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October 29, 2018

VIA E-FILED

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

**Re: Assumption of Commission Jurisdiction Over Pole Attachments from the Federal
Communications Commission
Docket No. L-2018-3002672**

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 or Audrey Waldock at 412-393-6334 or awaldock@duqlight.com.

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: Shaun A. Sparks, Assistant Counsel (shsparks@pa.gov)
Colin W. Scott, Assistant Counsel (colinScott@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Assumption of Commission Jurisdiction :
Over Pole Attachments from the Federal : **Docket No. L-2018-3002672**
Communications Commission :

**COMMENTS OF
DUQUESNE LIGHT COMPANY**

I. INTRODUCTION

At the Public Meeting of July 12, 2018, the Commission issued a *Notice of Proposed Rulemaking Order* (“*NOPR*”), to begin a rulemaking to assert Commission jurisdiction over pole attachments pursuant to the Telecommunications Act of 1996 (“TA 96”). The Telecommunications Act of 1996 contained provisions for states to reverse-preempt the Federal Communications Commission’s (“FCC”) jurisdiction over pole attachments. Through the *NOPR*, the Commission seeks comment on how the Commission may utilize its expertise and authority to address the challenges of broadband development throughout Pennsylvania.

The *NOPR* was published in the *Pennsylvania Bulletin* on September 29, 2018. See 48 Pa.B. 6273. Pursuant to the *NOPR*, interested parties have thirty (30) days from the date of publication in the *Pennsylvania Bulletin* to file comments, *i.e.*, on or before October 29, 2018. In response, and consistent with this direction, Duquesne Light Company (“Duquesne Light” or “Company”)¹ hereby submits comments for the Commission’s consideration.

¹ 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.

II. COMMENTS

As indicated above, in this *NOPR*, the Commission is seeking comment on its proposal to adopt the FCC pole attachment regulatory regime without modification at this time. In addition to the *NOPR*, Chairman Brown, Vice Chairman Place and Commissioners Kennard and Sweet issued statements with requests for comments on a number of additional issues surrounding the Commission's assumption of pole attachment regulation.

A. Proposed Section 77.1 et seq.

In the *NOPR*, the Commission proposes a new Chapter 77 to Title 52 of the Pennsylvania Code that exercises reverse-preemption of the jurisdiction of the FCC over pole attachments. Generally, Duquesne Light views the Commission's proposal favorably but does have some concerns with Chapter 77 as proposed.

The Company believes that the Commission's assumption of jurisdiction over pole attachments will allow a more balanced approach to all of the competing demands on pole infrastructure. Electric distribution companies own many of the poles other entities seek to utilize and these poles exist first and foremost for the provision of safe and reliable electricity service. While it behooves society to fully and efficiently utilize such infrastructure for the various needs of the community, it should never be to the detriment of worker safety or reliable electric service. Duquesne Light supports the Commission assumption of jurisdiction over pole attachments as the Commission's mission is to ensure safe and reliable utility service at reasonable rates. Thus the Commission would be in a position to ensure that pole attachments are occurring in such a manner as to meet this objective.

1. Section 77.2 – Applicability

As noted in the *NOPR*, Commission jurisdiction may not reach all facilities subject to attachment in the Commonwealth. *NOPR* at 9. If the Commission assumes responsibility for pole attachments there will be a gap in jurisdiction and accordingly a gap in how the Commission can govern pole attachments. As part of the *NOPR*, and to ensure that the Commission can properly adjudicate pole attachments, the Commission should consider how it will address a situation where it has jurisdiction over only one of the parties it has the power to regulate and whether it will be entangled in contract disputes. The Commission may want to draw a bright line in its proposed regulations regarding adjudication of pole attachment disputes that involve entities that are not regulated by the Commission.

2. Section 77.4 -- Adoption of FCC Regulations

In its proposed §77.4, the Commission seeks to adopt the FCC regulations “inclusive of future changes as those regulations may be amended.” As noted in the Statement of Chairman Brown, recent rulemakings at the FCC have sought to remove barriers to broadband deployment. In the *NOPR*, the Commission states that the proposed “turn-key” adoption of pole attachment regulations preserves the status quo on regulation. *See NOPR* at 11. If the Commission seeks to maintain the *status quo* on pole attachments as of the date of this rulemaking, it should act soon.

On August 3, 2018, the FCC released its Third Report and Order and Declaratory Filing² that provides for sweeping changes to the pole attachment regulations. Subsequent regulatory

² *See* FCC WT Docket No. 17-79 and WC Docket No. 17-84. Order available at <https://ecfsapi.fcc.gov/file/08031128928102/FCC-18-111A1.pdf>.

activity at the FCC is drastically changing the pole attachment regulations even as the Commission seeks to take pole attachment issues in hand.³

Given the fast pace of change occurring at the federal level, the Company seeks to understand whether the Commission will, as it appears by its proposed regulation, adopt each change promulgated at the FCC as quickly as it is adopted. Alternatively, if the Commission is seeking to control the pole attachment process as it exists today, without disrupting existing business practices, then adoption of the sweeping FCC regulations may be more than the Commission wants to embrace at this time. To that end, the Company suggests that the Commission determine at what point it wants to put its pin in the ground on pole attachment regulations and whether to implement the vastly changed FCC regulations effective in February 2019. If the Commission agrees that the proposed and sweeping FCC regulations are consistent with the needs of the Commonwealth, then its proposed language is consistent with that approach. If, however, the Commission wants to approach any future adoption of FCC regulations with a considered and vetted approach via the existing rulemaking processes used in the Commonwealth, its proposed regulations should reflect that intent.

3. Section 77.5 – Resolution of Disputes

In the *NOPR*, the Commission notes that it “can make its quasi-judicial function available to stakeholders.” *See NOPR* at 11. To accomplish this objective, the Commission proposes a §77.5 that states that “persons and entities subject to this chapter may utilize the mediation, formal complaint and adjudicative procedures under 52 Pa. Code Chapters 1, 3 and 5.” It then

³ A subsequent Declaratory Ruling and Third Report and Order in the same dockets was released September 27, 2018. Among other things, the September ruling seeks to override local laws that prohibit wireless deployment. It is available at <https://ecfsapi.fcc.gov/file/0927025585935/FCC-18-133A1.pdf>.

states in subsection (b) that parties shall use the Pa. Code “except where silent or in cases of conflict.”

In 47 C.F.R. §1404, the elements that are required in a pole attachment complaint are set forth in detail, including but not limited to a list of data that must be provided such as the “annual carrying charges attributable to the cost of owning a pole” and the “rate of return authorized for the utility for intrastate service.” In addition to the filing requirements, §1.1404(k) requires that a complaint includes a certification that the complainant has, in good faith, engaged or attempted to engage in executive-level discussions to resolve the dispute. It is unclear if the Commission expects parties to utilize the Pa. Code in preparing complaints or the C.F.R.’s more expansive requirements. Likewise, 47 C.F.R. §§1.1406 through 1.1408 set out details regarding dismissal of a complaint for failure to provide all of the elements outlined in §1.1404, the response period as well as fees, electronic filing and copies and forms of pleadings. The regulations contained in 47 C.F.R. §§1.1406 through 1.1408 are in conflict with the Commission’s established procedures. To that end, the Company suggests that instead of the Commission adopting all of 47 C.F.R. §§1.1401 through 1.1425, it should instead note that it is not adopting §1.1404 through §1.1408 and will utilize 52 Pa. Code Chapters 1, 3 and 5 to adjudicate any disputes. While the proposed regulation seems to indicate that Commission procedures will be used, it will be difficult for parties to parse out those sections that are silent or do not control.

As noted in Commissioner Sweet’s Statement, it is unclear whether access to the Commission’s procedures for mediation and formal complaint will result in a greater likelihood that parties will seek to have the Commission adjudicate disputes. Duquesne Light has not had a pole attachment case before the FCC in decades. That said, the process to file a complaint with the FCC and the time for adjudication, including the need to obtain the appropriate counsel in

Washington, D.C., a costly venture, has likely been the reason no complaints have been filed by or against the Company. With the opportunity to file a formal complaint before the Commission utilizing in-house or local counsel, more companies may be inclined to seek redress. It is impossible to estimate or speculate with any degree of certainty on whether parties will access the Commission process in great numbers.

B. Comprehensive Registry of Poles and Attachments

In his statement, Commissioner Kennard seeks comment on creation of a comprehensive registry of poles and attachments maintained by pole owners and accessible to pole attachers. The Company currently maintains a database of its poles but has serious concerns regarding making that database accessible to others outside of the Company. While poles are not necessarily a critical infrastructure that is subject to CIP regulation, any situation in which entities outside of the Company access the Company's IT resources and specific location of certain equipment there exists a possibility of cybersecurity breaches. Furthermore, the Company is replacing poles daily and during the course of its pole replacement the poles may change ownership. The Company's database may not reflect such changes in real-time and third parties should not rely on such information. To create and maintain a pole registry that could be accessed by third parties would be a costly endeavor, present a security risk, shows little necessity and would provide limited benefit to ratepayers.

C. Pole Attachment Agreements

Any standardization of any process or procedure potentially results in efficiencies. However, at this point in time, attempts to standardize pole attachment agreements may not be an efficient use of resources. The Company has several unique agreements that are the result of negotiations from decades ago that resulted in unique pole attachment agreements. It is likely

that similar negotiated agreements exist in all EDCs' territories. Given that pole attachments can be unique based on many factors, there needs to be flexibility within the Commonwealth to accommodate unique circumstances that may arise. Standardized agreements are unnecessary and interfere with contractual freedom of entities.

D. Unauthorized Pole Attachments

In his statement, Commissioner Kennard seeks comments on whether the FCC regulations provide a means for pole owners to address unauthorized attachments. The Company can envision a situation in which unauthorized attachments could be brought before the Commission in the formal complaint process and would enable the parties to obtain relief in a timely fashion.

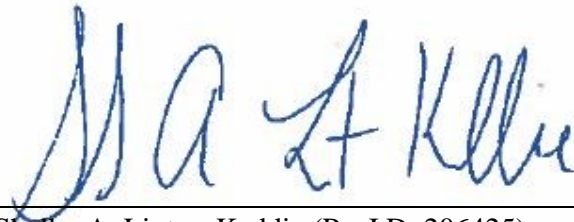
E. Working Group

Duquesne Light does not see the value in establishing a working group at this time. The value of a working group would be in developing a standardized agreement or a pole registry, both of which are unnecessary or ill-advised at this time.

III. CONCLUSION

Duquesne Light appreciates the Commission's efforts to reverse-preempt the FCC pole attachments and welcomes the more balanced view that the Commission can bring to bear on the issue of pole attachments. The Company respectfully requests that the Commission consider the comments and recommendations included herein as it moves forward with this proceeding.

Respectfully submitted,



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