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May 15, 2018

Efiled

Ms. Rosemary Chiavetta, Secretary
Commonwealth Keystone Building
2nd Floor, Room-N201
400 North Street
Harrisburg, PA 17120

Re: **Rulemaking Regarding Electricity Generation Customer Choice, 52 Pa. Code
Chapter 54
Docket No. L-2017-2628991**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Comments in the above-referenced proceeding.

Upon receipt, if you have any questions regarding the information contained in this filing, please contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads "Shelby A. Linton-Keddie".

Shelby A. Linton-Keddie
Manager, State Regulatory Strategy
And Senior Legal Counsel

Enclosure

c: Daniel Mumford (via email)
Matthew Hrivnak (via email)
Kriss Brown (via email)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking Regarding Electricity :
Generation Customer Choice, 52 Pa. : Docket No. L-2017-2628991
Code Chapter 54 :

**COMMENTS OF
DUQUESNE LIGHT COMPANY**

I. INTRODUCTION

The Electricity Generation Customer Choice and Competition Act (the “Competition Act”) provided, among other things, for the Commission to promulgate regulations to “... require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity service offered by that provider ...” See 66 Pa. C.S. § 2807(d)(2). To comply with this direction, the Commission issued Interim Requirements in 1997,¹ followed by promulgated regulations in 1998.² The 1998 regulations were amended in 2007.³ In 2010, the Commission adopted *Interim Guidelines*, which provided general guidance on the timing and content of advanced notifications regarding expiration of or a change in terms of a customer’s current contract for generation supply.⁴ In 2014, the Commission adopted

¹ See Chapter 28 Electric Generation Customer Choice and Competition Act – Customer Information – Interim Requirements, Docket No. M-00960890F0008 (Order entered July 11, 1997).

² See Final Rulemaking Order Establishing Customer Information Disclosure Requirements for Electricity Providers 52 Pa. Code, Chapter 54, Docket No. L-00970126 (Order entered May 1, 1998).

³ See Final Rulemaking Order Re Electric Distribution Companies’ Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa. C.S. § 2807(e)(2), Docket No. L-00040169 (Order entered May 10, 2007).

⁴ See Final Order Re Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices, Docket Nos. M-2010-2195286 and M-0001437 (Order entered September 23, 2010).

amended regulations regarding Electric Generation Supplier (“EGS”) disclosure statements.⁵ In its November 2013 Final Order regarding *Guidelines for Use of Fixed Price Labels for Products with a Pass-Through Clause*,⁶ the Commission issued guidelines on pricing labels and the “electric competition dictionary.” Following the Polar Vortex of 2014, the Commission swiftly adopted an Order requiring EGSs to provide “adequate and accurate customer information.”⁷ On April 3, 2014, the Commission adopted a *Final-Omitted Rulemaking Order Regarding the Provisions of Notices of Contract Expiration or Changes in Terms for Residential & Small Business Customers*,⁸ (hereinafter “Final-Omitted Rulemaking”) that contained significant changes to EGS customer information regulations, specifically with regard to variable priced products, and also included the creation of an EGS Contract Summary.

In the course of adopting regulations in the Final-Omitted Rulemaking, the Commission was operating under emergency conditions and provided only limited opportunity for stakeholder comment. During an April 21, 2017 CHARGE⁹ conference call, the Commission’s Office of Competitive Market Oversight (“OCMO”) invited stakeholders to submit informal comments on possible revisions to the EGS disclosure rules at 52 Pa. Code § 54.5. Following review of informal comments and extensive changes to Natural Gas Supplier (“NGS”) disclosure rules in

⁵ See *Final-Omitted Rulemaking Order Re Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385 (Order entered April 3, 2014).

⁶ See *Guidelines for Use of Fixed Price Labels for Products with a Pass-Through Clause* Final Order, at Docket No. M-2013-2362961 (Order entered November 14, 2013).

⁷ *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Order, Docket No. M-2014-2406134, (Order entered March 4, 2014) (*Variable Rate Order*) at 4-5

⁸ See *Final-Omitted Rulemaking Order Regarding the Provisions of Notices of Contract Expiration or Changes in Terms for Residential & Small Business Customers*, Docket No. L-2014-2409385 (Order entered April 3, 2014).

2016,¹⁰ the Commission proposes to amend regulations at 52 Pa. Code §§ 54.3, 54.5, 54.7, and 54.10 in this proceeding.

To that end, at the Public Meeting of December 7, 2017, the Commission issued a *Notice of Proposed Rulemaking Order* (“*NOPR*”), identifying proposed amendments to customer information regulations at 52 Pa. Code §§54.3, 54.5, 54.7 and 54.10 providing for standards and pricing practices for retail electricity services; a disclosure statement for residential and small business customers; marketing/sales activities; and the provision of notices of contract expiration or changes in terms for residential and small business customers. Through the *NOPR*, the Commission seeks comment on these proposed amendments.

The *NOPR* was published in the *Pennsylvania Bulletin* on March 24, 2018. See 48 Pa. B. 1696. Pursuant to the *NOPR*, interested parties have sixty (60) days from the date of publication in the *Pennsylvania Bulletin* to file comments, *i.e.*, on or before May 22, 2018. In response, and consistent with this direction, Duquesne Light Company (“Duquesne Light” or “Company”)¹¹ hereby submits comments for the Commission’s consideration.¹²

⁹ CHARGE (Committee Handling Activities for Retail Growth in Electricity) participants include EDCs, EGSs, industry trade organizations, consumers, the Office of Consumer Advocate, and the Office of Small Business Advocate.

¹⁰ See *Final Rulemaking Order – Rulemaking to Amend and Add Regulations to Title 52 of the Pennsylvania Code, Sections 62.72, 62.75, and 62.81 Regarding Customer Information Disclosure Requirements for Natural Gas Suppliers Providing Natural Gas Supply to Residential and Small Business Customers*, Docket No. L-2015-2465942 (Order entered April 21, 2016).

¹¹ Duquesne Light is a public utility as the term is defined under Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, and is certificated by the Commission to provide electric distribution service in portions of Allegheny County and Beaver County in Pennsylvania. Duquesne Light is also an EDC as that term is defined under Section 2803 of the Public Utility Code. See 66 Pa.C.S. § 2803.

¹² Please note that the Company will not be responding to every proposed recommendation in the *NOPR*, but only those which Duquesne Light believes necessitate comment.

II. COMMENTS

As indicated above, in this *NOPR*, the Commission is seeking comment on proposed revisions of the standards and pricing practices for retail electricity service at Section 54.3; the disclosure statement for residential and small business customers at Section 54.5, including the proposed changes to the EGS Contract Summary; marketing/sales activities at Section 54.7; and Section 54.10, notice of contract expiration or change in terms for residential and small business customers.

A. *Proposed Revisions to Section 54.3 -- Standards and Pricing Practices*

Duquesne Light supports the proposed changes to §54.3(1)(ii) that provides a single, easily accessible (and correct) location for the glossary of terms related to electric choice in Pennsylvania. As technology continues to evolve and as more customers transition to accessing information mostly via electronic means, the transition to maintaining information on the www.PAPowerswitch.com website is a logical next step.

The Commission also proposes deleting Section 54.3(1)(iii), which currently requires EDCs to distribute the “Common Electric Competition Terms” as part of its consumer education program. The Company agrees that this change is an important step toward a further understanding among consumers of the different roles of EGS and EDCs in the retail marketplace and reduces the likelihood of consumer confusion regarding the involvement of EDCs in the retail market. As such, Duquesne Light supports this change.

In addition, the Company supports the Commission’s proposed language in Section 54.3(2) that precludes any early termination fees being assessed against a residential or small business customer when the customer terminates a fixed duration contract after the notice of the contract expiration has been issued by the EGS and is before the contract expiration date. As the

retail market has evolved and as EDCs and EGSs have continued to refine the process by which customers are switched between suppliers or default service with automated transactions via electronic data, there is less customer control over the precise date a switch occurs. Penalizing a customer for when a transaction occurs over which the customer has no control discourages participation in the retail market and reduces customer satisfaction with both the EGS and the EDC.

B. Proposed Revisions to Section 54.5 – Disclosure Statement

As an EDC, the Company has no specific comments on the proposed revisions to Section 54.5 related to pricing. Generally, Duquesne Light agrees with the Commission’s attempts to align EGS disclosure rules with NGS rules related to customer choice. Consumers who may have shopped for gas and find the process transparent and beneficial may be more likely to shop for electric (or vice versa). To the degree possible, a similar format for pricing and disclosure for gas and electric will benefit Pennsylvania consumers.

With regard to specific proposed revisions to Section 54.5, Duquesne Light offers the following:

1. *Section 54.5(c)(6)*

Duquesne Light appreciates the Commission’s efforts to clarify the descriptor for how long a contract is in effect. The Company agrees that “term,” especially as used in a legal sense, has greater meaning than simply a length of time.

2. *Section 54.5(c)(9) and (12)*

Duquesne Light generally supports the proposed removal of unnecessary references to the EDCs in the disclosure statement. As noted, *supra*, eliminating customer confusion about the role played by EDCs and EGSs is important as the retail market for both gas and electricity

evolve. By removing unnecessary references to EDCs in the disclosure statement, customers are less likely to associate the product offered by the EGSs with the EDC. This will further enhance the EGSs' opportunity to develop branding and customer recognition, which has been a frequent issue raised by the EGS community.

However, while the Company agrees with the overall premise of removing unnecessary references to EDCs as part of an EGS contract, Duquesne Light has two articulated concerns. First, the Company cautions the Commission that the specific Section in the PA Code the PUC seeks to revise, Section 52.5(c)(9), refers to “the name and telephone number of the default service provider” (“DSP”) – **not** an EDC. While it is true that EDCs currently serve in this role, there is no guarantee that EDCs will always be default service providers. To the extent that the Commission finds this information valuable to communicate to customers at the time one enters into a contract with an EGS – the name and telephone number of the default service supplier, the Company believes that this information should remain, regardless of the identity of the DSP.

Second, while Duquesne Light agrees that it is unnecessary to have a “prominent display” of EDC information in multiple places on EGS documents, the Company disagrees that all references to EDCs should be eliminated. The one place where the Company believes there is still utility in having EDC information is as part of the EGS Contract Summary, since the summary's goal is to “provide, in an easy-to-read, one-page document, the most important terms of the disclosure statement.”¹³ Specifically, under the current format, EDC contact information is included as well as a reminder to customers that the EDC is to be called for emergencies,

¹³ *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes In Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385 (Apr. 2, 2014) at 25.

outages, etc., even after one enters into a contract with an EGS. This information is located at the bottom on the Contract Summary, does not include any logo or other forms of co-branding, and serves an important purpose – it educates (and reminds customers) that although they are entering into a contract with an EGS, the EDC still retains certain responsibilities. As such, the Company believes this one reference to EDCs should remain.

While Duquesne Light acknowledges that the Commission, in 2016, removed the reference to NGDCs as part of the NGS contract summary, the Company would like to point out two pertinent facts: (1) for some reason, no Natural Gas Distribution Company submitted comments in that proceeding; and (2) there is no requirement that the format of NGS and EGS disclosure statements must be identical, nor is it difficult to have NGSs reinsert NGDC information as part of the NGS contract summary going forward.

In this Order, the PUC notes that, at the time the Final-Omitted Rulemaking was promulgated, EDCs had robust consumer education programs and had a key role in informing consumers about the competitive market.¹⁴ Since that time, however, EDCs have been relieved of some of these educational requirements,¹⁵ so the amount of information customers have received to reinforce the separation of EDC and EGS responsibilities may no longer be on top of consumers' minds. While Duquesne Light is not, in any way, suggesting or recommending that EDCs should have to resume these education efforts, the Company is pointing out that the one reference to an EDC's continued responsibilities in the EGS Contract Summary serves an

¹⁴ See *NOPR* at 16.

¹⁵ See Secretarial Letter re *Revised Directive on the Annual Mailing of a Commission-endorsed Postcard*, Docket No. I-2011-2237952 (Mar. 19, 2015).

educational role to explain EDC responsibilities going forward in the absence of other efforts. As such, due consideration of this fact should be considered prior to ordering its removal.

3. *Section 54.5(g)(1) and (2)*

The Commission proposes inclusion of specific language in the disclosure statements regarding customer notification. Section 54.5(g)(1) is for use with a fixed duration contract and Section 54(g)(2) is for non-fixed duration contracts. In both cases, the proposed language is arguably too complex. The National Center for Education Statistics in its National Assessment of Adult Literacy¹⁶ (“NAAL”) found that 14% or 30 Million adults were below basic in literacy and 29% or 63 Million adults had only basic literacy. Further, 55% of adults who were below basic did not graduate from high school. Data from the Pennsylvania Department of Education¹⁷ indicates that in school year 2015-2016, 86.09% of students who were in the cohort for that year actually graduated. Thus, in 2015, 18,999 students in Pennsylvania did not graduate and are statistically likely to have a minimal ability to understand written language.

In the NAAL, basic literacy is defined as such tasks as reading and understanding information in short, commonplace texts, reading and understanding information in a simple document, such as using a television guide, and locating easily identifiable information such as the price on an event ticket. One-third of Americans are able to read and understand only the simplest of sentences.

As proposed, the disclosure language in Section 54.5(g) is simply too complex for too many customers. Accordingly, Duquesne Light offers the following revisions to be included in the disclosure statement:

¹⁶ https://nces.ed.gov/naal/kf_demographics.asp

¹⁷ <http://www.education.pa.gov/data-and-statistics/pages/cohort-graduation-rate-.aspx>

“If you have a fixed duration contract that will be ending, , or whenever we change the contract, you will receive two separate letters before the contract ends or the changes happen. These letters will explain your options.”

A similar change should be made to the proposed language in section (2). While Duquesne Light supports the goal of these revisions, the Company urges the Commission to be mindful of the reading skills of consumers when mandating specific language for consumption by the public.

4. *Section 54.5(k)*

The Company appreciates the Commission’s concerns regarding customer privacy and third party access. The requirement for disclosure by the EGS of its acquisition of a customer’s information from EDCs as provided for in this new section is an important component for customers to understand the type of information that will be shared EGSs. To that end, Duquesne Light suggests that the disclosure also provide, in plain and simple language, that signing the contract is consent for the EGS to obtain personal information from the EDC.

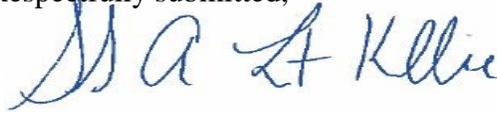
Duquesne Light proposes that the EGS disclosure be required to state that any information obtained for the purposes of providing electric service will not be provided by EDCs to third parties without the customer’s express consent and that should the customer’s information be inadvertently released, the customer will be notified. While these protections may exist under various state and federal regulations, stating them specifically in the disclosure clarifies the EGSs’ obligations to protect customer information as well as the customer’s consent to having this information shared with the EGS.

III. CONCLUSION

Duquesne Light appreciates the work undertaken by the Commission to date to continue refining the electric generation supplier disclosure rules as well as the customer experience when

shopping for electric generation supply in the Commonwealth. The Company respectfully requests that the Commission consider the comments and recommendations included herein as it moves forward with this proceeding.

Respectfully submitted,

A handwritten signature in blue ink that reads "Shelby A. Linton-Keddie". The signature is written in a cursive style and is positioned above a horizontal line.

Shelby A. Linton-Keddie (Pa. I.D. 206425)
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