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Anthony D. Kanagy

akanagy@postschell.com  
717-612-6034 Direct  
717-720-5387 Direct Fax  
File #: 179671

September 13, 2021

***VIA ELECTRONIC FILING***

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

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

Dear Secretary Chiavetta:

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

Respectfully submitted,



Anthony D. Kanagy

ADK/kl  
Attachment

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

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

### VIA EMAIL

Scott Granger, Esquire  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[sgranger@pa.gov](mailto:sgranger@pa.gov)

Christy Appleby, Esquire  
Phillip Demanchick, Esquire  
Aron J. Beatty, Esquire  
David Evrard, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
[cappleby@paoca.org](mailto:cappleby@paoca.org)  
[pdemanchick@paoca.org](mailto:pdemanchick@paoca.org)  
[abeatty@paoca.org](mailto:abeatty@paoca.org)  
[devrard@paoca.org](mailto:devrard@paoca.org)

Sharon E. Webb, Esquire  
Office of Small Business Advocate  
555 Walnut Street  
Forum Place, 1<sup>st</sup> Floor  
Harrisburg, PA 17101  
[swebb@pa.gov](mailto:swebb@pa.gov)

Joseph L. Vullo, Esquire  
Burke Vullo Reilly Roberts  
1460 Wyoming Avenue  
Forty Fort, PA 18704  
*Counsel for PA Weatherization Providers  
Task Force*  
[jlvullo@bvrrlaw.com](mailto:jlvullo@bvrrlaw.com)

Ria M. Pereira, Esquire  
Elizabeth R. Marx, Esquire  
John Sweet, Esquire  
Lauren N. Berman, Esquire  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101-1414  
*Counsel for Coalition for Affordable Utility  
Services and Energy Efficiency in PA  
(CAUSE-PA)*  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

Derrick Price Williamson, Esquire  
Barry A. Naum, Esquire  
Spilman Thomas & Battle, PLLC  
1100 Bent Creek Boulevard, Suite 101  
Mechanicsburg, PA 17050  
*Counsel for U.S. Steel*  
[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)  
[bnaum@spilmanlaw.com](mailto:bnaum@spilmanlaw.com)

Andrew J. Karas, Esquire  
Sophia Al Rasheed, Esquire  
Fair Shake Environmental Legal Services  
600 Superior Avenue, Suite 1300  
Cleveland, OH 44114  
*Counsel for NRDC*  
[akaras@fairshake-els.org](mailto:akaras@fairshake-els.org)  
[salrasheed@fairshake-els.org](mailto:salrasheed@fairshake-els.org)

Mark C. Szybist, Esquire  
1152 15th Street NW, Suite 300  
Washington, DC 20005  
*Counsel for NRDC*  
[mszybist@nrdc.org](mailto:mszybist@nrdc.org)

Karen O. Moury, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
*Counsel for Intervenor Peoples Natural  
Gas Company LLC*  
[kmoury@eckertseamans.com](mailto:kmoury@eckertseamans.com)

Lauren M. Burge, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219  
*Counsel for Intervenor Peoples Natural  
Gas Company LLC*  
[lburge@eckertseamans.com](mailto:lburge@eckertseamans.com)

John F. Povilaitis, Esquire  
Buchanan Ingersoll Rooney  
400 North Second Street, Suite 500  
Harrisburg, PA 17101-1357  
*Counsel for Nationwide Energy Partners,  
LLC*  
[john.povilaitis@bipc.com](mailto:john.povilaitis@bipc.com)

Jan K. Vroman  
623 Eastman Street  
West Mifflin, PA 15122  
[jan.vroman@yahoo.com](mailto:jan.vroman@yahoo.com)

James M. Van Nostrand, Esquire  
Keyes & Fox LLP  
275 Orchard Drive  
Pittsburgh, PA 15228  
*Counsel for ChargePoint, Inc.*  
[jvannostrand@keyesfox.com](mailto:jvannostrand@keyesfox.com)

Scott F. Dunbar, Esquire  
Keys & Fox LLP  
1580 Lincoln Street, Suite 1105  
Denver, CO 80203  
*Counsel for ChargePoint, Inc.*  
[sdunbar@keyesfox.com](mailto:sdunbar@keyesfox.com)

Robert A. Eberle, Esquire  
Amanda B. Bundick, Esquire  
Eberle & Bundick, LLC  
P.O. Box 44290  
Pittsburgh, PA 15205  
*Counsel for IBEW Local 29*  
[bob@eblaborlaw.com](mailto:bob@eblaborlaw.com)  
[amanda@eblaborlaw.com](mailto:amanda@eblaborlaw.com)

Sean D. Ferris  
406 Laurie Drive  
Pittsburgh, PA 15235  
[sferris.1@netzero.net](mailto:sferris.1@netzero.net)

Diane Buzzard  
1719 Hays Street  
Pittsburgh, PA 15218  
[deb574031@gmail.com](mailto:deb574031@gmail.com)

DATE: September 13, 2021



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Anthony D. Kanagy

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY BRIEF OF  
DUQUESNE LIGHT COMPANY**

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Tishekia E. Williams (ID # 208997)  
Michael Zimmerman (ID # 323715)  
Emily M. Farah (ID #32259)  
Duquesne Light Company  
411 Seventh Avenue, 16th FL  
Pittsburgh, PA 15219  
Phone: 412-393-1541  
Fax: 412-393-5757  
E-mail: twilliams@duqlight.com  
mzimmerman@duqlight.com  
efarah@duqlight.com

Michael W. Gang (ID # 25670)  
Anthony D. Kanagy (ID # 85522)  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: mgang@postschell.com  
akanagy@postschell.com

Date: September 13, 2021

*Counsel for Duquesne Light Company*

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## I. INTRODUCTION

Duquesne Light Company (“Duquesne Light” or “Company”) hereby files this Reply Brief in response to the Main Brief of Nationwide Energy Partners, LLC (“NEP”), regarding NEP’s master metering and electricity redistribution proposal that was reserved for litigation (“Reserved Issue”) under the Joint Petition for Approval of Settlement (“Settlement”), which was filed with the Pennsylvania Public Utility Commission (“Commission”) on September 3, 2021. Pursuant to the schedule adopted by Administrative Law Judges Joel H. Cheskis and John M. Coogan (the “ALJs”), Duquesne Light filed and served its Main Brief addressing the Reserved Issue. As explained therein, Duquesne Light opposed NEP’s master metering and electricity redistribution proposal and submitted that it should be denied because, *inter alia*, it will allow unregulated entities such as NEP to provide electric service to residential tenants in Duquesne Light’s service territory, to the detriment of those tenants and to the detriment of Duquesne Light’s customers. The Office of Consumer Advocate (“OCA”), Office of Small Business Advocate (“OSBA”) and Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”) each respectively filed Main Briefs opposing NEP’s proposal. No other party supported NEP’s proposal.

NEP’s Main Brief asks the ALJs and the Commission to subordinate one of its fundamental duties, *i.e.*, “the protection of the public and the ratepayers,”<sup>1</sup> to NEP’s desire to profit off of the difference between (a) its purchase of electricity on behalf of “multifamily development, owners, developers or condominium associations (‘Property Owner(s)’)”<sup>2</sup> at a lower commercial rate and (b) its resale of that service to individual tenants on behalf of Property

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<sup>1</sup> *PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 408-409 (Pa. Cmwlth. 2006).

<sup>2</sup> NEP MB at 1 (citing NEP St. 1 at 2-3).

Owners at a higher residential rate<sup>3</sup> (the “Differential”). In order to profit off of the Differential, NEP advances a proposal that would require Duquesne Light to allow master metering of multifamily residential buildings, with submetering of individual units and resale of electricity by unregulated entities throughout its territory, to detriment of Duquesne Light and its customers. None of the arguments advanced by NEP in its Main Brief are sufficient to overcome the substantial legal, factual and policy infirmities associated with its proposal regarding the Reserved Issue. Duquesne Light has already addressed many of NEP’s arguments in Duquesne Light’s Main Brief and will not repeat those arguments in detail herein.

For the reasons more fully explained in this Reply Brief, in Duquesne Light’s Main Brief and in testimony, the ALJs and the Commission should deny the relief requested by NEP related to its master metering and electricity redistribution proposal.

## **II. COUNTER STATEMENT OF APPLICABLE LEGAL STANDARDS**

NEP “acknowledges its burden of proof in this proceeding to show the just[ness] and reasonableness of its proposed master metering and smart sub-meter program under [proposed] tariff Rule 41.2.” NEP MB at 8. Although NEP correctly acknowledges its burden of proof with respect to its tariff Rule 41.2 proposal, it fails to acknowledge that its proposal attempts to change the terms and conditions of Duquesne Light’s existing Commission-approved tariff which prohibits residential master metering and the submetering and resale of electricity. Duquesne Light MB at 9. As explained by the Company:

Commission-approved tariffs are *prima facie* reasonable. *Kossmann v. Pa PUC*, 694 A.2d 1147, 1151 (Pa. Cmwlth. 1997); *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) *pet. for allowance of appeal denied*, 698 A.2d 597

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<sup>3</sup> See NEP Compl. ¶¶ 1 and 9.



(Pa. 1997); *Zucker v. Pa. PUC*, 401 A.2d 1377, 1380 (Pa. Cmwlth. 1979). Moreover, the Commission has previously upheld Duquesne Light's prohibition against residential master metering in *Motheral v. DLC*, 95 Pa.P.U.C. 261 (2001). See Appendix B. As such, NEP carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provisions unreasonable. *Id.*; *Brockway Glass*, 437 A.2d at 1071-72.

Duquesne Light MB at 9 (emphasis added). As NEP is attempting to revise the terms of Duquesne Light's Commission-approved tariff, NEP bears a very heavy of burden of proof in this proceeding.

### **III. SUMMARY OF REPLY ARGUMENT**

NEP's proposal is unjust and unreasonable for many reasons, and it should be denied. As explained in the Company's, OCA's and CAUSE-PA's Main Briefs, NEP's proposal strips residential tenant-customers of critical protections that they would otherwise receive as customers of Duquesne Light. NEP's proposal should be denied on that basis alone. However, NEP's proposal also economically harms Duquesne Light's customers by allowing NEP to profit off of the Differential and lowering Duquesne Light's revenues, including but not limited to the revenues that it receives from residential customers to offset universal service costs for low-income customers. If NEP's proposal is adopted, it will increase rates for Duquesne Light's remaining customers through Rider No. 5 and in subsequent base rate proceedings.

NEP couches its proposal as beneficial by providing building owners better energy efficiency measures than are provided through Duquesne Light's Commission-approved EE&CP. The record evidence clearly demonstrates that the primary benefit of the proposal is to support NEP's business model and allow NEP to expand its business into Duquesne Light's service territory. The Public Utility Code does not provide for the consideration and furtherance of economic benefits to NEP or building owners in evaluating whether the proposal should be

adopted. In addition, the cases cited by NEP as supporting its proposal all denied requests by unregulated third parties to allow master metering and clearly do not support NEP's proposal.

Finally, in addition to the legal impediments and lack of legal support, NEP has failed to meet its burden of proof that its proposal is in the public interest. The detriments of NEP's proposal clearly outweigh any alleged benefits. Moreover, NEP has not provided any measurement or quantification of the energy efficiency and conservation benefits that it provides to building owners or any demonstration that its alleged benefits are greater than those available under the Company's EE&CP. For the reasons explained herein, in the Company's Main Brief and in the Main Briefs of OCA, CAUSE-PA and OSBA, NEP's proposal should be denied.

#### **IV. REPLY ARGUMENT**

##### **A. NEP'S PROPOSAL IS NOT SUPPORTED BY PURPA OR PENNSYLVANIA LAW.**

NEP argues in its Main Brief that its proposal is "consistent with" PURPA. NEP MB at 29. However, as explained in the Company's Main Brief, PURPA does not provide support for NEP's proposal. PURPA generally disfavors master metering. Duquesne Light MB at 25.

NEP also states that its proposal is "consistent with" Pennsylvania law and that the cases cited by NEP "fully support" its proposal. NEP MB at 31. These statements are clearly incorrect. All of the cases cited by NEP to support these statements actually deny parties' proposals to allow master metering. These cases cannot and do not support NEP's proposal.

In *Pennsylvania Public Utility Commission v. West Penn Power Company*, 1979 Pa. PUC LEXIS 37, 32 PUR 4th 245 (August 27, 1979) ("*West Penn*"), the Commission limited master metering to then current locations. 1979 Pa. PUC Lexis \*156. This is consistent with Duquesne Light's current tariff.

In *Motheral, Inc. v. Duquesne Light Company*, 2001 Pa. PUC LEXIS 4 (March 23, 2001) (“*Motheral*”), the Commission rejected a building owner’s request to waive Rule 41 of Duquesne Light’s tariff to allow master metering of an apartment building. The Commission upheld the justness and reasonableness of Rule 41. Duquesne Light MB at 19.

Likewise, in *Tiffany Associates v. Duquesne Light Company*, 1998 Pa. PUC LEXIS 206 (November 20, 1998) (“*Tiffany Associates*”), the Commission again denied a request of a building owner to master meter a senior citizen apartment building in Duquesne Light’s service territory. 1998 Pa. PUC Lexis at \*14. Therein, the Commission explained that the prohibition on residential master metering not only applied in order to promote conservation but to ensure the “optimization of the efficiency of use of facilities and resources, and equitable rates to consumers.” *Id.*

All of these cases reject third-party requests to master meter. In addition, NEP has not cited any case requiring master metering of residential buildings with submetering and resale to tenants. NEP’s proposal is clearly not “consistent with” or “fully supported” by Pennsylvania law.

**B. NEP’S PROPOSAL TO ALLOW MASTER METERING OF RESIDENTIAL APARTMENT BUILDINGS WILL INCREASE RATES TO DUQUESNE LIGHT’S CUSTOMERS.**

NEP proposes to allow landlords to switch the Company’s current service of tenants in multi-family buildings from individual meters for each tenant/customer to a master meter where the landlord is the customer of the Company and the tenant is sub-metered by the landlord and/or NEP. If this proposal is adopted, the tenant will no longer be a customer of the Company.

There are clear detriments to Duquesne Light’s customers of NEP’s master metering proposal. Many of these detriments result from the loss of protections offered by the Commission’s regulation of current service to tenants and are clearly explained in the

Company's Main Brief and the briefs of other Parties. The Company also explained in its Main Brief that the NEP proposal would result in increases in rates to other customers by reducing the number of customers in the residential class. Duquesne Light MB at 17. NEP has admitted in its testimony and its Main Brief that its proposal is financed by the Differential between the residential rate currently charged to tenants by the Company and the lower master meter rate that would be charged to the landlord. See NEP MB at 22, fn 22. This Differential is used to fund NEP's activities. It is clear that very little of that Differential will go to the tenants as NEP plans to continue to charge them the Company's rates, less a minor discount, so essentially all of the Differential goes to NEP and its landlord clients. However, the loss of that revenue to Duquesne Light will result in increases in rates for the Company's other customers. This detriment also should be considered in evaluating whether the NEP proposal should be accepted.<sup>4</sup>

The revenue loss comes from two different components of rates. The first comes from the difference between residential base rates for multiple customers and lower commercial rates for a single customer. While NEP contends that the Company will have savings from NEP replacing the Company's tenant meters, customer costs for meters are only a small part of base rates. See Duquesne Light Exhibit 6-7. Other revenues are to recover system costs which in large part cannot be avoided and will ultimately increase rates to the Company's remaining customers.

The second source of lost revenues resulting from the NEP proposal is the loss of recovery of universal service costs, which are recovered by the Company under the universal service rider solely from residential customers, including individually metered residential tenants

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<sup>4</sup> Parties, including OSBA and OCA, have raised potential cost shifting issues between residential and commercial classes associated with NEP's proposal. OCA MB at 15; OSBA St. No. 1-R, p. 23. As explained herein, NEP's proposal is unjust and unreasonable, and Duquesne Light strongly opposes it. If NEP's proposal is adopted over the other parties' objections, it is premature to decide cost shifting issues in this proceeding, and they should be addressed in the Company's next base rate proceeding.

in multi-family buildings currently served by the Company. This reduction in the number of residential customers paying the surcharge will result in a larger charge to the Company's remaining residential customers.<sup>5</sup> See Duquesne Light Rider No. 5. NEP cannot claim any offset to these costs, because it has disclaimed any responsibility to provide its services to buildings that house low-income customers. Exhibit Tr-22. Nevertheless, its tenants will pay an amount equal to the universal service charge to NEP, and NEP will use such funds for its own purposes. Indeed, this is one of the problems that is created by allowing an unregulated entity like NEP to operate in the utility space without an obligation to serve all customers equally.<sup>6</sup>

The losses of revenues that the Company would experience as a result of adoption of NEP's master metering proposal would increase rates to the Company's remaining customers.<sup>7</sup> This is another reason to conclude that NEP's proposal is unreasonable and to reject it.

**C. THE COMMISSION SHOULD NOT CONSIDER THE ECONOMIC BENEFITS TO NEP AND ITS LANDLORD CLIENTS UNDER CONTROLLING APPELLATE PRECEDENT.**

In its Main Brief, NEP presents its case as to how it will use the revenue Differential to provide services to landlords that elect master metering and submetering under NEP's proposed rule. NEP indicates that it will provide replacement of tenant smart meters for Duquesne Light's smart meters, install energy savings and monitoring and usage control devices and obtain clean energy supplies without the typical premium required for such supply. NEP MB at 20. NEP

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<sup>5</sup> NEP continues to argue that Duquesne Light will benefit from NEP's proposal because in essence, Duquesne Light will have fewer customers to serve. NEP MB at 25. This argument should be summarily dismissed. Duquesne Light as a regulated utility is in the business of providing service to all customers and does not benefit by having fewer residential customers.

<sup>6</sup> NEP's business model of avoiding service to low-income customers allows NEP to minimize its uncollectible expense by cherry-picking customers who have a greater ability to pay their electric bills.

<sup>7</sup> NEP's proposed tariff language is unclear in whether it limits the proposal to 130 existing premises and all new premises or 130 existing and new premises in total. In its Main Brief, NEP clarifies that its tariff provision is intended to be limited to 130 premises in total. NEP MB at 12.

also asserts that these activities will allow its served multi-family buildings to obtain LEED certification and favorable treatment from banks and investors, presumably for financing these activities.<sup>8</sup>

While these activities may be useful to landlords to increase their rent charges and to advance NEP's business plan<sup>9</sup>, they are economic benefits for NEP which, under controlling appellate precedent, should not be the primary factors considered by the Commission. The leading case on this subject is the Commonwealth Court's decision in *Crown America Corp v. PUC*, 463 A. 2d 1257 (1983) ("*Crown America*"). In this case, Crown, an owner of several shopping malls, challenged a Commission decision approving a ban on master-metering at new multi-tenancy commercial service locations. The Commonwealth Court upheld the ban against master metering and concluded that the Commission's duty was to protect customers and the public and not to advance private interests. The Commonwealth Court stated as follows:

Crown's argument is untenable as a basis for the rejection of Rule 5F. Any economic disadvantage which may be the result of the rule is not unreasonable, because the protection of Crown's economic interests and competitive position, and of those similarly situated, is neither an objective of Section 1502 nor of the regulatory scheme of the Code in general.

*Crown America* at 1260.

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<sup>8</sup> In its Main Brief and in testimony, NEP argues that its proposal gives building owners more choices regarding energy efficiency and conservation measures. NEP MB at 15-16. Notably, no building owner has intervened in this proceeding in support of NEP's proposal. Moreover, as explained in the Company's Main Brief, building owners do not need master metering with submetering to implement many of the energy efficiency and conservation measures proffered by NEP, and building owners can also participate in the Company's Commission-approved EE&CP. Duquesne Light MB at 20-24. In addition, the Company provides building owners with usage information for their entire building through its website. NEP Exhibit TR-23.

<sup>9</sup> Duquesne Light notes as well that NEP's tariff conditions are clearly designed to support its business model, including the \$2 discount, payment plans that are no longer than lease terms and a requirement that buildings be served with green electricity supply. See NEP MB at 12-13, 21. In footnote 34 on page 21, NEP states that its proposed tariff rule is intended to require green electricity supply for the building. NEP did not include this provision in its revised tariff rule and is improperly attempting to add another tariff condition that will benefit NEP in its Main Brief.

While NEP states that Crown America is not controlling because of changes since 1983, it does not present any argument that the Commission's duties as interpreted by the Court have changed. As summarized in this Reply Brief and explained in detail in the Company's Main Brief and the Main Briefs of CAUSE-PA and OCA, NEP's proposal serves private interests, which under the controlling *Crown America* precedent, must yield to the broad public interest.

**D. NEP HAS FAILED TO DEMONSTRATE THAT IT CAN PROVIDE BETTER ENERGY EFFICIENCY AND CONSERVATION BENEFITS THAN DUQUESNE LIGHT PROVIDES THROUGH ITS COMMISSION-APPROVED EE&CP.**

The Company's Main Brief and the Main Briefs of CAUSE-PA and OCA explain in detail the many detriments that tenants will experience if NEP's proposal is approved. These detriments would result from the loss of the tenants' relationship with the Company and the regulatory protections afforded by the Commission's regulation. Duquesne Light MB at 15-17; CAUSE-PA MB at 14-41; OCA MB at 10-14. Due to the extensive explanation of the substantial customer harms addressed in these briefs, Duquesne Light is not repeating those arguments herein. However, NEP offers tenants only a slight discount off the residential charges that the Company would apply if the tenants remained customers of the Company. NEP MB at 12. A weighing of these detriments with NEP's alleged benefits to tenants alone provides a clear basis to reject NEP's proposal.

As noted above, it is undisputed in this proceeding that NEP bears the burden of proof as to its master metering proposal. Despite bearing the burden of proof, NEP failed to provide any actual evidence of its primary alleged benefit – increased energy efficiency and conservation benefits. Under Duquesne Light's Commission-approved EE&CP, Duquesne Light measures and quantifies the benefits that it provides to all participants, including multi-family buildings. NEP Cross Exhibit No. 14. NEP provided no measurement or quantification of the energy

efficiency benefits that it provides to multi-family buildings that it serves. NEP clearly failed to meet its burden of proof even as to the primary alleged benefit of its proposal.

**E. DUQUESNE LIGHT LAWFULLY REVISED RULE 18 IN ITS 2018 BASE RATE PROCEEDING.**

In its Main Brief, NEP suggests that Duquesne Light inappropriately revised Rules 18 and 14.3 in its 2018 base rate proceeding to eliminate third-parties ability to master meter and submeter. NEP MB at 37. NEP's arguments should not be accepted. As an initial matter, the Company did not allow residential redistribution of electricity before 2018 and the 2018 tariff changes did not affect residential redistribution of electricity. Rule 18 required Company consent for redistribution prior to the 2018 changes and after the 2018 changes. See NEP Exhibit TR-13. Similarly, Rule 41, which requires residential dwelling units to be individually metered by the Company, was implemented prior to 2018 and was not modified in the 2018 proceeding. See NEP Exhibit TR-13; NEP MB at 36.

In addition, all tariff changes in the 2018 base rate proceeding were properly noticed. In addition, the 2018 changes are consistent with Pennsylvania law, as explained above, which allows utilities to restrict master metering and submetering.

**F. DUQUESNE LIGHT CANNOT BE REQUIRED TO IMPLEMENT NEP'S DISCRETIONARY TARIFF PROVISIONS.**

NEP argues that Duquesne Light's concerns about policing NEP's proposed tariff conditions should be disregarded because Duquesne Light enforces a large tariff with many rules all of the time. NEP MB at 54. NEP disregards the fact that its proposed tariff rules are not required by statute or regulation and, therefore, are clearly discretionary. Duquesne Light is not required to implement discretionary programs for unregulated third parties. *Pa. PUC, et. al v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2018-2647577, et al., 2018 Pa. PUC LEXIS 432 (Order entered Dec. 6, 2018); Duquesne Light MB at 5.



V. CONCLUSION

For all the foregoing reasons, Duquesne Light Company respectfully requests that Administrative Law Judges Joel H. Cheskis and John M. Coogan and the Pennsylvania Public Utility Commission approve the Joint Petition for Approval Settlement that is being filed contemporaneously with this Main Brief without modification and deny the relief requested by Nationwide Energy Partners, LLC related to its master metering and electricity redistribution proposal.

Respectfully submitted,



Tishekia E. Williams (ID # 208997)  
Michael Zimmerman (ID # 323715)  
Emily M. Farah (ID #32259)  
Duquesne Light Company  
411 Seventh Avenue, 16th FL  
Pittsburgh, PA 15219  
Phone: 412-393-1541  
Fax: 412-393-5757  
E-mail: twilliams@duqlight.com  
E-mail: mzimmerman@duqlight.com  
E-mail : efarah@duqlight.com

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Michael W. Gang (ID # 25670)  
Anthony D. Kanagy (ID # 85522)  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: mgang@postschell.com  
akanagy@postschell.com

Date: September 13, 2021

*Counsel for Duquesne Light Company*