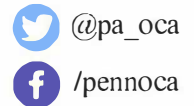


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560



FAX (717) 783-7152
consumer@paoca.org

October 29, 2021

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Exceptions in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby
Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAappleby@paoca.org

Enclosures:

cc: The Honorable Joel H. Cheskis (**email only**)
The Honorable John M. Coogan (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*319212

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 29th day of October 2021.

SERVICE BY E-MAIL ONLY

Scott B. Granger, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Sharon E. Webb, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17109-1923

Tishekia E. Williams, Esquire
Michael Zimmerman, Esquire
Emily Farah, Esquire
Duquesne Light Company
411 Seventh Avenue, 16th Floor
Pittsburgh, PA 15219

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

Mark C. Szybist, Esquire
Natural Resources Defense Council
1152 15th Street NW
Suite 300
Washington, DC 20005

Andrew J. Karas, Esquire
Sophia Al Rasheed, Esquire
Fair Shake Environmental Legal Services
600 Superior Avenue East
Cleveland, OH 44114

Ria M. Pereira, Esquire
Elizabeth R. Marx, Esquire
John W. Sweet, Esquire
Lauren N. Berman, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101

Derrick Price Williamson, Esquire
Barry A. Naum, Esquire
Spilman Thomas & Battle, PLLC
1100 Bent Creek Boulevard
Suite 101
Mechanicsburg, PA 17050

Joseph L. Vullo, Esquire
PA Weatherization Providers Task Force, Inc.
1460 Wyoming Avenue
Forty Fort, PA 18704

James M. Van Nostrand, Esquire
Keyes & Fox LLP
320 Fort Duquesne Blvd., #15K
Pittsburgh, PA 15222

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

John F. Povilaitis, Esquire
Alan M. Seltzer, Esquire
Buchanan Ingersoll & Rooney PC
409 North Second Street, Suite 500
Harrisburg, PA 17101

Michael Turzai, Esquire
William Roberts II, Esquire
Peoples Natural Gas Company LLC
375 North Shore Drive
Pittsburgh, PA 15212

Jan K. Vroman
623 Eastman Street
West Mifflin, PA 15122
E-Mail: jan.vroman@yahoo.com

Sean D. Ferris
406 Laurie Drive
Pittsburgh, PA 15235
E-Mail: sferris.1@netzero.net

/s/ Christy M. Appleby
Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAAppleby@paoca.org

Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

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

Scott F. Dunbar, Esquire
Keyes & Fox LLP
1580 Lincoln Street
Suite 1105
Denver, CO 80203

Robert A. Eberle, Esquire
Amanda B. Bundick, Esquire
Eberle & Bundick, LLC
P.O. Box 44290
Pittsburgh, PA 15205

Diane E. Buzzard
1719 Hays Street
Pittsburgh, PA 15218
E-Mail: deb574031@gmail.com

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: October 29, 2021
*319211

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY EXCEPTIONS
OF THE
OFFICE OF CONSUMER ADVOCATE

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CApplby@paoca.org

Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org

Counsel for:
Christine Maloni Hoover
Interim Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: October 29, 2021

Table of Contents

I. INTRODUCTION 1

II. REPLY EXCEPTIONS 1

OCA Reply to NEP Exception No. 4: .The ALJ Correctly Determined That NEP’s Proposed
 Tariff Rule 41.2 Was Not Just And Reasonable And Would Remove Important Consumer
 Protections Under The Public Utility Code, Commission’s Regulations, And Duquesne’s
 Tariff..... 1

OCA Reply to NEP Exception No. 9: Since The ALJs Denied NEP’s Proposal, The ALJs
 Did Not Need To Address The OSBA Cost Allocation Proposal. 6

III. CONCLUSION 7

TABLE OF AUTHORITIES

	Page(s)
Statutes	
66 Pa. C.S. § 1313.....	2
66 Pa. C.S. § 1401, <u>et seq.</u>	3
66 Pa. C.S. §1405(b)(1)	5
66 Pa. C.S. §1405(b)(2)	5
Regulations	
52 Pa. Code § 56.1, <u>et seq.</u>	3

I. INTRODUCTION

On October 12, 2021, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Deputy Chief Administrative Law Judge Joel H. Cheskis and Administrative Law Judge John M. Coogan (collectively the ALJs). Exceptions were filed by Nationwide Energy Partners, LLC (NEP). In their R.D., the ALJs approved the proposed Joint Petition for Settlement in the proceeding. R.D. at 53-57. With regard to the only litigated issue, the ALJs denied NEP's proposal to adopt a new master metering tariff rule, Tariff Rider 41.2, and determined that NEP had failed to meet its burden to demonstrate that the proposal should be adopted. R.D. at 78-84.

The Office of Consumer Advocate (OCA) files these Reply Exceptions in response to two of the Exceptions filed by NEP. No Exceptions were filed in response the ALJs' recommendation to approve the Joint Petition for Settlement. The OCA previously submitted a Main Brief and a Reply Brief in opposition to NEP's proposal. OCA M.B. at 8-14; OCA R.B. at 2-6.

The OCA submits that the ALJs correctly denied NEP's proposal to adopt a new master metering tariff rule, Tariff Rider 41.2, and that the Recommended Decision should be adopted by the Public Utility Commission (Commission).

II. REPLY EXCEPTIONS

OCA Reply to NEP Exception No. 4: The ALJ Correctly Determined That NEP's Proposed Tariff Rule 41.2 Was Not Just And Reasonable And Would Remove Important Consumer Protections Under The Public Utility Code, Commission's Regulations, And Duquesne's Tariff. (R.D. at 80-82; NEP Exc. at 21-26; OCA M.B. at 8-16; OCA R.B. at 2-6)

In its Exceptions, NEP argues that the R.D. erroneously holds and evaluates NEP and its proposed master meter program to the requirements applicable to Duquesne, as an EDC. NEP Exc. at 21-26. NEP also argues that the Recommended Decision applies the wrong legal standard to its proposed Tariff Rule 41.2. NEP Exc. at 26. The OCA submits that NEP's arguments are without merit.

The ALJs applied the correct legal standard when rejecting the NEP proposal. The ALJs correctly held that:

NEP has failed to provide that its proposed Tariff Rule 41.2 is just and reasonable. Duquesne Light, CAUSE-PA, and OCA set forth in great detail the protections and benefits in the Public Utility Code, Commission regulations, and Duquesne Light's tariffs that NEPs [sic] will no longer be eligible for should they no longer be Duquesne Light's customers, whether low income or otherwise. Duquesne Light M.B., pp. 14-17; CAUSE-PA M.B., pp. 23-56; OCA M.B., pp. 10-14. NEP primarily attempts to address these concerns through the modifications to its proposal that it offered in surrebuttal testimony. NEP M.B., pp. 44-45. We agree with Duquesne Light, CAUSE-PA, and OCA that these modifications are not an adequate substitute for the array of important customer benefits and protections currently provided to Duquesne Light's customers.

R.D. at 81.

NEP argues that “the RD fails to acknowledge that tenants behind commercial customer owned master metered buildings are *not* utility customers and should not be treated as such in addressing what the various parties characterize as ‘customer protections.’” NEP Exc. at 23 (emphasis in original). The OCA submits that is precisely the concern with NEP's proposal. See, OCA M.B. at 11-14; OCA R.B. at 3-6; R.D. at 82. While NEP is not a public utility certificated by the Public Utility Code, Section 1313 of the Public Utility Code, however, specifically brings resellers under the jurisdiction of the Public Utility Commission.¹ NEP acknowledges that Section 1313 of the Public Utility Code would apply to tenants in multifamily properties, but Section 1313 of Public Utility Code, however, does not address the loss of certain protections that tenants would otherwise have as utility customers. See, NEP Exc. at 24; OCA M.B. at 12.

The ALJs recognized in their Recommended Decision the gap in consumer protections that would be created if NEP's proposal were approved. The R.D. provided:

Although NEP argues it should not be held to the standards of a public utility, this contention does not negate consideration of whether NEP's proposal may disadvantage certain residential tenants. Even were NEP's customer protections comparable, we agree Duquesne Light and CAUSE-PA also raise valid and

¹ 66 Pa. C.S. § 1313.

complex concerns regarding the ability to enforce these protections before the Commission if any violations are identified in the future. In its Reply Brief, NEP responded to these concerns by citing *Coggins, supra*, where the Commission found a complainant could file a complaint with the Commission against a non-public utility that allegedly was violating 66 Pa. C.S. § 1313. However, *Coggins* does not squarely speak to a residential tenant's ability to pursue a complaint regarding NEP's Tariff Rules [sic] 41.2 before the Commission for issues unrelated to 66 Pa. C.S. § 1313. Such concerns may not be conclusively resolved until a future complaint is raised, at which point it will be difficult to reverse course should NEP's proposal be endorsed through Commission approved tariff language.

R.D. at 82

OCA witness Colton identified this same concern about the extent to which the Commission's residential consumer protections would extend to service billed pursuant to a non-residential rate. OCA witness Colton testified:

... I have a concern about the extent to which, if at all, the Commission's consumer protections applicable to residential customers would extend to service that is being billed pursuant to a non-residential rate. No recognition has been given to this lack of clarity about basic consumer protections designed to ensure fair treatment of Pennsylvania households and a reasonable assurance of ongoing access to essential utility services.

OCA St. 4-R at 7-8.

In its Exceptions, NEP argues that if there are consumer protection concerns, its proposed revisions to Tariff Rule 41.2 are sufficient to address the issue. NEP Exc. at 25-26. As the R.D. correctly concluded and the OCA discussed in its Briefs, however, NEP's proposed revisions to Tariff Rule 41.2 do not address full scope of the loss of consumer protections. See, R.D. at 81-82; OCA R.B. at 5-6. The ALJs' R.D. recognized that Tariff Rule 41.2 would potentially eliminate important consumer protections currently provided for under the law in Duquesne's service territory for all residential customers.² R.D. at 81-82. NEP's proposal would further eliminate access to statutorily-mandated customer protections provided to low income utility customers. OCA M.B. at 8-16; OCA M.B. at 2-6.

² See, 52 Pa. Code § 56.1, et seq.; 66 Pa. C.S. § 1401, et seq.

NEP's Exceptions attempt to minimize these concerns. NEP Exc. at 22, fn. 71; 25-26. In its footnote 71 in its Exceptions, NEP argues that "Rule 41.2 master metering proposal is not intended for affordable housing, and potential low income tenants will be given notice that traditional utility payment assistance programs, such as CAP, will not be available if they elect to sign a lease." NEP Exc. at 22, fn. 71. The OCA did not argue that NEP's proposal was intended to extend to affordable housing. As OCA witness Roger Colton discussed, NEP's proposal failed to address the potential that tenants may experience unexpected financial hardships and become low-income while living in their residences. OCA witness Colton explained that critical need that the Commission's protections provide to consumers who experience loss of income, as follows:

... NEP has not proposed any standards by which to measure whether someone is "low-income" or not. I have concerns about how NEP would identify and respond to changes in income. We know from Pennsylvania's universal service efforts that incomes may vary within a year. That is one reason that the Commission allows for the use of annualized income (e.g., 30-day or 90-day income annualized to 12-months) to establish eligibility for universal service programs (e.g., hardship fund) and customer protections (e.g., winter shutoff protections). NEP does not address what happens to a tenant if or when that tenant's income changes. I have concerns about the adoption of a tariff with such a fundamental aspect undefined.

OCA St. 4-R at 6-7 (emphasis added). The consumer protections provided under the law "ensure fair treatment of Pennsylvania households and a reasonable assurance of ongoing access to essential utility services" despite changes in circumstance that may impact a consumer's ability to pay. OCA St. 4-R at 7-8.

Another important consumer protection that would be lost to consumers is the payment arrangements provided for by Section 1405 of the Public Utility Code. NEP proposes in its Surrebuttal Testimony that tenants would be provided with a payment arrangement that NEP also provides "but such plan shall not [sic] greater than the lesser of (i) 12 months or (ii) the remaining term of the tenant's lease." NEP St. 1-SR at 14 (Public Version). The OCA submits, however, that this payment arrangement length may be significantly shorter than the timeframe provided for

under Chapter 14. Under Section 1405 of the Public Utility Code, a low-income customer at or below 250% of the Federal Poverty Level is eligible for longer payment arrangement. Section 1405 provides for a payment arrangement of three years for customers with income from 151%-250% of the Federal Poverty Level or five years for customers with income below 150% of the Federal Poverty Level.³

OCA witness Colton expressed concern regarding how these and other protections might be provided under the proposed Tariff Rule 41.2. As Mr. Colton testified:

... I have a concern how, if at all, basic consumer protections will be provided. For example, in my Direct Testimony, I identify a population of customers whose income is not sufficiently low to qualify a customer for universal service programs, but not sufficiently high to allow the customer to sustainably pay their electric bill over time. For such customers, protections such as reasonable payment plans are an important part of providing electric service. It is not clear how any or all of the Commission's consumer protections would be extended to tenants whose service is subject to the tariff as proposed by NEP.

OCA St. 4-R at 7. In its Main Brief, CAUSE-PA enumerates each of these protections under Chapter 14 and how each of these protections would be impacted by NEP's proposal. CAUSE-PA M.B. at 24-43. The ALJs' Recommended Decision correctly adopted these concerns. See, R.D. at 81-82.

NEP's arguments fail to recognize that the provision of electric utility service is not merely a product or service; it is a life-sustaining essential need. The issue presented in this case that NEP cannot overcome is that under NEP's proposal, no one, not Duquesne and not NEP, would be affording tenants the breadth of consumer protections provided under Chapter 14 and Chapter 56. For the reasons set forth above, the Commission should deny NEP's Exception No. 4 and approve the ALJ's Recommended Decision.

³ 66 Pa. C.S. §1405(b)(1),(2).

OCA Reply to NEP Exception No. 9: Since The ALJs Denied NEP's Proposal, The ALJs Did Not Need To Address The OSBA Cost Allocation Proposal. (NEP Exc. at 39-40; R.D. at 80-84; OCA M.B. at 15-16; OCA R.B. at 6).

In its Exceptions, NEP argues that the RD should have addressed and resolved the cost allocation issue if NEP's proposal was accepted by the Commission. NEP Exc. at 39. Since the ALJs denied NEP's proposal, the OCA submits that the ALJs correctly did not address the substance of the OSBA's proposed revenue impact analysis of Tariff Rule 41.2 and OSBA's allocation proposal in this case.⁴ To the extent that the Commission considers NEP's Tariff Rule 41.2, the OCA maintains its position that the NEP proposal would directly impact Duquesne multi-unit commercial property owners – not residential customers and that OSBA's proposed allocation should not be approved. OCA M.B. at 15-16; OCA R.B. at 6.

For the reasons set forth above, the Commission should deny NEP's Exception No. 9.

⁴ In Rebuttal Testimony, OSBA witness Knecht recommended that its recommendation that if master-metered multifamily service is approved under Tariff Rule 41.2 that the costs should be included as a part of the residential class costs for cost allocation and revenue allocation purposes. See, OSBA St. 1-R at 23.

III. CONCLUSION

For the reasons set forth above and in its Main Brief and Reply Brief, the Office of Consumer Advocate respectfully requests that the Public Utility Commission approve the Recommended Decision of Deputy Chief ALJ Cheskis and ALJ Coogan.

Respectfully Submitted,

/s/ Christy M. Appleby

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CApplby@paoca.org

Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org

Counsel for:
Christine Maloni Hoover
Interim Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
DATE: October 29, 2021