

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Carrier Current Systems, including Broadband over Power Line Systems)	ET Docket No. 03-104
)	
Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems)	ET Docket No. 04-37
)	

To: The Commission

COMMENTS OF DUKE ENERGY CORPORATION

By: Shirley S. Fujimoto
Jeffrey L. Sheldon
Erika E. Olsen
McDERMOTT, WILL & EMERY
600 Thirteenth Street, N.W.
Washington, D.C. 20005-3096
(202) 756-8000 (T)
(202) 756-8087 (F)

Its Attorneys

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EXECUTIVE SUMMARY

Duke Energy Corporation (“Duke”) applauds the Commission’s commitment to the rapid deployment of broadband capability to all Americans and is greatly encouraged by the FCC’s efforts in this area. Duke believes that Access BPL has the potential to provide a viable alternative to existing broadband pipelines and to extend broadband to unserved and underserved areas across the country. Access BPL has the tremendous potential to “enhance the economic, educational and social well-being of all Americans.”

Duke suggests several modifications to the NPRM’s proposals to clarify some key issues for Access BPL providers and those considering Access BPL ventures. Specifically, Duke suggests that: (1) the Commission modify its proposed definition for Access BPL to clarify the scope of the rules and to explicitly exclude Power Line Carrier (“PLC”) and In-House BPL; (2) the Commission establish a limited national database designed to facilitate communications between Access BPL providers and licensed users to enable prompt resolution of harmful interference; (3) existing Access BPL systems should be grandfathered under current Part 15 rules; and (4) the Commission re-evaluate Access BPL radiated emissions limits no later than two years after the adoption of a Report and Order in this docket.

Duke believes that Access BPL, with the regulatory changes suggested herein, has the potential to “offer a number of significant benefits” identified by the Commission, including increasing the availability of broadband services, increasing broadband competition, improving the quality and reliability of the Nation’s electric grid, and advancing homeland security interests.

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Pursuant to Section 1.415 of the FCC's Rules,¹ Duke Energy Corporation ("Duke"), by and through its attorneys, hereby submits its Comments in the above-captioned proceeding in response to the Federal Communications Commission's ("FCC's" or "Commission's") Notice of Proposed Rulemaking ("NPRM") in ET Docket Nos. 03-104 and 04-37.² As discussed herein, Duke applauds the Commission's commitment to broadband deployment but suggests several modifications to the NPRM's proposals to clarify some key issues. Specifically, Duke suggests that: (1) the Commission modify its proposed definition for Access BPL to clarify the scope of the rules and to exclude explicitly Power Line Carrier ("PLC") and In-House BPL; (2) a limited

¹ 47 C.F.R. § 1.415.

² *In re Carrier Current Systems, including Broadband over Power Line Systems; Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems*, ET Dockets No. 03-104, 04-37, FCC 04-29, (rel. Feb. 23, 2004); 69 Fed. Reg. 12612 (Mar. 17, 2004) ("BPL NPRM"); Public Notice, DA 04-760 (Mar. 23, 2004) (asking parties to submit responses only in new newly established docket, ET Docket No. 04-37).

national database be established that is designed to facilitate communications between Access BPL providers and licensed users to enable prompt resolution of harmful interference; (3) existing Access BPL systems should be grandfathered under current Part 15 rules; and (4) the Commission should re-evaluate Access BPL radiated emissions limits no later than two years after the adoption of a Report and Order in this docket.

I. INTRODUCTION

Duke Energy is a diversified energy company with a portfolio of natural gas and electric businesses, both regulated and unregulated, and an affiliated real estate company. Duke Energy supplies, delivers and processes energy for customers in North America and selected international markets.

Duke is in the process of exploring BPL options and business plans, and is vitally interested in the FCC's proceedings in this matter. Duke Power Company, the electric utility division of Duke Energy serving more than two million customers in the Carolinas, received an experimental FCC license in March, 2004 (Call sign WD2XIG) to conduct broadband over power line trials and is poised to deploy BPL to approximately 530 test homes this summer.

Duke applauds the Commission's commitment to the rapid deployment of broadband capability to all Americans and is greatly encouraged by the FCC's efforts in this area. Duke believes that Access BPL has the potential to provide a viable alternative to existing broadband pipelines and to extend broadband to unserved and underserved areas. As the FCC has stated, Access BPL can "enhance the economic, educational and social well-being of all Americans."³ Duke concurs that Access BPL, with the regulatory changes suggested herein, has the potential

³ BPL NPRM at ¶ 1.

to “offer a number of significant benefits” identified by the Commission, including increasing the availability of broadband services, increasing broadband competition, improving the quality and reliability of the Nation’s electric grid, and advancing homeland security interests.⁴

II. THE PROPOSED DEFINITION SHOULD BE REFINED AND NARROWED

The FCC has proposed that “Access BPL” be defined as:

“A carrier current system that transmits radio frequency energy by conduction over electric power lines owned, operated, or controlled by an electric service provider. The electric power lines may be aerial (overhead) or underground.”⁵

While accurate in some respects, Duke believes that the FCC’s Access BPL definition as proposed is overly broad and may inadvertently incorporate facilities that should not be included in a new Access BPL regulatory regime. In particular, Duke is concerned that the proposed definition would bring existing narrowband PLC and utility owned In-House BPL systems within its ambit, which would clearly be inappropriate and unintended. Moreover, the proposed definition, to the extent it would inadvertently include existing utility power line carrier systems into the regulatory regime for Access BPL, could potentially impose safety and reliability risks to utility infrastructure.

Existing narrowband PLC systems, typically employed by utilities for load control, relaying, and Supervisory Control and Data Acquisition (“SCADA”) operations, have been operated under the FCC’s existing Part 15 rules for many years without significant problems. However, as currently worded, PLC would meet all the relevant criteria as “Access BPL” under the FCC’s proposed definition. Duke does not believe the FCC intended this result, and indeed,

⁴ BPL NPRM at ¶ 48.

⁵ BPL NPRM at ¶ 32.

applying the same technical requirements to PLC as are proposed for Access BPL would be unnecessary and could have disastrous consequences for the use of PLC. For example, utilities must depend on continuous availability of PLC circuits for transmission system protection and could not precipitously terminate transmitters or shift frequencies without jeopardizing the safe and reliable operation of the electric grid.⁶

Similarly, the proposed definition of Access BPL would apply to any carrier current system on electric power lines owned, operated or controlled by a utility. Thus, for example, if a utility uses BPL equipment within its own building for the purpose of internal networking, this “In-House” BPL system might also be considered an “Access BPL” system because it is on power lines “owned, operated or controlled” by an electric service provider. Again, Duke does not believe the Commission intended this result.

Duke also notes that it has an obligation to its electric service customers, as well as other electric utilities with which Duke interconnects, to ensure that its system is maintained in a manner that will not jeopardize the stability, reliability or safe operation of the interconnected electric grid. Accordingly, the definition of Access BPL should recognize that any communications equipment that is to be installed on the medium or low voltage lines on the utility’s side of the point of interconnection with the customer’s premise must be owned, installed, and maintained by the utility.⁷

⁶ While Part 15 can require shut down of operations as a response to harmful interference, this is not the first action required when harmful interference is experienced. PLC operators would first seek to implement other mitigation techniques short of shutting down transmission control systems to avoid any harmful interference and maintain their operations.

⁷ A utility’s power lines are installed at the specific authorization and direction of the Public Service Commission, and must be maintained in strict compliance with state and local regulation, including the National Electric Safety Code (“NESC”).

To account for these issues, Duke recommends that the definition be revised to state that

Access BPL is:

“A carrier current system owned, installed and operated by an electric utility that transmits radio frequency energy on frequencies at 1 MHz or above using the utility’s medium voltage overhead or underground distribution system, or the low-voltage service lines on the supply side of the utility’s point of interconnection with a customer premise. Access BPL does not include power line carrier systems as defined in Section 15.3(t) of this Part or In-House BPL as that term is defined in Section 15.xx of this Part.”

Duke further suggests that “In-House BPL” be defined as:

“A carrier current system that transmits radio frequency energy on low-voltage electric lines within a building, on the customer side of the electric utility’s point of interconnection with the customer premise, for the purpose of transferring information between computers and other electronic equipment within the building or with a communications gateway.”

By limiting the definition of Access BPL as stated above and by adopting a complementary definition for In-House BPL, Duke believes there will be greater regulatory certainty that other systems will not be inadvertently and needlessly subject to regulation as Access BPL systems.

III. HARMFUL INTERFERENCE CONCERNS CAN BE OVERCOME OR EFFECTIVELY ADDRESSED

A number of parties have expressed concern with respect to the harmful interference potential of Access BPL. Duke believes, however, that some of these concerns are overstated, and that harmful interference issues can be effectively mitigated with proper safeguards. As discussed below, Duke supports the Commission’s proposal for Access BPL devices to be equipped with the ability to reduce or shut down radiated emissions and/or a performance modification capability, and supports establishment of a central database to facilitate the ability of a licensed user of spectrum, or other certified party, to identify and contact the relevant Access BPL provider in the case of a harmful interference problem. Further, as a utility provider Duke

is highly cognizant of the need to protect public safety operations, and is confident that the safeguards suggested will insulate public safety receivers from harmful interference.

A. Potential Harmful Interference to Licensed Services Can Be Mitigated and Resolved

Duke has followed a number of Access BPL trials with great interest, and is persuaded that Access BPL can be implemented with limited adverse effect on licensed radio services. In particular, by incorporating certain safeguards into Access BPL equipment and facilitating communications between licensed users and Access BPL providers, Duke believes that the concerns over potential harmful interference can be mitigated or fully resolved. As a public service entity that has worked in tandem with public safety agencies to address many emergencies, including hurricanes, snowstorms, and man-made catastrophes, Duke is also highly cognizant of the need to ensure public safety communications are free from harmful interference. Duke is confident that the measures proposed here, in conjunction with the Part 15 obligation to remedy harmful interference, will protect these critical systems

B. Remote Modification and Shut Down Features Should Be Integrated into BPL Units

The FCC has requested comment on its proposal to require that Access BPL equipment incorporate features that would allow the Access BPL provider to modify system performance and/or shut down devices in order to manage reports of harmful interference.⁸ Duke agrees that these features are feasible and advisable in order to mitigate or completely avoid harmful interference. Any requirement of a shut down feature, however, should clearly specify that only the *transmitting* component of the Access BPL equipment needs to be shut down, rather than

⁸ BPL NPRM at ¶ 40-43.

requiring the deactivation of the entire device. By limiting shut down to the transmitting component, rather than the entire device, the receiver would remain active, and thereby allow the Access BPL equipment to respond to commands issued remotely by the Access BPL provider. Thus, the Access BPL operator could modify and reinitiate the transmitter without requiring a technician to travel to the equipment location, access the utility space in proximity to energized conductors, and reactivate the equipment in the field. By limiting the shut down requirement to the transmitting portion of the Access BPL device, the FCC would achieve its goal of facilitating harmful interference mitigation and also limit costs of compliance for Access BPL providers. This will also enhance safety and efficiency by eliminating the need for a technician to access the utility space and work in proximity to the electrified component of the utility infrastructure. System modification and transmit shut down capabilities, therefore, are prudent measures that benefit both the public and the Access BPL provider.

C. The FCC Should Not Dictate A Range of Frequencies or Require Frequency Exclusion Capability

The FCC has sought comment on whether it should require each Access BPL device to be capable of operating across a minimum range of frequencies and to have the remotely operated capability to exclude a specific percentage of frequencies within this range. Duke believes such a requirement would be overly prescriptive of the design and technical specifications for Access BPL devices and would interfere with the industry's ability to innovate and develop Access BPL devices with active mitigation capabilities that are tailored to the ultimate market demands for such capabilities. For example, given the inherent shielding of underground distribution systems, it may only prove necessary to have minimal mitigation capabilities in Access BPL devices for underground deployment. Duke recommends that the

FCC refrain in requiring such prescriptive specifications for Access BPL device capabilities and rely instead upon its required outcomes for active mitigation of harmful interference.

D. A Limited Central Database Should Be Established to Screen Harmful Interference Complaints and Facilitate Communication with Access BPL Providers

Duke agrees in principle with the FCC's suggestion that a notification system is appropriate in order to address harmful interference complaints arising out of Access BPL operations.⁹ The Commission has suggested that a database notification requirement could be adopted along the lines of the notification requirement currently required of PLC system operators. However, the amount of data that the FCC proposes to collect from utilities and make available to the public far exceeds what is reasonably necessary to achieve the FCC's purpose. By comparison, the PLC database contains relatively general information on PLC system operations and is not made routinely available to the public. Granting public access to a national database of Access BPL devices containing the level of detail suggested in the NPRM would be: (1) inefficient, duplicative, and unwieldy, (2) cost-prohibitive, (3) unnecessary to manage legitimate harmful interference concerns; (4) inconsistent with Homeland Security and the need to protect Critical Energy Infrastructure Information (CEII);¹⁰ (5) of potential commercial value to the competitors of Access BPL; and (6) inconsistent with the treatment of other Part 15

⁹ See generally, BPL NPRM at ¶ 43.

¹⁰ See, e.g., FERC Order 630, Docket Nos. RM02-4-000-000, PL02-1-000-000 (Feb. 21, 2003), and FERC Order 630-A, RM02-4-000-000, PL02-1-000-000 (July 23, 2003) (defining Critical Energy Infrastructure Information and providing safeguards for its collection and use). Under these orders, CEII is information concerning proposed or existing critical infrastructure (physical or virtual) that: (1) Relates to the production, generation, transmission or distribution of energy; (2) Could be useful to a person planning an attack on critical infrastructure; (3) Is exempt from mandatory disclosure under the Freedom of Information Act; and (4) Gives strategic information beyond the location of the critical infrastructure.

devices, however widely deployed, that are not required to be posted to an infrastructure database.

Duke believes a limited national database could help a licensed user promptly identify whether Access BPL devices might be deployed in the user's general vicinity and to provide the licensed user with contact information for initiating specific dialog with the Access BPL operator. Because any harmful interference from an Access BPL device would be highly localized, it is simply unrealistic to believe that the identification of the specific location of all BPL devices, their modulations, and operating frequencies could, standing alone, be used by a licensed user to resolve a harmful interference question. The primary value in maintaining such a national database would be to help the licensed user determine whether Access BPL devices might be deployed in the general area of the harmful interference and if so, to identify the system operator and a point of contact to investigate the situation. Each BPL provider will undoubtedly maintain its own database of BPL device locations and operating parameters, but licensed users will need some means of quickly identifying who to contact that will have access to this information.

Duke suggests that a streamlined, cost-effective national database, maintained by an entity such as the United Telecom Council ("UTC"), would enable licensed radio users or other qualified entities to identify the Access BPL provider(s) in the relevant area and to communicate directly with the provider to address any harmful interference issues quickly and fully. Such a centralized database would simply: (1) identify whether or not Access BPL has been deployed in a particular Zip Code;¹¹ (2) identify the entity (or entities) operating Access BPL operations in

¹¹ The Power Line Carrier Association ("PLCA") and Ameren Energy Communications, Inc. ("Ameren") expressed concern over the privacy of individual customers should a national

(continued...)

that Zip Code; and (3) generate a report with contact information for the Access BPL operator(s) that have BPL devices in that Zip Code.¹²

Duke recommends that the national database only be made available to licensed radio operators or other qualified entities (such as state or federal agencies), rather than making this information available broadly to the public. In particular, Duke is concerned that such data should not be utilized to facilitate illegitimate complaints or be employed to obtain detailed confidential information on Access BPL deployment or business plans. Duke is also very concerned that such information should not jeopardize CEII.¹³ Database access could be managed through a registration or application process, by which an inquiring party meeting certain criteria is assigned a user name and password for database access. Restrictions on access would also be advisable, including limitations on the geographic areas or Zip Codes a user may query (*e.g.*, a licensee in California has no legitimate interest or harmful interference concerns with Access BPL operations in North Carolina), as well as limitations on the number of database

database be granular enough to identify locations of particular BPL modems or other equipment specifically associated with a particular premises. Duke is similarly concerned with ensuring the privacy of its customers, whether they are Access BPL subscribers or electric customers served by remote meter reading capabilities or similar applications. Duke believes, however, that this concern may be addressed through clarification of the Access BPL and In-House BPL definitions suggested above, and by limiting the database queries to simply identification of the *Access BPL provider* in a particular zip code, rather than providing access to specific location information of equipment or devices. A national database should not be granular enough to enable the identification of a particular Access BPL or electric customer.

¹² Utility service areas do not necessarily follow Zip Code boundaries, so it is possible for more than one utility to provide electric service in the same Zip Code. There may also be multiple BPL providers in a particular area.

¹³ In this respect, database information used to generate a report to a user inquiry should be exempt from disclosure under the Freedom of Information Act (“FOIA”) (see note 10, *supra*). Similarly, Duke understands that PLC data is effectively exempt from FOIA disclosure by virtue of the Memorandum of Understanding (“MOU”) between the FCC and PLC database administrator.

queries that may be made in a given time period. Such safeguards would aid in eliminating frivolous or illegitimate inquiries, and ensure that Access BPL providers' resources are directed toward responding to and, if necessary, mitigating actual cases of harmful interference.

It may also be advisable to filter database queries based on the frequency on which the licensee is receiving harmful interference. If the harmful interference relates to frequencies that are outside a "default" BPL frequency band (*e.g.*, 2-80 MHz), or if they are outside the actual band used by any nearby utilities, the user could be given immediate feedback that the source of the harmful interference cannot be BPL. Duke would also recommend that any Access BPL provider identified in a database report should receive electronic notification of the licensed user's name, contact information and the possible harmful interference issue. Duke believes that these simple procedures will promote the mutual interests of licensed radio users and Access BPL operators in mitigating harmful interference without placing an unnecessary burden on Access BPL operators and without public disclosure of sensitive information.

IV. EXISTING ACCESS BPL SYSTEMS SHOULD BE GRANDFATHERED

The FCC has also asked whether existing Access BPL systems should be required to come into compliance with any newly adopted technical rules or equipment standards, and, if so, what time frames would be reasonable to implement this requirement. Given that these systems remain subject to the non-interference mandate of Part 15 and have not been shown to be problematic, Duke believes that existing Access BPL systems, or components installed prior to the availability of upgraded equipment, should not be required to conform to any new technical

or equipment standards adopted pursuant to the current rulemaking.¹⁴ Early adopters and pioneers in this field should not be required to bear the burden of after-the-fact revisions to the technical criteria governing their operations, so long as such operations continue not to cause harmful interference. Moreover, the first generation of BPL equipment will quickly become technologically obsolete as adoption becomes more widespread, and will accordingly spur deployment of updated equipment. Mandatory upgrading, therefore, would be unnecessary. Duke also notes that because of the Part 15 non-interference condition, Access BPL providers also have every incentive to use equipment incorporating interference mitigation techniques regardless of a specific FCC mandate to do so.

In this regard, Duke also believes that manufacturers of Access BPL equipment should aid in the Access BPL provider's non-interference goal by integrating any FCC-mandated interference mitigations components (*i.e.*, shut down of transmitted emissions and system modification capability) as quickly as possible. Accordingly, Duke recommends that the FCC grandfather existing Access BPL equipment authorized under the current rules or forbear from enforcing any requirement that such systems upgrade their equipment, while also setting the effective date for any new technical standards for BPL equipment authorization as early as possible, consistent with: (1) the amount of redesign and retooling that the new standards might entail, (2) the orderly deployment of the inventory of existing equipment (preventing stranded costs), and (3) the ready availability of equipment conforming to the new standards to ensure the continued, uninterrupted deployment of Access BPL systems.

¹⁴ As discussed above, existing power line communications systems operating under Part 15 of the FCC's rules have not been shown to cause significant problems and do not appear to pose interference concerns. Accordingly, regardless of the FCC's decision on grandfathering for existing *Access BPL* systems, the FCC should clarify that PLC systems are not affected.

V. THE EXISTING PART 15 RADIATED EMISSIONS LIMITS ARE ACCEPTABLE AS A STARTING POINT, BUT SHOULD BE PERIODICALLY REEVALUATED

The FCC has suggested that the current Part 15 radiated emissions limits for intentional radiators continue to apply without modification to Access BPL devices, and that Access BPL systems be exempted from the conducted emissions limits contained in section 15.107(c) of the FCC's rules. Although the FCC's proposal is conservative, Duke agrees that this suggestion is a fair and prudent approach for the FCC to take at this early stage of Access BPL deployment. Moreover, this recommendation is an appropriate initial compromise between licensed users' concerns with harmful interference and the BPL industry's desire for emissions limits that will permit economical delivery of broadband service to the public.

Duke requests, however, that the FCC reevaluate the BPL emissions limits no later than two years after the effective date of these rules, and periodically thereafter, to ensure that the spectrum is being used efficiently and that BPL systems are not being held back by unrealized fears of harmful interference. The FCC should also clarify that despite its regular review cycle for the BPL emissions limits, Access BPL providers or equipment manufacturers may petition the Commission for higher limits as the technical characteristics of BPL equipment and network designs improve and as the experience of actual instances of harmful interference may dictate.

VI. PROPOSED EQUIPMENT AUTHORIZATION AND MEASUREMENT PROCEDURES FOR ACCESS BPL SYSTEMS APPEAR ADEQUATE

The FCC has proposed to retain the existing equipment verification procedures for Access BPL equipment, and has suggested a number of recommended BPL emissions measurement procedures intended to ensure compliance with Part 15 rules and to mitigate the

potential for harmful interference.¹⁵ Duke agrees that existing equipment verification procedures are appropriate for Access BPL technology. Further, while Duke has no immediate concerns with the FCC's proposed guidelines for BPL emissions measurements, Duke is currently undertaking a detailed review of the two-volume "Phase 1" report on Access BPL recently issued by the National Telecommunications and Information Administration ("NTIA"). Duke is assessing how NTIA's recommendations compare with the proposals raised by the Commission.¹⁶

VII. CONCLUSION

Access BPL has the potential to provide a totally new and revolutionary method of delivering broadband and to speed deployment of this increasingly important service to a variety of constituents. It promises significant benefits, including increased availability of broadband services to unserved and underserved populations, increased broadband competition, improved quality and reliability of the Nation's electric grid, and enhanced homeland security interests. It is also important to foster and to promote the development of this new technology while ensuring that existing licensed operations are protected from harmful interference. Duke believes that with the safeguards suggested herein and the reciprocal obligation of good faith, both licensed users and Access BPL providers can operate in harmony and can promptly resolve any instances of harmful interference. However, if overly conservative regulations are implemented, it will be

¹⁵ BPL NPRM at ¶¶ 19, 36, Appx. C.

¹⁶ National Telecommunications and Information Administration, *Potential Interference from Broadband over Power Line (BPL) Systems to Federal Government Radiocommunications at 1.7-80 MHz (Phase I Study)*, NTIA Report 04-413 (rel. April 27, 2004). Given the sheer volume and complexity of this report, Duke respectfully suggests that the FCC extend the time frame for Reply Comments in this proceeding, at least with respect to NTIA's recommended measurement procedures and interference mitigation techniques.

difficult if not impossible for Access BPL operators to provide cost effective and reliable service to end users. This could chill innovation and potentially derail a promising nascent technology with significant consumer potential, as well as endanger existing and new communications systems used to ensure the integrity and safety of the Nation's electric grid.

For the foregoing reasons, Duke Energy Corporation respectfully requests the Commission consider these comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted:

DUKE ENERGY CORPORATION

By: /s/ Shirley S. Fujimoto

Shirley S. Fujimoto
Jeffrey L. Sheldon
Erika E. Olsen
McDERMOTT, WILL & EMERY
600 13th Street, N.W.
Washington, D.C. 20005-3096
(202) 756-8000 (T)
(202) 756-8087 (F)

Its Attorneys

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