

**STEVENS & LEE**  
**LAWYERS & CONSULTANTS**

17 N. 2<sup>nd</sup> Street, 16<sup>th</sup> Fl.  
Harrisburg, PA 17101  
www.stevenslee.com

Direct Dial: (717) 255-7365  
Email: mag@stevenslee.com

January 22, 2016

**VIA ELECTRONIC FILING**

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

**RE: Petition of Duquesne Light Company for Approval of its Act 129 Phase III Energy  
Efficiency and Conservation Plan  
Docket No. M-2015-2515375**

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Duquesne Light Company is a Motion for Protective Order in the above-captioned matter.

Copies of this filing have been served in accordance with the attached Certificate of Service.

Thank you, and please contact me if you have any questions or concerns.

Sincerely,

STEVENS & LEE



Michael A. Gruin

Enclosures

cc: Certificate of Service  
Administrative Law Judge Katrina Dunderdale (via email and First Class U.S. Mail)

Philadelphia • Reading • Valley Forge • Allentown • Harrisburg • Lancaster • Scranton  
Wilkes-Barre • Princeton • Charleston • New York • Wilmington  
A PROFESSIONAL CORPORATION

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

Petition of Duquesne Light Company for Approval	:	
of its Act 129 Phase III Energy Efficiency and	:	Docket No. M-2015-2515375
Conservation Plan	:	
	:	
	:	

**MOTION FOR PROTECTIVE ORDER**

Pursuant to 52 Pa. Code § 5.365, Duquesne Light Company (“Duquesne” or “Company”) hereby files this Motion for Protective Order to limit the disclosure of confidential and proprietary information (Proprietary Information). In support of this Motion, Duquesne states as follows:

1. On November 25, 2015, Duquesne Light filed the above-captioned Petition with the Commission, requesting approval of its Phase III Energy Efficiency and Conservation (“EE&C”) Plan.
2. On December 12, 2015, notice of Duquesne Light’s Petition was published in the Pennsylvania Bulletin. The notice established a deadline of January 4, 2015 for the filing of comments on, and responsive pleadings to, the Company’s Phase III EE&C Plan.
3. This matter was assigned to Administrative Law Judge Katrina Dunderdale. On December 15, 2015, a Prehearing Conference Order was issued in this proceeding. The Prehearing Conference was held on January 6, 2016.
4. The following parties have intervened in this proceeding: the Office of Consumer Advocate (“OCA”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Office of Small Business Advocate (“OSBA”),

Wal-Mart Stores East, L.P. and Sam's East, Inc. (collectively "Walmart"), Citizen Power, and the Duquesne Industrial Intervenors ("DII").

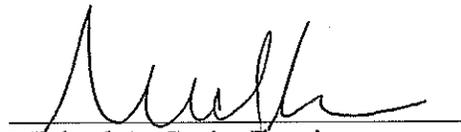
5. Confidential Information within the definition of 52 Pa. Code § 5.365 has been requested during the course of this proceeding, which justifies the issuance of a Protective Order. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.
6. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information.
7. The attached proposed Protective Order defines the information that is to be treated as Confidential by the parties and outlines the procedures that must be followed in handling information designated as Confidential.
8. Limitation on the disclosure of "Confidential" information will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the parties, the public, and the Commission.
9. The attached suggested Protective Order will protect the Confidential nature of such information while allowing the parties to use such information for purposes of the instant proceeding. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

10. The terms of the Protective Order attached hereto is similar to terms in other Protective Orders entered in other Commission proceedings.

11. Counsel for Duquesne has conferred with counsel for all parties who have intervened in this proceeding and circulated a copy of the suggested Protective Order, and none of the parties has objected to the granting of this Motion. Therefore, Duquesne respectfully requests that the Order be issued on an expedited basis.

WHEREFORE, for all of the foregoing reasons, Duquesne Light Company respectfully requests that the Administrative Law Judge grant this Motion and issue a Protective Order in the form attached hereto.

Respectfully submitted,



Michael A. Gruin, Esquire  
Attorney ID 78625  
17 North Second Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101  
Tel: 717.255.7365  
Fax: 610.988.0852  
[mag@stevenslee.com](mailto:mag@stevenslee.com)  
Counsel for Duquesne Light Company

DATED: January 22, 2016

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

Petition of Duquesne Light Company for Approval	:	
of its Act 129 Phase III Energy Efficiency and	:	Docket No. M-2015-2515375
Conservation Plan	:	
	:	

**PROTECTIVE ORDER**

Upon consideration of the Motion for a Protective Order filed on January 22, 2016 by Duquesne Light Company, there being no objection from the Office of Consumer Advocate (“OCA”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Office of Small Business Advocate (“OSBA”), Wal-Mart Stores East, L.P. and Sam’s East, Inc. (collectively “Walmart”), Citizen Power, and the Duquesne Industrial Intervenors (“DIP”),

IT IS ORDERED THAT:

1. The Protective Order is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which have been or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated therewith. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. The materials or information subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies and other materials which are believed by the producing Party to be of a proprietary or confidential nature, and which are so designated by being stamped “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” (hereinafter collectively referred to as “Proprietary Information”). When a statement or exhibit is identified for the

record, the portions thereof that constitute Proprietary Information shall be appropriately designated as such for the record.

3. This Protective Order applies to the following materials:

(a) The producing Party may designate as “CONFIDENTIAL” those materials which customarily are treated by that Party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its clients to risk of competitive disadvantage or other business injury;

(b) The producing Party may designate as “HIGHLY CONFIDENTIAL” those materials that are of such a commercially sensitive nature or of such a private, personal nature that the producing Party is able to justify a heightened level of confidential protection with respect to those materials. Each of the Parties shall endeavor to limit its designation of information as HIGHLY CONFIDENTIAL PROTECTED MATERIAL.

4. Proprietary Information shall be made available to counsel for the non producing Party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination or argument in this proceeding. To the extent required for participation in this proceeding, counsel for a Party may afford access to Proprietary Information subject to the conditions set forth in this Protective Order.

5. Proprietary Information produced in this proceeding shall be made available to the Commission and its Staff for purposes of filing. To the extent that Proprietary Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission’s testimony

or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Protected Information shall be permitted only in accordance with this Protective Order.

6. Proprietary Information shall be made available to a Reviewing Representative in this proceeding pursuant to the following procedures:

(a) Information deemed as “CONFIDENTIAL”, shall be made available to a “Reviewing Representative” who is a person who has signed a Non-Disclosure Certificate and who is:

- (i) an attorney who has made an appearance in this proceeding for a Party;
- (ii) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Paragraph (i);
- (iii) an expert or an employee of an expert retained by a Party for the purpose of advising, preparing for or testifying in this proceeding;
- (iv) employees or other representatives of a Party appearing in this proceeding with significant responsibility for the docket.

(b) Information deemed as “HIGHLY CONFIDENTIAL,” may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate and who is:

- (i) an attorney who has made an appearance in this proceeding for a Party;
- (ii) an attorney, paralegal, or other employee associated for purposes of this case with an attorney described in Paragraph (i);
- (iii) an outside expert or an employee of an outside expert retained by a Party for the purposes of advising, preparing for or testifying in this proceeding;
- (iv) a person designed as a Reviewing Representative for purposes of Highly Confidential Information pursuant to paragraph 11.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.423(e) of the Commission’s rules of Practice and Procedure, 52 Pa. Code §§5.362, 5.423(e), the producing Party may, by subsequent objection or motion, seek further protection with respect to HIGHLY

CONFIDENTIAL material, including but not limited to, total prohibition of disclosure or limitation of disclosure only to particular Parties.

7. A qualified "Reviewing Representative" for "HIGHLY CONFIDENTIAL" material may review and discuss "HIGHLY CONFIDENTIAL" material with their client or with the entity with which they are employed or associated, but may not share with or permit the client or entity to review the "HIGHLY CONFIDENTIAL" material, provided however that counsel for the Office of Consumer Advocate and Office of Small Business Advocate may share Proprietary Information with the Consumer Advocate and Small Business Advocate, respectively, without obtaining a Non-Disclosure certificate from these individuals, provided however, that these individuals otherwise abide by the terms of the Protective Order.

8. Proprietary Information shall be treated by the nonproducing Party and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 12(a). Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

9. Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any Party or any competitor of any Party a commercial advantage. In the event that the nonproducing Party wishes to designate as a Reviewing Representative a person not described in Paragraph 6 above, that Party shall seek agreement from the Party producing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 6 above with respect to

those materials. If no agreement is reached, the nonproducing Party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

10. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate set forth in Appendix A hereto, provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

11. A producing Party shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the producing Party, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information. The Proprietary Information shall be served upon the nonproducing Party hereto only in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."

12. The nonproducing Party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right to Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, effective January 1, 2009, until such time as the information is found to be non proprietary.

13. Any public reference to Proprietary Information by a Party or its Reviewing Representative shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to fully understand the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

14. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery, and including reference thereto as mentioned in Paragraph 15 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the Parties or pursuant to order of the Administrative Law Judge, the Commission or appellate court.

15. The nonproducing Party shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information. If a nonproducing Party challenges the designation of a document or information as proprietary, the Party providing the information retains the burden of demonstrating that the designation is appropriate.

16. Each Party shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; to refuse to produce Proprietary Information pending the adjudication of the objection;

and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order.

17. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the nonproducing Party, upon request, shall either destroy or return to the producing Party all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that the nonproducing Party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the producing Party, the non-producing Party shall certify in writing to the producing Party that the Proprietary Information has been destroyed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Administrative Law Judge  
Katrina L. Dunderdale

**APPENDIX A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

\_\_\_\_\_  
Petition of Duquesne Light Company for Approval :  
of its Act 129 Phase III Energy Efficiency and : Docket No. M-2015-2515375  
Conservation Plan :  
:

**NON-DISCLOSURE CERTIFICATE**

**TO WHOM IT MAY CONCERN:**

The undersigned is a Reviewing Representative of \_\_\_\_\_, a Party to this proceeding ("Party"). The undersigned has read and understands the Protective Order in the above-referenced proceeding, and agrees to be bound by, and comply with, the terms and conditions of said Protective Order. The undersigned agrees that any Proprietary Information shall be used or disclosed only for purposes of preparation for, and conduct of, the above-captioned proceeding, or any administrative or judicial review thereof, and shall not be disclosed of used for any other purposes.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
EMPLOYER

DATE: \_\_\_\_\_

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

\_\_\_\_\_ :  
Petition of Duquesne Light Company for Approval :  
of its Act 129 Phase III Energy Efficiency and : Docket No. M-2015-2515375  
Conservation Plan :  
:

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Motion have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant):

**VIA EMAIL AND FIRST-CLASS UNITED STATES MAIL**

Patrick Cicero, Esquire  
Joline Price, Esquire  
CAUSE-PA  
118 Locust Street  
Harrisburg, PA 17101  
[PCiceroPULP@palegalaid.net](mailto:PCiceroPULP@palegalaid.net)  
[JPricePULP@palegalaid.net](mailto:JPricePULP@palegalaid.net)  
*Counsel for CAUSE-PA*

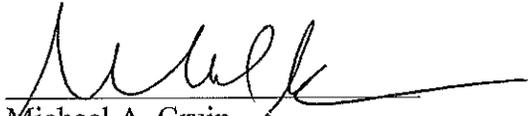
Elizabeth Rose Triscari, Esquire  
Office of Small Business Advocate  
Suite 1102 Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[etriscari@pa.gov](mailto:etriscari@pa.gov)

Lauren Burge, Esquire  
Darryl Lawrence, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101  
[DLawrence@paoca.org](mailto:DLawrence@paoca.org)  
[LBurge@paoca.org](mailto:LBurge@paoca.org)

Pamela C. Polacek, Esquire  
Allesandra L. Hylander, Esquire  
McNees, Wallace & Nurick  
100 Pine St.  
PO Box 1166  
Harrisburg, PA 17108  
[ppolacek@mwn.com](mailto:ppolacek@mwn.com)  
*Counsel for Duquesne Industrial  
Intervenors*

Theodore S. Robinson, Esquire  
Citizen Power  
2121 Murray Ave.  
Pittsburgh, PA 15217  
[Robinson@CitizenPower.com](mailto:Robinson@CitizenPower.com)

Barry A. Naum, Esquire  
Derrick Price Williamson, Esquire  
Spilman, Thomas & Battle, PLLC  
1100 Bent Creek Blvd., Suite 101  
Mechanicsburg, PA 17050  
[bnaum@spilmanlaw.com](mailto:bnaum@spilmanlaw.com)  
[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)  
*Counsel for Walmart*

  
\_\_\_\_\_  
Michael A. Gruin

January 22, 2016