

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held January 18, 2024

Commissioners Present:

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

Petition of Duquesne Light Company for
Clarification of Interim Guidelines for
Eligible Customer Lists Final Order entered
October 23, 2014

Docket No. P-2023-3043362
M-2010-2183412

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) is the Petition of Duquesne Light Company (Duquesne) for Clarification of Interim Guidelines for Eligible Customer Lists Final Order entered October 23, 2014, Docket No. M-2010-2183412 (Order entered October 23, 2014) (*ECL Order*). Every three years electric distribution companies such as Duquesne are required to send a solicitation to their customers regarding whether the customer declines inclusion in its eligible customer list (ECL) whose information may be provided to a competitive energy supplier (EGS). By this Petition, Duquesne seeks Commission authorization to extend the holdings of the Opinion and Order dated January 14, 2021, at Docket Nos. P-2020-3022674 and M-2010-2183412 (*January 14th Order*) through the 2024 ECL solicitation and subsequent ECL solicitations. Specifically, the Company proposes to serve the 2024

ECL solicitation, in addition to all ECL solicitations going forward, through electronic means for customers who have consented to receive e-communications from the Company. For the reasons set forth below, the Commission grants, in part, the Petition.

BACKGROUND

The Commission implemented the ECL via Order entered November 12, 2010, at Docket No. M-2010-2183412, outlining interim guidelines for EDCs' provision of ECLs. That Order provided for uniform categories of customer information to be made available to EGSs by EDCs and addressed customers' ability to restrict the inclusion of their information in the ECL.

On November 10, 2011, the Commission entered a Final Order on Reconsideration updating the interim ECL guidelines. Following subsequent processes, including informal and formal comments, the Commission adopted final ECL guidelines through the *ECL Order* on October 23, 2014. In relevant part, the *ECL Order* directs EDCs to conduct a solicitation every three years, beginning in the first quarter of 2015, to update their ECLs. These solicitations provide customers an opportunity to restrict the inclusion of their information in the ECL that is provided to EGSs. Customers who do not respond to a solicitation are automatically included in the ECL unless they otherwise request to be excluded.

On October 30, 2020, Duquesne filed a petition for a waiver (2021 ECL Petition) with the Commission at Docket No. P-2020-3022674 to expand email ECL service to include "e-communication customers" in addition to e-Billing customers for its 2021 ECL solicitation. E-communication customers are those residential customers who have not registered for e-Billing but have provided their email address to Duquesne and consented to receive electronic communications. The 2021 ECL Petition pertained only to the 2021 triennial ECL solicitation.

In its January 14, 2021 Order granting the 2021 ECL Petition (*January 14th Order*), the Commission determined that it was in the public interest to allow Duquesne to serve the 2021 ECL solicitation for e-communications customers, finding, in part, that doing so would “reduc[e] costs, will provide useful analytical information on the effectiveness of ECL solicitation by email, and is consistent with consumer preferences.” *January 14th Order* at p.7.

Pursuant to the *January 14th Order*, Duquesne conducted its 2021 triennial ECL solicitation electronically for customers who opted-in to electronic mailings of certain communications but have not opted for electronic mailings of bills. On December 30, 2021, at Docket No. P-2020-3022674, Duquesne provided a report to the Commission and stakeholders, as directed by the *January 14th Order*, with an evaluation of the electronic ECL solicitation and lessons learned (December 2021 Report).

DISCUSSION

Legal Standards

Following the issuance of a final decision, relief may be sought pursuant to Sections 703(f) and (g) of the Public Utility Code, relating to rehearing as well as the rescission and amendment of orders. 66 Pa.C.S. § 703(f)-(g). Requests for such relief must comply with 52 Pa. Code § 5.572 of the Commission’s regulations, relating to petitions for relief following the issuance of a final decision. The Commission has also determined that a petition for clarification must meet the same standards for issuance as a petition for reconsideration or rehearing. *Petition of PECO Energy Company for Approval of its Revised POR Program*, Docket No. P-2009-2143607 (Order entered August 24, 2010).

The standards for granting a petition for rescission, amendment, or clarification were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553 (1982) (*Duick*):

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . .” *What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the commission.* Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

Id. at 559 (emphasis added). Under the standards of *Duick*, a petition for clarification is likely to succeed only when it raises “new and novel arguments” not previously heard by the Commission or considerations which appear to have been overlooked or not addressed by the Commission. *Id.*

Petition

Duquesne is a certificated public utility and electric distribution company as defined in Sections 102 and 2803 of the Public Utility Code. 66 Pa. C.S. §§ 102, 2803. As such, Duquesne provides retail electric distribution services to more than 600,000 customers in its service territory. Petition at ¶ 1.

By Petition filed September 29, 2023, Duquesne asserts that because the ECL Order only pertained to the 2021 solicitation, additional clarification is needed for the 2024 and subsequent solicitations. Petition at ¶¶ 11, 12. Duquesne contends granting the Petition is in the public interest because it will better align the ECL solicitation method with customer expectations and preferences, enable enhanced solicitation tracking and messaging, and substantially reduce costs borne by customers. Petition at ¶ 28. Moreover, in light of the successes of the 2021 ECL solicitation, including the high open

rate for email solicitations and Duquesne’s actual cost savings, and Duquesne’s efforts to increase customer engagement in 2024, it is in the public interest to allow Duquesne to continue electronically distributing the ECL solicitations, including the upcoming 2024 ECL solicitation. Petition at ¶ 27.

Duquesne states that of its approximately 548,000 residential customers, approximately 250,000 are enrolled in electronic billing and an additional 122,990 are e-communication customers. Petition at ¶ 16. Duquesne proposes to employ the same process for electronically serving e-communication and e-Billing customers with future ECL solicitations, including the 2024 ECL solicitation. Duquesne will email the ECL solicitation to all e-communication and e-Billing customers with a subject line that includes “RESPONSE REQUESTED” in all-caps. Where an email is returned as undeliverable, or where the customer indicates a preference for hard-copy solicitation, Duquesne will provide a hard-copy solicitation by mail. Customers without email addresses will be mailed a hard copy of the ECL solicitation. Petition at ¶ 19.

Duquesne notes that customers seldom unsubscribe from emails, and that the current opt-out rate is only 0.1%. Petition at ¶ 18. Furthermore, the Petition states that the 2021 ECL solicitation had a high open rate – 73.45% of all customers who received emailed solicitations. Duquesne attributes the high open rate to customers’ increasing preference for, and ability to engage with, electronic communications. Petition at ¶ 21. Additionally, the rates at which customers open and read electronic communications have accelerated since the COVID-19 pandemic. For example, Duquesne’s marketing partner, Questline, reports an 18.42% year-over-year increase in energy utility e-newsletter open rates from 2021 to 2022. Petition at ¶ 30.

All customers, regardless of how they are served the ECL solicitation, will have the option of responding via Duquesne’s website, mobile app, text message, telephone call, or mail. Petition at ¶ 31. Duquesne asserts for those customers who prefer to

engage electronically – such as e-communication customers – it is simpler to respond to the ECL solicitation by using a “one-click” option in an email, rather than typing a URL into their internet browser or being redirected to Duquesne’s website, logging on and completing the task. The Company therefore expects that the above-listed improvements will increase overall customer engagement rates. To that end, Duquesne states it expects an increase in the overall customer engagement rate. Petition at ¶ 32. In further support of the value of electronic solicitation, Duquesne notes electronic service yields distinct analytical benefits as compared to hard-copy service, such as alerts when the solicitation is read. Duquesne asserts this body of data will help distinguish between those customers who chose not to respond to the ECL solicitation from those who did not read it. Petition at ¶ 33.

Lastly, Duquesne asserts that its proposal will also produce operational efficiencies and customer savings. Duquesne estimates that serving e-communication customers via email instead of hard-copy mailing will save approximately \$120,000 in printing and postage costs, thereby reducing Duquesne’s revenue requirement in future base rate proceedings. Moreover, to the extent expanded electronic service leads to a corresponding shift in how customers respond to the solicitation, it may also reduce Duquesne’s back-office costs of processing hard-copy customer responses. Petition at ¶ 34.

Answer to Petition

On October 18, 2023, the Office of Consumer Advocate (OCA) filed an answer to Duquesne’s Petition. In its Answer, the OCA states that it supports Duquesne’s goals of reducing costs for ratepayers and increasing customer engagement during the 2024 triennial ECL solicitation, and therefore, does not oppose the request to continue the use of expanded email service to customers who elect to either enroll in e-billing or receive electronic communications from the Company through the 2024 ECL solicitation period.

The OCA, however, submits that, to the extent the Commission grants Duquesne's Petition for Clarification, the request to expand email solicitation should only apply to the 2024 ECL solicitation period and not future solicitation periods, as requested by the Duquesne in its Petition. The OCA further submits that, to the extent that the Commission grants Duquesne's Petition for Clarification, the request to expand email solicitation should apply only to Duquesne, and not to other EDCs. Specifically, until the Commission adopts a statewide ruling on electronic ECL solicitation, EDCs' plans to deviate from the *Interim Guidelines* should be addressed as they appear before the Commission.

To that end, the OCA suggests that the Commission investigate the efficacy of email solicitation during the triennial ECL periods on a statewide basis and consider amendments to the current *Interim Guidelines* (ECL Order). As stated by Duquesne in the instant Petition, consumer expectations have shifted dramatically over the past decade, in part due to the COVID-19 pandemic, and indicate a growing reliance on – and preference for – electronic communications. Petition at ¶¶ 29, 30. Thus, the OCA encourages the Commission to consider updating the *Interim Guidelines* to better address consumers preferences during future ECL solicitation periods.

Disposition

Upon review, we find that Duquesne has met the standards for clarification of a final Commission order under *Duick*, 56 Pa. PUC at 559, in that the instant Petition raises issues not previously addressed by the Commission. Specifically, the 2021 ECL Petition pertained only to the 2021 triennial ECL solicitation period, but not the 2024 ECL solicitation period or any ECL solicitation period thereafter. Because the 2021 Petition only pertained to the 2021 solicitation period, additional clarification is warranted under *Duick* for the 2024 ECL and subsequent solicitations.

Duquesne demonstrates in its unopposed Petition that its method of service of the ECL solicitation will reduce costs for the utility and will allow greater convenience for Duquesne's customers who have opted for electronic communications. Further, Duquesne demonstrates that allowing service through electronic communication of this ECL solicitation will provide greater understanding of how customers interact with the ECL solicitation than paper mailing. We find that allowing Duquesne to provide its solicitations to customers as requested in this Petition will serve the public interest by reducing costs, providing useful analytical information on the effectiveness of ECL solicitation by email, and is consistent with consumer preferences.

We, however, agree with the suggestions made by the OCA that Duquesne's request to expand email solicitation should only apply to the 2024 ECL solicitation period and not future solicitation periods, and that the request to expand email solicitation should apply only to Duquesne, and not to other EDCs. We further agree with the OCA that we should initiate a proceeding to investigate the efficacy of email solicitation during the triennial ECL periods on a statewide basis and consider amendments to the current *Interim Guidelines* to better address consumers preferences during future ECL solicitation periods.

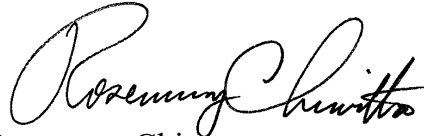
CONCLUSION

Duquesne's Petition for Clarification is granted, in part, and denied, in part, consistent with this Order. The Commission also directs the Office of Competitive Market Oversight in conjunction with the Law Bureau to open a proceeding at Docket No. M-2010-2183412 to update the eligible customer list guidelines applicable to all electric distribution companies; **THEREFORE,**

IT IS ORDERED:

1. That Duquesne Light Company's Petition for Clarification is granted, in part, and denied, in part, consistent with this Opinion and Order.
2. That Duquesne Light Company's request to expand email solicitation shall apply only to Duquesne Light Company and only for the 2024 ECL solicitation period, not to future solicitation periods.
3. That the Commission's Office of Competitive Market Oversight and the Law Bureau initiate a proceeding at Docket No. M-2010-2183412 to update the eligible customer list guidelines.
4. That a copy of this Order be served on Duquesne Light Company, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Bureau of Investigation and Enforcement.
5. That Docket No. P-2023-3043362 be marked closed.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 18, 2024

ORDER ENTERED: January 18, 2024