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Bridgette S. Dziedzic, Legal Counsel
DQE Communications LLC
bdziedzic@duqlight.com

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.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Bridgette Dziedzic'.

Bridgette S. Dziedzic, Legal Counsel

Enclosure

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

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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
DQE COMMUNICATIONS LLC

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, DQE Communications LLC (“DQE” or “Company”)¹ hereby submits comments for the Commission’s consideration.

¹ DQE Communications LLC is certificated by the Commission to be a competitive access provider throughout the Commonwealth.

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.

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. DQE is in favor of the Commission assuming jurisdiction over pole attachments.

The Company has been at the forefront of expanding broadband service in the Commonwealth, particularly in southwestern Pennsylvania and believes that providing robust access to information, data, and communications is beneficial to the Commonwealth. Increased broadband infrastructure makes this happen and the Company believes that the Commission's assumption of jurisdiction over pole attachments will allow for the deployment of broadband infrastructure to occur more quickly and in a more cost effective manner. The Company welcomes the Commission's efforts to take a more local and hands-on approach to pole attachments, a critical component of the efforts to increase broadband access.

1. 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." DQE is in favor of the Commission's approach to adopt the FCC regulations with a going-forward approach, especially in light of the recent FCC activities.

On August 3, 2018, the FCC released its Third Report and Order and Declaratory Filing² that provides for beneficial changes to the pole attachment regulations. Subsequent regulatory activity at the FCC is changing the pole attachment regulations even as the Commission seeks to take pole attachment issues in hand³. The Company believes that the recent FCC regulations will encourage and speed the ability for companies such as DQE to continue to push broadband access into those areas where it is not available in a more economical way.

2. 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.”

The Company welcomes the opportunity presented by the Commission’s adjudication process. Currently, with disputes regarding pole attachments, the Company must hire expensive D.C.-based counsel and pursue a complex and litigation process to obtain results that often are meaningless given the length of time that has passed before a decision is rendered. With access to the PUC’s mediation process and formal complaint procedure, the Company can pursue resolution of issues in a timely (and economically feasible) manner that does not impede progress on a project. The Company strongly believes that rules, processes, and the reconciliation of

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>.

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>.

differences between pole owners and pole attachment parties are best handled at the local level as opposed to Washington, D.C.

Commissioner Sweet's statement questions 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. DQE welcomes the option to file a formal complaint before the Commission utilizing in-house counsel and would certainly avail itself of the process if necessary. However, many disputes may be resolved more amicably now that both parties know that the Commission's process is readily available. DQE is unable to estimate the number of times that it may pursue adjudication before the Commission, but believes that it may do so to a limited degree.

B. Working Group

The Company does not see the value in establishing a working group at this time.

III. CONCLUSION

DQE Communications LLC appreciates the Commission's efforts to reverse-preempt the FCC pole attachments and welcomes the local intervention that the Commission can bring to bear on the issue of pole attachments.

Respectfully submitted,



Bridgette S. Dziejcie (Pa. I.D. 322115)
Legal Counsel
DQE Communications LLC
424 South 27th Street, Suite 220
Pittsburgh, PA 15203
bdziejcie@duqlight.com

Tel. (412) 393-1072

Date: October 29, 2018