertain to generation rates not distribution rates. *See* Peoples Exhibit No. JWS-6 (Brubaker/RAP Study), pp. 4 and 8 (Stating that the obligation for “delivery” of “power” is a separate and distinct function from the supply and sale of “back-up power,” “maintenance power” and “supplementary power.”).

⁷² *Petition of Metropolitan Edison Co. et al., supra.*

⁷³ In addition, Duquesne Light notes that the Commission is currently evaluating how to set back-up rates for CHP customers. Duquesne Light is not suggesting that the Commission finally decide that issue in this proceeding and reserves the right to revise its Rider No. 16 rate in the future.

D. The Recommended Decision Errs In Recommending That The Commission Find Duquesne Light’s Existing, Approved Rider No. 16 Rate Is Not Supported By Substantial Evidence (Exception No. 4)

The ALJ’s recommendation that the Commission find Duquesne Light has not presented substantial evidence to support its existing, previously-approved Rider No. 16 rate is based upon a misunderstanding of how cost of service is analyzed and determined for back-up distribution service. The Recommended Decision errs in accepting DII’s position that the cost of back-up distribution service should be based on *how often* a customer-generator imposes demands on the distribution system rather than the magnitude of the customer’s demands an EDC must be ready to serve whenever they are imposed. In short, the Recommended Decision accepts DII’s faulty assumption that frequency of use – in other words, *usage* – should be employed to determine and allocate *distribution* costs. As previously explained, the Commission has previously rejected such claims and determined that the cost of providing distribution service does not vary with “consumption” or “usage.”⁷⁴

The fundamental error underlying the ALJ’s recommendation is evident from the way the Recommended Decision frames the analysis of the reserved issue.⁷⁵ Specifically, the Recommended Decision asserts that the Company based its existing Rider No. 16 rate on the “assumption” that it is delivering back-up electricity to a Rider No. 16 customer “continuously during the entire time period” and claims further that such an “assumption” cannot be correct “because if Duquesne Light must provide service constantly, then the customer clearly does not have a generation project operating.”⁷⁶ Thus, the Recommended Decision incorrectly

⁷⁴ Alternative Ratemaking Policy Statement, p. 16. See DLC Initial Brief, pp. 19-25; DLC Reply Brief, pp. 14-17. See also Section I.C., *supra*.

⁷⁵ Recommended Decision, pp. 174-175.

⁷⁶ *Id.*

presupposes that a back-up service customer is not receiving distribution “service” unless back-up electricity from external sources is actually flowing to the customer’s meter during outages of its generator. The Commission has never viewed distribution “service” that way and, as previously explained, the ALJ’s assumption conflicts with the Public Utility Code’s definition of “service.”⁷⁷

The foregoing statements crystallize the Recommended Decision’s mistake of conflating generation supply costs (which vary with a customer’s consumption) and distribution costs (which do *not*). That misunderstanding led to the Recommended Decision’s equally erroneous conclusion that a customer on Rider No. 16 should bear the fixed costs of the distribution system only in proportion to its “use” of back-up service, where “use” is understood by the Recommended Decision to be actual delivery of electricity to the customer when its generator is not operating. This faulty premise, in turn, caused the Recommended Decision to reject as “unreasonable” the unassailable fact that an EDC bears the costs of keeping distribution capacity, i.e., transformers, poles and wires, available to meet a back-up customer’s demand even when back-up electricity is not flowing to the customer’s meter.⁷⁸ The Recommended Decision is, therefore, entirely contrary to this Commission’s findings about the nature of distribution system costs.⁷⁹

⁷⁷ 66 Pa.C.S. § 102.

⁷⁸ Recommended Decision, p. 174 (Stating that it is “unreasonable” to believe that an EDC must stand ready to “provide service ‘24-7-365’ ” to distribution customers that rely on the EDC for back-up distribution service and claiming support for that recommendation from evidence that the existing Rider No. 16 customer’s generator has generally been “available 97.5 percent of the time over the last few years.”).

⁷⁹ See, e.g., Alternative Ratemaking Policy Statement, p. 14 (Because “most, if not all, of a utility’s distribution system costs are fixed in the short run . . . customers should pay for those costs through fixed charges on their bills that reflect the amount of fixed costs of the distribution system for each customer class.”).

Because of the conceptual and factual errors at the heart of the Recommended Decision, it misapprehends – and therefore either disregards or marginalizes – the substantial record evidence demonstrating that the cost of providing back-up distribution service supports the existing Rider No. 16 rate.

1. Duquesne Light Properly Analyzed And Established The Cost Of Providing Back-Up Distribution Service

All of Duquesne Light’s customers depend on a reliable, secure and universally available distribution grid, including customers that generate a portion of their electricity.⁸⁰ Customer-generators could separate themselves from the distribution grid and avoid paying any charges to their EDC. However, customer-generators do not do so because they want to be able to rely upon the EDC’s distribution system to deliver electricity when their own generation is not operating during scheduled and unplanned outages.⁸¹ As DII witness Crist conceded, generator outages – and the attendant need for customer-generators to rely on the electric distribution grid – are “unpredicted” and, therefore, can (and do) occur at any time.⁸²

So long as a customer-generator wants to retain the option to have power delivered to it from external sources at any time (and DII’s members clearly have that expectation⁸³), the customer’s use of on-site generation to meet a portion of its load does not reduce the utility’s cost to furnish distribution service to that customer, as long as the utility has the obligation to serve the customer’s peak demand any time it may occur.⁸⁴ In other words, an EDC bears the fixed costs of building and maintaining its distribution system without regard to how frequently

⁸⁰ DLC Statement No. 16-R, p. 16.

⁸¹ *Id.*

⁸² Tr. 612, lines 20-22.

⁸³ Tr. 573, lines 9-14.

⁸⁴ DLC Statement No. 16-R, pp. 17-18.

the system may be used by customers. Moreover, whether or not a customer has on-site generation eligible for Rider No. 16, the size of the Company's distribution property and equipment (which determines its costs) must be sufficient to meet the customer's peak demand.⁸⁵ Therefore, Duquesne Light does not incur any less cost to build, own and operate its distribution system simply because a customer on Rider No. 16 may use back-up distribution service only intermittently,⁸⁶ as substantial record evidence demonstrates.

First, as previously discussed, DII's own witness conceded that it is reasonable to expect that outages of customers' on-site generators will occur at any time – including on-peak periods: “There will always be an outage. I don't know when the unpredicted outages are, that's why they're called unpredicted.”⁸⁷ Also, Mr. Crist, in preparing his own customer impact analysis of the Rider No. 16 rate, assumed that a representative customer with generation would have an outage each month and that those outages would cause the customer to register its maximum peak demand during the on-peak period of its applicable general service rate schedule.⁸⁸ In short, he assumed generator outages would occur during on-peak periods.

Second, DLC witness Gorman assembled, presented and analyzed extensive actual operating data for Duquesne Light's Rider No. 16 customer (Duquesne University). Those data establish that a back-up customer can and, in fact *did*, impose its peak demands during customer-class and system-peak periods:

⁸⁵ DLC Statement No. 14-R, p. 27, lines 4-12; DLC Statement No. 16-R, p. 18. The National Association of Regulatory Utility Commissioners' (“NARUC”) *Electric Utility Cost Allocation Manual* – a widely-recognized, authoritative source – states that “[l]ocal area loads are the major contributors in sizing distribution equipment.” NARUC, *Electric Utility Cost Allocation Manual* (Jan. 1992), p. 97.

⁸⁶ DLC Statement No. 14-R, p. 27, lines 6-8.

⁸⁷ Tr. at 612, lines 20-22.

⁸⁸ DLC Initial Brief, p. 28.

- As recently as June 2016, during an outage of its on-site generator, the peak demand of DLC’s Rider No. 16 customer was coincident with the peak demand of the Rate GL class⁸⁹ (Duquesne University receives general service on Rate GL).⁹⁰
- In two other months (May and September), the Rider No. 16 customer’s demand was at least 90% of its monthly peak when the Rate GL class peak occurred, which shows that outages of the customer’s generator were material contributors to the class monthly peaks.⁹¹
- When the Rider No. 16 customer achieved its annual peak demand for 2016 (at 2:15 PM on August 10), the Rate GL class demand was at 98% of its annual peak and the Company’s entire distribution system was at 97% of its total annual peak demand.⁹² These data also confirm that outages of a Rider No. 16 customer’s generator can – and did – occur during local-area and system peak periods.

As the foregoing summary demonstrates, the Recommended Decision is plainly wrong to question whether Duquesne Light “used any historical data” to substantiate the costs underlying Rider No. 16.⁹³ Duquesne Light presented those data for the record and submitted expert testimony explaining their significance:

These data indicate the Company must stand ready to meet a customer’s maximum need for Back-up service at the time of the class peak and the time of the system peak, and that a customer’s maximum need for Back-up service may occur (and historically has occurred) when the class and the system are operating at or very near peak.⁹⁴

In summary, substantial record evidence shows that there is not a valid cost-of-service basis for establishing a Rider No. 16 rate that is only 5% of (95% below) the fully-allocated cost of distribution service. Substantial record evidence also demonstrates that the existing Rider No. 16 rate is not excessive.

⁸⁹ DLC Statement No. 14-R, pp. 29-30.

⁹⁰ *Id.* at 30, lines 2-6.

⁹¹ *Id.* at 30, lines 7-8.

⁹² *Id.* at 30, lines 10-14.

⁹³ Recommended Decision, p. 177.

⁹⁴ DLC Statement No. 14-R, p. 30, lines 16-20. *See* DLC Initial Brief, p. 21.

2. The Recommended Decision Is Wrong In Contending That The Company Had To Furnish Cost-Based Support For A 30% “Load Factor” To Establish That The Existing Rider No. 16 Rate Is Not Excessive

As explained above, the Recommended Decision seriously erred in its analysis of how the cost of providing back-up distribution service should be determined. As a consequence, it also misconstrues the nature of the Company’s proposal in its last base rate case to reduce the Rider No. 16 rate from over \$6.00 per kW to \$2.50 per kW. Those dual misunderstandings underlie another equally erroneous finding. Specifically, the Recommended Decision wrongly assumes that the Company could not establish that the cost of providing back-up distribution service is at least as high as the existing Rider No. 16 rate without providing a cost basis for the 30% “load factor” used to judgmentally reduce the Rider No. 16 rate to \$2.50 per kW in DLC’s last case.⁹⁵ That finding is not correct and should be rejected.

As previously explained, substantial evidence *in this case* demonstrates that because back-up service customers can, and do, impose back-up demands during class and system peak periods, the cost of furnishing back-up distribution service is not materially less than the fully-allocated cost of providing general distribution service for customer classes eligible for Rider No. 16. In short, the cost-of-service study supports setting a Rider No. 16 rate that is \$7.00 per kW.⁹⁶ As a compromise in this proceeding, Duquesne Light agreed to maintain the current rate of \$2.50 per kW. Therefore, the cost justification for a rate of \$2.50 per kW does not depend on whether a 30% “load factor” is “supported” by “evidence,” as the ALJ incorrectly assumed⁹⁷ –

⁹⁵ Recommended Decision, pp. 174-175.

⁹⁶ DII Cross-Exam. Exhibit No. 3.

⁹⁷ *Id.* (Stating that “Duquesne Light should have presented evidence” to support the use of 30% load factor applied to the fully-allocated cost of service to derive the \$2.50 per kW rate.).

an assumption that flowed from the ALJ's erroneous assignment of the burden of proof to the Company.

To reiterate, a Rider No. 16 rate of at least \$2.50 per kW or, in fact, higher, is supported by the cost-of-service evidence in this case. For that reason, Duquesne Light originally proposed to increase the Rider No. 16 rate.⁹⁸ However, before the record closed, the Company elected not to seek an increase at this time. As the Company explained,⁹⁹ when this case was filed, it did not know the Commission would initiate a collaborative "working group" pursuant to the CHP Final Policy Statement to explore, among other issues, the design of back-up service rates, nor did it know that the legislature would revise the Public Utility Code to authorize alternative ratemaking methods.¹⁰⁰ Consequently, the Company decided not to propose any change to the existing Rider No. 16 at this time even though an increase to the rate of \$2.50 per kW could be justified.¹⁰¹

The Recommended Decision also misconstrues the nature of the Company's proposal to reduce the Rider No. 16 rate in its 2013 base rate case. At the time the 2013 case was filed, the Rider No. 16 rates were \$6.45 and \$6.04 per kW (based on the customer's maximum demand). Those rates had also been approved by the Commission and found to be just and reasonable. As DLC witness Gorman explained, in 2013 the Company decided to reduce the previously-

⁹⁸ The Company proposed to increase Rider No. 16 because: (1) unless the Rider No. 16 rate aligns with the cost of providing back-up service, increased penetration of distributed generation in DLC's service area will create further subsidies of customer-generators by other customers; and (2) back-up service rates below the cost of that service send erroneous price signals, incentivize customers to install generation that is not economically justified, and, in that way, can increase the cost of furnishing electric distribution service to all customers. DLC Statement No. 14, p. 12, lines 6-13; DLC Statement No. 16-R, p. 14, lines 14-21, pp. 30-31 and p. 32, lines 1-13.; DLC Statement No. 16-RJ, pp. 15-16.

⁹⁹ See DLC Initial Brief, p. 10; Tr. at 646, lines 1-5.

¹⁰⁰ See Act 58 of 2018.

¹⁰¹ Additionally, the MOU the Company entered into with Duquesne University aligns with the existing \$2.50 per kW rate for the term of that MOU. DLC Exhibit No. CJD-1-R.

approved rate to ameliorate its impact on DLC's Rider No. 16 customer, Duquesne University.¹⁰² (Duquesne University installed its existing 5,000 kW CHP facility over twenty years ago and has opted to receive service on Rider No. 16 since that time.¹⁰³) The Company proposed a rate of \$2.50 per kW, which approximated 30% of the fully-allocated cost of service that Mr. Gorman calculated in that case. That rate was accepted by the settling parties in the 2013 case, which included some of the same entities that are members of DII in this case.¹⁰⁴

The 30% multiplier was not an analytically-derived, cost-of-service based factor – nor was it intended to be.¹⁰⁵ Yet, the Recommended Decision claims that unless the Company presented evidence-based analysis to support that figure, it should be disregarded. In so doing, the Recommended Decision ignores the evidence presented by Peoples' witness Daniel, whose proposed Rider No. 16 was based on a 30% multiplier applied to the fully-allocated cost of service calculated by DLC witness Gorman.¹⁰⁶ Mr. Daniel also qualified to testify as an expert in this case,¹⁰⁷ and his testimony is part of the record.

At the outset, the ALJ's claim that the Company needed to support the use of a 30% "load factor" is wrong because, as discussed previously, she relies upon an incorrect assignment of the burden of proof to the Company. DII has the burden to prove that its entirely new usage-

¹⁰² Tr. at 323-324 (Mr. Gorman testified: "And at one point, he [Mr. Pfrommer – DLC's former Manager of Rates and Tariffs] mentioned to me, 'I'd like to get Duquesne University, our only customer on Rider 16, I'd like to give them a lower rate, so can I multiply by the load factor?' I said, 'You can multiply by the load factor if you want to get a lower rate.'" *Id.* at 323, lines 12-16)).

¹⁰³ DII Exhibit No. JC-7, pp. 4-5.

¹⁰⁴ In the Company's 2013 case, DII's membership included the University of Pittsburgh and Linde LLC. *See* Updated Appendix A to the Complaint of DII filed on October 30, 2013 at Docket No. R-2013-2372129. In addition, while not a member of DII in the 2013 case, United States Steel also intervened in that case. It is a member of DII in this case.

¹⁰⁵ *See* Tr. at 323-324.

¹⁰⁶ Peoples Statement No. 2, p. 10.

¹⁰⁷ *See* Recommended Decision, p. 177 (Stating that the ALJ relied upon the testimony of Mr. Crist because he was an "expert," and he "elected to use 5% as the load factor" to calculate his proposed rate.).

based approach to determining distribution service costs should be validated by the Commission. Furthermore, the Recommended Decision does not follow where the evidence clearly leads. As previously explained, there is solid record evidence in this case to support a Rider No. 16 rate that approximates the fully-allocated cost of distribution service for Rider No. 16-eligible classes. If, as the ALJ recommends, the Commission rejects (because allegedly not “supported”) the Company’s willingness to acquiesce to a rate as low as \$2.50 per kW, the alternative is not to grasp at the even lower 5% multiplier offered by DII. To the contrary, the record evidence and Commission-approved cost-of-service principles for distribution service would indicate a Rider No. 16 rate commensurate with the fully-allocated cost of distribution service would be cost-justified. In that event, the Rider No. 16 rate would be *higher* than the \$2.50 per kW to which the Company has acquiesced – not lower.

3. Duquesne Light Presented Additional Evidence Providing Further Confirmation That The Existing Rider No. 16 Rate Is Not Excessive And Should Not Be Reduced

Duquesne Light presented additional, substantial evidence, summarized below, that demonstrates the Company’s Rider No. 16 rate is not excessive or unreasonable. This highly relevant evidence was not considered at all in the Recommended Decision’s analysis of the reserved issue and is not even mentioned in the Recommended Decision’s summary of DLC’s position. This significant flaw in the Recommended Decision, in itself, justifies rejecting the ALJ’s recommendation to adopt DII’s proposed rate.¹⁰⁸

The Recommended Decision’s failure to consider this evidence is significant in another respect. The additional evidence the Company presented furnishes a robust analytical framework for assessing back-up distribution service costs and rates. That is exactly the kind of

¹⁰⁸ Recommended Decision, pp. 116-124.

information that would be extremely valuable to the CHP Working Group as it explores issues, and develops information, relating to back-up distribution service rate designs. As previously explained, the issuance of the CHP Policy Statement and the formation of the CHP Working Group influenced DLC's decision to not propose changes to Rider No. 16 in this case even though an increase in the Rider No. 16 rate could be justified. For the same reason – and particularly in light of the additional evidence DLC presented and the ALJ ignored – the Commission should reject DII's proposal to adopt an entirely new usage-based approach to setting distribution rates and an attendant radical reduction of the Rider No. 16 rate in this case. There are other forums before the Commission (particularly since the enactment of Act 58 and the Commission's initiative to explore alternative ratemaking methodologies¹⁰⁹) where, with the participation and input of all interested parties, the highly relevant evidence DLC presented (as discussed below) can be considered to help the Commission develop appropriate guidance for determining back-up distribution service costs and assessing back-up service rate designs. Duquesne Light believes that it is reasonable to maintain the existing rate while the Commission develops policy with respect to these issues.

Rider No. 16 Is Not Mandatory. Unlike the back-up rates of other EDC's, such as PECO Energy Company's ("PECO") Capacity Reservation Rider ("CRR") and PPL Electric Utilities Corporation's ("PPL") Rule 6 (to which Peoples' witness Scripps compared DLC), the Company's tariff allows customers with generation the option to choose Rider No. 16 or to remain on general service rates without Rider No. 16.¹¹⁰

¹⁰⁹ See Alternative Ratemaking Policy Statement, *supra*.

¹¹⁰ DLC Statement No. 16-R, pp. 7-10, 19-22.

The Flexibility To *Not* Elect Rider No. 16 Is Valuable To Customers With On-Site

Generation. Customers that have a relatively flat load profile or have a generator that will frequently be out of service during, or near, the hours the customer experiences its peak load will benefit from being on Rider No. 16.¹¹¹ Alternatively, customers with an on-site generator that operates as a baseload unit and has few outages, or outages predominantly during off-peak hours, would achieve a benefit from remaining on their general service rate schedule and not electing Rider No. 16.¹¹² DLC gives customers the flexibility to choose whether to elect Rider No. 16 based on the alternative they believe is most beneficial. DLC witness Fisher, analyzed savings under both options for a customer of the size, and with the operating characteristics, that Peoples' witness Scripps determined is a good representation for comparing back-up rates across multiple companies (5 MW of total connected load and a 2 MW on-site generator).¹¹³

DLC Witness Fisher's Analysis Shows That Customers With On-Site Generation Can Achieve Substantial Savings Under The Company's Back-Up Rates. Mr. Fisher's analysis, which was not rebutted by any party in this case, shows that:

- A representative customer-generator on Rider No. 16 at the current rate that experienced a 32-hour outage *every* month would save at least \$258,000 per year in transmission and distribution ("T&D") charges, compared to a customer without on-site generation.¹¹⁴ Those savings represents 37% of the customer's total T&D charges.¹¹⁵
- A representative customer with a generating facility reliable enough to avoid outages that would cause it to register peak demands during on-peak periods would realize even greater savings by choosing to remain on general service rates without electing Rider No. 16. In that case, the customer would have

¹¹¹ DLC Statement No. 16-RJ, pp. 11-12.

¹¹² *Id.*

¹¹³ DLC Statement No. 16-R, p. 20, n.17.

¹¹⁴ *Id.* at 22.

¹¹⁵ *Id.* In this scenario, a representative customer (5 MW of total load and a 2 MW generator) has generating capacity equal to 40% of its total load and avoids approximately 40% of its total T&D charges.

annual savings of \$318,000 to \$356,000 per year or 45% of its T&D charges.¹¹⁶

Duquesne Light Allows Customer-Generators To Avoid A Much Higher Portion Of Their T&D Charges Than EDCs To Which It Was Compared In This Case. While a representative customer with generation in Duquesne Light’s service territory can avoid between 37% and 45% of its T&D charges as compared to a customer without on-site generation, the same customer could avoid at most 12% of its T&D charges on PECO’s CRR and could not avoid any T&D charges on PPL’s Rule 6.¹¹⁷

The Company’s Back-Up Service Rates Meet Or Exceed The Benchmark For “Best Practices” That Even The Most Ardent CHP Advocates Have Recommended. A customer with a reasonably reliable on-site generator can avoid between 90% and 94% of the total-bill charges (generation plus T&D) that a similar full-requirements customer of Duquesne Light would incur.¹¹⁸ Peoples witness Scripps presented evidence that a back-up rate allowing a customer with on-site generation to avoid 90% of the customer’s otherwise applicable charges for full-requirements service achieves what even the staunchest CHP proponents consider the “best practices” for back-up rate design.¹¹⁹ Duquesne Light does not agree with Ms. Scripps’ prescription of “best practices” because, as shown by an unrebutted analysis that DLC witness Fisher presented, at Duquesne Light’s existing rates, the distribution charges a representative CHP customer with a reasonably reliable generator could avoid paying to the Company would exceed the costs the Company could avoid by that customer self-generating a portion of its

¹¹⁶ *Id.* at 21. In this scenario, a representative customer has generating capacity equal to 40% of its total load, but avoids 45% of its total T&D charges.

¹¹⁷ DLC Statement No. 16-R, p. 43, line 11 through p. 44, line 6.

¹¹⁸ DLC Statement No. 16-R, p. 30, Figure 4 (revised Aug. 17, 2018).

¹¹⁹ EPA Standby Rates Study, *supra* (Peoples Exhibit No. JWS-9), p. 9; Peoples Statement No. 3, p. 24, lines 15-17 and n.20.

electric load equal to its generator's capacity.¹²⁰ Nonetheless, the fact that DLC's current back-up distribution service rate clears Ms. Scripps' high hurdle provides substantial evidence confirming that the existing \$2.50 per kW rate is not excessive and should not be drastically reduced as DII proposed and the ALJ recommends.

E. The Recommended Decision Errs In Finding That Back-Up Service Should Have Been Treated As A Separate Class In DLC's Cost Of Service Study (Exception No. 5)

The Recommended Decision states that DLC should have prepared a "fully allocated cost of service study that treats Rider No. 16 customers as a distinct class."¹²¹ The Recommended Decision cites the testimony of DII witness Crist to support this proposition and asserts that Mr. Crist treated Rider No. 16 customers as a separate class for purposes of his "back-up rate analysis."¹²² The Recommended Decision gets things entirely wrong in several respects.

First, Mr. Crist did not perform a fully-allocated cost of service. He accepted the fully-allocated cost of service for Rider No. 16-eligible customer classes that Mr. Gorman calculated¹²³ and discounted that cost by applying a 5% multiplier. Second, Mr. Crist did not contend that the fully-allocated cost of service prepared by Mr. Gorman should – or could – treat Rider No. 16 "customers" (in reality, there is currently one customer on Rider No. 16) as a "distinct class." To the contrary, Mr. Crist recommended that, if the number of back-up customers increases *in the future*, then those customers could then be treated as a separate "class" for purposes of allocating the cost-of-service among customer classes: "[i]f there were a number of self-generators in DLC's service area, then Mr. Gorman could obtain load data from all of

¹²⁰ DLC Statement No. 16-R, p. 30, revised Figure 4. *See also* DLC Initial Brief, p. 24, n.94.

¹²¹ Recommended Decision, p. 175.

¹²² *Id.*

¹²³ *See* Tr. 588, lines 5-6.

them and aggregate such data into a customer class.”¹²⁴ Thus, even Mr. Crist recognized that there are not enough Rider No. 16 customers to justify using his preferred approach at this time. Although Mr. Crist’s recommendation has no impact on this case, it is incorrect for several reasons.

At the outset, all of the back-up service rates currently in place among major Pennsylvania EDC are set forth in “riders” that operate in tandem with the utilities’ general service rates that otherwise apply to customers.¹²⁵ None of the major EDCs identify back-up service as a separate “class” that merits a separate rate schedule in its tariff. Instead, customers are placed into appropriate general service customer classes based principally on their total peak demand without regard to whether they have on-site generation, just as Duquesne Light has also done in this and prior cases.¹²⁶ Indeed, this approach has been consistently used, with the Commission’s approval, by electric distribution utilities for many years because it is the theoretically proper way to identify customer classes for purposes of allocating the cost of service, as DLC witness Gorman explained.¹²⁷

Dividing the customer base into separate classes based on whether a customer does, or does not, receive back-up service would produce anomalous results because it ignores the most fundamental element of sound cost-allocation, namely, cost-causation.¹²⁸ The Company incurs

¹²⁴ DII Statement No. 1-S, p. 11, lines 18-23.

¹²⁵ PECO Energy Company Tariff – Electric Pa. P.U.C. No. 6, Original Page No. 68 (Pilot Capacity Reservation Rider); PPL Electric Utilities Corp. Supp. No. 125 to Tariff – Electric Pa. P.U.C. No. 201, Seventh Revised Page No. 10 (Rule 6 – Auxiliary Service for Non-Qualifying Facilities); Metropolitan Edison Co. Supp. No. 54 to Tariff – Electric Pa. P.U.C. No. 52, Pages 153-158 (Rider L – Partial Services) (The other FE subsidiaries, Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co., also provide Partial Services under Rider L to their respective tariffs.).

¹²⁶ See DLC Statement No. 14-R, p. 31.

¹²⁷ DLC Statement No. 14-R, p. 31, lines 9-14.

¹²⁸ See DLC Statement No. 14, p. 2, lines 6-8 (“The purpose of the ACOS [allocated cost of service study] is to assign, on a cost-causation basis, Duquesne Light’s distribution revenue requirement . . .”).

costs to meet customers' peak demand whenever it occurs and for whatever reason that it may be occurring. Attempting to carve out the cost to furnish distribution service for the portion of a customer's total peak demand attributable solely to its "back-up" component is not practical and, even if it were feasible, would not provide a reasonable basis for designing distribution rates.¹²⁹

There would be a significant cascading effect if DII's recommendation were implemented. Currently Duquesne Light (and all other major Pennsylvania EDCs) do *not* treat back-up service as a separate customer class. Therefore, any subsidies caused by a misalignment between the *rates* for back-up distribution service and the *cost* for back-up distribution service produces subsidies that remain in, and are paid by, the members of the general-service classes eligible for back-up service. Treating back-up service customers as a "distinct class" would shift revenue requirement not recovered from back-up service customers to customer classes that are not even eligible for Rider No. 16.

V. CONCLUSION

Other than certain members of DII, no party proposes any changes to Rider No. 16. Substantial record evidence supports the existing Rider No. 16 rate, and it should not be reduced. There is no basis for changing the terms of Rider No. 16 to have the rate apply only on an "as used" basis. The application of a back-up service rate to back-up contract demand is consistent with "best practices" for back-up rate design, and none of the reasons offered by DII for the "as used" application is valid or supported by the evidence. The DII proposal the ALJs recommends (based on an erroneous assignment of the burden of proof), would establish a rate less than 5% of

¹²⁹ DLC Statement No. 14-R, p. 32, lines 1-4.

the fully-allocated cost of providing distribution service, is not supported by the evidence, is contrary to the authorities DII relied upon, is not just and reasonable and should be rejected.

Respectfully submitted,



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