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June 24, 2013

VIA ELECTRONIC FILING

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

Re: Use of Fixed Price Labels for Products With a Pass-Through Clause
Docket No. M-2013-2362961

Dear Secretary Chiavetta:

Enclosed for filing are the Comments of Duquesne Light Energy, LLC in the above-captioned docket.

If you have any questions, please do not hesitate to contact me. Thank you.

Best Regards,

STEVENS & LEE


Michael A. Gruin

Encl.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Use of Fixed Price Labels for Products : Docket No. M-2013-2362961
With a Pass-Through Clause :
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**COMMENTS OF
DUQUESNE LIGHT ENERGY, LLC**

I. Introduction

Duquesne Light Energy, LLC (“DLE”) is an Electric Generation Supplier (“EGS”) licensed to provide service in all service territories and to all customers classes in the Commonwealth. DLE appreciates this opportunity to submit comments in response to the Pennsylvania Public Utility Commission’s (“Commission”) May 23, 2013 Tentative Order regarding the use of “fixed price” labels for electricity supply products that include pass-through charges.

As set forth in more detail below, DLE generally agrees that the definitions of “fixed price” and “variable price” in the Electric Competition Dictionary (“Dictionary”) should be refined, and that the concept of pass-through charges should be addressed in the Dictionary and/or the Commission’s proposed Policy Statement. These Comments will respond to the Commission’s request for input on the various solutions proposed in the Tentative Order, and will provide several additional suggestions for defining and communicating the concept of pass-through charges in the Dictionary. DLE will also explain why the Commission’s proposed Policy Statement provides an opportunity to address the proper scope of these price and product definitions, and why the Commission’s proposed Policy Statement should be limited to residential customers only.

II. Comments

A. DLE Agrees That Pass Through Charges Should Be Clearly and Prominently Explained in Residential Disclosure Statements

DLE agrees with the Commission's proposal to require pass-through charges to be defined in EGS disclosure statements for residential customers, in the same paragraph as the pricing description. Pass-through charges are legitimate and commonplace in the electricity supply marketplace, but as the Commission notes, many residential customers may not be familiar with the various charges that are incurred by EGSs and passed-through to customers. Therefore, if an EGS passes through charges to residential customers, it is important for those pass-through charges to be clearly and prominently explained in residential disclosure statements.

As the Commission noted in its Tentative Order, vaguely defined pass-through charges that are buried in the fine print of a residential disclosure statement will lead to negative experiences for residential customers and will undermine the competitive market. This will, in turn, negatively impact all suppliers doing business in Pennsylvania. Requiring a clear and simple explanation of the charges that are encompassed by an EGS's "pass-through charges" in residential disclosure statements will allow residential customers to better understand the products and price terms being offered by EGSs, and make better informed choices.

B. If Changed, the Dictionary's "Fixed Price" and "Variable Price" Definitions Should Refer To Price per kWh (or other unit of energy).

As the Commission recognizes in the Tentative Order, some EGS service offerings are structured such that customers are billed both commodity charges and for various pass-through

charges. Some of the Commission's proposals for labeling EGS charges are clearly preferable to others, as set forth below. But whichever labeling mechanism is ultimately chosen, the Commission should consider incorporating the concept of "price per kWh" into its chosen definitions for "fixed price" and "variable price", if it chooses to revise those definitions.

If the term "rate" is replaced by "price" in the proposed Fixed Price and Variable Price definitions, the proposed definitions may not accurately reflect the realities of how customers are billed for electricity supply. For instance, the proposed definition of "Fixed Price" refers to an "all inclusive price that will remain the same for a set period of time," and does not make any reference to the commodity (i.e. electricity) to which the fixed price relates. The proposed definition more accurately describes a flat monthly charge scenario (i.e., \$100 per month, \$200 per month, etc.), which really does not exist in the electricity supply marketplace. For accuracy's sake, if the words "rate" and "electricity" are removed from the definitions as proposed, the definition of Fixed Price should be changed to "an all inclusive price **per kWh (or other unit of energy)** that will remain the same for a set period of time...." And the definition of Variable Price should be changed to "an all inclusive variable electricity price **per kWh (or other unit of energy)** that can change by the hour, day, month, etc...." This will codify the concept that customers are being billed a price per unit of energy, not just a "fixed price" or "variable price". This change will also lay the foundation for better addressing the concept of pass-through charges, which are separate from charges for energy supply and which in some cases may be billed as separate line items by EGSs.

C. It Is Appropriate for the Commission to Add a Product Definition that Includes Pass-through Charges.

DLE agrees that it is appropriate for the Commission to amend the Dictionary to address the issue of pass-through charges, rather than banning the use of the term “fixed price” if an offer includes some pass-through charges. DLE believes the best way to accomplish this would be to add the product definition “Fixed Price with Pass-Through”. DLE believes this label is more accurate than the “Price with Pass-Through Clause” label that is proposed in the May 23 Order, and better describes a type of product that includes a commodity price that will not change during the term of the offer. For “Fixed Price with Pass-Through” products, EGSs could specify the length of the fixed price offer in their disclosure statement, and clearly explain the pass-through charges that will apply.

D. The Commission Should Recognize that the Current Definition of “Small Business Customer” is Overly Broad and May Encompass Large and Sophisticated Commercial Customers.

As the Commission notes on page 7 of the Order, “EGSs have, for many years, entered into fixed price contracts containing pass-through provisions with commercial and industrial customers in Pennsylvania”, and this experience gives these customers enough expertise and sophistication to understand pass-through mechanisms. Implicit in these statements is the acknowledgement that there is no need to extend the regulations regarding price labels and definitions of service offerings to cover sophisticated commercial customers, and that EGSs should not be required to add explanatory language about pass-through charges to contracts with such customers.

DLE certainly agrees that the concerns over pass-through charges do not apply to sophisticated commercial customers, and that regulations regarding disclosure statements and product definitions should not be extended to these customers. Unfortunately, the Commission's current definition of "Small Business Customer" in 52 Pa. Code 54.2, can be interpreted to include many sophisticated commercial customers with multiple, relatively small, locations. An example would be a national bank with multiple branch locations in a service territory. These branches likely receive service under a small commercial rate classification, and their maximum registered peak load is likely less than 25kW. Under the 54.2 definition, these branches would qualify as "small business" accounts, even if the energy procurement for these branches is being managed by a sophisticated energy specialist at the bank's national headquarters. As such, EGSs are required to comply with the Chapter 54 regulations regarding definitions, contracts, disclosure statements, billing, etc..., when contracting with these customers, even though these regulations are not intended for this type of customer.

While this definitional issue is not directly addressed in the Commission's May 23rd Tentative Order, it is certainly implicated if the Commission issues the proposed policy statement regarding pass-through charges. The policy statement would require EGSs to include additional definitions and explanations in its contracts with its customers, and provide notice to all affected customers whenever a customer experiences a price change as a result of a pass-through charge. For contracts with commercial customers that have multiple small locations, these contract changes and price changes notices would add additional cost and administrative burdens that are unnecessary, because the concerns that these protections are meant to address do not apply to these types of customers.

DLE submits that the Commission should use this opportunity to provide guidance in these situations, and to clarify that the definition of "Small Business Customer" does not apply to customers with multiple locations or multiple electricity accounts, even if those customers' individual accounts fall under the utility's small business classification. In the alternative, if the Commission is not inclined to address this issue in the current proceeding, the Commission should clarify that the Policy Statement's changes to price definitions and rules regarding pass-through charges only apply to residential customers.

DLE appreciates the opportunity to provide comments on this matter.

Respectfully Submitted,

Cliff Blashford
President of Duquesne Light Energy, LLC