



September 3, 2021

**VIA E-Mail**

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

*Main Brief of CAUSE-PA*

Your Honors:

Enclosed, please find the **Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** in the above noted proceeding.

Pursuant to the Commission's Emergency Order issued on March 20, 2020, and as indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully submitted,  
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A handwritten signature in black ink, appearing to read "Ria Pereira".

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**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served copies of the **Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 and consistent with the Commission’s March 20 Emergency Order at Docket M-2020-3019262.

**VIA EMAIL ONLY**

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Date: September 3, 2021

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission**

v.

**Duquesne Light Company**

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**Docket No. R-2021-3024750**

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**MAIN BRIEF OF  
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND  
ENERGY EFFICIENCY IN PENNSYLVANIA**

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**Date: September 3, 2021**

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## I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, files this Main Brief in support of its positions, and the recommendations advanced by CAUSE-PA's expert witness Harry Geller, Esq. CAUSE-PA is a signatory party to the Partial Settlement in this proceeding, which fairly resolves nearly all issues raised in this proceeding, with the sole exception of the ill-conceived and imprecise tariff proposal of Nationwide Energy Partners, LLC (NEP or Nationwide) to permit master-metering and sub-metering of multifamily residential buildings in the Duquesne Light Company (DLC, Duquesne, or the Company) service territory.

As discussed in this Main Brief, NEP's tariff proposal is not in the public interest. At its core, NEP's tariff proposal seeks to allow residential multifamily building owners, landlords, and private third-party companies to perform residential utility billing, collections, and terminations – potentially allowing these critical public utility functions to be performed outside of the direct purview and jurisdiction of the Public Utility Commission (PUC or Commission). In doing so, NEP's proposal could serve to eviscerate dozens of statutes, regulations, and policies which currently protect the rights of residential tenants to maintain service to their home in the DLC service territory. In a superficial attempt to address concerns about the effect of its tariff proposal on the rights of residential tenants, NEP proposes to supplant an entire canon of law governing residential utility billing, collections, and termination with a handful of half-baked alternative protections – offered as an afterthought in the final stage of this proceeding. These proposed alternative protections are largely unenforceable, devoid of critical detail, and wholly inadequate to remediate the likely harm to tenants in DLC's service territory – leaving tenants in DLC's service territory with little to no protection or recourse.

Ultimately, NEP has failed to meet its burden of proof in this proceeding. To the contrary, the evidence in the record of this proceeding clearly demonstrates that NEP's ill-conceived and imprecise tariff proposal is not supported by substantial record evidence, is categorically unjust and unreasonable, and is not in the public interest. NEP has likewise failed to meet its burden and has not articulated how DLC's existing tariff rules governing meter configurations for master-multifamily buildings in its service territory are unjust, unreasonable, or against the public interest. CAUSE-PA urges the Administrative Law Judges and the Commission to reject NEP's tariff proposal in its entirety, and affirm DLC's current Tariff Rules 18 and 41.

## **II. STATEMENT OF THE CASE**

On April 16, 2021, Duquesne Light Company (Duquesne Light or the Company) submitted a rate filing, Supplement No. 25 to Tariff Electric – Pa. P.U.C. No. 25, which proposes a general increase in electric distribution rates of approximately \$115 million.

On April 26, 2021, CAUSE-PA filed a Petition to Intervene and Answer in the proceeding, objecting to DLC's rate request on the basis that the proposed increase could result in unjust and unreasonable rates that would impose severe economic hardship on low and moderate income residential consumers.

On May 20, 2021, the Commission suspended DLC's filing by operation of law until January 15, 2022 pursuant to Section 1308(d) of the Public Utility Code, to allow for an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in DLC's proposed tariff supplement – as well as the lawfulness, justness, and reasonable of DLC's existing rates, rules, and regulations.

On May 25, 2021, NEP filed a formal Complaint against DLC's rate filing at docket number C-2021-3026057. NEP averred that DLC deprives certain commercial customer of the opportunity

to reduce their rates for service pursuant to Tariff Rule 18 and Tariff Rule 41, and that DLC's current and proposed rates were therefore contrary to law.

On May 27, 2021, Deputy Chief Administrative Law Judge (DCALJ) Joel H. Cheskis and Administrative Law Judge (ALJ) John M. Coogan presided over a Prehearing Conference in this matter, and in relevant part granted CAUSE-PA's Petition to Intervene.

On June 2, 2021, NEP filed a Motion to consolidate its formal complaint with Duquesne's general rate case. On June 4, 2021, DLC filed a formal Answer to NEP's Complaint, as well as Preliminary Objections in response to NEP's Complaint, challenging NEP's standing to intervene. An Order was issued on June 21, 2021, which denied DLC's Preliminary Objections, and granted consolidation of NEP's Complaint with the instant rate proceeding.

On June 22, 2021, two public input hearings were held. The parties submitted pre-served written testimony and exhibits pursuant to the litigation schedule established in the May 28, 2021 Scheduling Order, with CAUSE-PA sponsoring the Direct, Rebuttal, and Surrebuttal testimony of CAUSE-PA's expert witness, Harry Geller, Esq.

A hearing was held on August 17, 2021, and at which pre-served testimony and exhibits of the parties' respective expert witnesses were admitted into the record, along with the Joint Stipulation of CAUSE-PA and NEP and the Joint Stipulation of NEP and DLC, which contained responses to discovery and various documents. At hearing, the parties indicated that the only unsettled issue was NEP's tariff proposal to permit master and/or submetering of residential multifamily buildings. Pursuant to the May 28, 2021 Scheduling Order, main briefs are due on or before September 3, 2021 and reply briefs are due on or before September 13, 2021. CAUSE-PA submits the following Main Brief in compliance with the May 28, 2021 Scheduling Order.

### III. BURDEN OF PROOF

In proceedings before the Commission, a public utility typically has the burden to establish the justness and reasonableness of every element of its rate increase pursuant to matters under Section 1308(d) of the Code.<sup>1</sup> The Commonwealth Court has explained: “[w]hile it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.”<sup>2</sup> Thus, while the utility bears the burden in a rate case proceeding of providing its rate proposal is just and reasonable, a party that advances a proposal that the utility did not include in its filing carries the burden of proof related to this proposal.<sup>3</sup> In this instance, NEP bears the burden of proof as the proponent of revisions to DLC’s tariff.

It is also well established that tariff provisions that have been approved by the Commission are presumed to be reasonable, with the party challenging the tariff provision carrying a heavy burden of proof to show that circumstances have changed to render the approved provision unreasonable.<sup>4</sup>

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<sup>1</sup> 66 Pa. C.S. § 1308(d); 66 Pa. C.S. § 315(a).

<sup>2</sup> See Allegheny Ctr. Assocs. v. Pa. PUC, 570 A.2d 149, 153 (Pa. Cmwlth. 1990), citing Central Maine Power Co. v. Public Utilities Commission, 405 A.2d 153, 185 (Me. 1979).

<sup>3</sup> See 66 Pa. C.S. § 332(a); Lower Frederick Twp. v. Pa. PUC, 409 A.2d 505, 507 (Pa. Cmwlth. 1980); Pa. Financial Responsibility Assigned Claims Plan v. English, 64 A.2d 84, 87 (Pa. 1995) (“the statutory burden placed on a proponent of a rule or order under Section 332(a) does not shift to the utility simply because such rule or order is proposed within the context of the utility’s 1308(d) general base rate proceeding.”).

<sup>4</sup> See Brockway Glass Co. v. Pa. PUC, 437 A.2d 1067 (Pa. Cmwlth. 1981) (“Where the complaint involves an existing rate, however, the burden then falls upon the customer to prove that the charge is no longer reasonable.”); see also Bollinger v. T. W. Phillips Gas & Oil Co., Order, Docket No. C-2011-2225850 (May 1, 2012) (“Pennsylvania courts have repeatedly held that tariff provisions that have been properly submitted to and approved by the Commission are prima facie reasonable. ... Therefore, a complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden to prove that the facts and circumstances have changes so dramatically as to render the application of the tariff provision unreasonable.”).

The Pennsylvania Courts have found that “the burden of proof is met when the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.”<sup>5</sup> The “degree of proof before administrative tribunals...is satisfied by establishing a preponderance of the evidence.”<sup>6</sup> To meet this standard, the evidence presented “must be substantial and legally credible, and cannot be mere ‘suspicion’ or a ‘scintilla’ of evidence,” and must be more convincing – even by a minimal amount – than that presented by the other party.<sup>7</sup>

Based on the standards articulated by Pennsylvania Courts and the Commission, NEP – as the proponent of the proposed Tariff Rule 41.2 and revisions to DLC’s existing Tariff Rules 18 and 41 – has the burden of proof to show, by preponderance of the evidence, that its proposed tariff rule is just, reasonable, and in the public interest – and that DLC’s existing tariff rules are not.

#### IV. LEGAL STANDARDS

The scope of the Commission’s regulatory powers must be considered when assessing the lawfulness, justness, and reasonableness of NEP’s proposal – which would allow landlords and third-party submetering and/or billing companies to perform residential billing, collections, and terminations in DLC’s service territory.

Section 501, Title 66, of the Pennsylvania Consolidate Statutes sets forth the Commission’s enforcement abilities and states, in relevant part:

[T]he commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to

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<sup>5</sup> Burleson v. Pa. PUC, 461 A.2d 1234, 1236 (Pa. 1983).

<sup>6</sup> See Lansberry, Inc. v. Pa. PUC, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), alloc. denied, 529 Pa. 654, 602 A.2d 863 (1992).

<sup>7</sup> Se-Ling Hosiery, Inc. v. Margulies, 70 A.2d 854, 856 (Pa. 1950).

rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.<sup>8</sup>

Pennsylvania Courts have recognized that a fundamental duty of the Commission is “the protection of the public and the ratepayers.”<sup>9</sup> The Pennsylvania Superior Court has explained that it is “well settled that the Commission has jurisdiction over matters related to ‘the reasonableness of a utility's services, facilities and rates, as well as over matters concerning the utility's formation of reasonable rules and regulations governing the conditions under which service, facilities and rates shall be rendered, constructed or imposed.’”<sup>10</sup>

In addition to having explicit jurisdiction over the provisions of the Public Utility Code and all related matters as described in Section 501, the Commonwealth Court has affirmed the Commission’s implied authority in the absence of explicit statutory text. In ARIPPA v. Pa. PUC, for example, the Commonwealth Court affirmed the Commission’s jurisdiction to resolve a dispute between two electric distribution companies (EDCs) regarding ownership of alternative energy credits involving electric generation suppliers (EGSs). In that case, ARIPPA – an entity representing the EGSs – argued that the matter at issue was a private contractual dispute, outside the jurisdiction of the Commission. Affirming the Commission’s jurisdiction, the Commonwealth Court found that if a statute’s text does not provide the Commission with specific authority, “a strong and necessary implication from such text may, nonetheless, provide such authority.”<sup>11</sup>

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<sup>8</sup> 66 Pa. C.S. § 501(a); see also 66 Pa. C.S. § 502 (the PUC possesses the statutory authority to enforce its regulations)

<sup>9</sup> PPL Elec. Utils. Corp. v. Pa. PUC, 912 A.2d 386, 408-409 (Pa. Cmwlth. 2006).

<sup>10</sup> DiSanto v. Dauphin Consolidated Water Supply Co., 436 A.2d 197, 201 (Pa. Super. 1981).

<sup>11</sup> ARIPPA v. Pa. PUC, 966 A.2d 1204, 1211 (Pa. Cmwlth. 2009).



The Commission’s jurisdictional authority over landlords and other third-party master/sub-metering entities is an open legal question. However, recent precedent related to the Commission’s authority to regulate EGSs may be instructive. The Commonwealth Court recently found in Blue Pilot Energy, LLC v. Pa. PUC, that the Commission has the jurisdiction to enforce its regulations against a third-party EGS, but is without jurisdiction to require an EGS to issue customer refunds as a penalty for violating Commission regulations. The Court explained that the Commission’s jurisdiction over an entity attaches only if there is *specific statutory authority* or a “*strong and necessary implication*” of authority rooted in statutory text.<sup>12</sup> If implied, “[t]he requisite necessity must derive from the agency’s express statutory duties and responsibilities and bear directly on the agency’s ability to carry out those duties and responsibilities.”<sup>13</sup> The Court found there was insufficient statutory language authorizing the Commission to issue refunds to aggrieved customers. The Court concluded that the Commission was limited to issuing a civil penalty for violations of its regulations.<sup>14</sup> According to the Court, the avenue for relief for individual consumers would be through the courts – not the Commission.

Finally, Pennsylvania Courts have upheld prohibitions on master/sub-metering of residential utility services. In Crown American Corp. v. Pa. PUC, the Commonwealth Court upheld a tariff provision prohibiting master metering at new multi-tenant service locations. The Commonwealth Court found that any economic disadvantage resulting from master metering was not unreasonable because the protection of the owner’s economic interests was not the purpose of the Public Utility Code.<sup>15</sup>

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<sup>12</sup> See Blue Pilot Energy, LLC v. Pa. PUC, 241 A.3d 1254, 1264 (Pa. Cmwlth. 2020).

<sup>13</sup> Id. at 1265.

<sup>14</sup> See id. at 1267-1268.

<sup>15</sup> Crown Am. Corp. v. Pa. PUC, 463 A.2d 1257 (Pa. Cmwlth. 1983).

## V. SUMMARY OF THE ARGUMENT

NEP's proposed Tariff Rule 41.2 is inadequately designed and contains broad ambiguities that will serve to strip tenants in DLC's service territory of access to dozens of consumer protection laws, regulations, and policies that have been carefully developed over the span of many decades by the General Assembly and the Commission to ensure tenants can access and maintain utility services based on just and reasonable terms. NEP's proposed Tariff Rule 41.2 will also foreclose tenants from accessing critical forms of assistance through DLC's universal service and energy conservation programs, placing low income consumers and others faced with unique financial hardship at particular risk of harm.

NEP likewise fails to meet its burden of showing that DLC's current Rule 18 and Rule 41 should be supplanted to allow for master and/or sub-metering of DLC's services as recommended by NEP. DLC's current tariff rules were instituted in 1981, and – as an existing tariff previously approved by the Commission – are subject to a presumption of reasonableness.<sup>16</sup> In defense of its position, NEP asserts generally that DLC's current Rule 18 and 41 places NEP at an economic disadvantage – depriving them and others of a right to make a profit by purchasing electricity at the commercial rate and reselling that service to individual tenants at the higher residential rate.<sup>17</sup> This is not substantial evidence, and fails to meet the evidentiary burden in this proceeding.

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<sup>16</sup> See Brockway Glass Co. v. Pa. PUC, 437 A.2d 1067 (Pa. Cmwlth. 1981) (“Where the complaint involves an existing rate, however, the burden then falls upon the customer to prove that the charge is no longer reasonable.”); see also Bollinger v. T. W. Phillips Gas & Oil Co., Docket No. C-2011-2225850 (Order entered May 1, 2012) (“Pennsylvania courts have repeatedly held that tariff provisions that have been properly submitted to and approved by the Commission are prima facie reasonable. ... Therefore, a complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden to prove that the facts and circumstances have changes so dramatically as to render the application of the tariff provision unreasonable.”).

<sup>17</sup> NEP Complaint at 1 para. 1 & 3-4 para. 9.

As the Court in Crown American Corp v. Pa. PUC found in 1983, the economic interests of a third party (such as NEP) are not controlling when determining whether a tariff provision which restricts master and sub-metering is just and reasonable.<sup>18</sup> Rather, the statutory and/or regulatory objective controls – guided by the “fundamental duty of the Commission, assigned by the legislature” to protect the public and the ratepayers.<sup>19</sup> In this instance, both the statutory and regulatory objective of the Commission is plainly to uphold and enforce the Public Utility Code and the rights bestowed to tenants under those laws. DLC’s existing tariff rules prohibiting master and sub-metering of multifamily residential buildings are of critical import to fulfill both the letter and the spirit of the Public Utility Code and the Commission’s associated regulations and policy.

NEP has not advanced evidence capable of showing, by a preponderance of the evidence, that its proposed tariff is just, reasonable, and in the public interest. At the same time, it has failed to advance evidence showing DLC’s existing Tariff Rules 18 and 41 are unjust, unreasonable, or unlawful. To the contrary, there is overwhelming evidence in this proceeding that DLC’s existing tariff rules are necessary to protect renters from harm, and that NEP’s proposal would undermine critical consumer protections - severing the right of tenants to access DLC’s universal service programming. This result is neither just nor reasonable, and is not in the public interest.

CAUSE-PA urges DCALJ Cheskis, ALJ Coogan, and the Commission to reject NEP’s tariff proposal in its entirety, with prejudice, and to uphold DLC’s current Tariff Rules 18 and 41.

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<sup>18</sup> Crown Am. Corp. v. Pa. PUC, 463 A.2d 1257, 1260 (Pa. Cmwlth. 1983).

<sup>19</sup> Id.

## VI. ARGUMENT

NEP's proposed Tariff Rule 41.2 contains broad ambiguities and flaws that will sever tenants residing in DLC's service territory from a plethora of consumer protections enumerated under law, regulation, and Commission policy, and will foreclose tenants residing in multifamily properties from accessing numerous forms of assistance, including but not limited to DLC's CAP, LIURP, and Hardship Fund Program. Overall, NEP has failed to meet its burden of showing that its proposed Tariff Rule 41.2 is just, reasonable, supported by evidence, and in the public interest. As such, the proposal must fail.

As discussed throughout, NEP has not advanced evidence capable of showing, by a preponderance of evidence, that its tariff proposal is just, reasonable, and would serve the public interest, and has failed to show that DLC's existing Tariff Rule 18 and Tariff Rule 41 are unjust, unreasonable, or unlawful. Thus, CAUSE-PA urges DCALJ Cheskis, ALJ Coogan, and the Commission, to reject NEP's tariff proposal in its entirety and to uphold DLC's current Tariff Rule 18 and Rule 41.

### **A. Overview of DLC's Current Tariff Rules and NEP's Tariff Proposal Regarding Meter Requirements for Multifamily Buildings**

- i. DLC's current master metering tariff rules protect tenants from unreasonable and unjust terms and conditions of service, and preserve access to universal service programs.*

DLC's Tariff Rule 18 requires that a customer consume the energy they purchase from DLC and prohibits redistribution of electricity, absent a special showing. DLC's Tariff Rule 41 requires that each residential dwelling unit in the building have an individual meter through DLC

and prohibits master metering of residential buildings connected to the Company's system after January 1, 1981.<sup>20</sup>

DLC currently serves 130 master metered buildings with more than one residential unit, which were metered prior to adoption of its 1981 tariff restrictions.<sup>21</sup> While it is not clear at this time how many residential tenants reside in these master metered buildings, Mr. Geller reasoned that this likely includes duplexes, triplexes, and other small multifamily buildings, possible including mixed-use buildings, such as a business with an attached residential unit.<sup>22</sup>

All other residential multifamily buildings in DLC's service territory – small, medium, and large – are individually metered. This meter configuration allows for tenants to become customers of DLC, receive a direct bill subject to the requirements of the Public Utility Code and Commission regulation, access available customer assistance programs, and maintain direct control over their bill. If a tenant in an individually metered building falls behind on their bill, they have access to long-term payment arrangements and a range of universal service programs designed to help ensure low income families can maintain service to their homes. If faced with termination, tenants in an individually metered building have access to a range of consumer protections, including protection from termination from December through March; protection for medically vulnerable consumers; rigid timeframes to ensure prompt restoration; stringent requirements governing the timeframe for restoration; and a range of other procedural and substantive protections designed to ensure households are able to reasonably maintain service to

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<sup>20</sup> DLC St. 6 at 2: 12-17.

<sup>21</sup> NEP St. 1 at 6: 8-9.

<sup>22</sup> CAUSE-PA St. 1-R at 6: 1-6.

their home. If NEP’s tariff proposal were approved, tenants in DLC’s service territory could lose the ability to access most of these protections – now or in the future.

***ii. DLC appropriately withdrew its narrow proposal to modify its tariff related to master metering of multifamily buildings in light of the substantial risk to residential tenants posed by NEP’s proposal.***

On June 19, 2019 and February 24, 2021, collaborative meetings were held pursuant to the Joint Petition for Settlement in DLC’s last rate proceeding (Docket No. R-2018-3000124) to discuss the feasibility and merits of permitting master metering of affordable multifamily housing.<sup>23</sup>

In its initial filing, the Company set forth a proposal allowing for limited master-metering based on the findings of the collaborative meeting. Specifically, DLC proposed Tariff Rule 41.1 in its initial filing for master metering for new residential multifamily premises, where the premises:<sup>24</sup>

- Is a new service, i.e. a new construction or otherwise newly connected to the Company’s distribution system;
- Is master metered through the entire building;
- Has a minimum of four dwelling units; and
- Is low income supportive housing.

DLC’s expert witness, Yvonne Phillips, explained that “low income supportive housing” refers to housing that is “permanently available to low-income tenants where the housing provider is responsible for utility bills.”<sup>25</sup> Additionally, the low income housing provider would have had to: (1) show that the building is a public housing authority development; or (2) certify annually

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<sup>23</sup> DLC St. 6 at 3: 19 – 4: 34.

<sup>24</sup> Id. at 5: 1-14.

<sup>25</sup> Id. at 5: 5-20.

that all tenants are (i) eligible for a Housing Choice Voucher (HCV), available to residents who make 50% or less of the median family income; and (ii) have household incomes equal to or less than 150% FPL.<sup>26</sup>

Importantly, DLC’s narrow proposal requiring housing providers to offer supportive housing subject to long-term use restrictions as a condition of master metering would preserve the rights of tenants in newly master-metered buildings, as it would ensure the building owner was not able to pass along the cost of utility service to their tenants.<sup>27</sup> As Mr. Geller explained, while customers tenants in master-metered properties are not eligible for universal services, limiting master metering to supportive low income housing, “wherein utilities are paid for by housing providers and rents charged to low-income are limited by law and most often based on household income” mitigates the concerns raised by Mr. Geller related to tenant protections.<sup>28</sup> DLC’s master metering proposal would have also required the building owner to re-meter the building, at the owner’s expense, if the building was no longer used to provide subsidized low income housing.<sup>29</sup>

CAUSE-PA supported this proposal, and was an active participant in the multi-stakeholder collaborative process used to develop DLC’s proposed tariff revision.<sup>30</sup> In fact, the collaborative was in furtherance of a recommendation from CAUSE-PA’s expert witness in DLC’s 2018 rate

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<sup>26</sup> Id. at 5: 5-20.

<sup>27</sup> The types of housing providers that would qualify for the narrow master metering exemption originally proposed by DLC are already paying all of the utility costs – without passing those costs on to the tenant through rent. In other words, every individually metered unit is in the name of and paid for by the affordable housing provider. Without any obligation to pay for utilities – either directly or as a part of rent – tenants in this type of publicly supported housing are not subject to termination and are not otherwise eligible for universal service programs.

<sup>28</sup> CAUSE-PA St. 1-R at 59: 9-17.

<sup>29</sup> DLC St. 6 at 5: 5-20

<sup>30</sup> Pa. PUC v. Duquesne Light Co., Docket Nos. R-2018-3000142; R-2018-3000829, CAUSE-PA St. 2-SR at 5-6 (Surrebuttal Testimony dated August 6, 2018). Note that CAUSE-PA’s testimony from the 2018 Duquesne Light rate proceeding was attached as an appendix to NEP Statement 2.

case.<sup>31</sup> Importantly, CAUSE-PA's original proposal in the 2018 rate case never contemplated sub-metering which, as discussed below, is particularly egregious in that it provides the building owner or third-party re-billing entity the ability to independently bill, collect from, and terminate service to residential units – evading Commission oversight of these highly sensitive and closely regulated essential public utility functions.

As described in Ms. Phillips' Surrebuttal Testimony, DLC withdrew its proposed Tariff Rule 41.1 as a result of grave concerns about NEP's proposed Tariff Rule 41.2.<sup>32</sup> While CAUSE-PA was initially supportive of DLC's narrow and well-crafted proposed tariff revision, for the reasons noted above, we support DLC's decision to withdraw the proposal in order to preserve and protect the rights of tenants in DLC's service territory. As discussed throughout, opening DLC's service territory to new master and sub-metering of residential multifamily buildings in the manner proposed by NEP will eviscerate the rights of tenants who currently reside in an individually metered unit – foreclosing the ability of tenants to access essential consumer protections and critical rate assistance. DLC was right to withdraw its original proposal in order to preserve these critical rights, even if doing so comes at the expense of advancing other important goals envisioned by DLC's withdrawn proposal.

***iii. NEP's Tariff Proposal may evade Commission oversight and will expose tenants in DLC's service territory to substantial risk of harm.***

NEP is proposing a new DLC Tariff provision, Rule 41.2., which would allow master metering and the associated redistribution of energy necessary to allow for sub-metering and re-

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<sup>31</sup> Id.

<sup>32</sup> DLC St. 6-SR at 3: 1-4.



billing by the landlord or a third-party billing company such as NEP. NEP’s proposal would add limited conditions to master and sub-metering arrangements, including the following:<sup>33</sup>

- Master metering is allowed for non-low income new and existing multifamily properties;
- Sub-metering must be AMI or another advanced revenue metering;
- Technologies must be provided with billing so that tenants can access usage information and optional controls to receive a credit based on conservation actions; and
- Redistribution of energy costs may never exceed the total bill a customer would have received for the same amount of usage for Tariffs in effect, pursuant to Section 1313 of the Public Utility Code.

NEP proposes that a Commission-approved form be used by property owners or their authorized representatives to notify DLC of the decision to master meter, and that verification of compliance with the tariff conditions will be available to DLC on “no more than an annual basis.”<sup>34</sup>

Notably, NEP offers no definition of “non-low income” – nor would it impose any requirement that a property owner verify or confirm income status of tenants.<sup>35</sup> CAUSE-PA’s expert witness, Harry Geller, explained the significance of this deficiency in NEP’s proposal:

Low income customers may reside in properties that become master metered under NEP’s proposal, or may subsequently move into these properties. Further, customers may become low income while residing in a [master or submetered] property because of numerous factors, including job losses and wage reductions. NEP’s proposal fails to propose any reasonable mechanism to account for or determine low income status and may very well result in low income tenants being cut off from crucial protections and sources of utility assistance.<sup>36</sup>

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<sup>33</sup> NEP St. 1 at 24: 3-18.

<sup>34</sup> Id. at 24:16-18.

<sup>35</sup> CAUSE-PA St. 1-R at 9: 6-14.

<sup>36</sup> CAUSE-PA St. 1-R at 9: 6-14.

Through its Surrebuttal Testimony, in response to criticism of DLC, CAUSE-PA, OCA, and OSBA that NEP's proposal failed to provide even the most basic consumer protections, NEP offered several additional provisions to its proposed Tariff Rule 41.2:<sup>37</sup>

- Limiting approval under proposed Tariff Rule 41.2 to 130 existing developments and new buildings;
- Reviewing the impacts of proposed Tariff Rule 41.2 in DLC's next base rate case;
- A mandatory minimum \$2 per tenant bill credit regardless of income level or usage;
- Matching the number of days due from bill issue date including the number of days grace period to DLC's effective tariff;
- Past due or collection recovery fees may not exceed collection recovery fees of the utility based on tariff requirements in a given month;
- Meter testing requests and fees must match the applicable time to test and fee recovery amounts of the utility under the tariff and Pennsylvania law;
- Payment plans must be offered to tenants having trouble paying bills, not greater than the lesser of 12 months or the remaining term of the tenant's lease;
- Notices of disconnection must match the number of type of notices provided by Pennsylvania rules and regulations;
- Service may only be disconnected for non-payment;
- EV charging and other technologies that are chosen by property owners may not be separately billed to tenants, or treated as a separate line item of usage and are subject to the total bill cap amount of less \$2 credit to qualify for Tariff Rule 41.2.

NEP also proposed to require tenants to be provided with a disclosure prior to lease signing, which would include language indicating that universal service programs will be unavailable to tenants and whether the property owner has selected a competitive generation supplier.<sup>38</sup>

These additional provisions provide a modicum of protection to tenants, at least on paper. But – as discussed in detail below – there is still a wide gap between the consumer protections and

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<sup>37</sup> NEP St. 2 at 14-16.

<sup>38</sup> Id.

universal service programs available to tenants who reside in an individually metered residential unit and those that would be available to tenants who reside in a master and/or sub-metered building under NEP's proposal. There are also serious and substantial questions regarding how and to what extent these provisions of DLC's tariff could be enforced against a landlord or third-party billing agent. As Ms. Phillips explained in her Rejoinder testimony:

NEP's updated proposal retains many of the shortcomings in its initial proposal, including but not limited to shortcomings related to customer assistance programs, electric supply shopping programs, customer/tenant due process, and other customer protections. It also introduces new problems. For example, it would appear to significantly expand the scope of landlord requirements that Duquesne Light would need to police; though it apparently does not provide the Company with either the resources or the enforcement powers to do so.<sup>39</sup>

This is a critical failure in NEP's proposal. The only oversight of master and/or sub-metering practices contemplated in NEP's proposal is the submission of a form no more than once a year. As discussed in later sections of this Main Brief, it is entirely unclear how a tenant could launch a complaint with the Commission against a third party or landlord for violations of DLC's tariff – or whether and to what extent the Commission could exercise jurisdiction over a complaint.

NEP admits that there are “differences” in the protections available to tenants in DLC's service territory and the protections available to tenants under NEP's master and sub-metering proposals – but asserts there is “no reason” why tenants should be provided “identical consumer protections from both a public utility like Duquesne and a private company like NEP.”<sup>40</sup> CAUSE-PA vehemently disagrees. While NEP may see “no reason” to protect consumers in accordance with established laws, we do. And so does the legislature and the Commission, which have established detailed statutory and regulatory requirements governing the provision of residential

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<sup>39</sup> DLC St. 6-RJ at 2: 12-18.

<sup>40</sup> NEP St. 2 at 3-4.

service to ensure Pennsylvanians can maintain service to their homes. NEP's flippant dismissal of critical consumer rights should be a red flag for the Commission.

According to NEP witness Teresa Ringenbach, "[l]ack of Government oversight of NEP's proposal is not an issue."<sup>41</sup> She argues that "there are laws governing submetering and the PaPUC has authority over submetering."<sup>42</sup> She also notes that the proposed tariff provisions would provide the Commission with adequate oversight of submetering companies.<sup>43</sup>

First, there are just two applicable sections of the Public Utility Code. Section 1313 of the Public Utility Code restricts the resale of utility service at a rate higher than the applicable residential tariff rate for service, and section 3313 imposes penalties for violation of section 1313. To CAUSE-PA's knowledge, there are no other statutory or regulatory laws that explicitly govern submetering schemes in Pennsylvania.

The Commission has the clear jurisdiction and authority to oversee and enforce tariff provisions against DLC, a public utility within the clear purview of the Commission; however, its authority to oversee and enforce tariff provisions against a third party absent explicit or clearly and necessarily implied statutory authority to do so is uncertain. As described above in setting forth the applicable legal standards in this case, the legal authority of the Commission to oversee third-party master/sub-metering and rebilling companies and/or to enforce the tariff rules proposed by NEP, is largely an open legal question.

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<sup>41</sup> NEP St. 2 at 4: 12.

<sup>42</sup> Id. at 4: 13-14.

<sup>43</sup> Id. at 4: 15-16.

In the context of regulating electric generation suppliers (EGSs), the Commonwealth Court recently found in Blue Pilot Energy, LLC v. Pa. PUC, that the Commission has the jurisdiction to enforce its regulations against a third-party EGS, but is without jurisdiction to require an EGS to issue customer refunds as a penalty for violating Commission regulations. The Court explained that the Commission’s authority and jurisdiction over an entity attaches only if there is *specific statutory authority* or a “*strong and necessary implication*” of authority rooted in statutory text.<sup>44</sup> If implied through statute, “[t]he requisite necessity must derive from the agency’s express statutory duties and responsibilities and bear directly on the agency’s ability to carry out those duties and responsibilities.”<sup>45</sup> The Court found that there was insufficient statutory language – either specific or implied – which would allow the Commission to issue refunds to aggrieved customers. Instead, the Court noted that the Commission was limited to issuing a civil penalty for violations of its regulations – leaving the Commission without the jurisdiction to redress complaints of aggrieved consumers.<sup>46</sup> According to the Court, the avenue for relief for individual consumers aggrieved by a supplier such as Blue Pilot Energy, LLC would be through the courts – not the Commission.

Here, NEP is proposing tariff provisions, for which there is little to no direct statutory or regulatory hook allowing the Commission to impose or enforce. Indeed, it is uncertain whether the Commission has the jurisdiction to regulate third-party master/sub-metering companies and the landlords or property owners of master/sub-metered buildings, or to redress complaints of tenants who reside in these properties if a third party does not comply with the terms of NEP’s

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<sup>44</sup> See Blue Pilot Energy, LLC v. Pa. PUC, 241 A.3d 1254, 1264 (Pa. Cmwlth. 2020).

<sup>45</sup> Id. at 1265.

<sup>46</sup> See id. at 1267-1268.

proposed tariff revisions. As it stands, there are very few statutory or regulatory provisions which specifically apply to landlords and third-party re-billing companies – and just two provisions which explicitly apply to sub-metering.<sup>47</sup> The scope of these provisions is quite narrow, and none provide the Commission with clear authority to impose or enforce the provisions in NEP’s tariff proposal. In short, it is not at all clear whether the Courts would uphold the Commission’s authority to regulate landlords and third-party re-billing companies pursuant to the terms of NEP’s proposed tariff revision as a “strong and necessary implication” of its authority.

Based on Blue Pilot Energy, LLC v. Pa. PUC decision, discussed above, it is quite possible that a tenant aggrieved by a landlord or master/sub-metering company’s violations of NEP’s proposed tariff may be limited to seeking redress before the Court of Common Pleas. This is an impractical path to relief for most utility consumers, especially for low and moderate income consumers who most often lack the resources to hire an attorney to represent them in a proceeding before the Court of Common Pleas – a far more legally intensive process than the Commission’s informal and formal complaint processes, which is explicitly designed to serve *pro se* consumers.<sup>48</sup>

Adding to this uncertainty is NEP’s insistence that it “is *not* trying to be and should not be characterized or held to the standards of a ‘public utility’ in Pennsylvania.”<sup>49</sup> In Ohio, NEP has fought long and hard against the ability of state regulators to oversee its residential billing, collections, and termination standards.<sup>50</sup> Indeed, there is a distinct likelihood that NEP – or other

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<sup>47</sup> See, e.g., 66 Pa. C.S. §§ 1313, 3313; see also 66 Pa. C.S. §§ 1523 *et seq.* (Discontinuance of Service to Leased Premises Act (DSLPA)). The applicability of DSLPA to master and sub-metered properties is discussed further below.

<sup>48</sup> See 52 Pa. Code §§ 56.140-181; see also Pa. PUC, Informal Complaints, <https://www.puc.pa.gov/complaints/informal-complaints/>.

<sup>49</sup> NEP St. 2 at 2-3.

<sup>50</sup> In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C., 163 Ohio St.3d 208, 2020-Ohio-5583 (Dec. 9, 2020), available at: <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-5583.pdf>.

landlords or third-party master/sub-metering companies – may later challenge the Commission’s jurisdiction to enforce NEP’s proposed tariff provisions. Given the substantial costs associated with re-metering an entire building, it will be very difficult and expensive to later reverse the tariff provision if NEP’s proposed protections are later found to be unenforceable against third parties. In the meantime, tenants subject to a master or submetering scheme could be subjected to substantial harm, divesting them from access to dozens of consumer protections and programs.

Ultimately, as explained in further detail throughout, NEP’s proposed tariff allowing master and sub-metering in DLC’s service territory may serve to strip renters in DLC’s service territory of the rights available to them under the Public Utility Code. In place of those rights, NEP proposes to implement a few potentially unenforceable protections, which fall far short of the enforceable protections afforded by the General Assembly to residential consumers who reside in an individually metered unit. As such, NEP’s tariff proposal is both unjust and unreasonable, is not in the public interest, and must be rejected in its entirety.

**B. NEP’s proposal undermines dozens of statutory and regulatory residential consumer protections and places tenants of risk of harm as a result.**

Pursuant Chapters 14 and 15 of the Public Utility Code, and Chapter 56 of the Commission’s regulations, residential utility customers are provided numerous protections related to billing, utility services, and termination of services.<sup>51</sup> Chapter 28 of the Public Utility Code, Chapters 54 and Chapter 58 of the Commission’s regulations, and formal Commission policy set forth various additional requirements and standards regarding the role of the public utility as the

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<sup>51</sup> See 66 Pa. C.S. § 1401 *et seq.*; 66 Pa. C.S. § 1501 *et seq.*; 52 Pa. Code § 56.1 *et seq.*

billing agent and the availability of universal service programs designed to ensure residential low income consumers can maintain affordable utility service to their home.<sup>52</sup>

As Mr. Geller describes in his Rebuttal Testimony, NEP’s proposed Tariff Rule 41.2 “may work to sever the rights of many affected residential tenants to participate in DLC’s universal service programs and disenfranchise renters in DLC’s service territory from even the most basic billing, collections, and termination protections provided for in the Public Utility Code, the Commission’s regulations, and Commission orders.”<sup>53</sup> Below, we will discuss several of the most critical legal provisions which may be circumvented or undermined by NEP’s proposal to demonstrate the serious deficiencies in NEP’s proposal. However, there is insufficient time in this proceeding and space in this brief to identify and discuss *all* of the many legal provisions that NEP’s proposal may circumvent.

Similar to the uncertainties surrounding the Commission’s jurisdiction, discussed above, it is an open legal question whether certain provisions of the Public Utility Code may apply to landlords or third-party master/sub-metering companies like NEP when those landlords or companies are performing the critical functions of a public utility, such as billing, collections, and terminations.<sup>54</sup> However, while relevant to this case, those thorny legal questions are not squarely at bar in this base rate and tariff proceeding, as there is no aggrieved party seeking redress against a landlord or master/sub-metering company. Rather, the Commission is tasked here with determining whether NEP’s tariff proposal to *permit* master/sub-metering in DLC’s service

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<sup>52</sup> See 66 Pa. C.S. §§ 2802, 2803, 2804; 52 Pa. Code §§ 54.71-54.78; 52 Pa. Code § 58.1 *et seq.*; 52 Pa. Code § 69.265.

<sup>53</sup> CAUSE-PA St. 1-R at 1: 20 – 2: 2.

<sup>54</sup> See, e.g., Tenant Action Group v. Pa. PUC, 514 A.2d 1003 (Pa. Cmwlth. 1986) (finding that the emergency utility provisions of the Commission’s regulations, which concern occupants who are seriously ill, apply to tenants whose service is at risk of termination due to a landlord’s nonpayment – regardless of metering structure).



territory is just, reasonable, and in the public interest. In doing so, it must consider the risk – and the uncertainty – as to the applicability and enforceability of consumer and tenant protections enshrined in the Public Utility Code.

Importantly, CAUSE-PA does not carry the burden in this proceeding to demonstrate why NEP’s proposal is not in the public interest. Rather, the burden rests squarely on NEP to produce substantial evidence demonstrating that its proposal is just, reasonable, and in the public interest. In light of the serious and substantial legal uncertainties and deficiencies with NEP’s proposal discussed below, CAUSE-PA submits that NEP has squarely failed to meet its burden in this proceeding, and its proposal must therefore be rejected by the Commission.

***i. Billing, Collections, and Termination Standards***

Chapter 14 of the Public Utility Code applies to electric distribution companies (EDCs), natural gas distribution companies (NGDCs), water and wastewater utilities, and steam heat utilities, and sets forth strict parameters governing residential billing, collections, and terminations.<sup>55</sup> Chapter 56 of the Commission’s regulations implements the statutory provisions of Chapter 14, and sets forth uniform standards for residential account billing, terminations, customer complaint procedures, credit and deposit requirements.<sup>56</sup>

If approved, NEP’s proposed Tariff Rule 41.2 will sever tenants in master/sub-metered properties from the crucial protections available under Chapters 14 and 56, which are otherwise available to tenants with individual meters. NEP fails to meet its burden of showing that its tariff proposal is just, reasonable, and in the public interest, as NEP’s proposed tariff rule lacks crucial

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<sup>55</sup> 66 Pa. C.S. § 1401 *et seq.*; CAUSE-PA St. 1 at 11: 9-16.

<sup>56</sup> 52 Pa. Code § 56.1 *et seq.*; CAUSE-PA St. 1 at 11: 9-16.

specificity about the standards of billing, collection, and termination that tenants will be subjected to under NEP's master/sub-metering scheme.

CAUSE-PA's concern that tenants who reside in a master and/or sub-metered building would not be able to access customer protections if NEP's tariff proposal were approved is echoed by other expert witnesses in this proceeding. Specifically, OCA's expert witness, Mr. Roger Colton, expressed concern that NEP has not articulated what basic consumer and customer protections would be offered to tenants under NEP's proposal.<sup>57</sup>

Ultimately, even with the few concessions NEP proposed in an attempt to alleviate concerns about consumer impacts,<sup>58</sup> NEP's proposed tariff is inadequately designed to ensure consistent billing, payment, termination, and customer service standards for tenants in master and/or sub-metered properties and will jeopardize tenant's ability to access, afford, and maintain utility services to their home.<sup>59</sup>

#### 1. Definition of Customer

As Mr. Geller described in his Rebuttal Testimony, the definition of "customer" is "foundational to the provision of residential service, and determines which consumers have access to certain rights."<sup>60</sup> Chapter 14 defines a "customer" as "a natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the

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<sup>57</sup> OCA St. 4-R at 7: 11-18.

<sup>58</sup> As explained above, the Commission's ability to enforce these concessions is uncertain – leaving open the possibility that NEP's proposal could subject tenants to master/sub-metering without any protection.

<sup>59</sup> CAUSE-PA St. 1-R at 15: 1-8.

<sup>60</sup> CAUSE-PA St. 1-R at 12: 17-18.

property for which the residential utility service is requested.”<sup>61</sup> The definition of a customer under Chapter 14 includes a person who seeks to restore service at the same location or another location within the utility’s service territory within 30 days of service termination or discontinuance.

Pursuant to Chapter 56 of Commission regulation, a customer is defined as a “natural person at least 18 years of age in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or an adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential public utility service is requested.”<sup>62</sup> The definition of a “customer” pursuant to Commission regulation includes a person who seeks to have service reconnected at the same location (or transferred to another location in a service territory) within 30 days of termination or disconnection.<sup>63</sup>

NEP’s tariff proposal does not require tenants under master and sub-meters to be treated as utility “customers” under Chapter 14 of the Public Utility Code and Chapter 56 of the Commission regulations. As such, NEP’s proposed tariff could expose tenants to broad inconsistencies in service and billing standards and will allow master and sub-metered companies to exclude tenants in newly master metered buildings from numerous crucial protections that flow from being utility “customers.” As Mr. Geller points out, these tenants will continue to be responsible for paying the utility costs and will be subject to the loss of service to their home for nonpayment – but without the same protections.<sup>64</sup> As discussed below, the paltry concessions included in NEP’s Surrebuttal Testimony to address concerns about the impact of NEP’s proposal to tenants’ rights pale in comparison to the protections from termination available to tenants who currently reside in an

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<sup>61</sup> 66 Pa. C.S. § 1403.

<sup>62</sup> 52 Pa. Code § 56.2(i).

<sup>63</sup> 52 Pa. Code § 56.2(ii).

<sup>64</sup> CAUSE-PA St. 1-R at 14: 16-20.

individually metered unit in DLC's service territory – and therefore enjoy all of the protections afforded to utility “customers” pursuant to Pennsylvania statutes and regulations.

## 2. Billing and Payment Standards

Chapter 14 of the Pennsylvania Utility Code and Chapter 56 of the Commissions regulations set forth numerous provisions related to billing and payment standards for utility customers. In his Rebuttal Testimony, Mr. Geller detailed several provisions that he believed were particularly salient to residential customers facing the prospect of master and/or sub-metering schemes under NEP's proposed tariff language, including budget billing, billing for non-basic services, billing information and bill presentment, fees and late charges, and application of partial payments.<sup>65</sup>

In his Rebuttal Testimony, Mr. Geller expressed a concern that tenants who reside in multifamily buildings which are master and/or sub-metered under NEP's tariff proposal will not have access to the same billing and payment application standards provided to individually metered residential customers.<sup>66</sup> As Mr. Geller explained, under NEP's proposal, a landlord or a sub-metering company would be the customer of the public utility, not the tenant. As such, the tenant would not receive a bill from the utility or be protected by the billing and payment application standards that apply to residential consumers who reside in an individually metered multifamily building.<sup>67</sup> This raises a host of concerns, as the provisions noted above would not apply:

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<sup>65</sup> 52 Pa. Code §§ 56.12, 56.13, 56.15, 56.21, 56.22, 56.23.

<sup>66</sup> CAUSE-PA St. 1-R at 17: 1-7.

<sup>67</sup> Id.

- Budget Billing: Budget billing, available to tenants who reside in an individually metered unit, would not be available to tenants who reside in a building that has been master/sub-metered pursuant to NEP's proposed tariff.<sup>68</sup> This will make it difficult for tenants with fixed income – disproportionately Seniors and individuals with a disability – to keep up with seasonal billing fluctuations.
- Billing for Merchandise, Appliance, and Nonrecurring and Recurring Services: Non-energy merchandise, appliances, or services, which are required to be separately itemized on the bill for individually metered tenants, would not be required to be separately itemized under NEP's proposal for tenants who reside in master/sub-metered buildings.<sup>69</sup> This would create issues with proper payment posting, and could lead to the termination of service to tenants if they are unable to pay for non-energy costs – practices which are strictly prohibited for tenants with individually metered service.<sup>70</sup>
- Billing Information: Billing details required to be provided to residential tenants who reside in an individually metered tenant unit would not be available to residential tenants who reside in a master/sub-metered building under NEP's proposal, making it difficult for tenants to understand their bill or challenge inappropriate charges.<sup>71</sup>
- Fees: Fees and charges, subject to strict disclosure requirements for individually metered residential tenants, would not be required to be disclosed to tenants who reside in master/sub-metered buildings under NEP's proposal. This lack of disclosure requirement is compounded by the lack of requirements in NEP's proposal for master/sub-metering companies to provide billing details – again making it very difficult for a tenant subject to a master/sub-metering scheme to challenge the validity of imposed charges, or the manner in which payments are applied to those charges.<sup>72</sup>
- Accrual of Late Charges: While NEP's amended proposal would require master/sub-metering providers to limit application of late fees to the amount authorized in DLC's tariff,<sup>73</sup> the lack of disclosure requirements would prevent consumers from verifying whether these charges were properly applied.<sup>74</sup>
- Application of Partial Payments: If a tenant who resides in an individually metered unit makes a partial payment, there are clear rules that govern how those payments are applied. Under NEP's master/sub-metering proposal, those rules would not apply – allowing the

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<sup>68</sup> Id. at 17: 19-24.

<sup>69</sup> Id. at 18: 1-12.

<sup>70</sup> See 52 Pa. Code § 56.23, 56.83(3).

<sup>71</sup> CAUSE-PA St. 1-R at 18: 14-19.

<sup>72</sup> CAUSE-PA St. 1-R at 18: 21-26.

<sup>73</sup> NEP St. 2 at 14-16.

<sup>74</sup> CAUSE-PA St. 1-R at 18: 28 – 19: 7.

landlord or master/sub-metering company to apply partial payments to more recent debt, potentially compounding application of late fees, or to potential non-energy goods or services which may appear on the bill.<sup>75</sup>

As noted above, subsequent to the rebuttal testimony of parties' expert witnesses in this proceeding, NEP amended its proposed Tariff Rule 41.2 to include a few additional billing requirements, which allowed for (1) matching the number of days due from the bill issue date, including grace periods, to DLC's effective tariff, and (2) requiring that past due or collection recovery fees may not exceed the collection recovery fees under the utility's tariff for a given month.<sup>76</sup> However, these paltry concessions do not address the many shortcomings addressed above – and, once again, it remains unclear whether these miniscule concessions would be legally enforceable by the Commission.

In his Rebuttal Testimony, Mr. Geller extensively describes how NEP's billing and payment standards, policies, and procedures in other areas in Pennsylvania are inconsistent with the billing and payment standards set forth under Pennsylvania statute and regulations, despite NEP's claim that it attempts to adhere to the Commission's standards for the provision of residential service.<sup>77</sup> In noting the sharp divergence of NEP's policies and procedures related to billing and payment, Mr. Geller specifically notes that NEP practices represent only *one potential model* of master/sub-metering that tenants may encounter if NEP's proposal were approved.<sup>78</sup> Other models could impose even more egregious billing, collections, and terminations practices that further complicate the ability of residential consumers to access and maintain utility services to their home.

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<sup>75</sup> DLC St. 6-R at 20: 3-14.

<sup>76</sup> NEP St. 2 at 14-16.

<sup>77</sup> CAUSE-PA St. 1-R at 16: 37 – 19: 20.

<sup>78</sup> *Id.* at 17: 8-18.

NEP's tariff proposal fails to account for the wide disparities in billing and collection standards that would be allowable under the proposed tariff, and the potential harms those billing models could cause to tenants in DLC's service territory. Nor does NEP's tariff proposal account for how tenants who are experiencing billing or payment issues might seek review of these issues if their landlord is unable or unwilling to redress billing and payment problems. Once again, it is unclear whether the Commission could enforce even the limited billing provisions described in NEP's revised tariff proposal – let alone impose the dozens of other critical billing requirements that most tenants in DLC's service territory currently enjoy. Similarly, while NEP's proposed tariff rule, as amended, provides meager requirements that billing days and past due/collection recovery fees are matched to applicable tariff provisions, NEP's proposal does not account for the numerous billing and payment standards that might be imposed by landlords and master/sub-metering companies if NEP's tariff proposal were approved. Indeed, while NEP proposes to prohibit termination for reasons other than non-payment, NEP fails to address how tenants will be billed – and subsequently might face termination – in the case their utility bill contains other bundled services.

### 3. Credit and Deposit Standards

In his Rebuttal Testimony, Mr. Geller describes various statutory and regulatory provisions related to credit and deposits that currently protect tenants in DLC's service territory who reside in an individually metered building, but may later be unavailable to tenants who encounter master metering and sub-metering schemes pursuant to NEP's tariff proposal.

As Mr. Geller explains, Section 1404 of the Public Utility Code (Cash Deposits and Household Information Requests) sets for statutory rules related to Pennsylvania utilities charging

and retention of security deposits.<sup>79</sup> Similarly, Chapter 56 Subchapter C of the Commission's regulations provide for credit and deposit standards and procedures for applicants for utility service.<sup>80</sup> Section 56.32 sets forth specific requirements for public utilities requiring cash deposit from an applicant for service.<sup>81</sup> Pursuant to Section 56.38 (relating to payment period for deposits by applicants), a utility may require a "cash deposit, payable during a 90-day period in accordance with, in an amount that is equal to 1/6 of an applicant's estimated annual bill at the time the public utility determines a deposit is required" based on a number of factors, including nonpayment of an undisputed delinquent account" -- absent collecting a deposit allowed by a separate regulation or order.<sup>82</sup> Section 56.32(2) also requires that assessments of creditworthiness should be based on "generally accepted credit scoring methodology, as provided in a Commission-approved tariff, and which employs standards for using the methodology that fall within the range of general industry practice."<sup>83</sup> The credit scoring methodology utilized for this purpose must specifically assess the risk of public utility bill payment." These provisions are critically important, as they standardize credit terms and help to prevent potentially discriminatory application of security deposit requirements and other credit practices.

In addition, Section 1404(a.1) of the Public Utility Code and Section 56.32(e) of the Commission's regulations *prohibit* a public utility from assessing a security deposit on a consumer who is income eligible for a customer assistance program.<sup>84</sup> Pursuant to Section 56.32(e), an

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<sup>79</sup> CAUSE-PA St. 1-R at 19-20; 66 Pa. C.S. § 1404(a).

<sup>80</sup> 52 Pa. Code §§ 56.31-56.38.

<sup>81</sup> 52 Pa. Code § 56.32.

<sup>82</sup> 52 Pa. Code § 56.38; see also 66 Pa. C.S. § 1404(a).

<sup>83</sup> 52 Pa. Code § 56.32(2).

<sup>84</sup> CAUSE-PA St. 1-R at 19-20; 66 Pa. C.S. § 1404(a.1); 52 Pa. Code § 56.32(e).



applicant for service is confirmed to be CAP eligible if the applicant provides income documentation or other information “attesting to [their] eligibility for state benefits based on household income eligibility requirements” consistent with the utility’s CAP.<sup>85</sup>

NEP’s tariff proposal is silent on the security deposit standards that tenants under master and/or sub-metering schemes would have to comply with to establish or maintain service. In other words, under NEP’s proposal, landlords and third-party sub-metering companies would be unconstrained in their ability to impose security deposits.

In his Rebuttal Testimony, Mr. Geller notes that NEP’s sub-metering practices in other areas of the state provide an illustrative example of the kinds of credit and deposit standards which are currently imposed on residents in master and/or sub-metered buildings. As Mr. Geller explains, NEP’s security deposit standards are determined based on a contractual arrangement with the property owner / landlord, which can open the door to discriminatory and exclusionary practices.<sup>86</sup> Indeed, the potential for inequitable application of security deposit standards can have a uniquely detrimental impact to low and moderate income tenants, who would otherwise be exempt from security deposits if they were to reside in an individually metered multifamily building.<sup>87</sup>

NEP dismisses this concern, asserting that the properties it serves do not house low income tenants, notwithstanding the fact it does not make any effort to identify the income of tenants it serves.<sup>88</sup> However, as Mr. Geller notes, “NEP’s service model is but one of many possible models for credit and deposit standards” that would be permissible under NEP’s proposed tariff

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<sup>85</sup> 52 Pa. Code § 56.32(e).

<sup>86</sup> CAUSE-PA St. 1-R at 21.

<sup>87</sup> Id. at 22: 1-14.

<sup>88</sup> Id. at 22: 15-20.

language.<sup>89</sup> Moreover, NEP's assertion here is ignorant to the distinct likelihood that a non-low income household may become low income or face other acute financial hardship while residing at the property.<sup>90</sup> Mr. Geller concludes that NEP's tariff proposal lacks critical safeguards to address or ensure low income residents who would be master metered under NEP's proposal would not be charged a security deposit as a condition of establishing electric service to their unit.

NEP has failed to meet its burden of showing that its proposal is in the public interest, as it would allow landlords and other third-party entities to impose unjust and unreasonable security deposit standards in a manner which contradicts the residential deposit standards established by the legislature in the Public Utility Code. As such, NEP's proposal must be rejected.

#### 4. Payment Arrangements

In his Rebuttal Testimony, Mr. Geller describes several salient statutory and regulatory provisions which ensure that residential utility customers have access to payment arrangements issued either through a utility or by the Commission.<sup>91</sup> Section 56.97(b) of the Commission regulations require public utilities to exercise good faith and fair judgment when negotiating payment arrangements and lists several factors that must be considered for a payment arrangement to be reasonable, such as the size of the unpaid balance and the customer's ability to pay.<sup>92</sup> Section 56.285 also provides additional standards for payment arrangements that apply only to victims of domestic violence with Protection from Abuse Order (PFA) or other court order containing clear

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<sup>89</sup> Id.

<sup>90</sup> Id.

<sup>91</sup> CAUSE-PA St. 1-R at 23: 20 – 24: 8.

<sup>92</sup> 52 Pa. Code § 56.97(b).

evidence of domestic violence.<sup>93</sup> Sections 1405 and 1407 of the Public Utility Code, in turn, authorize the Commission to establish payment arrangements between a public utility and a customer or applicant for services, and sets forth standards related to the length of payment arrangements, the number of payment arrangements, and the extension of payment arrangements.<sup>94</sup> Pursuant to these statutory provisions, a residential customer or applicant could obtain a payment arrangement from the Commission for up to 60 months, depending on household income, and may be able to obtain additional payment arrangements if their circumstances change.<sup>95</sup> Fair and flexible payment arrangements are critically important for residential consumers, and are an important tool to help prevent the loss of service to a home.<sup>96</sup>

As Ms. Ringenbach describes in her Surrebuttal Testimony, NEP’s amended tariff proposal would require landlords and third-party master/sub-metering entities to offer tenants in a master/sub-metered building a single payment plan no greater than *the lesser* of 12 months or the remaining term of the tenant’s lease.<sup>97</sup> Notably, NEP’s proposal leaves open the possibility that a landlord or third-party master/sub-metering company could opt to evict tenants who are behind on their bills – or could simply opt to not renew their lease if a tenant is late with their utility payments. In fact, NEP’s services elsewhere in the state include contractual provisions with landlords that allow NEP to force a landlord to evict a tenant if they do not pay.<sup>98</sup>

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<sup>93</sup> 52 Pa. Code § 56.285.

<sup>94</sup> 66 Pa. C.S. §§ 1405, 1407.

<sup>95</sup> 66 Pa. C.S. §§ 1405, 1407.

<sup>96</sup> See, e.g., Public Utility Service Termination Proclamation of Disaster Emergency – COVID-19, Order, Docket No. M-2020-3019244 (Order entered March 18, 2021).

<sup>97</sup> NEP St. 2 at 14-16.

<sup>98</sup> See CAUSE-PA St. 1-R at 29-30.

Even with the amendment described by Ms. Ringenbach, NEP's tariff proposal does not ensure that tenants in master/sub-metered multifamily properties would be able to access payment plans that are anywhere near comparable to the payment arrangements available to tenants who reside in individually-metered buildings - and is also silent as to whether and under what circumstances a tenant could obtain an extension or additional payment arrangement. Indeed, there is simply no comparison between the terms available to tenants under NEP's master/sub-metering scheme and the payment arrangement terms available to tenants who reside in an individually metered multifamily building pursuant to DLC's current tariff.

The lack of specificity in NEP's proposed tariff regarding access to payment arrangements allows for wide variations in payment plan standards by master and sub-metering companies, and would have a uniquely detrimental impact on certain vulnerable groups – including low income consumers and victims of domestic violence. Once again, NEP has failed to fulfill its burden of proof to show that its tariff proposal is just, reasonable, or in the public interest.

#### 5. Termination of Service Procedures

Section 56.81 of the Commission's regulations provide that an authorized involuntary termination of service may occur after notice is provided for nonpayment of an undisputed delinquent amount.<sup>99</sup> Sections 56.91 through 56.100 set forth specific notice requirements utilities must follow prior to terminating services.<sup>100</sup> As Mr. Geller summarizes, Pennsylvania public

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<sup>99</sup> 52 Pa. Code § 56.81.

<sup>100</sup> 52 Pa. Code §§ 56.91-56.100; CAUSE-PA St. 1-R at 26: 5-10.

utilities are required to notify customers of a pending termination at several crucial points and by specific means prior to terminating service.<sup>101</sup>

NEP's proposed Tariff Rule 41.2, as amended, provides that notices of disconnection must match the number and type of notices provided for under Pennsylvania statute and regulations, and requires that utility services may only be terminated for non-payment.<sup>102</sup> But, as explained at the outset, the enforceability of this proposed tariff amendment is uncertain. Even if the provisions are enforceable, it will be extremely difficult and costly for the Commission – or DLC – to monitor an unknown number of different landlords and third-party master/sub-metering entities which could begin operating in DLC's service territory.

Enforceability aside, NEP's proposed tariff rule continues to lack crucial specificity to ensure that tenants in master/sub-metered properties are able to access the robust termination procedures set forth under law and regulation, and available to tenants with individual meters.<sup>103</sup> NEP's tariff proposal leaves uncertain (1) whether tenants must receive personal contact prior to termination; (2) whether medical certificates may be obtained to postpone termination; (3) whether tenants will be protected from termination pursuant to the winter moratorium, from December 1 through March 31; and (4) whether victims of domestic violence or other vulnerable populations will be provided additional notice of termination consistent with the Commission's regulations. As discussed above, NEP's proposal also does not address whether tenants may have their services terminated where a tenant makes partial payment on the bill. Given the lack of clear payment

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<sup>101</sup> CAUSE-PA St. 1-R at 26: 5-10. As Mr. Geller notes, these requirements are different termination rules for victims of domestic violence with a Protection from Abuse Order (PFA) or other court order with evidence of domestic violence. See 66 Pa. C.S. § 1417; 52 Pa. Code §§ 56.321 – 56.361. There are also additional notice requirements for tenants pursuant to the Discontinuance of Service to Leased Premises Act (DSLPA), discussed below.

<sup>102</sup> NEP St. 2 at 14-16.

<sup>103</sup> CAUSE-PA St. 1-R at 30: 13-19.

posting requirements, or any prohibition on the addition of non-energy charges to the bill or other fees or charges, it is quite possible that consumers may face termination for nonpayment even if they have paid enough to cover their electricity costs.

NEP's proposed tariff provisions would not restrict master/sub-metering schemes from including other punitive actions for non-payment in addition to involuntary termination of service – like eviction. As Mr. Geller noted through his Rebuttal Testimony, NEP's operations elsewhere in the state are governed by contract between NEP and the landlord, and permit NEP to require a landlord to initiate eviction proceedings where a balance exceeds \$500.<sup>104</sup> As Mr. Geller points out, the myriad uncertainties surrounding termination procedures inherent in NEP's tariff proposal will serve to compound acute affordability problems already faced by low income customers.<sup>105</sup>

Again, NEP has failed to show how its proposed tariff will serve the public interest. To the contrary, NEP's proposal presents a serious threat to the health, safety, and wellbeing of tenants who may be exposed to NEP's master/sub-metering scheme. As such, NEP's proposal must fail.

## 6. Winter Protections from Termination

Section 56.100(b) prohibits an electric distribution utility from terminating service to customers with household incomes at or below 250% FPL between December 1 and March 31, unless otherwise allowed under the regulations.<sup>106</sup>

NEP's tariff proposal fails to carve out any protections from termination during the winter months. While tenants under 250% FPL in individually metered multifamily properties are protected from termination of essential utility services during the winter, tenants who are

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<sup>104</sup> CAUSE-PA St. 1-R at 29-30.

<sup>105</sup> Id. at 30: 13-19.

<sup>106</sup> 52 Pa. Code § 56.100(b).

master/sub-metered under NEP’s proposal will have to solely rely on the policies and goodwill of their respective landlords and master/sub metering companies if they are unable to afford their utility services during the winter. As Mr. Geller explained, tenants who are unable to afford their utility costs during the winter months will face untenable choices between paying for utility services and other basic necessities – such as food, medicine, or housing, or will rely on unsafe energy sources to remain in their homes.<sup>107</sup> Mr. Geller reasoned that “NEP’s proposed tariff revisions would expose tenants who reside in a master and/or sub-metered property to termination of service in the winter months – forcing families in DLC’s service territory to go without heat if they are unable to afford to pay.”<sup>108</sup> As discussed in further detail below, these tenants would not have access to any of DLC’s universal service programs – and may be unable to access federal or state assistance programs.

Once again, NEP’s proposal is not in the public interest, as it could place tenants in DLC’s service territory at risk of serious harm. As such, NEP’s proposal must fail.

#### 7. Protections for Customers with Medical Conditions

Section 1406(f) of the Public Utility Code prohibits a public utility from terminating service to a residential premise when a customer has submitted a medical certificate.<sup>109</sup> The Commission regulations related to medical certificates are set forth in Sections 56.111 – 56.118.<sup>110</sup>

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<sup>107</sup> CAUSE-PA St. 1-R at 32: 15-20.

<sup>108</sup> Id. at 32: 1-4.

<sup>109</sup> 66 Pa. C.S. § 1406(f). Medical certificates are defined under Chapter 14 of the Public Utility Code as written documents which certify “that a customer or member of the customer's household is seriously ill or has been diagnosed with a medical condition which requires the continuation of service to treat the medical condition; and is signed by a licensed physician, nurse practitioner or physician's assistant.”

<sup>110</sup> 52 Pa. Code §§ 56.111-56.118.

If a customer submits a medical certificate that complies with the requirements of Section 56.113, a public utility cannot terminate service for a maximum time period of 30 days. For customers who are unable to keep up with their current charges, a customer may renew their medical certificates up to two times under Section 56.116.<sup>111</sup> If a customer keeps up with their current charges, the medical certificate may be renewed every 30 days, regardless of underlying arrearages.<sup>112</sup>

NEP's tariff proposal does not include any protections from termination for tenants who suffer from a serious illness or medical condition and reside in master/sub-metered properties. As Mr. Geller explains in his Rebuttal Testimony, medical certificates are meant to provide a level of protection against termination to medically vulnerable households to help to ensure that households experiencing serious medical conditions or chronic illness can remain connected to services.<sup>113</sup> As the Commission is well aware, this is a serious matter of public and personal health and safety.

While the possibility exists that landlords and master/sub-metering companies may choose to voluntarily adhere to some standards for medical certificates, adherence has the potential to vary widely.<sup>114</sup> NEP fails to delineate any policies and procedures in its tariff proposal for how its tenants might obtain and submit a valid medical certificate, or whether the tenants will have to meet other requirements to postpone termination. NEP also fails to specify in its tariff proposal how any oversight or enforcement of medical certificate procedures might occur.

We note here that there is some case law which suggests that master/sub-metered buildings must comply with the Commission's medical protections – and possibly other provisions of the

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<sup>111</sup> 52 Pa. Code § 56.114.

<sup>112</sup> 52 Pa. Code § 56.116.

<sup>113</sup> CAUSE-PA St. 1-R at 34: 18-21.

<sup>114</sup> Id. at 34: 3-6.



Public Utility Code and Commission statute – when moving to terminate service to a tenant in a master-metered building. In Tenant Action Group v. Pa. PUC, the Commonwealth Court found that a public utility could not terminate service to a master-metered building where a tenant provides a medical certificate pursuant to the protections in Sections 56.111 to 56.118.<sup>115</sup> Citing both Section 1501 and 1502 of the Public Utility Code, the Court explained that “not applying the ‘Emergency Provisions’ to tenants is an ‘unreasonable difference as to service’ particularly in light of Section 1501 [of the Public Utility Code] which mandates that ‘service...shall be reasonably continuous and without unreasonable interruptions or delay.’”<sup>116</sup>

Notably, the Commonwealth Court in Tenant Action Group v. Pa. PUC recognized the practical importance of a public utility requiring individual metering of residential buildings to enable the public utility to comply with critical protections for medically vulnerable consumers.<sup>117</sup> Indeed, DLC’s current tariff requiring residential buildings to be individually metered serves a critically important role in allowing medically vulnerable tenants to maintain service to their home.

The Court’s decision in Tenant Action Group v. Pa. PUC remains unchallenged and suggests that master/sub-metering schemes may subject to some provisions of the Public Utility Code. However, that remains an open legal question, which is not at bar in this case. The question in this case is whether NEP’s proposal to amend DLC’s existing tariff is just, reasonable, and in the public interest – not whether NEP and other master/sub-metering schemes currently operating in other regions of the state are compliant with existing law.

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<sup>115</sup> Tenant Action Group v. Pa. PUC, 514 A.2d 1003 (Pa. Cmwlth. 1986).

<sup>116</sup> Id. at 1106 (citing 66 Pa. C.S. §§ 1501, 1502).

<sup>117</sup> Id. at 1106.

Given the broad uncertainties about what protections medically vulnerable tenants might access under NEP’s proposal, and the inherent obstacles to enforcement of those protections, CAUSE-PA submits that NEP’s proposal is fundamentally unreasonable, unjust, and contrary to the public interest.<sup>118</sup> As such, its proposal must fail.

#### 8. Disputes, and Informal and Formal Complaints

Sections 56.140 through 56.181 of the Commission Regulations set forth provisions related to utility disputes, and informal and formal complaints.<sup>119</sup> Section 56.141 requires a public utility to attempt to resolve a dispute in accordance with Section 56.151 once notice of a dispute is received.<sup>120</sup> Once a valid complaint or dispute has been issued, termination is prohibited until resolution of the complaint or dispute.<sup>121</sup>

As discussed more fully at the outset of this brief and further below, tenants subjected to a master/sub-metering scheme retain some limited rights pursuant to the Discontinuance of Service to Leased Premises Act (DSLPA), regardless of whether they are classified as customers of a utility. However, it is unclear how – and to what extent – a tenant subject to master/sub-metering under NEP’s proposal may seek relief against a landlord or third-party master/sub-metering company for other matters unrelated to DSLPA or enforcement of Section 1313 of the Public Utility Code. NEP’s tariff proposal engenders confusion about whether tenants who reside in a master/sub-metered building may seek relief through the Commission, must avail themselves of Pennsylvania Courts, or are solely reliant on whatever relief – if any – is offered by landlords and

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<sup>118</sup> CAUSE-PA St. 1-R at 35: 2-5. As Mr. Geller noted, under NEP’s proposal, “medically vulnerable tenants in master/sub metered communities would potentially suffer loss of utility services and/or face eviction that could potentially pose an acute risk to health and safety of those tenants.” Id.

<sup>119</sup> 52 Pa. Code §§ 56.140-56.181.

<sup>120</sup> 52 Pa. Code § 56.141(1).

<sup>121</sup> 52 Pa. Code § 56.141(2).

master/sub-metering companies. It is moreover unclear the extent to which the Commission may exert authority over landlords who may be in violation of applicable tariff provisions, statutes, or regulations. With these critical questions unresolved by NEP and unclear in its proposed tariff language, NEP has failed to meet its burden of showing that its tariff proposal is supported by evidence, or just, reasonable, and in the public interest.

## 9. Protections for Victims of Domestic Violence

In his Rebuttal Testimony, Mr. Geller explained that our General Assembly exempted victims of domestic violence from the billing and collections standards contained in Chapter 14 of Title 66 of the Pennsylvania Consolidated Statutes in recognition of the unique and harmful barriers victims of domestic violence face when attempting to access utility services.<sup>122</sup> Specifically, victims of domestic violence are exempt from the billing, collection, and termination standards set forth in Chapter 56, subchapters A-K.<sup>123</sup> Instead, victims of domestic violence with a PFA or other court order “which provides clear evidence of domestic violence against the applicant or customer” are subject to the billing, collections, and credit standards set forth in Chapter 56, Title 52 of the Pennsylvania Code – codified in subsections L-V of the Chapter.<sup>124</sup> Mr. Geller explains that the following critical provisions work to protect victims of domestic violence and alleviate barriers victims face in establishing and maintaining utility services:<sup>125</sup>

- Service cannot be denied based on utility arrears accrued in someone else’s name.
- Access to extended payment arrangements based on individualized circumstances.
- No termination for debt accrued in someone else’s name.
- 48-hour stay and posted notice if no personal contact immediately preceding termination.

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<sup>122</sup> 66 Pa. C.S. § 1417. CAUSE-PA St. 1-R at 36: 12-17.

<sup>123</sup> CAUSE-PA St. 1-R at 36: 12-17.

<sup>124</sup> CAUSE-PA St. 1-R at 36: 18-21; 52 Pa. Code §§ 56.251-56.461 (subchapters L-V).

<sup>125</sup> CAUSE-PA St. 1-R at 37-38; 52 Pa. Code §§ 56.285, 56.323, 56.335.

NEP's tariff proposal fails to address whether victims of domestic violence will have access to any additional protections, or will be able to access any of the protections afforded to qualifying victims of domestic violence under the Commission regulation. While NEP proposes that Rule 41.2 include some general provision for payment plans no greater than the lesser of 12 months or the remaining term of a tenant's lease,<sup>126</sup> NEP's proposed tariff language does not provide for any additional payment plan terms in recognition of the unique obstacles faced by victims of domestic violence. Similarly, while NEP's tariff proposal provides for notices of disconnection to match the number and type of notices provided under Pennsylvania rules and regulations,<sup>127</sup> the proposed language is imprecise as to whether victims of domestic violence will be allowed additional personal contact notice prior to termination of service. Nor does NEP's tariff provide any clarity about whether victims of domestic violence with PFAs or other qualifying court orders will be subject to occupant liability, a protection that Mr. Geller describes as critical that victims will not be held responsible for their abusers' debts or otherwise prevented from reconnecting to service.<sup>128</sup>

This broad ambiguity in NEP's tariff proposal will create barriers to safety and uneven protections for victims of domestic violence who reside in master/sub-metered multifamily buildings. Mr. Geller described at length in his Rebuttal Testimony how a domestic violence victims' ability to leave violent relationships often hinges on access to financial resources and assistance – and how victims are forced to make untenable choices when they lack independent

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<sup>126</sup> NEP St. 2 at 14-16.

<sup>127</sup> Id.

<sup>128</sup> CAUSE-PA St. 1-R at 39: 5-10.

financial resources.<sup>129</sup> Mr. Geller also detailed how poverty and domestic violence and interconnected, often as a direct result of economic abuse in a relationship, and explained that domestic violence is pervasive across Pennsylvania.<sup>130</sup>

The ambiguity inherent in NEP’s tariff proposal will serve to cut off victims of domestic violence in master/sub-metered properties from critical protections available to residential tenants with individual meters. This is unjust, unreasonable, and against the public interest.

**C. NEP’s proposal undermines numerous consumer protections set forth in the Discontinuance of Service to Leased Premises Act (DSLPA).**

***i. Protections for tenants under the DSLPA***

Chapter 15 of the Public Utility Code sets forth various provisions related to utilities’ provision of services and facilities, including the provision of services to residential tenants. Contained in subchapter B of Chapter 15, the Discontinuance of Services to Leased Premises Act (DSLPA) sets forth the rules and requirements related to discontinuance or termination of services to tenant-occupied premises.<sup>131</sup> The rules and requirements under the DSLPA are applicable to all tenants, *regardless of the building meter configuration*.<sup>132</sup> However, as a practical matter, NEP’s proposal would serve to circumvent these provisions as well – undermining the intent of the DSLPA to protect tenants from the willful or negligent actions of a landlord.

DSLPA sets forth the rights of tenants who receive regulated utility service where the utility account is listed in the landlord’s name.<sup>133</sup> Specifically, it protects a tenant’s right to

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<sup>129</sup> CAUSE-PA St. 1-R at 38: 12 – 40: 2.

<sup>130</sup> Id. at 38: 17 – 39: 4 (internal citations omitted).

<sup>131</sup> 52 Pa. Code § 56.1 *et seq.*

<sup>132</sup> CAUSE-PA St. 1 at 11: 20 – 12: 2.

<sup>133</sup> CAUSE-PA St. 1-R at 40: 5-7, citing 66 Pa. C.S. § 1523 *et seq.*

continued service where: (1) termination is due to nonpayment by a landlord ratepayer;<sup>134</sup> or, (2) a landlord ratepayer seeks to voluntarily disconnect service to a leased premises when tenants are still residing in the rental unit.<sup>135</sup> Tenants have the right to enforce their rights under the DSLPA through the Commission's informal and formal complaint process.<sup>136</sup> DSLPA contains a number of specific notice provisions, including 37-day notice to landlords and 30-day notice to tenants prior to termination for non-payment.<sup>137</sup>

Tenants also have a right to continued services under the DSPLA.<sup>138</sup> Specifically, the 30-day notice to tenants at risk of termination due to a landlord's nonpayment must inform the tenant of their right to continued service by paying an amount equal to the bill for the thirty-day period preceding the notice or the billing month preceding the notice.<sup>139</sup> Tenants may continue to maintain services if they pay for each subsequent 30-day period of service, and may deduct their payment amount from their rental payments without retribution by a landlord.<sup>140</sup> If a tenant is unable to pay the full 30-day bill amount, the utility must return any partial payments if service is subsequently terminated.<sup>141</sup>

In the case of a landlord seeking to *voluntarily* disconnect services to an occupied premises: (1) the landlord must submit a notarized form swearing under penalty of law that the unit is

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<sup>134</sup> 66 Pa. C.S. § 1527.

<sup>135</sup> 66 Pa. C.S. § 1523(b).

<sup>136</sup> 66 Pa. C.S. § 1523(a)(3).

<sup>137</sup> CAUSE-PA St. 1-R at 40: 12-16.

<sup>138</sup> CAUSE-PA St. 1-R at 41: 6-13.

<sup>139</sup> 66 Pa. C.S. § 1523(b).

<sup>140</sup> 66 Pa. C.S. § 1527(b). 66 Pa. C.S. § 1529. 66 Pa. C.S. § 1531.

<sup>141</sup> 66 Pa. C.S. § 1527(c).

unoccupied;<sup>142</sup> (2) the utility must obtain consent from all of the affected tenants;<sup>143</sup> or (3) the utility must obtain the names and addresses of the affected tenants and provide notice to each dwelling unit, and provide affected tenants with the same rights they would have if their service were being terminated for nonpayment.<sup>144</sup> This is a critical component of DSLPA, and prevents illegal attempts to constructively evict tenants from their home by shutting off essential services.<sup>145</sup>

Finally, and significantly, the DSLPA expressly provides that any waivers of a tenant's rights granted by the statute are void and unenforceable.<sup>146</sup> NEP's tariff proposal included a disclosure requirement to tenants regarding a few of the rights they may be waiving.<sup>147</sup> While NEP's proposal does not specifically mention waiver of rights under DSLPA, it is certainly contemplated that master/sub-metering would effectively waive a tenant's rights under DSLPA by frustrating the purpose and circumventing the intent of the law to shield tenants from the actions or inaction of a landlord which may interfere with a tenants' right to service.

In analyzing the protections provided to tenants through DSLPA, it is important to recognize that there is a nearly identical Act – the Utility Service Tenants Rights Act (USTRA) – which provides the same protections for tenants served by a municipal utility.<sup>148</sup> Together, DSLPA and USTRA are intended to protect all Pennsylvania tenants from the negligent or intentional acts of a landlord to disrupt essential utility services to a tenant-occupied residence.

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<sup>142</sup> 66 Pa. C.S. § 1523(b)(1).

<sup>143</sup> 66 Pa. C.S. § 1523(b)(2).

<sup>144</sup> 66 Pa. C.S. § 1523(b)(3); § 1523(c).

<sup>145</sup> See CAUSE-PA St. 1-R at 44.

<sup>146</sup> 66 Pa. C.S. § 1530.

<sup>147</sup> NEP St. 2 at 16.

<sup>148</sup> 68 P.S. § 399.1 *et seq.*

*ii. Application of DSLPA under NEP's Proposed Tariff*

The rights and responsibilities provided for under the DSLPA are applicable to tenants in Pennsylvania, regardless of their status as customers of utilities. As discussed above, these rights and responsibilities are non-waivable. As such, it is crucial to determine whether NEP's tariff proposal is compliant with the provisions under the DSLPA. In his Rebuttal Testimony, Mr. Geller concludes that NEP's tariff proposal complicates the ability of tenants to prevent termination based on landlord nonpayment and undermines tenant protection against voluntary disconnection of services to leased units without notice and/or consent to tenants.<sup>149</sup>

First, Mr. Geller explains that NEP's tariff proposal has the potential to undermine tenants' rights to continued services where landlords (or a third-party master/sub-metering company) fail to make payments on utility bills. If a landlord responsible for a utility bill stops making payments, DSLPA allows tenants to continue service without interruption by paying for the last 30 days of service, and permits tenants to deduct the paid amounts from rents.<sup>150</sup> While tenants with individual meters would only need to pay the last 30 days of service to their unit to prevent the termination, tenants in master/sub-metered multifamily properties would have to pay for the last 30 days of service *to the entire building* – not just their unit.<sup>151</sup> This frustrates the intent and purpose of the law to protect consumers from the negligence or malicious acts of their landlord.

Mr. Geller also describes the additional complication if a third-party master/sub-metering company becomes insolvent or fails to make utility payments.<sup>152</sup> Tenants who have already paid

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<sup>149</sup> CAUSE-PA St. 1-R at 42-45.

<sup>150</sup> Id. at 43: 7-18.

<sup>151</sup> Id.

<sup>152</sup> Id. at 43: 19 – 44: 7.



the third-party company may attempt to seek relief through the court system, resolution of court proceedings might take years and result in loss of service to the residence.<sup>153</sup> As Mr. Geller points out, tenants ability to seek relief through the court system is again complicated by the fact that third-party master/sub-metering companies might be headquartered in different states and jurisdictions than the properties which they service.<sup>154</sup>

NEP's master metering proposal also has the ability to undermine DSLPA protections when a landlord voluntarily disconnects service to a leased premises.<sup>155</sup> Mr. Geller reasons that, pursuant to NEP's proposal, landlords will effectively gain full control over the services to each unit in sub-metered buildings and can turn service on or off without contacting the utility – thus evading requirements under the DSLPA to provide notarized attestation that the unit is either unoccupied or that a tenant consents to the disconnection of service.<sup>156</sup>

In addition to frustrating the effectiveness of DSLPA at protecting tenants from the actions of their landlord, NEP's proposal also complicates enforcement. NEP's tariff proposal contains broad ambiguities about whether and to what extent tenants' exercise their rights under the DSPLA, or how a tenant would enforce their rights under the DSLPA. Mr. Geller described his experience assisting hundreds of tenants where landlords have shut-off utility services as an attempt to evict these tenants – regardless of whether termination was occurring during the winter or with medically vulnerable members of the tenant's household.<sup>157</sup> If tenants are unable to learn

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<sup>153</sup> Id. at 43: 19 – 44: 7.

<sup>154</sup> Id.

<sup>155</sup> Id. at 44: 8-13.

<sup>156</sup> Id.

<sup>157</sup> CAUSE-PA St. 1-R at 44: 14 – 45: 3.

about and exercise their rights to continued services, they will be forced from their homes with little or no warning – resulting in additional costs to tenants and posing a dangers to their households, especially in winter or summer months when temperatures can reach extreme levels.<sup>158</sup> NEP’s tariff proposal fails to account for these dangerous and illegal constructive eviction practices, and would result in unjust and unreasonable outcomes for tenants.

**D. NEP’s proposal creates substantial issues regarding how rates are charged and payments are applied by a landlord or third-party sub-metering company for residential service, and the manner a consumer may seek relief.**

Section 1313 of the Public Utility Code, in relevant part, prohibits a corporation or other entity from purchasing service from a public utility and reselling it to consumers, where the bill rendered would exceed the currently effective rates for residential service<sup>159</sup> Section 3313 provides that violation of Section 1313 is a summary offense, punishable by a \$100 fine for each residential bill exceeding the maximum allowed under section 1313.<sup>160</sup>

NEP’s proposed tariff rule would require submetering to include AMI or other advanced revenue metering so that tenants can access usage information, and further provides that the redistribution of energy costs may not exceed tariff rates pursuant to Section 1313.<sup>161</sup> The proposed tariff rule also provides for matching of the number of days due from the bill issue date to DLC’s effective tariff.<sup>162</sup> While NEP’s tariff proposal provides these limited requirements for the use of advanced technology meters, and generally requires alignment of bill due dates with DLC’s tariff,

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<sup>158</sup> Id. at 44: 14 – 45: 3.

<sup>159</sup> 66 Pa. C.S. § 1313.

<sup>160</sup> Id.

<sup>161</sup> NEP St. 1 at 24: 3-18.

<sup>162</sup> NEP St. 2 at 14-16.

it falls short of aligning all fees and charges with DLC's rates – and leaves open the possibility that electricity charges could be bundled with other services, which can serve to mask overcharging and further complicate issues with payment posting, discussed above.<sup>163</sup>

The lack of clarity around the parameters of rebilling could give rise to serious issues. For instance, while NEP's proposal would limit "past due or collection recovery costs", it does not define what might be considered a "past due or collection recovery cost" – nor does it explicitly prohibit inclusion of other fees unrelated to past due/collection costs that are either higher than DLC's fees or are not charged by DLC at all.<sup>164</sup> A master/sub-metering entity could impose any number of creative fees, such as a common area usage fee, a billing services fee, or even a fee for calling the master/sub-metering company for customer assistance.<sup>165</sup> There is also nothing in NEP's proposal restricting multiple utility charges (trash, water, wastewater, internet, etc.) on the same bill – obfuscating the charges for electricity, and creating a distinct risk that a tenant could face the termination of multiple essential services if a customer falls behind on any one service.<sup>166</sup> While imposition of such fees and bundling may violate Section 1313, such violations could prove difficult to enforce.

NEP's tariff proposal also raises numerous uncertainties about how a tenant might verify their charges and seek redress for violations of Section 1313. As Mr. Geller explains in his Rebuttal Testimony, methods of resale of utility services can vary widely and are often determined by lease or other written or oral rental agreement between landlords and tenants.<sup>167</sup> Recall, NEP's proposal

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<sup>163</sup> See CAUSE-PA St. 1-R at 55: 13-21.

<sup>164</sup> See NEP St. 2 at TR-22 (proposed tariff language).

<sup>165</sup> See CAUSE-PA St. 1-R at 19, 47; CAUSE-PA St. 1-R Appendix A – CAUSE-PA to NEP I-7.

<sup>166</sup> See CAUSE-PA St. 1-R at 19: 9-19.

<sup>167</sup> Id. at 46: 6-8.

would not impose bill presentment standards requiring certain billing details and itemizations to be included on the bill. While NEP’s proposal would require periodic disclosure of usage, there is no requirement that this information be on a bill – or a description of how a tenant would be able to access this information. While some providers may provide this information in a readily accessible format, NEP’s proposal does not include any requirement to do so. As such, it may prove difficult for tenants under NEP’s proposal to determine the accuracy of their bill.<sup>168</sup>

NEP’s tariff proposal also raises questions about whether tenants can seek relief from the Commission when violations of Section 1313 occur. While it is clear the Commission has the authority to impose financial penalties against the landlord for violations of section 1313, pursuant to section 3313, it is not clear whether a tenant could seek a refund or other individualized redress through the Commission for a violations of Section 1313 that may result in financial harm to a tenant. As discussed earlier, the Commonwealth Court’s recent decision in Blue Pilot Energy, LLC v. Pa. PUC suggests that a tenant’s path to relief may in fact be with the Court of Common Pleas – not the Commission.<sup>169</sup> This presents an impracticality for many tenants – especially low and moderate income households – who cannot afford the expense of hiring an attorney and pursuing formal court action to seek redress for a billing overcharge. Without access to the Commission’s informal and formal complaint processes, violations of this type would go largely unaddressed.

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<sup>168</sup> Id. at 46: 16-21.

<sup>169</sup> See Blue Pilot Energy, LLC. V. Pa. PUC, 241 A.3d 1254 (Pa. Cmwlt. 2020).

Given the distinct risks of excessive charges and fees presented by NEP's proposal, the challenges inherent with enforcement, and the potential for tenants to be left without a viable remedy, NEP has not met its burden, and its proposal must fail.

**E. NEP's tariff proposal undermines consumer protections related to notification of increased rates and tariff changes under statute.**

Section 53.45, Title 52 of the Pennsylvania Code enumerates requirements for the timing and contents of notices to customers of tariff or tariff changes.<sup>170</sup> This notice is required to include, but is not limited to, the ability of consumers object to or contest the proposed rate increase.<sup>171</sup>

Tenants subject to master/sub-metering would not receive notice from DLC of a proposed or approved rate change, nor is there any requirement in NEP's proposal to provide such notice. Without adequate notice of rate changes, tenants will be unable to determine if their landlords are charging rates that violate of Section 1313, or financially plan for upcoming changes in rates.<sup>172</sup> It may also foreclose a tenants' ability to challenge a proposed residential rate increase, despite the fact they may be required to pay the then-applicable residential rate for service. The broad ambiguities engendered by NEP's tariff proposal are both unjust and unreasonable to tenants. Moreover, tenants not being provided with notice of tariff changes affects the public interest. As Mr. Geller points out "[w]ithout adequate notice of proposed tariffs and tariff changes, tenants lose the right to provide public utilities, stakeholders and parties, and the Commission with critical

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<sup>170</sup> 52 Pa. Code § 53.45.

<sup>171</sup> See also 66 Pa. C.S. § 1308 (voluntary changes in rates) (“[u]nless the commission otherwise orders, no public utility shall make any change in any existing and duly established rate, except after 60 days notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect.”)

<sup>172</sup> Id. at 49: 9-14.

input about whether increasing the costs of services is just, reasonable, and in the public interest.”<sup>173</sup> As such, NEP’s proposed tariff rule must fail.

**F. NEP’s tariff proposal undermines consumer protections related to the confidentiality of consumer information.**

EDCs and EGSs “may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information.”<sup>174</sup> NEP’s tariff proposal leaves unclear to what extent – if at all – tenant’s usage information, payment history, and other critical information will remain confidential from third parties, including landlords.

Mr. Geller raises serious concerns in his Rebuttal Testimony about how NEP’s specific policies and procedures provide for widescale disclosure to the landlord of tenant’s usage, past-due amounts, and eligibility for termination, as well as disclosure of account information to submit unpaid balances to third-party collections.<sup>175</sup> Again, NEP’s policies and procedures speak to only one variation of the egregious disclosure of tenant information that might occur if NEP’s imprecise tariff proposal is approved. Under NEP’s proposal, master/sub-metering companies would be allowed to decide what tenant utility information (if any) remains confidential. Tenants served by a master/sub-meter pursuant to NEP’s proposal will potentially face disclosure of highly personal household information – including whether a tenant is home, whether they go on vacation, whether they have visitors, appliance usage, what temperature they keep their homes, and other highly personal and sensitive household information.<sup>176</sup> As Mr. Geller concluded, “[i]f NEP’s tariff

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<sup>173</sup> CAUSE-PA St. 1-R at 49: 9-14.

<sup>174</sup> 52 Pa. Code § 54.8; CAUSE-PA St. 1-R at 49: 17 – 50: 2.

<sup>175</sup> Id. at 50: 10 – 51: 6.

<sup>176</sup> Id.

proposal is approved, it has the potential to allow landlords to eviscerate tenant privacy, circumventing important consumer protections available to tenants who reside in an individually metered tenant unit.”<sup>177</sup> Disclosure of tenant information and data to landlords in this manner may facilitate discriminatory actions against a tenant, resulting in adverse actions based on information not currently available landlords in DLC’s service territory.

**G. NEP’s tariff proposal undermines tenant’s ability to access universal service programs and undercuts bill affordability safeguards for low income tenants.**

NEP’s tariff proposal does not guarantee tenants under master/sub-meters any right to access universal service programs, such as DLC’s Customer Assistance Program (CAP), Hardship Fund Program, and Low Income Usage Reduction Program (LIURP). NEP’s expert witness, Ms. Ringenbach, confirmed that NEP’s proposal would not allow tenants to access CAP, and asserts that “a CAP program is not needed for master metering under [NEP’s] proposal.”<sup>178</sup> Mr. Geller and other expert witnesses in this proceeding have expressed a concern that NEP fails to articulate how its proposal is consistent with emphasis in Pennsylvania on providing universal services.<sup>179</sup>

In place of universal service assistance, NEP proposes to require a meager \$2/month credit - which NEP claims is “modeled on CAP.”<sup>180</sup> As Mr. Geller explains in his Rebuttal Testimony, this small \$2/month discount does not in any way resemble the structure or benefits provided under utility CAP programs.<sup>181</sup> Similarly, DLC’s expert witness Ms. Phillips that the \$2 credit “falls far short of the bill savings that low-income tenants could otherwise realize” if individually metered,

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<sup>177</sup> Id.

<sup>178</sup> NEP St. 1 at 26: 13-16.

<sup>179</sup> OCA St. 4-R at 6: 26 – 7: 9; DLC St. 6-R at 11: 7-20, 20-21.

<sup>180</sup> NEP St. 1 at 26: 13-16.

<sup>181</sup> CAUSE-PA St. 1-R at 52: 5-7.

especially considering the Percent of Income Payment Plan (PIPP) structure of DLC’s CAP, coupled with arrearage forgiveness over 24-months for each full monthly payment.<sup>182</sup> Ms. Phillips estimates that DLC annually provides approximately \$24.5 million in bill credits to about 36,000 participating customers – or an average monthly bill discount of about \$57 per customer.<sup>183</sup> Ms. Phillips further points out that DLC’s low income customers have access to several other assistance programs, including LIHEAP and DLC’s Hardship Fund Program – to which DLC matches customer contributions of up to \$375,000 annually.<sup>184</sup>

Severing tenants from access to universal service programs provided by CAP and other universal service programs exacerbates existing rate unaffordability faced by low and moderate income tenants, and places them at increased risk of termination and potentially eviction. There is also substantial question whether foreclosing tenants from access to universal service programs violates provisions of the Electric Choice and Competition Act, which require that universal service programming be “available” to ensure low income consumers can maintain affordable service to their home<sup>185</sup> – and dictates that the availability of universal service programming shall not be diminished: “The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.”<sup>186</sup> Approving NEP’s proposal would both restrict the availability of universal service programming and diminish the protections, policies, and services that now assist customers in DLC’s service territory – in apparently violation of these statutory provisions.

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<sup>182</sup> DLC St. 6-R at 17: 4-17.

<sup>183</sup> Id. at 17: 4-17.

<sup>184</sup> Id. at 17-18.

<sup>185</sup> 66 Pa. C.S. § 2803; 66 Pa. C.S. § 2804(9)

<sup>186</sup> 66 Pa. C.S. § 2802(10).



NEP claims that it does not service low income customers,<sup>187</sup> and its proposal is at least superficially targeted at *non*-low income properties – apparently in an attempt to recognize the harsh consequences to tenants who may be foreclosed from accessing critical assistance. However, as Mr. Geller points out, NEP does not collect residential income data and therefore has no idea how many low income customers reside at any given time in their properties.<sup>188</sup> In turn, NEP’s proposal contains no requirement for a landlord or master/sub-metering entity to verify tenant income at any time – either at the time the building is metered or re-metered, or periodically thereafter. DLC expert witness Ms. Phillips notes that just because a given building is not a low income property does not mean that its residents do not have low incomes.<sup>189</sup> Ms. Phillips reminds us that the economic devastation caused by COVID-19 demonstrate that a household’s economic security can change quickly.<sup>190</sup>

Even if NEP only serves communities with relatively high rents, as it claims,<sup>191</sup> there is no guarantee that tenants will not lose their jobs or encounter other financial hardship that may cause households to become low income, or struggle financially.<sup>192</sup> Further, even assuming, *arguendo*, that NEP only serves non-low income tenants, NEP’s proposed tariff does not guarantee that the master/sub-metering companies that would be allowed to operate in DLC’s service territory if NEP’s tariff proposal were approved would not serve any low income tenants. Indeed, as Mr.

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<sup>187</sup> CAUSE-PA St. 1-R at 54: 1-2.

<sup>188</sup> *Id.* at 54: 3-5.

<sup>189</sup> DLC St. 6-R at 18: 17-22.

<sup>190</sup> *Id.* at 18-19.

<sup>191</sup> CAUSE-PA St. 1-R at 54: 6-8.

<sup>192</sup> *Id.* at 54: 6-16.

Geller points out, other master/sub-metering companies may serve more diverse communities than the communities NEP claims it serves.<sup>193</sup>

While NEP's proposal provides some general notice provisions for tenants related to their inability to access various forms of customer assistance, the proposal lacks specificity for how that notice will be conveyed. Notice to tenants that they must give up their right to assistance programs is inadequate, and does not appropriately account for the reality that some consumers will inevitably face economic hardship sometime in the future.

If implemented, NEP's proposal would diminish the availability of universal service programs to those in need, in violation of multiple statutes. As such, NEP's proposal must fail.

#### **H. NEP's tariff proposal does not further energy efficiency goals.**

After review of the record in this proceeding, Mr. Geller concluded that there was no evidence presented that master/sub-metering improves the overall energy efficiency of properties or reduces usage in individual tenant units.<sup>194</sup> Similarly, OSBA expert witness Robert D. Knecht expressed concern that NEP's proposal would complicate utility's energy efficiency and conservation programs and strip tenants' ability to make prudent shopping decisions.<sup>195</sup> While NEP touts its energy efficiency and carbon reduction programming as a benefit of master metering and NEP's tariff proposal requires AMI or advanced submetering,<sup>196</sup> NEP's proposal does not require any standards for energy conservation. Nor has NEP substantiated that master metering inherently leads to conservation.<sup>197</sup> As discussed above, NEP's tariff proposal would cut tenants

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<sup>193</sup> CAUSE-PA St. 1-R at 54: 19 – 55: 3.

<sup>194</sup> Id. at 56: 16-17.

<sup>195</sup> OSBA St. 1-R at 23-24.

<sup>196</sup> NEP St. 1 at 9-1.

<sup>197</sup> CAUSE-PA St. 1-R at 56: 16-19.

off from many forms of customer assistance and would prevent tenants under master meters from accessing energy efficiency programs – such as LIURP and Act 129 programs, as well as other federally funded programs available only to individually metered tenants such as the Weatherization Assistance Program (WAP).<sup>198</sup>

**I. NEP’s tariff proposal raises significant questions related to implementation and oversight.**

In her Rebuttal Testimony, DLC’s expert witness Ms. Phillips points out the vagueness and impracticality of NEP’s proposed compliance provision in its tariff proposal, and voices concern that NEP proposes what amounts to a novel mediation process to be administered by the Commission - without presenting any evidence that the Commission is willing or equipped to carry out this role.<sup>199</sup> Ms. Phillips notes the additional uncertainty of this process, given NEP has not provided a copy of the master metering form that it proposes the Commission use in this process.<sup>200</sup>

NEP’s tariff proposal raises significant questions regarding the extent of the Commission’s authority over landlords and third-party master/sub-metering companies. These questions are not only legal in nature, there are also a number of more practical concerns regarding the Commission’s ability to enforce NEP’s proposed tariff rules. Under NEP’s proposal, the Commission would be required to oversee dozens of landlords and master/sub-metering companies without clear definitions of authority and responsibilities – and without any additional resources to finance this expanded regulatory function.<sup>201</sup> The buildings subject to master/sub-metering

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<sup>198</sup> CAUSE-PA St. 1-R at 57: 3-11.

<sup>199</sup> DLC St. 6-R at 25: 16 – 26: 25.

<sup>200</sup> DLC St. 6-R at 26: 24-33.

<sup>201</sup> NEP’s proposal is currently limited to the 130 multifamily buildings currently master-metered (prior to 1981) and any new buildings with 4 or more units. NEP St. 2 at TR-22. Thus, while the number of master/sub-metered

could be quite large, with dozens or even hundreds of units, or could be much smaller, with as few as four units.<sup>202</sup>

Even assuming that the Commission can easily identify and monitor compliance of landlords or third-party master/sub-metering companies at these properties, the Commission's authority to require third parties to comply with above-described implementation procedure is unclear. If issues exist with compliance under the above provisions, it is also unclear how the Commission would identify potential violations, or the extent of the Commission's compulsory or punitive powers over landlords and third-party master/sub-metering companies if violations were to occur. Again, the ability for tenants to seek redress from the Commission for violations of NEP's proposed tariff is likewise uncertain – leaving open the door that tenants could suffer physical or financial harm as a result of tariff violations, without any form of recourse in the courts.

NEP's proposal lacks critical detail regarding how its proposed tariff provision would be implemented and enforced. As such, its proposal must fail.

**J. DLC'S Tariff Rule 18 and Rule 41 are just, reasonable, and in the public interest, and should be affirmed.**

NEP's formal Complaint avers that DLC's Tariff Rules 18 and 41 are unjust, unreasonable, and in violation of sections 1301 and 1304 of the Public Utility Code.<sup>203</sup> The basis of NEP's complaint is rooted in its claim that DLC's Tariff Rules 18 and 41 deprive NEP of the opportunity to operate its business in DLC service territory,<sup>204</sup> and deprive "certain commercial customers of

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properties may be limited at first, that number would inevitably grow over time, as new housing comes into the market.

<sup>202</sup> NEP St. 2 at TR-22.

<sup>203</sup> NEP Complaint at 1 para. 1 & 3-4 para. 9.

<sup>204</sup> Id. at 1 para. 1

the opportunity to reduce their rates for service.”<sup>205</sup> In short, NEP alleges that prohibitions on master/sub-metering forecloses landlords and third party master/sub-metering companies from earning a profit on the resale of utility services – enabling them to pay the lower commercial and industrial rate for service, while passing on the higher residential rate to tenants who reside in the building.

In Motheral, Inc. v. DLC, DLC’s prohibition on master/sub-metering of services in Tariff Rule 41 was upheld as reasonable by the Commission.<sup>206</sup> In Motheral, the owner of a university student dormitory challenged DLC’s Tariff Rule 41, seeking an exemption based on “economic hardship.”<sup>207</sup> In rejecting the request, the Commission explained: “Tariff Rule 41 is indeed a lawfully adopted tariff and, therefore, we cannot waive it solely to assuage the Complainant’s economic situation.”<sup>208</sup> In Crown, which formed the basis of Motheral, the Court dismissed the argument that master metering prohibitions are improper because they deprive companies of commercial opportunities to operate master/sub-metering services.<sup>209</sup> The Court reasoned that preventing economic disadvantages to multifamily building owners is not an objective under the Pennsylvania Utility Code, and that “[a]ny economic disadvantage which may be the result of [master metering] was not unreasonable.”<sup>210</sup>

Ultimately, NEP has failed to meet its heavy burden of showing DLC’s existing Tariff Rules 18 and 41 are unjust and unreasonable. As such, DLC’s existing tariff rules must be affirmed.

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<sup>205</sup> Id. at 3-4 para. 9.

<sup>206</sup> Motheral, Inc. v. DLC, 2001 Pa. PUC LEXIS 4, \*11-12 (Pa. P.U.C. March 23, 2001).

<sup>207</sup> Id. at \*1-2.

<sup>208</sup> Id. at \*11.

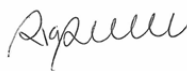
<sup>209</sup> Crown Am. Corp. v. Pa. PUC, 463 A.2d 1257, 1260 (Pa. Cmwlth. 1983).

<sup>210</sup> Id.

## VII. CONCLUSION

As described in this Main Brief, NEP fails to meet its burden of proof to show that its proposed Tariff Rule 41.2 is just, reasonable, or in the public interest. To the contrary, there is overwhelming record evidence that NEP's tariff proposal is inadequately designed and contains broad ambiguities that could sever tenants in DLC's service territory from numerous customer protections, allow landlords and third-party master/sub metering companies to circumvent applicable laws, regulations, and Commission policy, and endanger residential tenants' ability to access numerous forms of customer assistance. For these reasons, CAUSE-PA urges the ALJs and the Commission to reject NEP's tariff proposal in its entirety and to uphold DLC's current Tariff Rules 18 and 41.

Respectfully submitted,  
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## **APPENDIX A: PROPOSED FINDINGS OF FACT**

1. DLC's Tariff Rule 18 requires that a customer consume the energy they purchase from DLC and prohibits redistribution of electricity, absent a special showing. (MB at 10; DLC St. 6 at 2: 12-17).
2. DLC's Tariff Rule 41 requires that each residential dwelling unit in the building have an individual meter through DLC and prohibits master metering of residential buildings connected to the Company's system after January 1, 1981. (MB at 10; DLC St. 6 at 2: 12-17).
3. DLC withdrew its proposed Tariff Rule 41.1 as a result of grave concerns about NEP's proposed Tariff Rule 41.2. (MB at 14; DLC St. 6-SR at 3: 1-4).
4. NEP is proposing a new DLC Tariff provision, Rule 41.2., which would allow master metering and the associated redistribution of energy necessary to allow for sub-metering and re-billing by the landlord or a third-party billing company such as NEP. (MB at 14; NEP St. 1 at 24).
5. NEP's tariff proposal seeks to allow residential multifamily building owners, landlords, and private third-party companies to master and/or sub-meter residential multifamily buildings, allowing these entities to perform residential utility billing, collections, and terminations. (MB at 1; CAUSE-PA St. 1-R at 14).
6. Because NEP's tariff proposal does not require tenants under master and sub-meters to be treated as utility "customers" under Chapter 14 of the Public Utility Code and Chapter 56 of the Commission regulations, NEP's proposed tariff may expose tenants to broad inconsistencies in service and billing standards and will allow master and sub-metered companies to exclude tenants in newly master metered buildings from numerous crucial protections that flow from being utility "customers." (MB at 25; CAUSE-PA St. 1-R at 14: 16-20).
7. NEP's tariff proposal lacks clarity with regard to bill presentment and payment posting, and fails to account for the wide disparities in billing and collection standards that would be allowable under the proposed tariff. (MB at 25-26; CAUSE-PA St. 1-R at 16-18).
8. NEP's tariff proposal is silent on the security deposit standards that tenants under master and/or sub-metering schemes would have to comply with to establish or maintain service. (MB at 30-31; CAUSE-PA St. 1-R at 21).
9. NEP's proposed tariff includes vastly inferior payment arrangement requirements compared to arrangements available under the Pennsylvania Code, which would have a uniquely detrimental impact on certain vulnerable groups – including low income consumers and victims of domestic violence. (MB at 32-33; CAUSE-PA St. 1-R at 29-30).
10. NEP's proposal does not include clear parameters for residential collections and terminations, and would allow landlords or third-party sub-metering companies to take other punitive actions for non-payment – including eviction. (MB at 35-36; DLC St. 6-R at 20: 3-14).

11. NEP's tariff proposal does not include any protections from termination during the winter months. (MB at 36; CAUSE-PA St. 1-R at 32: 15-20).
12. NEP's tariff proposal does not include any protections from termination for tenants who suffer from a serious illness or medical condition and reside in master/sub-metered properties. (MB at 37; CAUSE-PA St. 1-R at 34: 18-21).
13. NEP's tariff proposal complicates the ability of tenants to prevent termination based on landlord nonpayment and undermines tenant protection against voluntary disconnection of services to leased units without notice and/or consent to tenants. (MB at 45; CAUSE-PA St. 1-R at 42-45).
14. NEP's tariff proposal does not include protections for victims of domestic violence. (CAUSE-PA St. 1-R at 38: 3-9; MB at 41-42).
15. NEP's tariff proposal fails to align all fees and charges with DLC's rates – and leaves open the possibility that electricity charges could be bundled with other services, which could serve to mask overcharging and further complicate issues with payment posting discussed above. (MB at 48; CAUSE-PA St. 1-R at 55: 13-21).
16. NEP's tariff proposal would not require landlords or third-party sub-metering companies to notify residents of proposed or upcoming changes in rates. (CAUSE-PA St. 1-R at 48: 15-19).
17. NEP's tariff proposal leaves unclear to what extent – if at all – a tenant's usage information, payment history, and other critical information will remain confidential from third parties, including landlords. (CAUSE-PA St. 1-R at 50: 5-9; MB at 62-63).
18. There was no evidence presented that master/sub-metering improves the overall energy efficiency of properties or reduces usage in individual tenant units. (MB at 55; CAUSE-PA St. 1-R at 56: 16-17).
19. NEP's proposed Tariff Rule 41.2 will foreclose tenants from accessing critical forms of assistance through DLC's universal service and energy conservation programs, including its Customer Assistance Program (CAP), Low Income Usage Reduction Program (LIURP), and Hardship Fund program, placing low income consumers and others faced with unique financial hardship at particular risk of harm. (MB at 8; DLC St. 6-R at 20-21).
20. Severing tenants from access to universal service programs provided by CAP and other universal service programs exacerbates rate unaffordability, and places low and moderate income customers at increased risk of termination and potentially eviction. (CAUSE-PA St. 1-R at 52: 10-13; MB at 53).
21. NEP's proposed two-dollar credit is not comparable to the assistance provided through DLC's universal service programs. (MB at 53; CAUSE-PA St. 1-R at 54-55).
22. NEP's proposal would not further energy efficiency and conservation goals, and would foreclose tenants from accessing available energy efficiency programs to reduce their energy consumption. (MB at 56; CAUSE-PA St. 1-R at 56-57).



## **APPENDIX B: PROPOSED CONCLUSIONS OF LAW**

1. NEP bears the burden of proof to demonstrate that DLC's existing tariff rules are unjust, unreasonable, and not in the public interest. This is a "very heavy burden", requiring NEP to overcome a presumption of reasonableness afforded to prior approved tariffs. (MB at 5).<sup>211</sup>
2. NEP bears the burden of proof to demonstrate by a preponderance of the evidence that its proposal is just, reasonable, and in the public interest. (MB at 5).<sup>212</sup>
3. NEP has not advanced evidence capable of showing, by a preponderance of evidence, that its tariff proposal is just, reasonable, and would serve the public interest, and has failed to show that DLC's existing Tariff Rules 18 and 41 are unjust, unreasonable, or unlawful. (MB at 9).
4. DLC's current Tariff Rule 41 was previously upheld by the Commission, which concluded that DLC's master and sub-metering restrictions cannot be disregarded in order to address economic concerns. (MB at 58-59).<sup>213</sup>
5. The Commonwealth Court has previously concluded that preventing economic disadvantages to multifamily building owners as a result of prohibitions on master metering is not an objective under the Pennsylvania Utility Code, and that "any economic disadvantage which may be the result of [master metering] [is] not unreasonable." (MB at 58-59).<sup>214</sup>
6. If approved, NEP's proposed Tariff Rule 41.2 would likely sever tenants in master/sub-metered properties from the crucial protections available under Chapters 14 and 56, which are otherwise available to tenants with individual meters. (MB at 23).<sup>215</sup>
7. The Commission has the clear jurisdiction and authority to oversee and enforce tariff provisions against DLC, a public utility within the clear purview of the Commission; however, its authority to oversee and enforce tariff provisions against a third party absent explicit or implied statutory authority to do so is uncertain. (MB at 18).<sup>216</sup>

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<sup>211</sup> Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 437 A.2d 1067 (Pa. Cmwlth. 1981); Bollinger v. T. W. Phillips Gas & Oil Co., Docket No. C-2011-2225850 (Order entered May 1, 2012).

<sup>212</sup> 66 Pa. C.S. § 332(a); Pa. Financial Responsibility Assigned Claims Plan v. English, 64 A.2d 84, 87 (Pa. 1995).

<sup>213</sup> Motheral, Inc. v. DLC, 2001 Pa. PUC LEXIS 4, \*11-12 (Pa. P.U.C. March 23, 2001).

<sup>214</sup> Crown Am. Corp. v. Pa. PUC, 463 A.2d 1257, 1260 (Pa. Cmwlth. 1983).

<sup>215</sup> See 66 Pa. C.S. Ch. 14, 15, 28; 52 Pa. Code Ch. 52, 54, 58.

<sup>216</sup> ARIPPA v. Pa. PUC, 966 A.2d 1204, 1211 (Pa. Cmwlth. 2009); Blue Pilot Energy, LLC. v. Pa. PUC, 241 A.3d 1254, 1264 (Pa. Cmwlth. 2020).

8. NEP’s proposed tariff lacks crucial specificity to ensure that tenants in master/sub-metered properties are able to access the robust termination procedures set forth under law and regulation, and available to tenants with individual meters. (MB at 35).<sup>217</sup>
9. Tenants subjected to a master/sub-metering scheme retain some limited rights pursuant to the Discontinuance of Service to Leased Premises Act (DSLPA), regardless of whether they are classified as customers of a utility. (MB at 40)<sup>218</sup> However, master/sub-metering schemes frustrate a tenant’s ability to meaningfully exercise those rights. (MB at 40).
10. In passing the Discontinuance of Service to Leased Premises Act (DSLPA) and the Utility Service Rights Act (USTRA), the legislature intended to provide certain *non-waivable* rights to all Pennsylvania tenants to shield them from the negligent or intentional acts of their landlord that serve to interfere with the tenant’s access to safe and stable utility services. (MB at 45-47)<sup>219</sup>
11. Tenants may be unable to seek relief and remediation from the Commission for violations of Section 1313 if a landlord or third-party submetering company overcharges for electric service. (MB at 49-50)<sup>220</sup>
12. The Electric Choice and Competition Act requires that universal service programming be made “available” to ensure low income consumers can maintain affordable service to their home. (MB at 53-54)<sup>221</sup>
13. The Commission “must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.” (MB at 54)<sup>222</sup>
14. NEP’s tariff proposal would foreclose income eligible tenants from access to DLC’s universal service and energy conservation programs, including the Customer Assistance Fund, the Low Income Usage Reduction Program, and the Hardship Fund, unlawfully diminishing the protections, policies, and services that now assist customers in DLC’s service territory. (MB at 8)<sup>223</sup>
15. NEP’s proposal is not just, reasonable, or in furtherance of the public interest, as it serves to undermine the effectiveness or completely sever the rights of residential tenants enshrined in dozens of statutory and regulatory provisions.

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<sup>217</sup> CAUSE-PA 1-R at 30: 13-19; see, e.g., 66 Pa. C.S. §§ 1406, 1417; 52 Pa. Code §§ 56.81, 56.91-56.100, 56.111-.116, 56.285; 66 Pa. C.S. §§ 1523, 1527.

<sup>218</sup> See 66 Pa. C.S. § 1523 *et seq.*

<sup>219</sup> 66 Pa. C.S. § 1523 *et seq.*; 68 P.S. § 399.1 *et seq.*

<sup>220</sup> Blue Pilot Energy, LLC. v. Pa. PUC, 241 A.3d 1254, 1264 (Pa. Cmwlth. 2020).

<sup>221</sup> 66 Pa. C.S. §§ 2803, 2804(9).

<sup>222</sup> 66 Pa. C.S. § 2802(10).

<sup>223</sup> 66 Pa. C.S. §§ 2802(10), 2803, 2804(9).

### **APPENDIX C: PROPOSED ORDERING PARAGRAPHS**

1. NEP has not advanced evidence capable of showing, by a preponderance of evidence, that its tariff proposal is just, reasonable, and would serve the public interest, and, as such, NEP's proposed Tariff Rule 41.2 is denied in its entirety
2. NEP has failed to show that DLC's existing Tariff Rule 18 and Tariff Rule 41 are unjust, unreasonable, or unlawful.
3. NEP's Complaint in this matter is dismissed, with prejudice.
4. DLC's existing Tariff Rule 18 and Tariff Rule 41 are affirmed.