

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held April 4, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Joint Application of DQE Communications LLC and  
GI DI Vertigo Acquisition LLC for All Necessary  
Authority, Approvals and Certificates of Public  
Convenience Authorizing the Transfer and Change in  
Control of DQE Communications LLC from  
Duquesne Light Holdings, Inc. to GI DI Vertigo  
Acquisition LLC

Docket Nos.  
A-2024-3045207  
S-2024-3045946

**ORDER**

**BY THE COMMISSION:**

On January 2, 2024, DQE Communications LLC (DQE Communications or Licensee), and GI DI Vertigo Acquisition LLC (GI or Transferee), (collectively, the “Joint Applicants”) filed a joint application pursuant to the Pennsylvania Public Utility Commission’s Abbreviated Procedures for Review of Transfer of Control of Telecommunications Public Utilities at 52 Pa. Code §§ 63.321 – 63.325 and Sections 1102(a) and 1103 of the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. §§ 1102(a) and 1103. The Joint Applicants are seeking approval of a transfer of all membership interests in, and change in control of, DQE Communications from its current direct

parent, Duquesne Light Holdings, Inc. (DLH or Transferor) to GI (the “Transaction”).<sup>1</sup> The joint application was filed as a general rule transaction under 52 Pa. Code § 63.324(a)(2) and (4) because it will transfer greater than 20% of the controlling interest in DQE Communications to GI. Additionally, the Joint Applicants are requesting the registration of securities pursuant to 66 Pa. C.S. §§ 1901 *et al.* and 52 Pa. Code § 3.601 at the above-docketed securities certificate for the issuance of up to \$210 million. On February 15, 2024, the Company agreed to voluntarily extend the consideration period until April 4, 2024.<sup>2</sup>

DQE Communications is a Pennsylvania limited liability company headquartered at 45 South 23rd Street, Pittsburgh, PA 15203. By Order entered November 23, 2004, the Commission approved the Company to be certificated as a Competitive Access Provider (CAP).<sup>3</sup> DQE Communications primarily provides telecommunication services including Metro Ethernet and wireless backhaul services, as well as colocation and broadband Internet access service, on an individual contract basis pursuant to its tariff to other telecommunications entities and enterprise customers, in addition to schools and libraries in the Pittsburgh region. DQE Communications also leases dark fiber to enterprise customers, quasi-governmental customers, including communications carriers on an individual basis.

GI is a Delaware limited liability company with its principal place of business located at 6720 North Scottsdale Road, Suite 350, Scottsdale, AZ 85253. GI is a newly formed company created for the purpose of completing the Transaction. GI is primarily owned and indirectly controlled by private equity funds affiliated with GI Partners, an

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<sup>1</sup> See Docket No. A-2024-3045207. A joint application has been filed seeking approval of a proposed transaction in which GI DI Vertigo Acquisition LLC will acquire all membership interests in, and change of control, of DQE Communications LLC from Duquesne Light Holdings, Inc.

<sup>2</sup> The Joint Applicants filed a letter on February 15, 2024 voluntarily extending the consideration period for registration of the securities until such time that the general rule transaction has been approved.

<sup>3</sup> See Docket No. A-311233. DQE Communications Network Services LLC was merged with and into DQE Communications LLC, pursuant to a Secretarial Letter entered December 8, 2014 at Docket No. A-2014-2440466.

investment management firm which has raised over \$42 billion in capital from leading institution investors in private equity, real estate, and data infrastructure-focused markets.

DLH is a corporation headquartered at 411 Seventh Avenue, Pittsburgh, PA 15219. DLH owns all the membership interests in DQE Communications. DLH also owns all the common stock of Duquesne Light Company (Duquesne Light), which is engaged in the transmission and distribution of electricity in Allegheny and Beaver Counties in Pennsylvania. Currently, DLH is the direct parent of DQE Communications.

DQE Holdings, LLC (DQE Holdings) is a Delaware limited liability company with its principal place of business located at 411 Seventh Avenue, Pittsburgh, PA 15219. DQE Holdings is owned by 3 investment funds.

### **Transfer of Control**

The Transaction stems from a Membership Interest Purchase Agreement dated December 16, 2023 (the “Agreement”), by and between Transferor and Transferee, Transferor will sell 100% of the issued and outstanding membership interests of Licensee to Transferee. Upon completion of the Transaction, DQE Communications will be a direct, wholly owned subsidiary of GI.<sup>4</sup> Following the Transaction’s close, DQE Communications will be wholly owned and controlled by GI, and GI in turn will be indirectly wholly owned and controlled by GI DI Vertigo Parent LP (Vertigo Parent). The indirect equity interest in Vertigo Parent will be held by investors. However, as passive investors, the limited partners will have no voting interest in Vertigo Parent or DQE Communications. Vertigo Parent will be controlled by its general partner, GI DI Vertigo GP LLC, which in turn is ultimately indirectly controlled by GI Partners’ founder, Richard Magnuson.

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<sup>4</sup> Diagrams depicting the pre- and post-Transaction corporate structures are available. See Exhibit A of the Revised Exhibit for pre- and post-Transaction ownership charts that more clearly illustrate the effects of the Transaction on the organizational structure of DQE Communications and GI.

Additionally, several existing agreements between Duquesne Light and DQE Communications will continue with GI after the Transaction. These include the Sonet Fiber Use Agreement (Sonet Agreement), the Pole and Duct Agreement, the Master Fiber Agreement, and the Master Services Agreement. Duquesne Light leases certain portions of Licensee's system in order to serve Duquesne Light's SCADA and protective relay systems under the Sonet Agreement. The Pole and Duct Agreement offers Licensee with access to poles and underground infrastructure for purposes of installing and maintaining its communications infrastructure. The Master Fiber Agreement provides the original dark fiber service alongside the Master Services Agreement that provides Metro Ethernet and Internet services to Duquesne Light. These agreements are not affiliate interest agreements because they are effective after closing of the proposed Transaction.

The Joint Applicants state that the Transaction will be seamless and transparent in nature, having no effect on the rates, terms, or conditions of service received by customers of the Licensee, and as such, no customer notice is required.

The Joint Applicants emphasize that the Transaction is not expected to have any adverse impact on the Pennsylvania customers or operations of the Licensee. Rather, the Transaction will provide the Licensee with access to additional financial resources and operational expertise through Transferee, enabling Transferee to invest more capital and not be constrained by the credit metrics associated with raising capital for an electric utility.

In addition to Pennsylvania, the Joint Applicants are also seeking approval of the Transaction in Ohio and West Virginia, in which prior consent was not required or

granted with no exceptions filed.<sup>5</sup> The Joint Applicants state that no conditions have been considered, imposed, or agreed to in any other jurisdiction in which approval of the Transaction is being sought. The Joint Applicants further claim that the Transaction is not expected to lead to any reductions in Pennsylvania jobs, tax revenues, or facilities, nor is it expected to have any negative impact on functions, operations, or activity of any nature currently performed in or affecting Pennsylvania.

On April 14, 2022, the Joint Applicants filed a Section 214 Application with the Federal Communications Commission (FCC) seeking approval of the Transaction. On February 23, 2024, the FCC granted the application for consent to transfer control of DQE Communications to GI. The Section 214 Application is not subject to referral to the Department of Justice (DOJ) for review under the FCC's rules at 47 C.F.R. § 1.40001(a)(1) because DQE Communications does not hold any of the specified FCC authorizations or licenses.

The Joint Applicants aver that the Transaction will not adversely affect competition in any markets within Pennsylvania, as it will not reduce the number of competitors in the Pennsylvania telecommunications marketplace. Rather, the Transaction will improve the financial strength of the Licensee, thereby enhancing their competitive strengths and the increased availability of the services they offer in Pennsylvania. In support of their averment that the Transaction will not negatively impact competition, the Joint Applicants submit that numerous unaffiliated providers offer the same or competing services as those of the Licensee in the same geographic locales within Pennsylvania, including: Verizon, Comcast, Brightspeed, Windstream,

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<sup>5</sup> On February 15, 2024, the Ohio Public Utilities Commission determined that prior consent for the transfer of control of DQE Communications was not required. On February 14, 2024, the Public Service Commission of West Virginia adopted a recommended decision granting the application to transfer control of DQE Communications LLC to GI DI Vertigo Acquisition LLC, subject to a 15-day exceptions period which expired on February 29, 2024, with no exceptions filed. Accordingly, the consent of the Public Service Commission of West Virginia became effective as of March 5, 2024.

Armstrong, Charter, FirstLight, Horizon Telecom, Salsgiver, Extenet, Citynet, and Shentel (Glo) Fiber.

The Joint Applicants further assert that the Transaction will not have a negative impact on the Licensee's capital structures, nor will it have any impact on their existing Pennsylvania tariffs.

The Joint Applicants verify that, to the best of their knowledge, they are in compliance with all Commission obligations and filings and assert that the Joint Applicants have not been a party to any state or federal proceedings over the last three years involving allegations of violations of State or Federal Requirements.

### **Securities Certificate**

In addition to the Transaction described herein, the Joint Applicants filed for the registration of a securities certificate. The aggregate amount of debt to be issued by GI and guaranteed by DQE Communications is requested not to exceed \$210 million. Upon completion of the proposed Transaction, GI will initially borrow \$116 million in the form of bank loans to fund a portion of the acquisition. DQE Communications is seeking Commission authorization to guarantee the debt of GI as well as incremental debt financing that will be used for growth capital, working capital and general corporate purposes (the "Financing Instruments") if the proposed Transaction is approved. This debt will neither be registered with the Securities and Exchange Commission (SEC), nor will it be rated by a rating agency. The Company currently has no debt outstanding.

Bank borrowings and similar securities will include: (1) an initial funded principal of \$116 million in a senior secured term loan facility (Closing Term Facility); (2) \$55 million in a senior secured delayed draw facility (Delayed Draw Term Facility); and (3) \$30 million in a senior secured revolving facility (Revolving Facility). The interest rate

will be determined based on prevailing market rates at the time of issuance, though the Company anticipates the rate will be in the range of the daily simple Secured Overnight Financing Rate (SOFR)<sup>6</sup> rate plus 4.0%. The Closing Term Facility will be available in a single drawing on the date the proposed Transaction closes (Closing Date). The Delayed Draw Facility will be available during the period commencing after the Closing Date and ending two years after the Closing Date. The Revolving Facility will be available on a revolving basis during the period commencing on the Closing Date and ending five years after the Closing Date.

Concurrently with the close of the proposed Transaction, debt issuance will occur in one or more series from time to time directly to banks by terms decided by market conditions and Commission requirements.

GI plans to issue the debt in conjunction with DQE Communications contingent upon the approval of the proposed Transaction, which will serve the public interest as the Financing Instruments are necessary and appropriate, are consistent with the performance the Company services to the public and will not impair their ability to perform such services and will promote their corporate purposes.

### **Public Interest**

The Joint Applicants aver that the Transaction and the Financing Instruments will serve the public interest, convenience, and necessity by providing the Licensee with access, through Transferee, to the extensive technical, financial, and operational expertise and resources of GI. GI has substantial experience investing in telecommunications infrastructure companies that operate outside of Pennsylvania, such as Skybeam, Essex Telecom, Clarity Telecom (Bluepeak), Single Digits, and Blue Stream Communications.

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<sup>6</sup> SOFR (Secured Overnight Financing Rate) is an interest rate published by the Federal Reserve Bank of New York. SOFR is used as the average interest rate for secured loans issued with a maturity of 1 day. SOFR is a benchmark rate that provides an alternative to the discontinued LIBOR rate.

The Joint Applicants submit that the substantial public benefit will result from the Transaction because Licensee will be better positioned to compete with other competitive providers by being able to expand and invest in its network and service offerings.

The Joint Applicants note that DLH is also the direct parent of Duquesne Light, a Pennsylvania regulated public utility, and as a result the Licensee is less well positioned and subject to greater restrictions, compared to its competitors involved in the aggressive, capital-intensive telecommunications market. After the Transaction, the Licensee will benefit from aligning its' risk profile with other telecommunications service providers by allowing Transferee to use its existing leadership to achieve expansion on its data infrastructure and communications service offerings. GI expects to employ its experience and expertise in growing data infrastructure companies to help DQE Communications with its expansion, which will increase competition and improve services to its carrier, enterprise, healthcare, and educational institutions customers. According to the Joint Applicants, this continuity should allow for the sustained managerial, technical, and financial competency in the provision of telecommunications services in Pennsylvania.

Furthermore, the Joint Applicants claim that the Licensee participation in the Financing Instruments will serve the public interest because of its integral role in effectuating the Transaction, along with the fact that it will provide the Licensee with access to additional financial resources, thereby enhancing their competitive position.

As indicated by the Joint Applicants, the Transaction will be completely transparent and have no adverse impact on the customers of the Licensee, with the only change following closing of the Transaction being that DQE Communications ownership will shift from DLH to GI.<sup>7</sup>

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<sup>7</sup> See Docket No. G-2023-3038590. DQE Communications will withdraw from the affiliated interest agreement (AIA) at closing of the sale of its member interests and removal of a party from the AIA is authorized by the AIA without approval.

## Conclusion

The Commission has determined that the Licensee is current with their annual Financial Reports, annual Security Planning and Readiness Self-Certification Reports, annual Universal Service Fund payments, and that there are no outstanding Commission fines, fees, or assessments due.

As required by the Code at 66 Pa. C.S. §§ 1102(a) and 1103 and the Commission's regulations at 52 Pa. Code § 63.324(k)(1), we find that the record sufficiently supports the Joint Applicants' claim that the proposed Transaction is in the public interest. The Transaction will provide the Licensee with access to Transferee's financial, managerial, and operational resources and expertise. The Transaction will be seamless and transparent to customers, with the Licensee continuing to provide telecommunication services at the same rates, terms and conditions of service. Further, there will be no negative impact on Pennsylvania as a result of the Transaction. Therefore, for the reasons advanced by the Joint Applicants, we conclude that the record provides substantial evidence of affirmative public benefits sufficient to warrant approval of the proposed Transaction.<sup>8</sup>

We also find that the Transaction will benefit and does not harm competition. Rather, based upon the Commission's analysis of the information provided in the joint application, we find that the Transaction will benefit competition because it will allow the Licensee to better serve their customers without resulting in the addition or elimination of any competitors within the marketplace, and because a number of other providers

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<sup>8</sup> We believe the record shows that the Transaction satisfies the necessary or proper standard under Section 1103 of the Code and provides affirmative public benefits consistent with *City of York v. Pa. PUC*, 295 A.2d 825 (Pa. 1972) (*City of York*), and *Irwin A. Popowsky v. Pa. PUC*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*). The Commission retains general authority to impose conditions upon approval of a transaction as codified in the Public Utility Code at 66 Pa. C.S. § 1103. “[E]ven where the [Commission] finds benefit in the first instance, Section 1103(a) also confers discretion upon the agency to impose conditions which it deems to be just and reasonable.” *Popowsky*, 937 A.2d at 1057, n.21. This includes authority to impose conditions upon approval of a general rule or a pro forma transaction, in accordance with Sections 63.324(h)(4) and 63.325(h)(4) of our regulations at Title 52 of the Pennsylvania Code.

continue to offer similar services as the Licensee in the same geographic locales within Pennsylvania markets as required under the Code at 66 Pa. C.S. §§ 1102(a) and 1103 and the Commission's regulations at 52 Pa. Code § 63.324(k)(3).

Having reviewed the filings, we conclude that the Joint Applicants' proposal for the transfer of control of the Licensee to Transferee is necessary or proper for the service, accommodation, convenience, or safety of the public, and that the joint application should be approved. We also find that the Joint Applicants' request for the registration of a securities certificate pertaining to the participation of Licensee in financing instruments up to an aggregate amount of \$210 million is necessary or proper for the present and probable future capital needs of the utilities, and as a result the securities certificate should be registered; **THEREFORE,**

**IT IS ORDERED:**

1. That the joint application for the general rule transfer of control of DQE Communications LLC and GI DI Vertigo Acquisition LLC is hereby approved and that certificates of public convenience be issued to DQE Communications LLC and GI DI Vertigo Acquisition LLC evidencing our approval.

2. That DQE Communications LLC and GI DI Vertigo Acquisition LLC shall file notice with this Commission within 30 days of the transfer of control of DQE Communications LLC. If the parties determine that the proposed transaction will not take place, they shall promptly so notify this Commission.

3. That the securities certificate filed by DQE Communications LLC for the issuance of up to \$210 million of bank loans and similar securities through and until December 31, 2025, is hereby registered.

4. That within 60 days of the issuance of any securities pursuant to the under Ordering Paragraph 3, above, DQE Communications LLC and GI DI Vertigo Acquisition LLC shall file notice with the Commission of such issuance together with a summary of the interest rate, maturity and call provisions of the securities issued.

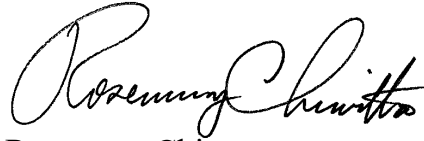
5. That the aggregate principal amount outstanding pursuant to the instant securities certificate shall not exceed \$210 million.

6. That the period of time for which the issuance of debt pursuant to this registration is granted will end on December 31, 2025.

7. Consistent with Section 1903(b) of the Public Utility Code, 66 Pa. C.S. § 1903(b), the registration of the subject securities certificate does not represent Commission approval of the proposed projects for rate recovery pursuant to 66 Pa. C.S. §§ 1301-1328.

8. That upon completion of all issuances pursuant to the Order and submission of the final filing under Ordering Paragraph No. 2, above, this case be marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: April 4, 2024

ORDER ENTERED: April 4, 2024