**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held December 20, 2018

Commissioners Present:

Gladys M. Brown, Chairman, Statement

Andrew G. Place, Vice Chairman

Norman J. Kennard

David W. Sweet

John F. Coleman, Jr.

Pennsylvania Public Utility Commission R-2018-3000124

R-2018-3000829

Office of Consumer Advocate C-2018-3001029

Jason Dolby C-2018-3001074

Peoples Natural Gas Company LLC C-2018-3001152

Office of Small Business Advocate C-2018-3001566

Duquesne Industrial Intervenors C-2018-3001713

Leonard Coyer C-2018-3002424

NRG Energy Center Pittsburgh LLC C-2018-3002755

v.

Duquesne Light Company

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Duquesne Light Company (Duquesne or the Company) and the Duquesne Industrial Intervenors (DII), filed on October 29, 2018, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale, issued on October 18, 2018, in which she, *inter alia*, granted the Joint Petition for Approval of Settlement Stipulation (Joint Settlement Petition or Partial Settlement) that was filed on September 14, 2018, by Duquesne, the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Clean Air Council (CAC), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), ChargePoint, Inc. (ChargePoint), Community Action of Pennsylvania (CAAP), DII, the Keystone Energy Efficiency Alliance (KEEA), the Natural Resources Defense Council, Inc. (NRDC), NRG Energy Center Pittsburgh LLC (NRGP), and Wal-Mart Stores East, LP and Sam’s East, Inc. (Wal-Mart), (collectively the Joint Petitioners). The Partial Settlement proposes to resolve all but one of the contested issues related to the rate proceeding. The remaining contested issue reserved for litigation involves the proposed rate increase by Duquesne to its Tariff Rider No. 16 – Service to Non-Utility Generating Facilities (Rider No. 16). [[1]](#footnote-2) With regard to the outstanding issue, the ALJ supported DII’s position and recommended that Duquesne file a tariff supplement to reduce the present Rider No. 16 rate from $2.50 kW to $0.352 per kW to reflect the actual cost of receiving service under Rider No. 16. Duquesne and DII filed Replies to Exceptions on November 5, 2018.

For the reasons discussed below, with regard to the sole outstanding issue involving Tariff rider No. 16 that was left unresolved by the terms of the Partial Settlement, we shall grant Duquesne’s Exceptions and deny DII’s Exceptions so that Duquesne Light Company will not be required to decrease the rate in Tariff No. 16 for “back-up” service that can be elected by eligible customers that meet a portion of their load with their own generating facilities. Accordingly, we shall adopt the ALJ’s Recommended Decision, as modified, and grant the Joint Settlement Petition which approves the Partial Settlement, without modification, consistent with this Opinion and Order.

As discussed below, the genesis of this proceeding involved a general rate increase in which Duquesne proposed a base rate change that would have increased its annual distribution revenue by $133.8 million, a 16.4% increase over present revenues, on a distribution revenue basis, based on a fully projected future test year (FPFTY) ending December 31, 2019. Joint Settlement, Appendix E. Our approval of the Joint Petition, which embodies a so-called “black box” settlement, permits Duquesne to file new tariff rates designed to provide an overall distribution base rate increase of $92.7 million, an 8.1% over present revenues, on a distribution revenue basis. *Id*.

# History of the Proceeding[[2]](#footnote-3)

On March 28, 2018, Duquesne[[3]](#footnote-4) filed Supplement No. 174 to Tariff Electric – Pa. P.U.C. No. 24 (Supplement No. 174) to become effective May 29, 2018, containing a proposed general increase in electric distribution rates of approximately $133.8 million in additional annual base rate operating revenues based upon data for a Fully Projected Future Test Year (FPFTY) ending December 31, 2019. The proposed base rate increase included $52.2 million of revenues currently recovered by surcharges. Therefore, the proposed annual revenue increase to customers over current rates was $81.6 million.

On April 6, 2018, the Office of Consumer Advocate (OCA) filed a public statement and formal complaint at Docket No. C-2018-3001029. In addition to the formal complaint filed by the OCA, formal complaints were filed by Jason Dolby at Docket No. C-2018-3001074; the Peoples Natural Gas Company LLC (Peoples) at Docket No. C-2018-3001152; James Fedell at Docket No. C-2018-3001473;[[4]](#footnote-5) the Office of Small Business Advocate (OSBA) at Docket No. C-2018-3001566; Duquesne Industrial Intervenors (DII) at Docket No. C-2018-3001713; Leonard Coyer at Docket No. C-2018-3002424; and NRG Energy Center Pittsburgh LLC (NRG Pittsburgh or NRGP) at Docket No. C-2018-3002755.

On April 19, 2018, the Commission suspended the effective date of Supplement No. 174 by operation of law, pursuant to Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), until December 29, 2018, unless permitted by Commission Order to become effective at an earlier date, and instituted an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations proposed in Supplement No. 174.

Peoples filed a formal complaint against Duquesne, at Docket No. C‑2018‑3001152, on April 10, 2018. On May 1, 2018, Duquesne filed a Motion for Partial Judgment on the Pleadings against Peoples. Duquesne contended Peoples lacked standing to pursue a claim against Duquesne’s proposed changes to Rider No. 16 because Peoples did not receive service under the Rider and thus, Peoples lacked standing to pursue a claim on behalf of its customers who might use Rider No. 16.

On May 15, 2018, the Office of Administrative Law Judge scheduled one public input hearing to be conducted in the afternoon of June 14, 2018, in the City of Pittsburgh, Allegheny County, Pennsylvania and another public input hearing to be conducted in the evening of June 14, 2018, in Beaver Falls, Beaver County, Pennsylvania. Notice was published in two newspapers of general circulation on June 1, 2018, and June 8, 2018.

On May 18, 2018, the Commission consolidated the temporary rates proceeding for Duquesne at Docket No. R-2018-3000829 with the pending Section 1308(d) rate proceeding at Docket No. R-2018-3000124, pursuant to the Commission’s Order adopted May 17, 2018 at Docket No. M-2018-2641242 concerning the Tax Cuts and Jobs Act of 2017 (TCJA). The Commission specified the parties were expected to address the effect of the federal tax rate reductions and other changes in the TCJA on the justness and reasonableness of the consumer rates charged during the term of the suspension period and, in particular, whether a retroactive surcharge or other measure is necessary to account for the tax rate changes that became effective on January 1, 2018.

On May 22, 2018, the ALJ issued an Interim Order which granted Duquesne’s Motion for Partial Judgment on the Pleadings against Peoples. The Interim Order noted Peoples was still a party in the base rate proceeding due to its status as a customer of Duquesne.

Also, on May 22, 2018, Peoples filed a Petition for Interlocutory Review and Answer to Material Question on an Expedited Basis (*IR Petition*) with the Commission, pursuant to 52 Pa. Code § 5.302(a). Peoples asked the Commission if the presiding officer erred in the Interim Order dated May 22, 2018, when granting the Motion for Partial Judgment on the Pleadings filed by Duquesne on May 1, 2018. Peoples and DII filed briefs in support of the *IR Petition*, and Duquesne filed a brief in opposition to the *IR Petition*.

On May 31, 2018, KEEA filed a Petition to Intervene. KEEA averred it consisted of over forty entities which implement energy efficiency improvements, and the proposed changes to Rider No. 16 could impact negatively the ability of KEEA entities to offer these energy efficiency improvements to customers of Duquesne.

On June 14, 2018, the ALJ conducted an afternoon public input hearing at which ten people appeared and testified under oath, and an evening public input hearing at which two people appeared and testified under oath. On the same date (June 14, 2018), the Commission issued its Opinion and Order on Peoples’ *IR Petition* in which it answered in the affirmative the material question of whether the May 22, 2018 Interim Order (which granted the Motion for Partial Judgment on the Pleadings) erred by precluding Peoples, as a developer of Combined Heat and Power projects, from contesting Duquesne’s proposed increase to the Back-up Rate for Combined Heat and Power projects. The Commission then returned the matter to the Office of Administrative Law Judge for further proceedings.

On August 15, 2018, the ALJ convened the Parties and conducted the Evidentiary Hearing in Harrisburg, Pennsylvania. Present were the following Parties: Duquesne, BIE, OCA, OSBA, Wal-Mart, ChargePoint, DII, CAUSE-PA, CAAP, NRDC, NRG Pittsburgh, KEEA and Peoples. The Presiding Officer concluded the proceedings on August 17, 2018. The August 15, 2018 Evidentiary Hearing generated Transcript pages 169 through 388; the August 16, 2018 Evidentiary Hearing generated Transcript pages 389 through 639, and August 17, 2018 Evidentiary Hearing generated Transcript pages 640 through 678. The documents that were marked and admitted into evidence at the evidentiary hearing are itemized by party in an eighteen-page document marked as “Appendix A” attached to the Recommended Decision.

At the start of the August 15, 2018 Evidentiary Hearing, Duquesne advised the ALJ that a Partial Settlement in principle had been reached between Duquesne and all of the other active parties except Peoples. Duquesne also advised that the Partial Settlement covered all issues except the Rider No. 16 issue. Duquesne provided the presiding officer with a confidential summary list of the settlement provisions. The Evidentiary Hearing proceeded on the litigated issue involving Rider No. 16.

At the start of the August 17, 2018 Evidentiary Hearing, Duquesne advised the Presiding Officer that it officially had withdrawn its request to amend Rider No. 16, and that Peoples no longer objected to the settlement. However, DII indicated it still wished to pursue its objection to Rider No. 16 and requested the opportunity to question witnesses on August 17, 2018, and to brief the Commission on its position. Both requests were granted. On September 6, 2018, Main Briefs were received from Duquesne and DII.

On September 14, 2018, Reply Briefs (R.B.) were received from Duquesne and DII. On the same date, Duquesne, on behalf of all signatories, filed the Joint Settlement Petition including attached Statements in Support. The following parties joined with Duquesne in requesting that the Commission approve the proposed resolution: BIE, OCA, OSBA, CAUSE-PA, DII, CAAP, Wal-Mart, ChargePoint, KEEA, NRG Pittsburgh, CAC, and NRDC. Peoples and IBEW indicated they had no objection to the Partial Settlement.

On September 14, 2018, the ALJ issued a letter to all formal Complainants in which she advised them of their right to comment, agree or object to the Partial Settlement and how their responses could be included in the record in this proceeding. On October 2, 2018, the record was closed. The record is comprised of Transcript Pages 1 through 678 in addition to the statements and exhibits listed in Appendix A of the Recommended Decision.

As noted, Exceptions were filed by Duquesne and DII on October 29, 2018. Duquesne and DII filed Replies to Exceptions on November 5, 2018.

# Introduction

As a preliminary matter, we note that any issue that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also see, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In her Recommended Decision, the ALJ made seventy Findings of Fact and reached eleven Conclusions of Law. R.D. at 145-155, 178-180. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

## Legal Standards

The purpose of this investigation is to establish distribution rates for Duquesne’s customers that are “just and reasonable” pursuant to Section 1301 of the Code. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia,* 262 U.S. 679 (1923).

In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield, supra* and *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield* the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

*Bluefield,* 262 U.S. at 692-3.

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

Rate cases are expensive to litigate, and the reasonable cost of such litigation is an operating expense that is recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings as well as the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision; yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a rate case settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

With regard to the burden of proof in this matter, Section 315(a) of the Code provides:

**§ 315. Burden of proof**

1. **Reasonableness of rates.—**In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding

preference over all other proceedings and decide the same as speedily as possible.

66 Pa. C.S. § 315(a). Consequently, in this proceeding, Duquesne has the burden to prove that the rate increase proposed by the Partial Settlement is just and reasonable. The Joint Petitioners have reached an accord on many of the issues and claims that arose in this proceeding and submitted the Settlement. The Joint Petitioners have the burden to prove that the Partial Settlement is in the public interest.

# Joint Petition for Partial Settlement

## Terms and Conditions of the Partial Settlement

As noted, the Joint Petitioners agreed to the Partial Settlement covering all issues except for one – the issue involving the proposed revisions by Duquesne to Rider No. 16 (Service to Non-Utility Generating Facilities). The Partial Settlement, if approved, will result in a net increase in annual base distribution operating revenues of $92.7 million. This increase includes $52.2 million of revenues that are currently recovered from customers through various surcharges.[[5]](#footnote-6) Thus, the remaining $40.5 million attributed to non-surcharge revenues represent approximately a 50% reduction to the $81.6 million originally proposed by Duquesne on its base rates. The Joint Petitioners have agreed, *inter alia,* to a base rate increase, an allocation of that revenue increase to the rate classes, a rate design for each rate class, universal service, customer service, time of use, and master metering matters, and an Electric Vehicle ChargeUp Pilot (EV Pilot) program. As noted, the Partial Settlement further provides that the Parties to this proceeding have reserved for litigation, the issues related to Rider No. 16 – Service to Non-Utility Generating Facilities. All parties in this proceeding either support or do not oppose the Partial Settlement. Partial Settlement at 1-2.

The Settling Parties stated that the Partial Settlement was achieved after an extensive investigation of Columbia’s filing, including extensive informal and formal discovery and the filing of direct, rebuttal, surrebuttal and rejoinder testimony by a number of the Joint Petitioners. Partial Settlement ¶ 61 at 19-20. They also stated that the Partial Settlement is in the public interest for the reasons set forth in their respective Statements in Support. Partial Settlement ¶ 64 at 20.

The Joint Settlement Petition contains the terms and conditions of the Partial Settlement and Appendices A through T. Appendix A to the Partial Settlement sets out the tariff supplements to be filed and to become effective in accordance with the Partial Settlement. Appendix B sets out the proof of revenues. Appendix C presents the present rates, the proposed rates, and the effects of the Partial Settlement on each rate class. Appendix D presents the allocation of the tax refund resulting from the TCJA. Appendix E represents the revenue allocation to each class at the net settlement increase of $40.5 Million. Appendix F sets forth the proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs. Appendices G through R represent the Statements in Support filed by Duquesne, I&E, the OCA, the OSBA, CAUSE-PA, DII, ChargePoint, Walmart, NRDC, KEEA, NRGP[[6]](#footnote-7), and CAAP, respectively. Appendices S and T are letters of non-opposition filed by Peoples and IBEW.

The essential terms of the Partial Settlement are set forth in Paragraph Nos. 30 through 60 of the Joint Petition, which is shown below in full as it appears in the Joint Petition:

**A. REVENUE REQUIREMENT AND ACCOUNTING**

30. The distribution rates set in this proceeding will be designed to produce increased base operating revenues of $92.7 million based upon the pro forma level of operations for the twelve months ended December 31, 2019, inclusive of the $52.2 million of revenues recovered under current surcharges, for a net increase in revenues of $40.5 million.

31. Duquesne Light will provide a refund to customers of $24 million, which includes interest. This amount resolves the parties’ positions regarding the return of 2018 federal income tax expense savings and 2018 Excess Deferred Income Taxes (“EDIT”). Duquesne Light will refund this amount beginning January 2019 through a one- or two -time bill credit on a distribution revenue basis. The provision of this credit to customers will be subject to audit to ensure that the Company has returned the full amount of the credit to customers in the manner referenced herein. The allocation of the tax refund is set forth in **Appendix D**. As set forth in **Appendix D**, the credit for most customers will be a fixed amount per customer based upon the allocation of the refund to class divided by the number of customers in the class as of December 1, 2018. The credit for other customers will be an individual calculation based on the percentage of each customers’ base distribution revenue to the class distribution revenue for the period of December 1, 2017 through November 30, 2018.

32. The level of revenue requirement included in this Settlement reflects the resolution of the parties’ positions in the dispute regarding the application of 66 Pa.C.S. § 1301.1 in this case.

33. As of the effective date of rates in this proceeding, Duquesne Light will be eligible to include plant additions in the Distribution System Improvement Charge (“DSIC”) once the total eligible account balances exceed the levels projected by the Company in this proceeding at December 31, 2019. The foregoing provision is included solely for purposes of calculating the DSIC, and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in an FPFTY filing.

34. For purposes of calculating its DSIC, Duquesne Light shall use the equity return rate for electric utilities contained in the Commission’s most recent Quarterly Report on the Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for electric utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa. C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa. C.S. § 1358(b)(1).

35. Duquesne Light will continue to use normalization accounting with respect to the benefits of the tax repairs and Internal Revenue Code (“IRC”) Section 263A deductions. Duquesne Light will reverse EDIT with regard to prior tax repairs and IRC Section 263A deductions pursuant to the Average Rate Assumption Method (“ARAM”) used to reverse EDIT associated with accelerated depreciation deductions. The remaining unamortized EDIT balance will continue as a reduction to rate base in all future base rate proceedings until the full amount is returned to ratepayers.

36. Duquesne Light will be permitted to amortize its costs related to the following:

(i) Electrical Model — Commencing with the effective date of rates in this proceeding (December 29, 2018), the Company will be permitted to amortize the estimated non-labor expenses for the field inventory and graphic design tool of $20.6 million related to the development and implement-tation of the electrical model over a five year period for an annual amortization of $4.12 million per year.

37. Commencing with calendar year 2019, Duquesne Light will deposit into its pension trusts an amount equal to $10 million per year; provided, however, that contribution(s) in any year in excess of the foregoing may be used on a cumulative basis to satisfy future contribution obligations under this Settlement. The Settlement provides for recovery of the expense component of $5 million (50% of the average cash contributions) of projected future pension contributions. Additionally, Duquesne Light will be permitted to include the other 50% of actual pension contributions from January 1, 2007, forward, net of related accumulated deferred income taxes, in rate base for rate making purposes. The rate base adjustment for pensions shall be the amount necessary to adjust the Accounting Standards Codification (“ASC”) 715 capitalized pension amounts to equal accumulated capitalized pension contributions, net of applicable deferred income taxes, from January 1, 2007 forward. The depreciation expense for book and ratemaking purposes will be based on the ASC 715 capitalized amounts. The adjusted amounts will be used for reporting rate base in reports to the Commission. If Duquesne Light concludes that a contribution less than $10 million to the pension trust is appropriate, the Company may reduce the pension contribution and will record a regulatory liability on its books of account that is equal to 50% of the reduction to the pension contribution below the level of $10 million. Any regulatory liability recorded will be reduced to the extent of 50% of contributions in excess of $10 million in subsequent years. If a regulatory liability remains at the time of the Company’s next rate proceeding, the regulatory liability amount will be returned to ratepayers as directed in the next base rate proceeding. Any amount recorded as a regulatory liability shall not bear an interest obligation. Duquesne Light shall provide a report and affidavit attesting to the actual contributions to pension trusts during each calendar year. The report and affidavit shall be publicly filed with the Commission, with copies provided to I&E, OCA and OSBA on or before January 31 of the following calendar year, with the first report and affidavit due on or before January 31, 2020.

38. The Company’s distribution rate allowance for Other Post Employment Benefits (“OPEBs”) is based upon the estimated ASC 715 cost for the FPFTY of approximately $0.4 million ($0.3 million on a distribution basis), which reflects a two-year normalization of the Net Periodic Benefit Cost for historic and future test year distribution costs. The distribution expense component included in rates is approximately 50% of this estimated cost less the annual effect of the 3-year amortization of the regulatory liability of $2.6 million ($2.2 million on a distribution basis) as explained in Duquesne Light St. No. 2, p. 29, for a net distribution credit of $0.6 million. The remaining 50% of actual ASC 715 cost will be the amount to be capitalized on the Company’s books. The actual labor capitalization ratio will be used to determine the split between capitalized and expensed amounts. The Company accounts for and funds OPEBs through a Voluntary Employees Beneficiary Associated (“VEBA”) trust, into which it will deposit the full amount of annual costs calculated by the Company’s actuary pursuant to ASC 715. Retiree OPEBs and administrative costs of maintaining the trusts and/or accounts are paid from amounts deposited in the trust. The Company accounts for the difference between the net periodic postretirement benefit expense determined annually by the actuary in accordance with ASC 715 and the amount of ASC 715 postretirement benefit expense used to establish rates. That difference is recorded as a regulatory asset or liability and will be expensed or credited in future base rate proceedings in determining OPEB expense included in rates.

39. Duquesne Light’s jurisdictional separation study of distribution and transmission costs and assets shall be approved for purposes of this case only and shall hold no precedential value in a future base rate proceeding. All parties reserve the right to challenge the jurisdictional separation study in future matters.

40. Duquesne Light will file a Total Company Pennsylvania jurisdictional report showing capital expenditures, plant additions and retirements, by month, for the Future Test Year (“FTY”) ending December 31, 2018, and the FPFTY ending December 31, 2019, by July 31 of each of the years following the test years. In Duquesne Light’s next base rate proceeding, the Company will prepare a comparison of its actual expenses and rate base additions for the twelve months ending December 31, 2019, to its projections in this case. However, it is recognized by Joint Petitioners that this is a black box settlement that is a compromise of the Joint Petitioners’ positions on various issues.

41. Commencing with implementations subsequent to May 1, 2015, the Company shall be permitted to capitalize the development costs for cloud-based information systems. The Company will record the costs related to the development of cloud-based information systems as a regulatory asset at the time such costs are incurred. The Company shall begin amortization of the costs after the systems are placed in service. Amortization of the regulatory asset will be included in the Company’s depreciation claim and the unamortized balance in the regulatory asset account will be included in rate base in the Company’s current and future base rate proceedings. Nothing in this provision shall preclude a challenge to the prudence or reasonableness of specific cloud-based expenditures in a future base rate proceeding.

42. In each base rate case in which the Company proposes to recover costs of cloud-based information systems that were recorded in the regulatory asset, pursuant to paragraph 41 as a capital cost for ratemaking purposes, the Company will provide a listing of the cloud-based computing costs by year, as well as the expected useful life of each item. This requirement applies to the costs of cloud-based information systems recorded in the regulatory asset that were not capitalized for Generally Accepted Accounting Principles (“GAAP”) purposes.

43. The timing of a Company notice with regard to annual dividends in excess of 85% of annual net income will be revised to the following: The Company must provide notice and explanation to the Commission when annual dividend payments in the preceding 12 months ended March 31st exceed 85% of annual net income of the prior calendar year. With the revised language, the Company will be able to adjust its distributions in the first quarter of the following year in order to avoid inadvertently violating the advance notice requirement currently in place.

44. Duquesne Light will update the unbundled costs that are currently recovered in default service rates that were previously approved by the Commission as part of the Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period June 1, 2017, to May 31, 2021, at Docket No. P-2016-2543140. Exhibit DBO-5 reflects the updated unbundling costs. These updated unbundling costs will be fixed and reconciled only for differences between projected and actual consumption. The Company would reflect the updated unbundled costs in rates effective June 1, 2019, the first effective default service supply rate change for all classes after new distribution rates become effective December 29, 2018.

**B. DUQUESNE LIGHT PROGRAMS**

45. The Electric Vehicle ChargeUp Pilot (“EV Pilot”) is resolved on the following terms and conditions:

1. The Company’s proposed DC Fast Charging Evaluation will be limited to make ready infrastructure, as defined in DLC Statement No. 6, and fast charging stations owned by the Company to be used solely for the Company and the Port Authority of Allegheny County electric bus evaluation. The cost associated with this investment included in rate base in this case is $500,000.

b. The Company’s Level 2 charging proposal will be limited to the Company’s investment in make ready infrastructure to provide electric service to charging stations owned by other parties with at least 4 charging stations available to the public. The Company’s total investment in these facilities under the pilot will be limited to $1.3 million: approximately $650,000 of this investment will be capital investment in front of and including the meter, and approximately $650,000 will be expense investment in the form of rebates behind the meter. The Company will be permitted to capitalize all costs for infrastructure in front of and including the meter. The Company will be permitted to provide a rebate for costs for infrastructure behind the meter and will be permitted to record these rebate costs as a regulatory asset. The Company will provide a report in its next base rate proceeding. The report will evaluate customer participation and feedback, public access to charging stations and charger station usage and identify the charging station revenues received by the Company from charging station owners. Report results will be broken down by year. Determination of the appropriate method of cost recovery for the behind the meter Level 2 rebate costs will be deferred to the Company’s next base rate case.

c. Customer education costs with regard to the EV Pilot in this proceeding are reduced to $200,000 to reflect the reduction in scope of the pilot in this settlement.

d. The Company will assess the EV Pilot data and develop a plan for an EV load management program to be proposed in its next base rate case proceeding.

e. Customer Electric Vehicle Registration Incentives in this proceeding are reduced to $70,000 per year. Any unused portion of the $70,000 per year will be addressed in the next base rate proceeding.

f. The Company will develop annual public reports, submitted to the Commission, to track the progress of the EV Pilot implementation. Metrics include:

i. Charging infrastructure deployed over time, including by location and date of activation;

ii. Charging infrastructure installation costs by site type (broken out by capital and rebate costs);

iii. For all charging stations deployed through the EV Pilot: the usage rate by site type and charger type;

iv. Estimated avoided air emissions resulting from the programs.

46. Duquesne Light’s revised Light Emitting Diode (“LED”) Street Light Program, as explained in Duquesne Light Statement No. 6 and as set forth in Rate SM of the Company’s tariff Supplement No. 174, is approved. See Duquesne Light Exhibit No. DBO-1.

47. Duquesne Light’s proposed fee free bank card payment program, as described in DLC Statement No. 7, is approved.

48. Duquesne Light withdraws its Woods Run Microgrid proposal without prejudice.

**C. REVENUE ALLOCATION AND RATE DESIGN INCLUDING CUSTOMER CHARGE**

49. The revenue allocation to each class at the net settlement increase of $40.5 million is reflected in **Appendix E**.

50. The fixed monthly charge for Rates RS, RA, RH and GS will be increased from $10.00 per month to $12.50 per month

**D. UNIVERSAL SERVICE, CUSTOMER SERVICE, TIME OF USE SERVICE AND MASTER METERING**

51. Duquesne Light agrees that its proposal to remove the phrase “for which service is requested” from its retail tariff Rule No. 5a is withdrawn.

52. Within 120 days of the entry of a Commission order approving this settlement, Duquesne Light agrees to hold a non-confidential collaborative with all interested stakeholders to obtain stakeholder input regarding residential time-of-use rates. Duquesne Light agrees to continue with a second non-confidential collaborative with all interested stakeholders to obtain additional stakeholder input regarding residential time-of-use rates within 30 to 60 days after its initial collaborative. Duquesne Light agrees to consider in good faith the issues and suggestions raised in the collaboratives. Duquesne Light agrees to make a proposal regarding time-of-use rates in its next default service rate filing, unless the Commission directs that Duquesne Light make a time-of-use rate filing prior to its next default service rate filing. All parties retain all rights to challenge the rates, terms and conditions proposed by Duquesne Light with regard to its time-of-use rates. This paragraph 52 does not supersede any Commission directive relating to time-of-use rates that conflicts with the provisions herein.

53. Duquesne Light intends to provide anonymized aggregate energy usage data for residential multifamily buildings that are 50,000 square feet or larger and will provide periodic updates to the Income Eligible Program Advisory Group regarding the status of implementation. Duquesne Light further agrees to participate in any working group established by the City of Pittsburgh to address the issue of energy efficiency benchmarking for multifamily buildings.

54. Starting with its 2019 program year, Duquesne Light will use its best efforts to ensure that 10% of its completed Low Income Usage Reduction Program (“LIURP”) jobs are for electric heating customers, and will provide reports on its progress toward reaching that goal to members of its Income Eligible Advisory Group. Duquesne Light will increase its LIURP budget by $140,740 annually to accommodate for the increased cost to remediate electric heating customer usage. Duquesne Light agrees to review the list of customers with high Customer Assistance Program (“CAP”) credits (over $1,000) from the prior year and prioritize those customers for LIURP treatment when possible. If the list has been exhausted, Duquesne Light will use the high usage CAP customer list as well as eligible customers requesting weatherization. This prioritization will continue unless Duquesne Light evaluates the cost-effectiveness of the prioritization, and reviews that evaluation with stakeholders.

55. Within 60 days of the effective date of rates, Duquesne Light will revise its medical certificate policy and accompanying procedures to accept medical certificate renewals if the customer’s current bill or budget bill amount is paid in full by the due date while under the protection of a medical certificate. Customers will not be limited to two medical certificate renewals if the provisions of this paragraph are met. Upon submission of an initial medical certificate, Duquesne Light will inform customers that they can continue to renew their medical certificate and continue to receive medical certificate protection if they continue to pay their current bill or budget bill amount in full by the due date for the duration of their medical condition or emergency, and that they remain responsible for any outstanding balance. Duquesne Light will also refer customers to any available bill payment assistance programs, including CAP, Hardship Fund, Customer Assistance Referral Evaluation Services (“CARES”), and Low Income Home Energy Assistance Program (“LIHEAP”), and will work with customers protected by a medical certificate to establish an equitable payment arrangement for outstanding arrears pursuant to Commission rules. Duquesne Light will share its revised policy with parties to this proceeding, and will provide an opportunity for feedback and suggestions. Duquesne Light may amend this policy in response to future Commission rulemakings, orders or policy. Duquesne Light will be permitted to write off any outstanding balances overdue for more than one year for customers that have medical certificates for a period of one year or longer.

56. Within 60 days of the effective date of rates, Duquesne Light will revise its Protection From Abuse Order (“PFA”) policy and accompanying procedures to accept PFAs or civil or criminal court orders with evidence of domestic violence toward an applicant for service, a current customer, or a member of the applicant or customer’s household, consistent with 66 Pa. C.S. § 1417 and 52 Pa. Code Ch. 56, subsections L-V. Duquesne Light will share its revised policy with the Income Eligible Program Advisory Group, and will provide an opportunity for feedback and suggestions.

57. Duquesne Light will engage in discussions regarding budget billing issues with its Income Eligible Program Advisory Group and will consider proposals to address these issues in its next base rate proceeding. If prior to the next base rate proceeding, consensus is reached among the Income Eligible Program Advisory Group and the Company on implementation of particular budget billing proposals and the Company determines that those proposals will have minimal or no revenue impact, Duquesne Light agrees that it will implement those proposals as soon as practicable.

58. Duquesne Light will conduct a competitive selection process, such as a Request for Proposal, for the purpose of determining its universal service program provider(s). Duquesne Light will invite local community based organizations (“CBO”) to participate in the competitive selection process. Final selection of universal service program providers will be determined in accordance with Duquesne Light’s processes and procedures. A description of CBO participation in Duquesne Light’s universal services programs will be included in its Universal Services and Energy Conservation Plan that is filed with the Commission for review and approval.

59. Within 180 days of the effective date of rates, Duquesne Light will convene a non-confidential collaborative with all parties to this proceeding, and all interested stakeholders who are developers of multifamily housing within its service territory, to discuss the feasibility of revising its retail tariff to permit master-metering of multifamily housing. Parties to the collaborative will specifically consider:

a. Under what circumstances master-metering would be permitted, and the factors Duquesne Light would require a building owner to meet before approving a master-metering configuration;

b. The impact that any such tariff change would have on low income tenants’ ability to continue to afford utility service;

c. The impact of individual customers not utilizing Advanced Metering Infrastructure (“AMI”) meters; and

d. The impact that any such change would have on the Company’s revenue allocation and the ability to meet its projected revenue requirements.

The parties to the collaborative will make a good faith effort, in coordination with the Company, to develop consensus on the scope of a tariff revision that permits master-metering, taking into consideration all of the foregoing factors. Additional collaborative meetings will be held thereafter, as necessary, but not less than on an annual basis, in an effort to reach consensus on any issues which remain unresolved after the first collaborative is held. Based on feedback from the collaborative meetings, Duquesne Light will present a proposal regarding master-metering of multifamily housing buildings as a part of its next general base rate case. The treatment of any alleged confidential information during the collaborative will be subject of an agreement of the parties and stakeholders participating in the collaborative.

**E. OTHER ISSUES**

60. Duquesne Light, on behalf of itself and its affiliates, will not develop or fund (except such projects incented through Duquesne Light Act 129 programs) a project for the generation or distribution of steam, hot water, or chilled water (except for self-service) within the then-certificated service territory of NRGP, without sending letter notification to NRGP at least forty-five (45) days prior to the commencement of any construction activities or funding disbursements related to any such project. The letter notification will identify the customers that will be served, what service will be provided, and how service will be provided. Duquesne Light will cooperate in providing additional information to NRGP with respect to such project upon request from NRGP.

Partial Settlement at 8-19.

The Joint Petitioners included a comparison of the distribution and total bills for a residential rate RS customer using 600 kWh at present, proposed, and settled rates. As shown in the first column (Distribution Increase) in the table below, the Joint Petitioners indicated that an RS customer who presently pays $44.28 in monthly distribution charges will pay $48.64 (9.85% increase over present rates) under the Settlement compared to $52.94 (19.55% increase over present rates) as originally proposed by the Company. The second column (Total Bill Increase), which include transmission, generation and additional surcharges, in addition to distribution charges, indicates that an RS customer who presently pays $98.15 in their total bill will pay $102.51 (4.44% increase over present rates) under the Settlement compared to $106.80 (8.82% increase over present rates) as originally proposed by the Company.

|  |  |  |  |
| --- | --- | --- | --- |
| **Distribution Increase** |  | **Total Bill Increase** |  |
| Present Distribution Bill | $44.28 | Present Total Bill | $98.15 |
| Proposed Distribution Bill | $52.94 | Proposed Total Bill | $106.80 |
| Proposed Percentage Distribution Increase | 19.55% | Proposed Percentage Total Increase | 8.82% |
| Settled Distribution Bill | $48.64 | Settled Total Bill | $102.51 |
| Settled Percentage Distribution Increase | 9.85% | Settled Percentage Total Increase | 4.44% |

Partial Settlement at 3, Appendix C at 1.

In addition to the specific terms to which the Joint Petitioners have agreed, the Partial Settlement contains other general terms and conditions typically found in settlements submitted to the Commission. Specifically, the Joint Petitioners agreed that the Partial Settlement is conditioned upon the Commission’s approval of all the terms and conditions contained therein without modification. The Joint Settlement Petition establishes the procedure by which any of the Joint Petitioners may withdraw from the Partial Settlement and proceed to litigate this case, if the Commission should act to modify or reject the Settlement. In addition, the Joint Petitioners asserted that although the Partial Settlement is proffered to settle the instant case, it may not be cited as precedent in any future proceeding, except to the extent required to implement any term specifically agreed to by the Joint Petitioners. The Joint Petitioners further submitted that the Partial Settlement is made without any admission against, or prejudice to, any position which any of the Joint Petitioners might adopt in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to in the Partial Settlement before us. Partial Settlement ¶¶ 65‑69 at 20-21. Moreover, the Joint Petitioners waived their right to file Exceptions in this case if the ALJ, in her Recommended Decision, recommended the Commission adopt the Partial Settlement in full. However, the Joint Petitioners expressly submitted that they did not waive their rights to file Exceptions in response to issues reserved for litigation. *Id.* ¶ 71 at 21.

The Joint Petitioners respectfully requested that the ALJ and the Commission approve the Partial Settlement, including all terms and conditions thereof, subject to the resolution of the issue reserved for litigation. Partial Settlement at 21‑22.

## Highlighted Issues

At the hearing in this proceeding, the ALJ informed the Joint Petitioners of her concerns regarding certain of the provisions of the Partial Settlement and requested that the Joint Petitioners, particularly Duquesne, provide justification in their respective Statements in Support for why these elements should remain in the Settlement. Tr. at 67‑77. These issues are discussed in more detail below.

### 1. **Proposed Changes to Rider No. 21**

In its initial filing, Duquesne proposed to update its Rider No. 21 – Net Metering Service to reflect a requirement that rate payers who are customer generators must install a generation meter at all new net metered facilities after December 29, 2018. This proposal was not opposed by any other Party and was preserved without modification in the Partial Settlement. Duquesne Statement in Support at 29. At the hearing, the ALJ instructed the Joint Petitioners to explain the specific proposed changes to Rider 21 and to also explain how these changes will remain in compliance with the Commission’s regulations at 52 Pa., Code § 75.14, related to meters and metering. Tr at 675-76.

**a.** Positions of the Parties

Duquesne explained that under this proposal, it would install an additional meter at new net metered facilities to measure the facility’s total generation output and that the customer would be responsible for installing the meter socket for the generation meter. Duquesne noted that although this would not be required for existing net metered facilities or those in the interconnection queue, it reserved the right to retrofit such facilities with a generation meter at its expense. Duquesne reasoned that its proposal supports distributed generation implementation by enabling Duquesne to gather more granular data regarding net metered facility generation output, which could be useful for Duquesne in distribution planning and operations and could also be useful in the aggregate to the Commission and other interested parties. Duquesne Statement in Support at 29.

Duquesne claimed that this proposal is consistent with our regulations at 52 Pa. Code § 75.14 because it does not implicate the requirement under this section that a customer-generator facility must be equipped with a bidirectional meter. Rather, Duquesne submitted that it would continue to equip net metered facilities with a bidirectional net meter for billing-related purposes, including the measurement of net consumption and/or excess generation credits. Thus, according to Duquesne, net-metered customers would not experience any change in the manner, speed, or degree at which they realize the benefits of net metering because the generation meter would be used solely for data collection purposes. Duquesne Statement in Support at 29-30.

Duquesne also noted that the incremental costs associated with its proposal would be allocated consistent with its existing practice. Namely, Duquesne would bear the costs of the generation meter and customers would bear the costs of installing the new meter socket which would accommodate this meter. Duquesne argued that procuring and installing an additional meter socket would result in incremental customer costs of about $75. In Duquesne’s view, this cost is reasonable in light of the benefits that it claims the generation meters will yield. Further, Duquesne explained that the revenue impacts of these incremental costs are reflected in the negotiated black box revenue requirement. Duquesne Statement in Support at 31.

**b.** ALJ’s Recommendation

The ALJ recommended that Duquesne’s request to amend its Rider No. 21, as outlined above, be denied. The ALJ found Duquesne’s proposal to be contrary to the language of 52 Pa. Code § 75.13(k), which prohibits an EDC from charging a fee or other type of charge to a net metered customer generator if that fee or charge is not applied to other customers of the EDC who are not customer-generators. The ALJ pointed out that under this regulation, an EDC may not require additional equipment unless the Commission specifically authorizes the additional equipment. The ALJ concluded that Duquesne failed to justify why it is just or reasonable to impose a new fee on new customer-generators that does not apply to other customers. According to the ALJ, while collecting information to assist with future planning is a valid exercise, such data collection does not justify the cost associated with the installation of the generation meter socket. In the ALJ’s view, Duquesne’s proposed revision would discourage the installation of new generating facilities, resulting in a reduction in energy conservation efforts, which is contrary to the goals of the Commission. R.D. at 163-64.

### 2. **Allowed Smart Meter Costs**

In this proceeding, Duquesne requested permission to roll its SMC into base rates. Additionally, Duquesne noted that its smart meter installations will be completed by the end of 2019, which corresponds to the FPFTY in this proceeding. Duquesne Statement in Support at 6. At the hearing, the ALJ inquired as to whether the inclusion of smart meter costs complies with prior Commission Orders and whether the Commission has already granted permission for this type of cost to be included. Tr. at 676

**a.** Positions of the Parties

Duquesne asserted that all SMC costs have been subject to audit as part of the reconcilable surcharge and any costs that were previously included in the surcharge remain subject to audit pursuant to the Commission’s rules and regulations. Duquesne represented that any smart meter costs that were not previously included in its SMC were included in the test years in this proceeding and were subject to review by the Parties to this proceeding. Citing to Section 2807(f)(7) of the Code, 66 Pa. C.S. § 2807(f)(7), Duquesne submitted that electric distribution companies are permitted to recover smart meter costs through an automatic adjustment clause or through base rates. Therefore, Duquesne reasoned that its proposal to roll its SMC into base rates and to recover remaining smart meter costs in base rates is appropriate. Duquesne Statement in Support at 6-7.

The OCA submitted that Duquesne’s proposal should be approved without modification because it is consistent with the Code and with prior Commission orders. Specifically, the OCA cited to *Petition of West Penn Power Company for Approval of Smart Meter Deployment Plan,* Docket No. R-2014-2428742. OCA Statement in Support at 22-23.

**b.** ALJ’s Recommendation

The ALJ recommended approval of this Partial Settlement provision. The ALJ highlighted the assertions of Duquesne and the OCA that the smart meter costs included in Duquesne’s rate base do not include any previously-denied smart meter costs. The ALJ also highlighted Duquesne’s assertion that the smart meter costs that are included in base rates are subject to audit. R.D. at 164-65.

### 3. **Allocation of 2018 Tax Refund**

The ALJ requested that the Joint Petitioners provide an allocation, by rate class, of the 2018 tax refund that is outlined in Paragraph No. 31 of the Partial Settlement. Tr. at 676.

**a.** Positions of the Parties

As noted above, the Joint Petitioners presented the proposed tax refunds by rate class in Appendix D to the Settlement.

**b.** ALJ’s Recommendation

The ALJ found that in laying out the proposed refunds by rate class, the Joint Petitioners did not provide an estimate of the refund amounts to be disbursed to the medium and large commercial and industrial classes, or for Rate SM.[[7]](#footnote-8) Instead, the ALJ pointed out that the Joint Petitioners included a footnote indicating that each such customer will have its refund calculated individually based on the percentage of actual base distribution revenue. The ALJ determined that the Joint Petitioners failed to provide any detail or guidance as to how Duquesne will calculate the amounts to be refunded to the Commercial and Industrial classes and failed to explain why an estimate cannot be provided for the customer classes with a single customer or a small number of customers. Therefore, the ALJ recommended that Duquesne be directed to file with the Commission’s Bureau of Technical Utility Services (TUS) a list or calculation of how the $24 million tax refund will be allocated to the various rate classes. R.D. at 166-168.

Notwithstanding the above, the ALJ found the $24 million tax refund to be an appropriate amount. The ALJ pointed out that this amount more than doubles the refund amount initially suggested by Duquesne. The ALJ concluded that Duquesne’s proposal to refund its customers in the first one or two pay periods of 2019 is in the public interest because refunds will be provided to these customers in a timely manner. R.D. at 168.

### 4. **Electric Vehicle Program**

With regard to the EV Pilot Program outlined in Paragraph No. 45 of the Partial Settlement, the ALJ instructed the Joint Petitioners to (1) explain who will receive the EV Pilot rebates, (2) explain the allocation of EV Pilot costs to the customer classes and (3) provide justification for why consumers should pay the costs to install the stations that will be owned by third parties. Tr. at 676.

**a. Positions of the Parties**

In its Statement in Support, Duquesne explained that the EV Pilot rebates will be available to customers that register their EV with Duquesne. Duquesne submitted that this will permit the Company to enter the EV into the electrical model and evaluate the impacts on the system, which will assist in grid planning. Additionally, Duquesne explained that the rebates are designed to encourage third parties to purchase and install public chargers to allow the EV pilot to succeed. Duquesne pointed out that under the Partial Settlement, the rebates are not included in the rate increase, but will be recorded as a regulatory asset and claimed in a future rate case. Duquesne Statement in Support at 17-18.

Duquesne next explained that there is no specific allocation of EV Pilot costs to customer classes. Instead, they are allocated across all classes. Further, Duquesne clarified that it is not installing charging stations other than the DC Fast Charging stations for its own use and for the Port Authority of Allegheny County (PAAC) electric bus evaluation pilot. Duquesne stated it will provide make ready infrastructure and rebates for certain behind the meter equipment. According to Duquesne, because these stations must be available to the general public and not for private use, this ensures that the stations will be available to all people in Duquesne’s service territory and not just to a limited subset. Additionally, Duquesne argued that this will allow it to evaluate the effect of adding the Level 2 chargers to its distribution grid for grid planning purposes and will increase the usage of its distribution system, which benefits all customers. Duquesne Statement in Support at 18-19.

In its Statement in Support, I&E submitted that the Partial Settlement permits limited implementation of the EV Pilot in a manner that ensures that it benefits the public without imposing unwarranted costs. I&E highlighted, *inter alia,* that under the Partial Settlement, Duquesne has limited the scope of its proposed DC Fast Charging Evaluation Station to stations owned by Duquesne to be used solely for Duquesne and the PAAC electric bus evaluation pilot. I&E argued that by limiting DC Fast Charging costs to Company use and costs for the PAAC electric bus evaluation, Duquesne has tailored its expenditures to costs reasonably associated with a broader public benefit for ratepayers instead of just costs incurred for the benefit of a very small consumer group. I&E explained that this satisfies the concern I&E had that all ratepayers were being asked to pay for a program providing an insignificant portion of the rate base in which only 0.05% of vehicle registrations in Allegheny County were electric vehicles. I&E also noted that by agreeing that the costs for behind the meter Level 2 infrastructure rebates will be recorded as a regulatory asset, with such costs deferred to Duquesne’s next rate case, and only if there is adequate justification, this alleviates the concern of I&E and other parties that rate base should not unreasonably subsidize individual customer projects unless they definitively benefit a broader rate base. I&E Statement in Support at 24.

In its Statement in Support, the OCA contended that it would be improper to require residential ratepayers to subsidize the costs of a program that will only benefit the commercial classes. Therefore, the OCA submitted that Duquesne’s agreement to defer the appropriate method of any recovery of rebates until Duquesne’s next base rate proceeding is in the public interest. The OCA highlighted that Duquesne provides for specific reporting requirements to evaluate customer participation and feedback. The OCA noted that this will afford interested Parties the opportunity to assess how the funds were used, from whom the charging station revenues were received, and to ensure that Duquesne is compliant with the terms of the Partial Settlement. Additionally, the OCA asserted that the provision of the Partial Settlement, wherein Duquesne will dedicate all of the charging stations it owns to the use of the Company and the PAAC will prevent Duquesne from becoming a competitor in an unregulated market. According to the OCA, were Duquesne to own EV chargers, as any other third party, this would have the effect of allowing a regulated utility to enter an unregulated competitive market with the risk being borne by captive ratepayers. OCA Statement in Support at 15-16.

In its Statement in Support, the OSBA, likewise, trumpeted the provision of the Partial Settlement that contemplates that the cost of rebates will not be recovered in base rates, but instead recorded as a regulatory asset with the appropriate cost recovery deferred to Duquesne’s next base rate case. The OSBA submitted that the Partial Settlement’s reduction in the scope of the EV Pilot, coupled with the reduced recovery of pilot costs in base rates will benefit Duquesne’s small business customers. OSBA Statement in Support at 4-5.

In its Statement in Support, CAUSE-PA pointed out that under the Partial Settlement, the cost of the pilot has been reduced from $3.1 million to $2.07 million. Like the other Joint Petitioners, *supra,* CAUSE-PA noted that the Partial Settlement provides an opportunity to evaluate whether $650,000 of the $2.07 million (*i.e.* the amount allocated to rebates) can be recovered from ratepayers in Duquesne’s next base rate proceeding. CAUSE-PA argued that the EV pilot is in the public interest because it provides significant investment into the electrification of public transportation and has a tangible public benefit to low income customers who are more likely to use public transportation as compared to higher income customers. CAUSE-PA Statement in Support at 5.

In its Statement in Support, ChargePoint submitted that the EV pilot balances customer needs and desires, Company objectives, and ratepayer benefits and costs, while ensuring that the Competitive EV charging market in Pennsylvania can continue to develop in a sustainable manner. ChargePoint highlighted that the EV Pilot will provide a significant foundation for ensuring that new load is incorporated in a safe, reliable, and efficient manner. ChargePoint also pointed out that the Pilot will generate substantial information regarding customer experience and EV charging data, which will be provided annually to the Commission for review and will be useful for future distribution planning and load management program development. ChargePoint submitted that the EV Pilot Program incorporates a set of guiding principles which considers all major stakeholders impacted by the Pilot. Thus, ChargePoint argued that the EV Pilot program is in the public interest because it will ensure that investments appropriately reduce market barriers, minimize costs, and maximize benefits to ratepayers. ChargePoint Statement in Support at 6.

In its Statement in Support, NRDC argued that the information gathered from the Pilot will support improved capacity utilization and other power objectives of the Commonwealth and that all ratepayers will benefit from the estimated reductions in utility customer bills that will result from increased EV charging in Pennsylvania. NRDC Statement in Support at 4-5.

**b. ALJ’s Recommendation**

The ALJ determined that the costs of the EV Pilot Programs should be approved as just and reasonable without any definitive class allocation. The ALJ reasoned that the impact will be relatively small and, because these costs relate to a pilot, some expenditures are needed before the Parties and the Commission can make a determination as to whether the EV incentives and provisions will create a larger public benefit. The ALJ also found that the EV Pilot Program, as modified by the provisions in the Partial Settlement, will reduce the impact on the base rates substantially while providing incentives for third parties to pay to install Level 2 charging stations for public use. The ALJ pointed out that while the use of EVs within Duquesne’s service territory is statistically small, the benefits of a population that drives EVs cannot be realized if public charging stations are not easily available. Therefore, the ALJ recommended that this portion of the Partial Settlement be adopted. R.D. at 168-69.

### 5. **Time of Use Rates**

As noted above, Paragraph No. 52 of the Partial Settlement provides that Duquesne will hold a collaborative to discuss residential TOU rates and will make a proposal regarding TOU rates in its next default service rate filing, unless it is ordered by the Commission to do so earlier. At the hearing, the ALJ asked the Joint Petitioners to address whether Duquesne should be required to make a TOU filing prior to its next default service rate filing. Tr. at 676.

**a. Positions of the Parties**

Duquesne submitted that it should not be required to make a TOU filing outside of its default service filings. Duquesne reasoned that TOU rates are appropriate for generation charges but not for distribution charges, and accordingly, issues regarding generation charges should be addressed in default service proceedings. Duquesne also noted that the collaborative process contemplated in Paragraph No. 52 of the Partial Settlement will occur in 2019 and that Duquesne will make its next default service filing in 2020. In Duquesne’s view, this is a reasonable timeframe for considering TOU proposals and developing a new TOU program. Duquesne Statement in Support at 24‑25.

The OCA noted that Duquesne has agreed to hold a collaborative between interested stakeholders to consider TOU rate issues and suggestions and that Duquesne has also agreed to make a proposal regarding TOU rates in its next default service rate filing. The OCA represented that it understands the importance and complexity of the issues surrounding residential TOU rates and that it will participate in the collaborative. OCA Statement in Support at 23.

KEEA, likewise, highlighted Duquesne’s agreement to make a proposal regarding TOU rates in its next default service filing. KEEA submitted that Duquesne’s agreement to establish a collaborative process on TOU rates is significant. KEEA asserted that the collaborative process is an important step to establishing a TOU program structure that encourages investments in energy efficiency and renewable energy, produces substantial peak demand reductions, and sends the proper price signal to customers to conserve electricity and engage in energy efficiency. As Duquesne does not currently offer a TOU program, KEEA proffered that Duquesne should not be required to make a TOU proposal prior to its next default service filing. Rather, KEEA contended that it is in the best interest of the public for stakeholders to have an opportunity to provide input, via the collaborative process, on how the program should be designed. KEEA Statement in Support at 4-5.

NRDC adopted the position of KEEA as to the provisions of the Partial Settlement that concern TOU rates. NRDC concurred with the other Joint Petitioners that the collaborative process is an important first step towards establishing an appropriate TOU program. NRDC Statement in Support at 3.

**b. ALJ’s Recommendation**

The ALJ agreed with Duquesne and the other Joint Petitioners who addressed this issue in their respective Statements in Support that there is no need to mandate that Duquesne make a TOU proposal prior to its next default service rate filing. The ALJ determined that Electric Generation Suppliers serving in Duquesne’s service territory are capable of supplying TOU rates and that, at this time, a TOU proposal is best handled as a supply or generation charge. The ALJ also determined that because TOU rates could reduce customer charges and peak demands and thereby better reflect proper price signals which encourage energy efficiency and conservation, the collaborative process contemplated in Paragraph No. 52 of the Partial Settlement is the optimal method to develop a TOU proposal for which Duquesne can include in its next default service rate filing. Therefore, the ALJ recommended that this portion of the Partial Settlement be adopted. R.D. at 170.

### 6. **Effect of Medical Certificate Program Changes for Ratepayers with Balances in Excess of $10,000**

At the hearing, the ALJ asked whether the provision outlined in Paragraph No. 55 of the Partial Settlement applies to consumers with balances that are greater than $10,000, and if it does apply, how such instances will be handled. Tr. at 677.

**a. Positions of the Parties**

Duquesne explained that this provision was adopted as a result of CAUSE‑PA’s concerns that Duquesne’s current medical certificate policy is not consistent with the Commission’s regulations which allow for unlimited medical certificates for customers with a medical condition who continue to pay their current charges or budgeted bill in full. Duquesne noted its own concern that customers could have large unpaid balances if they continue to obtain medical certificates for an extended period but do not pay their past due balances. Duquesne asserted that the provision outlined in Paragraph No. 55 satisfies Duquesne Light’s concerns by clarifying that Duquesne will write off outstanding balances that are overdue for more than one year for customers that have medical certificates for one year or longer. Duquesne provided clarification that this provision of the Partial Settlement would apply to any outstanding balances that are $10,000 or greater. Additionally, Duquesne Light averred that it will continue to follow all Commission regulations and orders with respect to balances that are greater than $10,000. Duquesne Statement in Support at 26.

Cause-PA expressed its support for the proposed changes to Duquesne’s medical certificate policies, as set forth in Paragraph No. 55 of the Partial Settlement. CAUSE-PA submitted that these changes are critical to ensuring that Duquesne’s policies are in line with the Commission’s guidance in relation to 52 Pa. Code § 56.116. In response to the ALJ’s question on this issue, CAUSE-PA stated that the provision, as proposed, would be applied to all accounts where the household has been protected by a medical certificate for a year or longer regardless of the amount owed. Additionally, CAUSE-PA posited that this is unlikely to be very many accounts because obtaining a medical certificate is not easy and it is expected that utilities will attempt to work with the household for a more permanent resolution of the debt such as a payment agreement. CAUSE-PA Statement in Support at 8-9.

**b. ALJ’s Recommendation**

The ALJ highlighted Duquesne’s assertion that despite the provision in the Partial Settlement that permits it to write off outstanding unpaid balances, Duquesne will continue to follow all Commission regulations and orders with respect to outstanding balances exceeding $10,000. Based on this assurance, the ALJ recommended that the Commission adopt this provision of the Partial Settlement. R.D. at 171.

## **ALJ’s Overall Recommendation**

The ALJ found the Partial Settlement, generally is an equitable, fair, and reasonable resolution of this proceeding and, therefore, it is in the public interest. For these reasons the ALJ recommended that the Commission approve the Partial Settlement, except as discussed in the resolution of the highlighted issues, outlined, *supra*, and in the discussion on the sole outstanding issue that was reserved for litigation, *infra*. R.D. at 159.

## **Disposition**

The Joint Petitioners advised the ALJ that they did not oppose the Partial Settlement. The Settlement also was served on the *pro se* Complainants who were non-signatories to the Settlement. None of the *pro se* Complainants filed a response or objection to the Partial Settlement.

Based on our review of the Partial Settlement, we find that there are numerous settled issues therein that are beneficial to customers. Among those provisions are: (1) the reduced revenue increase compared to the Company’s originally requested revenue increase; (2) the tax refund related to collections from customers in 2018 and the return of EDIT; (3) the agreement that Duquesne must realize a base level of plant investment before any incremental expenditures can be recovered through a DSIC; (4)  the agreement that Duquesne will amortize the costs related to the Electrical Model over five years instead of relying on the higher expense levels the Company projected to occur in the FPFTY; (5) the inclusion of key provisions concerning the amount of Duquesne’s ongoing pension contributions and Duquesne’s agreement to provide a report and affidavit attesting to the actual contributions during each calendar year; (6) the inclusion of specific provisions for meeting the Company’s OPEB requirements; (7) the agreement that in each base rate case for which Duquesne seeks to recover cloud-based information systems that were recorded in the regulatory asset as a capital cost for ratemaking purposes, it must provide a listing of cloud-based computing costs by year, along with the expected useful life of each item; (8) the agreement that Duquesne will modify its EV Pilot Program to narrowly tailor its expenditures to costs reasonably associated with a broader public benefit for ratepayers while also permitting the Company to incent EV usage in its service territory, which will increase usage of the distribution system and also allow the Company to evaluate the impacts of EV usage on the grid; (9) the agreement that Duquesne will revise its LED Street Lighting Program, by expanding the program for conversion of mercury vapor, high pressure sodium lights to LEDs; (10) the agreement that Duquesne’s fee free bank card program will be implemented; (11) the agreement that Duquesne will withdraw its Woods Run Microgrid Proposal, without prejudice; (12) the agreement that the fixed monthly customer charge for Rates RS, RA, RH, and GS will be increased from $10.00 per month to $12.50 per month and that the fixed smart meter charge will be rolled into volumetric rates, resulting in a reduction in the customer charge from $14.17 per month to $12.50 per month; (13) the agreement that Duquesne will convene a non-confidential collaborative with all interested stakeholders to obtain stakeholder input regarding TOU rates and that Duquesne will make a TOU proposal in its next default service rate filing; (14) the commitment of Duquesne to participate in any working group established by the City of Pittsburgh to address the issue of energy efficiency benchmarking for multifamily buildings; (15) the commitment of Duquesne to use its best efforts to ensure that 10% of its completed LIURP jobs are for electric heating customers and to review its list of customers with high CAP credits from the prior year and to prioritize those customers for LIURP treatments when possible; (16)  the agreement that Duquesne will withdraw certain proposed tariff changes, which will eliminate the potential for ambiguity regarding the balances Duquesne could assess on customers or applicants who reside in one property yet move to another property; (17) the commitment of Duquesne to revise its medical certificate policy but that Duquesne will continue to follow all Commission regulations and orders with respect to outstanding account balances that are greater than $10,000; (18) the agreement that Duquesne will revise its PFA policy and accompanying procedures to accept PFAs or criminal court orders with evidence of domestic violence toward an applicant for service, a current customer, or a member of the applicant or customer’s household; (19) the commitment of Duquesne to engage in discussions regarding budget billing issues and to consider proposals to address budget billing concerns by the parties in its next base rate proceeding; (20) the commitment of Duquesne to conduct a competitive selection process to select its universal service program providers and to invite local community based organizations to participate in the process; (21) the Commitment of Duquesne to convene a collaborative to discuss master-metering issues related to multifamily housing, and to hold additional collaborative meetings, as necessary, to reach consensus on any issues that remain unresolved after the initial collaborative; and (22) the assertion of Duquesne that the smart meter costs included in its rate base do not include any previously-denied smart meter costs.

The Partial Settlement resolves the majority of the issues impacting residential consumers, business customers and the public interest at large and represents a fair balance of the interests of Duquesne and its customers. The benefits of approving the Partial Settlement are numerous and will result in significant savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, conserving precious administrative resources. Moreover, the Partial Settlement provides regulatory certainty with respect to the disposition of issues which benefits all parties. For the reasons stated herein and in the settling Parties’ Statements in Support, we agree with the ALJ’s conclusion that the Joint Settlement Petition is in the public interest. Additionally, as no Party excepted to the ALJ’s recommendation that Duquesne’s request to amend its Rider No. 21 be denied, we shall adopt this recommendation.

In light of the above, we shall adopt the ALJ’s recommendation to grant the Joint Settlement Petition and adopt the Partial Settlement, as modified, consistent with the ALJ’s recommended modifications in Section III. B. Highlighted Issues, *supra,*

# Rider No. 16

## Burden of Proof

Typically, in proceedings before the Commission, the public utility has the burden to establish the justness and reasonableness of every element of its rate increase in all proceedings conducted under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d). The standard of proof which a public utility must meet is set forth in Section 315(a) of the Code, 66 Pa. C.S. § 315(a), which specifies that, “[i]n any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceeding upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.” The Commonwealth Court has upheld this standard of proof[[8]](#footnote-9) and has applied it in base rate proceedings.

In this proceeding, the burden of proof lies squarely with Duquesne. Duquesne is the public utility seeking permission from the Commission to increase its base rates and to implement and/or alter programs. The burden of proof does not shift to a statutory party or individual party (whether an entity or an individual) which challenged the requested rate increase. Instead, the utility’s burden, to establish the justness and reasonableness of every component of its rate request, is an affirmative one and remains with the public utility throughout the course of the rate proceeding.[[9]](#footnote-10)

Under the Code, rates charged by public utilities must be just and reasonable and cannot result in unreasonable rate discrimination. 66 Pa. C.S. §§ 1301 and 1304.

A public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request. 66 Pa. C.S. § 315(a); *Pa. PUC v. Aqua Pennsylvania,* Docket No. R-00038805,

(Order entered August 5, 2004).

As the Commonwealth Court explained: “While 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.”[[10]](#footnote-11) Therefore, while the ultimate burden of proof does not shift from the utility, a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment.[[11]](#footnote-12)

However, a party that raises an issue that is not included in a public utility’s general rate case filing bears the burden of proof. As the proponent of a Commission order with respect to its proposals, DII bears the burden of proof as to proposals that Duquesne did not include in its filing. Duquesne’s existing Rider No. 16 provisions are deemed just and reasonable because those tariff provisions previously were approved by the Commission. Therefore, DII, as the party challenging a previously-approved tariff provision, bear the burden to demonstrate the Commission’s prior approval is no longer justified. *See* *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R‑2010-2215623, *et al.*  (Order entered March 15, 2012).

As we proceed in our review of the various positions espoused in this proceeding, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania* *v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Moreover, any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

## Rider No. 16 – Service to Non-Utility Generating Facilities

### Background

The Commission’s Combined Heat and Power (CHP) Policy Statement[[12]](#footnote-13) provides a helpful description of CHP as follows:

Combined Heat and Power (CHP) is the concurrent production of electricity or mechanical power and useful thermal energy (heating and cooling) from a single source of energy. Unlike central station generation, it is a type of distributed generation which is located at or near the point of consumption. It is a suite of technologies that can use a variety of fuels to generate electricity or power at the point of use, allowing the heat that would normally be lost in the power generation process to be recovered to provide needed heating and cooling.

Customers that receive all of their electricity from the utility or via the grid are known as “full requirements” customers. Customers with onsite generation such as CHP are “partial requirements” customers and typically require a different set of services which includes continuous electricity service for the portion of usage that is not provided by the onsite generator, as well as service for periods of scheduled outages or unscheduled (also known as forced) outages. EPA Standby Rate Study[[13]](#footnote-14) at 4.

Rider No. 16 addresses both Supplementary Power and Back-up Power.[[14]](#footnote-15) Duquesne’s current Rider No. 16 defines Supplementary Power as “electric energy and capacity supplied by the Company or by an electric generation supplier (EGS) to a non‑utility generating facility and regularly used in addition to that electric energy which the non-utility generating facility generates itself.” Back-up Power is defined as “electric energy and capacity supplied by the Company to a non-utility generating facility during any outage of the non-utility generating facility’s electric generating equipment . . . ” Rider No. 16, Supplement No. 91 to Electric Tariff Pa. P.U.C. No. 24.

As part of Supplement No. 174, Duquesne originally proposed to increase the rate charged for “back-up service” under Rider No. 16 for eligible customers that meet a portion of their load with their own generating facilities. Duquesne proposed to increase the rate for Rider No. 16 service from $2.50 per kW to $8.00 per kW for the level of demand specified by the customer in its contract for back-up service. According to Duquesne, Rider No. 16 proposed increase was designed to provide better price signals to potential customers considering construction of distributed generation with back-up charges that better reflect the actual cost to provide back-up distribution service. Duquesne Initial Brief (I.B.) at 1-2.

Three intervening parties addressed the proposed changes to Rider No. 16 – the OSBA, Peoples, and DII.[[15]](#footnote-16) Other parties to the case neither opposed nor supported the proposed changes to Rider No. 16. *Id.* at 4.

At the August 17, 2018 evidentiary hearing, Duquesne notified the ALJ that the Company was withdrawing its proposed changes to Rider No. 16 and would leave in place the existing Rider No. 16 terms. *Id.* at 10. Upon the Company’s withdrawal of the proposed changes to Rider No. 16, Peoples withdrew its opposition to the settlement of all issues in the case. DII, on behalf of its members excluding Duquesne University, continued to litigate the issue. DII argued that the existing Rider No. 16 rate should be further discounted. *Id.* at 11.

### Memorandum of Understanding Between Duquesne Light Company and Duquesne University

On June 25, 2018, after Duquesne filed its general rate case with the Commission, Duquesne entered into a Memorandum of Understanding (MOU)[[16]](#footnote-17) with Duquesne University, the only customer currently electing to receive service under Rider No. 16. Under the terms of the MOU, the Company and Duquesne University agreed, subject to the Commission’s approval, that the University could continue to receive back-up service under the current rate of $2.50 per kW for a period of five years effective January 1, 2019. Duquesne I.B.at 8-9. Any increases in the Back-up Service rate during that period would only apply to new Rider No. 16 customers. Duquesne St. 1-R.

Duquesne provided that the Commission previously approved excluding existing customers with on-site generation from changes in back-up rates and charges when new, increased back-up rates and charges were proposed and approved for prospective application. Duquesne I.B. at 9 (citing PECO Tariff Electric – Pa. P.U.C. No. 5, Original Page No. 68; Joint Settlement Petition, Appendix D, p. 4 at Docket No. R-2015-2468981).

### 3. Positions of the Parties

#### a. Duquesne’s Position

Duquesne agreed to withdraw its proposed changes to Rider No. 16 and retain the existing rate of $2.50 per kW. Duquesne noted that except for certain members of DII, all parties – including the only two customers that actually elected, or may elect, service under Rider No. 16 in the future – either support or do not oppose the Company’s decision to maintain the existing Rider No. 16 rate at $2.50 per kW as applied to back-up contract demand. Duquesne averred that the existing Rider No. 16, together with the valuable option customer-generators retain to take general service without Rider No. 16, allow such customers to avoid significant transmission and distribution charges. Duquesne noted that unlike other Pennsylvania electric distribution companies, it allows customers the flexibility to choose whichever option a customer might prefer. According to Duquesne, Rider No. 16 is an option that may be very attractive to an eligible customer depending on the characteristics of its on-site generation, how the customer chooses to operate its on-site generation, differences in charges under Rider No. 16 versus charges in the customer’s applicable rate schedules, and the customer’s load characteristics. Duquesne I.B. at 13‑14 (citing Duquesne St. 16-R at 19-24, Duquesne St. 16-RJ at 11-12, 17; OSBA St. 1-R at 6).

#### b. DII’s Position

DII stated that CHP generation projects are often sized based on the account’s thermal load requirements, not the electrical load requirements. According to DII, this factor makes the rates, terms and conditions for services provided by the utility a critical aspect of the customer’s economic decision when evaluating a potential CHP project. DII averred that CHP systems typically operate in parallel with the local electric utility, and the CHP system power output is often supplemented by energy purchased from an EGS or default service provider. DII I.B. at 5-6 (citing Peoples St. 4 at 4; DII St. 1 at 10, 12, 13, 15-16; DII St. 1-S at 24).

DII stated that the back-up power rate must be calculated using a load factor or diversity adjustment, but the current 30% load factor used by Duquesne is excessive in light of the single Rider No. 16 customer’s actual unplanned outage rate of 2.5% (and other factors such as general availability statistics for CHP and other distributed generation systems). DII proposed a 5% load factor yielding a Back-up rate of $0.352 per kW and proposed a new Maintenance rate (for planned maintenance) of $0.235 per kW. DII I.B. at 8-9.

### 4. ALJ’s Recommendation

The ALJ found that Duquesne failed to meet its burden to prove that the present rate charged to customers under Rider No. 16 is based on facts and is just and reasonable. The ALJ recommended that Duquesne file a tariff to reduce the existing distribution charge in Tariff Rider No. 16 from $2.50 to $0.352. However, the ALJ was not persuaded by DII’s argument that Rider No. 16 should be split into two rates to reflect Stand-by and Maintenance and recommended that the request by DII for the two separate rates based on when in time a CHP relies on distribution service from the EDC be denied. The ALJ found that DII should have an opportunity to put forward this argument in the next base rate case at which time it can more fully develop its contention that a separate maintenance rate is needed for distributed generation and/or CHP customers. R.D. at 178.

### 5. Duquesne’s Exception No. 1 Regarding the Burden of Proof

#### Duquesne’s Exception No. 1

Duquesne contends that the ALJ erred in assigning to Duquesne the burden of proof with regard to DII’s proposal to reduce the existing approved Rider No. 16 rate from the presently tariffed rate of $2.50 to $0.35 per kW. Duquesne avers that the ALJ accepted DII’s position because she believed that the Company did not “meet its burden of proof that the rate charged to customers under Rider No. 16 is based on facts and is just and reasonable.” Duquesne notes that the ALJ made this finding notwithstanding the extensive evidence it presented including the testimony of OSBA witness Kalcic (not mentioned in the R.D.), the Commission’s approval of the existing Rider No. 16 rate in Duquesne’s last base rate case, and the fact that the existing rate is unopposed by the only current Rider No. 16 customer (*i.e.*,Duquesne University), as well as the only customer with a CHP project that intends to apply for service under Rider No. 16 (*i.e.* Peoples). Duquesne Exc. at 5-6 (citing R.D. at 178).

According to Duquesne, the ALJ inappropriately assigned the burden of proof with regard to DII’s entirely new proposal for back-up service rate design to the Company. Duquesne asserts that a new, alternative proposal made by another party cannot be adopted without requiring the proponent to meet the burden of showing by a preponderance of substantial evidence that its proposal is “just and reasonable.”[[17]](#footnote-18) Duquesne Exc. at 6.

Duquesne contends that the Commission has repeatedly held that, while a utility has the burden to prove that a proposed rate (or an existing rate that is the subject of a Commission investigation) is just and reasonable, a party that advances a proposal that the utility did not include in its filing carries the burden of proof as to that contrary proposal. Duquesne argues that the authority furnished by those precedents and the Commission’s reaffirmation and summary of the extensive precedent on this issue in *Petition of Metropolitan Edison Co.*, conforms to the reasonable principle that a party should not have to “prove the negative.” Duquesne Exc. at 9-10.

#### DII’s Reply

In Reply, DII contends that the ALJ appropriately assigned the burden of proof to Duquesne. DII provides that it is inequitable to shift the burden of proof onto a party that is forced to defend against a utility’s dramatic cost increases and eleventh-hour shift in litigation position. According to DII, Commission precedent demonstrates that Duquesne possesses the burden of proof for its entire rate case, especially issues it raised in its filing. DII R. Exc. at 5.

The current Rider No. 16 rate of $2.50/kW was proposed in Duquesne’s previous rate case at Docket No. R-2013-2372129. At that time, Duquesne witness William Pfrommer, the Senior Manager of Rates and Tariff Services, explained the methodology for calculating the rate as follows:

The Company is proposing a distribution rate of $2.50 per kW. This is based on an average of the primary demand costs per kW in Mr. Gorman’s Exhibit 6-2B and a load factor of 30%. The load factor is an estimate based on the availability of the current customer, a review of other utility tariffs, and the expectation of the need for the Company to provide back-up power.

Peoples St. 2 at 9 (citing Docket No. R-2013-2372129 - Duquesne St. 12 at 19 and Exh. 6-2B).

In this proceeding, DII considered the 30% load factor as excessive and proposed a new factor of 5% in light of the single Rider No. 16 customer’s actual unplanned outage rate of 2.5% (and other factors such as general availability statistics for CHP and other distributed generation systems). DII witness Crist accepted Duquesne’s cost analysis in Duquesne Exhibit No. 6-4H but applied an allocation factor of 5%. DII recommended that Duquesne modify its tariff by decreasing the back-up rate from $2.50 to $0.352 per kW and adding a new Maintenance Rate of $0.235 per KW. DII Brief at 8-9 (citing DII St. 1 at 25-26).

#### Disposition

As noted, Duquesne disagrees with the ALJ’s assignment to the Company of the burden of disproving the reasonableness and legality of DII’s proposal to reduce the existing, approved Rider No. 16 rate. We agree with Duquesne. In Duquesne’s prior rate case, we determined that the existing Rider No. 16’s provisions were deemed just and reasonable because those tariff provisions previously were approved by the Commission and the party challenging a previously-approved tariff provision bears the burden to demonstrate the Commission’s prior approval is no longer justified. *See* *Pa. P.U.C. v. Duquesne Light Co.*, Docket No. R-2013-2372129 (Order entered April 23, 2014) at 20-21 citing *Pa. P.U.C. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R‑2010-2215623, *et al.* (Order entered March 15, 2012). In this proceeding, we remain of the same mindset. Therefore, consistent with well-established precedent, we conclude that the DII, as the proponent of a change to an existing tariffed rate that has been approved by the Commission, is responsible for bearing the burden of proof as to whether the present tariff rate in Rider No. 16 is unreasonable and should be replaced with its proposed rates. Accordingly, we shall grant Duquesne’s Exception No. 1.

### 6. Duquesne’s Exception No. 2 Regarding the “As Used” Basis for Rider No. 16

#### a. Duquesne’s Exception No. 2

In its second Exception, Duquesne avers that the ALJ erred because she did not expressly recommend that DII’s proposal to modify the application of the Rider No. 16 on an “as used” basis should be rejected.

In support of its request that DII’s proposal should be explicitly rejected Duquesne references the three purported reasons put forth by DII as to why DII believes the demand charge in Rider No. 16 should be applied only on an “as used” basis. In response to DII’s argument that the “as used” application encourages efficient operation of the CHP system by incenting customer-generators to avoid outages, Duquesne argued that it is unreasonable for the demand charge to be applied on an “as used” basis because CHP customers must replace the generation their units do not provide during an outage. Duquesne maintains that generation replacement costs are substantial and that its witness, Neil S. Fisher calculated this cost to be over $49 per MWH. Duquesne also notes that back-up distribution charges are only a small fraction (less than 3‑4%) of a CHP customer’s total bill and these customers will be sufficiently motivated to avoid unplanned outages by the generation replacement costs rather than any back-up distribution costs incurred. Duquesne Exc. at 12-13 (citing Duquesne St. 16-R at 30, Revised Fig. 4; Duquesne St. 16-R at 28, Fig. 3).

Secondly, Duquesne disagrees with DII’s contention that back-up demand charges should be applied on an “as-used” basis because that is the way demand charges are applied for general service rates. Duquesne notes that because demand charges are applied on an “as used” basis for general service, they are much higher than the $2.50 per kW rate of Rider No. 16. Duquesne avers that a CHP customer who believes it can operate its generator efficiently and avoid outages during on-peak periods has the flexibility to remain on its general service rate without electing Rider No. 16. Duquesne also contends that the “spikes and dips” in usage that general service customers exhibit and which DII alluded to as a reason to apply a back-up rate on an “as used” are not a measure of the peak demand that the system must be designed to meet. Duquesne Exc. at 13 (citing Duquesne St. 16-RJ at 6-7; Duquesne I.B. at 27, Duquesne R.B at 27-29; Duquesne St. 14-R at 30).

Finally, Duquesne disagrees with DII’s argument that applying the demand charge to “as used” demand is necessary to conform Rider No. 16 to the billing practice for the existing Rider No. 16 customer. Duquesne submits that it has signed an MOU with Duquesne University under which the demand charge will apply to the university’s contracted demand charge, and thus makes the terms of Rider No. 16 and the MOU consistent. Duquesne Exc. at 13-14 (citing Duquesne I.B. at 8-9, Duquesne Exh. CJD-1-R; Duquesne St. 1-R at 11).

#### DII’s Replies

In Reply, DII avers that the Company’s MOU with Duquesne University refers to contract peak demand and this language mirrors the Tariff, which was being applied as basing charges on actual demand. DII also notes that the EPA Standby Rates Study states that utilities may apply “an agreed-upon contract demand” but suggests non‑contract options as well, including actual monthly demand. DII R.Exc. at 9-10 (EPA Standby Rates Study at B-5,6). DII also notes that with actual demand charges, the operators of onsite generation systems are motivated to avoid outages, because even a brief outage can increase the customer’s demand charges for the month. DII R. Exc. at 10.

#### c. Disposition

Although the Recommended Decision does not address this issue, DII proposed that Rider No. 16 rate should apply on an “as used” basis. We note that Rider No. 16 rate is voluntary, and the customer has the option to choose whether to remain on the full requirements rate or operate within its contracted level of back-up demand. Because the rate is voluntary and applies to the negotiated contracted level of back-up demand, we are persuaded that the Rider No. 16 rate should not be applied on an “as used” basis. We are further persuaded by People’s witness Jamie Scripps who explained that the “best practices” included in the EPA Standby Rates Study specifically noted that back-up rates may be applied to an agreed-on contract demand rather than on an “as used” basis. Peoples St. 3 and 3-R, EPA Standby Rates Study. Therefore, we hereby grant Duquesne’s Exception No. 2. Accordingly, DII’s proposal to modify the applications of the Rider No. 16 on an “as used” basis is hereby rejected.

### 7. Duquesne’s Exception No. 3 Regarding DII’s Proposed Rider No. 16 Rate

#### Duquesne’s Exception No. 3

Duquesne states that the ALJ erred in recommending adoption of DII’s proposed Rider No. 16 rate of $0.35 per kwh. Duquesne claims the $0.35 rate is contrary to the record evidence and Commission-approved principles of distribution rate design. In noting that its Rider No. 16 involves distribution service and not generating capacity, Duquesne submits that throughout this case, DII tried to impose criteria that is appropriate only for designing standby *generation* rates to the back-up rate for distribution service. Duquesne Exc. at 14.

Duquesne avers that the service it provides to eligible customers electing Rider No. 16 ensures that capacity is available on the distribution system up to the level of kW demand for which those customers contract with the Company. Furthermore, Duquesne submits that if a customer-generator expects Duquesne to provide back-up distribution service whenever its generator is not operating, the contracted level of capacity must be available 24 hours per day, 365 days per year (24-7-365), because, as DII witness Crist acknowledged, and as operating data for the existing Rider No. 16 customer confirms, outages of customers’ generators occur at any time, including during class and system peak periods. Duquesne Exc. at 14 (citing Duquesne St. 16-R at 12-13; Duquesne I.B. at 19-30; Duquesne R.B. at 13-27; Tr. at 612; Duquesne St. 14-R at 29‑30).

Duquesne notes that the Commission found that unlike the supply costs of energy that vary as customers’ consumption varies, distribution service costs do not vary in the short run in proportion to a customer’s daily or monthly levels of consumption. Duquesne Exc. at 15 (citing the Alternative Ratemaking Policy Statement at 16). [[18]](#footnote-19) Despite those Commission decisions, Duquesne asserts that DII contends that the fully-allocated cost of providing distribution service to eligible customers under Rider No. 16, as calculated by Duquesne witness Howard S. Gorman’s cost of service study,[[19]](#footnote-20) should be discounted by multiplying that cost by 5% (*i.e.*, a 95% discount) to reflect how often Mr. Crist estimates a back-up customer may use the distribution system. Duquesne alleges that although Mr. Crist tried to call his proposed multiplier a “load factor” and persuaded the ALJ to do the same, his description (*e.g.*, “unplanned outage hours”)[[20]](#footnote-21) confirms that 5% is an estimate of the “forced outage rate” of customers’ on-site generation. Duquesne claims that Mr. Crist mislabeled his multiplier a “load factor” to create the misconception that he was replicating the approach that Duquesne’s witness used in its 2013 base rate case to judgmentally reduce the over $6.00 per kW rate to $2.50 per kW. Duquesne Exc. at 15 (citing Tr. at 323-324).

According to Duquesne, DII is of the view that customer-generators should receive back-up service at a rate that absolves them from paying all but a small fraction (5%) of the costs to have distribution capacity available 24-7-365 to meet their needs. In Duquesne’s view, DII witness Crist’s recommendations would exempt back-up customers from costs that all other Duquesne distribution customers pay, even though customers with generation could (and did) impose the same peak demands that they would have if they had not installed on-site generation. Duquesne Exc. at 17-18 (citing Tr. at 619-20).

Duquesne alleges that DII’s proposed 5% multiplier measures the frequency with which a customer-generator imposes its demands, which is a measure of usage or consumption but not demand. Therefore, Duquesne avers that applying a 5% multiplier to the fully‑allocated cost of distribution service calculates charges that are proportional to a back-up customer’s energy usage rather than distribution costs. Duquesne submits that the ALJ’s Recommended Decision on pages 174-175 accepts this proposition as evidenced by the mistaken belief that the Company is providing distribution “service” only when electricity from external sources is actually being delivered by the Company to a customer’s meter during its generator outages. Duquesne Exc. at 18.

According to Duquesne, DII was incorrect in relying on the RAP Study[[21]](#footnote-22) to support its position that the fully-allocated costs of furnishing distribution service should be multiplied by a “forced outage rate” to determine an appropriate back-up distribution rate. Duquesne notes that the portions of the RAP Study DII tried to rely upon have nothing to do with rates for distribution service. Rather, the RAP study clearly states that forced outage rates should be used only to calculate “generation reservation charges.” Duquesne Exc. at 19 (citing DII I.B. at 36-38, RAP Study at 13).

#### DII’s Replies

In Reply, DII contends that they have consistently argued that a load factor should be maintained and based on historical data and industry norms (*i.e.* 5% based on the record evidence in this proceeding). DII also contends that their approach is consistent with Duquesne’s position in the Company’s last rate case, but with additional and improved data. DII R. Exc. at 11. DII provides that Duquesne’s witness Pfrommer used the term “load factor” in Duquesne’s 2013 rate case proceeding to describe the assumption that was being applied in determining the current back-up service rate. DII R. Exc. at 11 (citing Exh. JC-6 (Pfrommer 2013 Testimony)).

DII argues that distributed generation customers do not impose the same cost on the distribution system as full-requirements customers. DII states that onsite generation customers have dramatically different usage patterns and should not be charged for back-up service as if they are using the distribution system 100% of the hours of the year. They contend that in the absence of a proper cost of service study analyzing Rider No. 16 as a separate class, a load factor ensures that onsite generation customers get the appropriate diversity recognition in back-up rates. DII R.Exc. at 11-12 (citing DII Brief at 32-34, DII St. 1-S at 11, Peoples St. 4-SR at 3).

#### Disposition

We agree with Peoples witness Daniel that the “continued use of a 30% load factor can be viewed as a reasonable compromise that maintains the *status quo* from Duquesne’s prior base rate case – in which we found Duquesne’s rates to be just and reasonable.” Peoples St. 2-R at 15. The development of recommendations regarding standby rates and maintenance rates may be part of the Commission’s CHP Working Group’s future activities. DII and other distributed generation customers can participate in the CHP Working Group process regarding these rates. Thus, we find that the present Rider No. 16 design provides a reasonable estimate of distribution costs for CHP customers and should not be reduced to DII’s recommended levels, at this time. For these reasons, we shall grant Duquesne’s Exception No. 3 and reverse the ALJ’s recommendation on this matter.

### 8. Duquesne’s Exception No. 4 Regarding the Record Evidence for the Rider No. 16 Rate

#### Duquesne’s Exception No. 4

Duquesne contends that the ALJ erred in finding that Duquesne’s existing rate in its Rider No. 16 is not supported by substantial evidence. Duquesne argues that it has the obligation under Rider No. 16 to serve the customer’s peak demand any time it may occur, and therefore, its costs to build, own and operate its distribution system to serve a customer under its Rider No. 16 are not reduced simply because a customer may use back-up distribution service only intermittently, as substantial record evidence demonstrates. In other words, Duquesne emphasizes that as an EDC, it bears the fixed costs of building and maintaining its distribution system without regard to how frequently the system may be used by customers, Duquesne Exc. at 24- 25 (citing Duquesne St. 16 at 17-18, Duquesne St. 14‑R at 27).

Duquesne opines that in light of the testimony presented by its witnesses and the data it provided in support of its costs to provide service under Rider No. 16, the ALJ’s Recommended Decision was wrong to question whether Duquesne “used any historical data” to substantiate the costs underlying Rider No. 16. In this regard, Duquesne acknowledged that its witness Gorman provided an analysis of the existing Rider No. 16 customer’s performance data that showed in June 2016, the customer’s peak demand was coincident with the peak demand of the Rate GL class (Duquesne University receives general service on Rate GL); in two other months the customer’s demand was at least 90% of its monthly peak when the Rate GL class peak occurred, contributing to the class monthly peaks; and when the customer reached its annual peak demand, the Rate GL class demand was at 98% and the Company’s peak was at 97% of its annual peak demand. Duquesne Exc. at 26 (citing Duquesne St. 14-R at 29-30, Duquesne I.B. at 21, R.D. at 177).

Duquesne contends that it provided additional evidence that Rider No. 16 is not excessive or unreasonable and this evidence was not considered by the ALJ in her Recommended Decision. Duquesne claims that Rider No. 16 is both reasonable and non-excessive because: it is not mandatory; it meets or exceeds the benchmark for best practices; and customers can achieve substantial savings on transmission and distribution charges. Duquesne Exc. at 30-33.

#### DII’s Replies

DII rejoins that Duquesne has provided no evidence for a $2.50 back-up rate. DII contends that no witness testified to support a $2.50/kW rate and Duquesne witness Gorman indicated that he did not know why a 30% availability figure was used. DII R. Exc. at 18-19 (citing Tr. at 323-26).

DII provides that Duquesne University’s performance data under Rider No. 16 did not differentiate between forced outages or planned maintenance and therefore, it was unknown why the generator was unavailable. DII contends that if the Rider No. 16 rate differentiated between Back-up Service and Maintenance Service, a customer like Duquesne University would negotiate its downtimes or maintenance to ensure they were not down during anticipated peaks. DII R.Exc. at 20 (citing DII R.B. at 12-13, DII St. 1‑S at 12-13).

DII further submits that the testimony of Peoples witness Daniel and Duquesne witness Fisher fails to support Duquesne’s current position. DII notes that Mr. Daniel stated, “continued use of a 30% load factor can be viewed as a compromise.” DII argues that Mr. Fisher’s comparison of Duquesne’s rates with other Pennsylvania utilities is insufficient to justify the Rider No. 16 rates, as these rates may also be unnecessarily inflated. DII R. Exc. at 21-22 (citing Peoples St. 2-SR at 15 and Tr. at 663).

#### Disposition

We agree with Duquesne that the ALJ erred in adopting DII’s position that the Rider No. 16 rate should be reduced from $2.50 to $0.352 by using a load factor of 5%. In reaching this determination, we believe that the ALJ incorrectly equated the 30% load factor used by Duquesne in its previous rate case with a usage factor. Duquesne’s 30% factor was not based on how often a CHP generator fails to run; rather, it approximates 30% of the fully‑allocated cost of service as calculated by Duquesne witness Gorman in the 2013 rate case. The 30% factor considers more than the availability of the CHP customer’s generator. It was not an analytically-derived, cost-of-service based factor – nor was it intended to be. It was proposed and accepted in a settlement in the 2013 case. Duquesne R.Exc. at 29. During the prior rate case, William Pfrommer, the Senior Manager of Rates and Tariff Services, explained the methodology for calculating the rate as follows:

The Company is proposing a distribution rate of $2.50 per kW. This is based on an average of the primary demand costs per kW in Mr. Gorman’s Exhibit 6-2B and a load factor of 30%. The load factor is an estimate based on the availability of the current customer, a review of other utility tariffs, and the expectation of the need for the Company to provide back-up power.

Peoples St. 2 at 9 (citing Docket No. R-2013-2372129 - Duquesne St. 12 at 19 and Exh. 6-2B).

We further find that there is substantial evidence in the record supporting the current Rider No. 16 rate. In this regard. we agree with Peoples witness Daniel who calculated the cost of service and used the same 30% multiplier to arrive at a rate very similar to the existing Rider No. 16 rate. In support of the use of the 30% multiplier, Mr. Daniel stated:

It is my understanding that no party opposed the Company’s Rider No. 16 rate calculation methodology in its prior rate case. The Company witness in the last case explained that the back-up rate was based on estimated availability of the Rider No. 16 customer, a review of other utility tariffs, and the expectation of the need for the Company to provide back-up power. Accordingly, the Commission should require that the Rider 16 distribution charge be calculated using the same rate calculation methodology supported by Duquesne and approved by the Commission in the Company’s previous rate case.

Peoples St. 2 at 10-11.

We also conclude that the $2.50 Rider No. 16 rate is reasonable because it is voluntary, and the customers can achieve savings through Rider No. 16 because it is less than the applicable full requirements rate. If Rider No. 16 is not the best fit for a particular CHP customer, it can remain on full requirements service. Duquesne witness Fisher analyzed the savings options for a CHP customer under Rider No. 16 and the full requirements rates and determined that customers with on-site generation can achieve substantial savings using the Company’s back-up rates in Rider No. 16. Mr. Fisher calculated the savings for a typical CHP customer with a 5 MW total connected load with a 2 MW on-site generator. His calculations showed that if this customer had elected Rider No. 16 and experienced a 32-hour monthly outage, the customer would save at least $258,000 per year in transmission and distribution (T&D) charges, or 37% of the customer’s total T&D charges. Duquesne Exc. at 32 (citing Duquesne St. 16-R at 20, 22). The record further provides evidence that customers that install CHP in Duquesne’s service area can also avoid a higher percentage of T&D charges than those customers located in PECO’s and PPL’s service areas. Duquesne St. 16-R at 43-44.

Accordingly, we shall grant Duquesne’s Exception No. 4.

### 9. Duquesne’s Exception No. 5 Regarding a Separate Class for Rider No. 16 Customers

#### Duquesne’s Exception No. 5

Duquesne avers that the ALJ erred in finding that Rider No. 16 customers should have been treated as a separate class in Duquesne’s Cost of Service Study in the last rate case. In this proceeding, the ALJ adopted the position of DII witness Crist who characterized the Rider No. 16 customers as a class of customers with a 95% operational availability with 5% downtime. Duquesne disagreed with Mr. Crist’s analysis. Duquesne Exc. at 34 (citing R.D. at 175).

Duquesne points out that Mr. Crist did not perform a fully-allocated cost of service study. Rather, Mr. Crist used Duquesne witness Gorman’s cost of service study[[22]](#footnote-23) for Rider No. 16 eligible customer classes and discounted that cost by applying a 5% multiplier. Duquesne notes further that Mr. Crist did not treat the current single Rider No. 16 customer as a class but recommended that in the future, when there are more Rider No. 16 customers, those customers could be treated as a separate class. Duquesne Exc. at 34-35 (citing Tr. at 588, DII St. 1-S at 11).

#### DII’s Replies

In Reply, DII agrees with the ALJ that Rider 16 Service customers should be treated as a distinct class. Regarding cost of service, DII states that it agrees with Duquesne’s stated goal of reaching cost of service. DII contends that this is why it recommends studying Rider No. 16 customers as a class. DII avers that the class of Rider No 16 customers should bear the appropriate costs of the distribution system, determined by studies that appropriately reflect the non-coincident nature of the individual customer’s reliance on back-up service. DII R.Exc. at 24.

#### Disposition

As noted, Duquesne only has one Rider No. 16 customer. As such, we are of the opinion that one customer does not make a class and that it would be premature to establish a separate customer class until such time as additional projects come on line and sufficient operational data is collected. Additionally, other proposed CHP projects have not yet been built in Duquesne’s territory, and when they are built, it is likely that actual performance may vary. Thus, any new Rider No. 16 customers may not have the same operating profile as does the existing Rider No. 16 customer such as outage rates, peak demand size and time of outage occurrence. Since we do not know the diversity of a potential class for Rider No. 16 customers, it is too early at this time to characterize a class of CHP customers without actual performance data. Therefore, we shall grant Duquesne’s Exception No. 5 and reverse the ALJ’s recommendation on this matter.

### 10. DII’s Exception No. 1 Regarding a Separate Maintenance Rate

#### DII’s Exception No. 1

DII alleges that the ALJ erred in recommending that the Commission not require a separate maintenance rate for Rider No. 16. DII provides that a planned maintenance rate encourages coordination of outages with the EDC, so that maintenance of onsite generation systems is performed at a mutually beneficial time for the customer and the local distribution utility. DII maintains that the RAP Study indicates that daily maintenance rates should be lower than daily standby rates, accounting for the fact that “maintenance outages . . . would be coordinated with the utility and scheduled during periods when system generation requirements are low.” DII Exc. at 4 (citing Exhibit No. JWS-6 at 5).

DII maintains that a planned maintenance rate provides customer-generators reliability benefits. First, DII suggests a separate and lower rate for maintenance service that would encourage routine maintenance of the distributed generation units and increase long-term availability and reliability of the generation as a whole. DII references its witness Crist testimony in which he noted that setting the maintenance rate lower than the back-up rate would encourage customers to engage in necessary maintenance to avoid unplanned outages. DII Exc. at 5 (citing DII St. 1 at 26). DII continues by noting that a separate and lower rate for maintenance service encourages customers with onsite generation to keep their generation running at utility peak periods. DII Exc. at 5 (citing Peoples St. 2 at 22).

According to DII, a separate rate for planned maintenance would allow for the development of clear reliability data by distinguishing between forced outages and scheduled maintenance. DII contends that this would assist the Commission and the utility in developing true cost-based rates in future proceedings. DII Exc. at 6.

#### Duquesne’s Replies

In its Reply, Duquesne contends that unplanned outages for Rider No. 16 customers can and do occur during on-peak periods, and there is no valid cost of service basis for establishing a back-up rate that is 95% below the fully-allocated cost of service as DII proposes and even less reason to establish a separate “maintenance” rate that is even further below the fully-allocated cost of service. Duquesne R.Exc. at 5.

Duquesne explains that if a back-up rate is applied to a customer’s contracted level of back-up demand – as the terms of Rider No. 16 currently provide and as “best practices” for back-up rate design deem proper – then no purpose is served by setting a second rate for “maintenance” outages. Duquesne R.Exc. at 5-6 (citing Duquesne Exc. at 11-12). Duquesne explains further that as Rider No. 16 is currently structured, the customer pays a single rate applied to the level of back-up demand for which it contracts. According to Duquesne, the customer is then entitled to receive back‑up distribution service up to the maximum hourly limit set forth in Rider No. 16 irrespective of when or why a generator outage occurs. Duquesne R.Exc. at 6.

Duquesne contends that the cost of generation is sufficient incentive for a customer-generator to schedule maintenance during off-peak periods. Duquesne R.Exc. at 9. Regarding PURPA applicability, Duquesne notes that PURPA regulations apply only to “qualifying facilities” that meet qualification criteria established by PURPA and have been certified by FERC. Duquesne states that FERC’s regulations do not apply to customer-owned behind-the-meter generation that is not certified as a “qualifying facility.” Duquesne R.Exc. at 10 (citing 18 CFR § 292.301(a)). Duquesne avers that DII’s attempt to rely upon the PURPA regulations is an example of DII’s attempt to appropriate principles and rate criteria that only apply to the generation supply service and erroneously apply them to distribution service. Duquesne R.Exc. at 12.

#### Disposition

Based upon our review of this matter, we are of the opinion that insufficient information has been provided to require Duquesne to provide a separate maintenance rate in the existing Rider No. 16 at this time.

Based on the record, it is unclear if the lack of a maintenance rate for Rider No. 16 has deterred development of onsite generators. Duquesne has only one customer on Rider No. 16, and that customer does not object to maintaining the current Rider No. 16 rate. Additionally, Peoples has withdrawn its objection in this proceeding.

DII also did not adequately analyze on-system generator use of existing rate schedules. DII witness Heller admits in discovery that “base rate schedule GL and L do not raise significant obstacles to Pitt’s plans to develop more onsite generation” and DII’s witness Sprys admits Allegheny County Airport did not evaluate or consider this option [Option C] in their analysis.[[23]](#footnote-24) For example, Rate Schedule L and HVPS Customers can reduce their distribution charges by scheduling their generator outages during off-peak periods, subject to applicable minimum charges.[[24]](#footnote-25)

Also, we agree with Duquesne that whether or not a customer is eligible for Rider No. 16, the Company must size its equipment to meet the customer’s peak demand. This is the case for Duquesne, because the Rider No. 16 is voluntary, and the customer could return to full requirements delivery service upon switching back the otherwise applicable rate schedule. Thus, Duquesne must arrange for distribution system capacity to be available to serve its customers at any time, unless this optionality was eliminated in the tariff. As Duquesne asserts, it costs the same to build a distribution system that will be used every day (as with a non-generation customer) as it does for a distribution system that will be used once or twice a year but is reserved for use during the remainder of the year. We agree with Duquesne that it may not avoid distribution costs when the customer plans its generation outages to occur at off-peak times if the customer has the option to revert to its otherwise applicable rate schedule. Duquesne St. 16-R at 8.

# Conclusion

Based on our review of the record, and consistent with the foregoing discussion we shall: (1) grant the Exceptions filed by Duquesne Light Company in this proceeding; (2) deny the Exceptions filed by the Duquesne Industrial Intervenors; and (3) modify the ALJ’s Recommended Decision, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by the Duquesne Light Company on October 29, 2018, are granted, consistent with this Opinion and Order.
2. That the Exceptions filed by the Duquesne Industrial Intervenors on October 29, 2018, are denied, consistent with this Opinion and Order.
3. That the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale, issued on October 18, 2018, is modified, consistent with this Opinion and Order.
4. That Duquesne Light Company shall not place into effect the rates, rules, and regulations contained in Supplement No. 174 to Tariff Electric Pa. P.U.C. No. 24, the same having been found to be unjust, unreasonable, and therefore unlawful.
5. That the Joint Petition for Approval of Settlement Stipulation filed by Duquesne Light Company, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for

Affordable Utility Services and Energy Efficiency in Pennsylvania, the Duquesne Industrial Intervenors, the Community Action Association of Pennsylvania, Wal-Mart Stores East, LP and Sam’s East, Inc., ChargePoint, Inc., the Keystone Energy Efficiency Alliance, NRG Energy Center Pittsburgh LLC, Clean Air Council, and the Natural Resources Defense Council, Inc. at Docket Nos. R-2018-3000124 and R-2018-3000829, including all terms and conditions as clarified, is approved.

1. That Duquesne Light Company is hereby authorized to file the tariff supplement contained in Appendix “A” to the Joint Petition for Approval of Settlement Stipulation on less than statutory notice, to be effective on at least one day’s notice after entry of the Commission’s Final Order, for service rendered on and after December 29, 2018, designed to produce $92.7 million in additional annual base rate operating revenue based upon the pro forma level of operations at December 31, 2018, consistent with the Commission’s Final Order in this proceeding.
2. That Duquesne Light Company shall allocate the authorized increase in operating revenue to each customer class and shall implement the rate design as set forth in Appendix “A” to the Joint Petition for Approval of Settlement Stipulation.
3. That the Formal Complaints filed against the base rate proceeding at R-2018-3000124 by the Office of Consumer Advocate at C-2018-3001029; Peoples Natural Gas Company LLC at C-2018-3001152; Office of Small Business Advocate at C‑2018-3001566; Duquesne Industrial Intervenors at C-2018-3001713; and NRG Energy Center Pittsburgh LLC at C-2018-3002755, are dismissed and marked closed, consistent with the Joint Petition for Approval of Settlement Stipulation.
4. That Duquesne Light Company shall refund to customers $24 million, which sum includes interest, through a one or two-time bill credit on a distribution revenue basis, to return to ratepayers $19.2 million in 2018 tax savings associated with the Tax Cut and Jobs Act of 2018, inclusive of the effect of deferred income taxes and a gross-up of income taxes, and 2018 protected and unprotected EDIT.
5. That Duquesne Light Company shall file with the Commission’s Bureau of Technical Utility Services a list that shall detail by rate class how much in dollars will be refunded to each rate class as a result of the Tax Cut and Jobs Act of 2017 refund. The list shall be filed at Docket No. R-2018-3000829 on or before January 29, 2019.
6. That the Formal Complaints of Jason Dolby at C-2018-3001074; and Leonard Coyer at C-2018-3002424, are dismissed and marked closed.
7. That Duquesne Light Company shall not alter the terms of Tariff Rider No. 21 to require new customer-generators to install a second meter socket for a generation meter prior to receiving net-metering services.
8. That upon acceptance and approval by the Commission of the tariff revisions filed by Duquesne Light Company, consistent with this Order, the investigation at Docket No. R-2018-3000124 shall be marked closed.
9. That upon acceptance and approval by the Commission of the $24 million refund to customers, which sum includes interest, through a one or two-time bill credit on a distribution revenue basis, pursuant to the Tax Cut and Jobs Act of 2017, the proceedings at Docket No. R-2018-3000829 shall be marked closed.
10. That the Memorandum of Understanding between Duquesne Light Company and Duquesne University of the Holy Spirit regarding Tariff Rider No. 16 signed June 25, 2018, is hereby approved.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 20, 2018

ORDER ENTERED: December 20, 2018

1. As discussed, *infra*, Duquesne initially proposed an increase in Tariff Rider No. 16’s existing rate of $2.50 per kW rate to $8.00 per kW, but subsequently withdrew its request in an attempt to satisfy Peoples’ concerns about the increase. Notwithstand-ing, the withdrawal of the rate increase, DII continued to oppose the Company’s existing Rider No. 16. R.D. at 116. [↑](#footnote-ref-2)
2. An abbreviated procedural history of the proceeding is found here. See the Recommended Decision, pp. 1-7, for a more detailed history of the proceeding. [↑](#footnote-ref-3)
3. Duquesne is a “public utility” and an “electric distribution company,” as those terms are defined in Sections 102 and 2803 of the Public Utility Code (Code), 66 Pa. C.S. §§ 102 and 2803, and provides electric distribution and transmission services to approximately 596,000 customers in Allegheny and Beaver Counties, Pennsylvania. [↑](#footnote-ref-4)
4. On June 1, 2018, the presiding officer issued the Fifth Interim Order which bifurcated the formal complaint filed by James Fedell at Docket No. C-2018-3001473 from the base rate proceeding, and marked the formal complaint proceeding as closed due to the filing of a Certificate of Satisfaction, in accordance with 52 Pa. Code § 5.24. [↑](#footnote-ref-5)
5. The Partial Settlement reflects a roll-in of current recoveries under the Smart Meter Charge (SMC), Distribution System Improvement Charge and the Purchase of Receivable Portion of the Retail Market Enhancement Surcharge. Partial Settlement Appendix F at ii-iii. [↑](#footnote-ref-6)
6. NRGP supports only the provisions of the Partial Settlement relating to the stipulation between NRGP and Duquesne as set forth in Section E, Paragraph No. 60 of the Settlement. NRGP does not oppose the remainder of the Settlement. Partial Settlement at 2, n.2. [↑](#footnote-ref-7)
7. Rate SM is for Street light Municipal customers. [↑](#footnote-ref-8)
8. *Lower Frederick Twp. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980). *See also*, *Brockway Glass v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981). [↑](#footnote-ref-9)
9. There is no similar burden placed on parties which challenge a proposed rate component. See, *Berner v. Pa. PUC*, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955). [↑](#footnote-ref-10)
10. *Allegheny Center Assocs. v. Pa. PUC*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990). [↑](#footnote-ref-11)
11. *See*, *e.g*., *Pa. PUC v. PECO,*1990 Pa. PUC Lexis 155; *Pa. PUC v. Breezewood Telephone Company*, 1991 Pa. PUC Lexis 45. [↑](#footnote-ref-12)
12. *Final Policy Statement on Combined Heat and Power*, Docket No. M‑2016-2530484, (April 5, 2018) (CHP Policy Statement). [↑](#footnote-ref-13)
13. Peoples Ex. No. JWS-9 (US EPA, *Standby Rates for Customer-Sited Resources: Issues Considerations and the Elements of Model Tariffs* (2009) (EPA Standby Rates Study). [↑](#footnote-ref-14)
14. Duquesne proposed to rename these terms to Supplementary Service and Back-up Service and revised the definitions of each term. Although Duquesne has withdrawn the proposed changes to Rider 16, we will use the term service as it is more descriptive. [↑](#footnote-ref-15)
15. DII includes Duquesne University, the Allegheny County Airport Authority, Linde Energy Services Corporation, United States Steel Corporation, and the University of Pittsburgh. Duquesne University is not objecting to the terms of Rider No. 16 and has signed a Memorandum of Understanding with Duquesne. [↑](#footnote-ref-16)
16. Duquesne Exh. CJD-1-R. [↑](#footnote-ref-17)
17. *Petition of Metropolitan Edison Co. et al.*, Docket Nos. P-2015-2508942, P-2015-2508948, P-2015-2508936; P-2015-2508931 (Final Order entered Apr. 19, 2018) pp. 16-17 (*Petition of Metropolitan Edison Co.*). [↑](#footnote-ref-18)
18. *Fixed Utility Distribution Rates Policy Statement*, Docket No. M‑2015‑2518883 (May 3, 2018) (Alternative Ratemaking Policy Statement). [↑](#footnote-ref-19)
19. DLC Statement No. 14 and accompanying exhibits. [↑](#footnote-ref-20)
20. DII Statement No. 1 at 25; 18-20. *See also* DII Statement No. 1-SR at 11:16-18. [↑](#footnote-ref-21)
21. James Selecky, Kathryn Iverson, Ali Al-Jabir, *Standby Rates for Combined Heat and Power Systems – Economic Analysis and Recommendations for Five States* (Feb 2014) (RAP Study). Peoples Ex. JWS-6. [↑](#footnote-ref-22)
22. DLC Statement No. 14 and accompanying exhibits. [↑](#footnote-ref-23)
23. Duquesne 16-R at 10. [↑](#footnote-ref-24)
24. Duquesne 16-R at 14. For rate schedule L, the Minimum Charge shall be the Demand Charge based on 70% of the Contract *On-Peak* Demand for transmission and distribution and the Demand Charge as calculated under Rider No. 9 for Company supplied supply. [↑](#footnote-ref-25)