



May 9, 2019

VIA E-FILE

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

**Re: Pennsylvania Public Utility Commission v. Peoples Natural Gas Company LLC;
Docket No. R-2018-3006818 (2019 Base Rate Case Filing)**

**REPLY OF PEOPLES NATURAL GAS COMPANY LLC TO DUQUESNE LIGHT
COMPANY'S ANSWER AND COMMENTS TO PEOPLES' MOTION FOR
PROTECTIVE ORDER**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Reply of Peoples Natural Gas Company LLC to Duquesne Light Company's Answer and Comments to Peoples' Motion for Protective Order. Copies of the Answer are being served on the Presiding Officer, Deputy Chief Administrative Law Judge Joel H. Cheskis, and on all parties, as indicated on the enclosed Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for Peoples Natural Gas Company LLC

DPZ:kmg
Enclosure

cc: Honorable Joel H. Cheskis
Per Certificate of Service
Andrew Wachter, Esquire
William H. Roberts, II, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2018-3006818
	:	
Peoples Natural Gas Company LLC	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Reply of Peoples Natural Gas Company LLC to Duquesne Light Company's Answer and Comments to Peoples' Motion for Protective Order**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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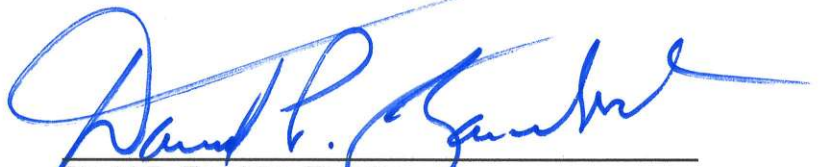
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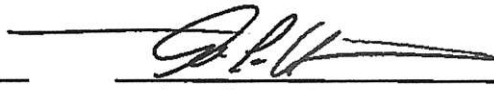
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Counsel for *Peoples Natural Gas Company LLC*

Date: May 9, 2019

VERIFICATION

I, Andrew P. Wachter hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 5/9/19



Andrew P. Wachter
Director, Finance and Regulation
PNG Companies LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
JOEL H. CHESKIS

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2018-3006818
	:	
Peoples Natural Gas Company LLC	:	

**REPLY OF PEOPLES NATURAL GAS COMPANY LLC
TO DUQUESNE LIGHT COMPANY'S
ANSWER AND COMMENTS TO
PEOPLES' MOTION FOR PROTECTIVE ORDER**

AND NOW COMES Peoples Natural Gas Company LLC (“Peoples” or the “Company”), pursuant to the order issued by Deputy Chief Administrative Law Judge Joel H. Cheskis (the “DCALJ”) via e-mail on May 2, 2019, to file this Reply to “Duquesne Light Company’s Answer and Comments to Peoples’ Motion for Protective Order,” filed on May 7, 2019 (“Duquesne’s Answer”). Duquesne’s Answer asks the DCALJ to modify the Protective Order proposed by Peoples (the “Proposed Protective Order”) to permit Duquesne’s employee-witnesses and inside attorneys to view Confidential and Highly Confidential material. Peoples respectfully submits that the DCALJ should deny this request. Instead, the DCALJ should modify the Proposed Protective Order as recommended in the “Answer of Peoples Natural Gas Company LLC to the Motion of Peoples Natural Gas Company LLC for Protective Order” (“Peoples’ Answer”).

In support whereof, Peoples states as follows:

I. PRELIMINARY MATTERS

Duquesne states “the issue presently before the Commission is Peoples’ ongoing failure ... to provide timely and complete discovery responses to parties to this proceeding.” Duquesne’s Answer p. 2. That is untrue. The issue presently before the Commission is whether to grant Peoples’ Motion for a Protective Order. If there is an issue with Peoples’ responses to discovery requests, the Commission’s regulations provide an adequate avenue for redress; this is not the proper time and place to address such concerns.

Nevertheless, considering that Duquesne alleges that Peoples violated the Commission’s regulation at 52 Pa. Code § 5.365, Peoples is compelled to respond to Duquesne’s allegation. To do so, Peoples need only provide the following chronology of events:

January 28, 2019	Peoples files this proceeding.
February 25, 2019	Duquesne files Petition to Intervene.
February 25, 2019	Peoples begins serving Confidential and Highly Confidential discovery responses to parties other than Duquesne.
March 11, 2019	Peoples files a Prehearing Conference Memorandum stating that Peoples would file a Motion for Protective Order.
April 4, 2019	Peoples serves its answers to Duquesne’s first set of interrogatories. The e-mail serving the answers notifies all parties that Highly Confidential Answers are being served by mail to 2 outside counsel for Duquesne and 3 inside counsel for Duquesne.
April 5, 2019	Counsel for Peoples contacts outside counsel for Duquesne to confirm that the Highly Confidential Answers were provided as though subject to a protective order, pursuant to 52 Pa. Code § 5.365(c)(4). Duquesne’s outside counsel agrees that the Highly Confidential Answers will be treated as subject to a protective order.
April 9, 2019	Counsel for Peoples sends outside counsel for Duquesne a draft Stipulated Protective Agreement between Peoples and Duquesne.

April 24, 2019	Outside counsel for Duquesne contacts counsel for Peoples to request additional Highly Confidential discovery Answers (OCA Set VI, Nos. 2 and 14, served on April 5, 2019).
April 25, 2019	Counsel for Peoples provides the requested Highly Confidential discovery answers to outside counsel for Duquesne, who agrees to treat those answers as though subject to a protective order.
April 25, 2019	Outside counsel for Duquesne provides counsel for Peoples with proposed edits to the Stipulated Protective Agreement between Peoples and Duquesne.
April 26, 2019	Counsel for Peoples and outside counsel for Duquesne discuss Duquesne's proposed edits to the Stipulated Protective Agreement, but are unable to reach a resolution.
April 30, 2019	Duquesne's outside counsel contacts Peoples' counsel to request Confidential or Highly Confidential materials that Peoples previously served in response to other parties' discovery.
April 30, 2019	Duquesne's outside counsel e-mails the DCALJ regarding the parties' dispute over who receives copies of Confidential and Highly Confidential discovery responses that Peoples provides to Duquesne.
May 2, 2019	The DCALJ holds a telephonic hearing and establishes a procedural schedule regarding a protective order.
May 3, 2019	Peoples' counsel provides Duquesne's outside counsel and outside witness with the Confidential and Highly Confidential discovery answers requested on April 30.

In short, Peoples has promptly provided all requested discovery responses (including Confidential and Highly Confidential responses), at least to Duquesne's outside counsel. If Duquesne has been prejudiced by delays in getting access to discovery responses, it is because Duquesne slept on its rights – it failed to promptly request discovery from Peoples, respond to Peoples' offer to enter into a Stipulated Protective Agreement, and/or bring the matter to the attention of the DCALJ.

II. LEGAL STANDARDS FOR A MOTION FOR PROTECTIVE ORDER

The Commission's regulation at 52 Pa. Code § 5.365 permits a party to request a protective order to limit the disclosure of trade secrets or other confidential information. The party requesting a protective order must demonstrate that the potential harm to it of providing the information would be substantial, and that the harm to it of disclosing the information without restriction outweighs the public's interest in free and open access to the administrative hearing process.

The protective order is to apply the least restrictive means of limiting access to information. The protective order should require proprietary information to be released to the counsel of a party and to eligible outside experts. 52 Pa. Code § 5.365(d). "To be eligible to receive proprietary information, the expert [generally] may not be an officer, director, stockholder, partner, owner or employee of a competitor of the producing party." *Id.*

III. PEOPLES' MOTION FOR A PROTECTIVE ORDER SHOULD BE GRANTED, AS MODIFIED

A. Description of the Proposed Protective Order

On May 3, 2019, Peoples filed a Motion for Protective Order seeking an order protecting "Proprietary Information," which includes Confidential and Highly Confidential Information. "Confidential" materials are materials customarily treated by the producing party as sensitive or proprietary and which, if disclosed freely, would subject that party to risk of competitive disadvantage or other business injury. "Highly Confidential" materials are materials of such a commercially sensitive nature, or of such a private, personal nature, as to warrant a heightened level of protection. Examples include customers' names or customer prospects' names,

marketing plans, competitive strategies or service alternatives, and competitive pricing or discounting information. Proposed Protective Order ¶¶ 2-4.

Proprietary Information is to be made available to counsel. Proposed Protective Order ¶ 5. Proprietary Information is also to be made available to any Reviewing Representative who signs a non-disclosure certificate and is not a Restricted Person. Proposed Protective Order ¶¶ 7, 8, 10, and 11. Significantly, Restricted Persons include employees of a competitor if the employees' duties involve marketing or pricing of the competitor's products or services. Proposed Protective Order ¶ 8(i).

Finally, the Proposed Protective Order provides that parties retain the right to question or challenge the designation of any material as "Confidential" or "Highly Confidential." Proposed Protective Order ¶ 25. The foregoing provisions are standard in protective orders that have traditionally been adopted by presiding officers.

B. The DCALJ Should Approve the Proposed Protective Order, with the Modifications Requested by Peoples

1. The Proposed Protective Order is Consistent with 52 Pa. Code § 5.365

The Proposed Protective Order should be approved because it is consistent with Section 5.365 of the Commission's regulations. The Proposed Protective Order only protects trade secrets or other confidential information, and only because the potential competitive harm flowing to the producing party as a result of the disclosure of the information would be substantial, outweighing the harm to the public's interest in free and open access to the administrative hearing process.

Additionally, the Proposed Protective Order provides for the least restrictive means of limiting access to the Proprietary Information by carefully defining the persons who may receive

the Proprietary Information. The Proposed Protective Order specifies in detail the persons who can be Reviewing Representatives and the persons who cannot be Reviewing Representatives because they are Restricted Persons. The Proposed Protective Order also allows any party to challenge the designation of material as “Confidential” or “Highly Confidential.” Consequently, the DCALJ should approve the Protective Order.

2. Peoples’ Motion is Consistent with Prior Commission Protective Orders

Protective Orders are routinely granted in rate cases. Attached as **Appendix A** is the Protective Order that was issued in Duquesne’s 2018 base rate proceeding (the “Duquesne Protective Order”) at Docket No. R-2018-3000124 *et al.* Significantly, the definitions of “Reviewing Representative” in the Duquesne Protective Order (Paragraphs 6a. and 6b.) are very similar to the definitions of “Reviewing Representative” in Peoples’ Proposed Protective Order (Paragraphs 7 and 9). Similarly, the definition of “Restricted Person” in the Duquesne Protective Order (Paragraph 7) is very similar to the definition of “Restricted Person” in Peoples’ Proposed Protective Order (Paragraph 8). Treating Duquesne in this proceeding in the same manner that Peoples was treated in Duquesne’s rate case does not unfairly prejudice Duquesne. Moreover, Peoples can also produce, if needed, protective orders in numerous Peoples proceedings where the same language as contained in the Proposed Protective Order was included in the order without objection from parties to the proceeding. The DCALJ should approve Peoples’ Proposed Protective Order because it is very similar to Protective Orders that the Commission has approved in the past.

3. The Proposed Protective Order should be Modified as Recommended by Peoples

The parties’ dispute over the Proposed Protective Order is quite narrow. No party has argued that Peoples failed to prove the need for a protective order. Rather, the parties’ dispute

only pertains to the breadth of the protective order and the procedure for determining who can and cannot receive access to Proprietary Information.

Under the Proposed Protective Order, a Restricted Person is defined to include, in pertinent part, “an officer, director, stockholder, partner or owner of any *competitor* of a party or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services.” Proposed Protective Order ¶ 8(i) (emphasis added). Peoples argues that Peoples and Duquesne are competitors. In part, this is due to the obvious and ever-present possibility that customers will switch their primary fuel from electricity to natural gas, and vice versa. In contrast, Duquesne asks the Commission to bury its head in the sand and ignore fuel switching.

Duquesne’s Direct Testimony treated Peoples as a competitor, Duquesne Light Statement No. 1, Direct Testimony of C. James Davis, pp. 6-9, and Duquesne has treated Peoples as a competitor in other proceedings, including, but not limited to, *Petition of Peoples Natural Gas Company LLC for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2017-2640306, Brief of Duquesne Light Company in Support of its Petition for Interlocutory Review and Answer of Material Questions pp. 13-14. Duquesne cannot have it both ways. Either Duquesne and Peoples are in competition or they are not. Peoples respectfully requests that the Commission acknowledge the obvious – natural gas and electricity are fuels that can be used for the same purposes. As a result, distributors of natural gas compete with distributors of electricity.

Given that competition between Duquesne and Peoples is a fact, Peoples recommends that the Proposed Protective Order be modified to create a rebuttable presumption that every employee of Duquesne is a “Restricted Person.” Although Restricted Persons generally do not

have access to Proprietary Information pursuant to the Proposed Protective Order, Peoples will provide those Duquesne employees executing the Non-Disclosure Certificate with all Proprietary Information that does not relate to Competitive Activities.¹ Peoples' Answer to Peoples' Motion, p. 2. In addition, Duquesne could rebut the presumption with respect to any particular employee by demonstrating (via affidavit – a “Duquesne Affidavit”) that said employee is not involved in Competitive Activities.

This compromise approach will resolve most disputes that would otherwise arise from implementation of the Proposed Protective Order. It will also protect Peoples' Proprietary Information without unduly limiting the ability of Duquesne to prepare its case using that information (through outside counsel, outside experts, and, under certain conditions, employee witnesses and attorneys).

3. Duquesne's Proposed Changes are Unnecessary

Duquesne asks that the Proposed Protective Order be modified so that Duquesne's in-house counsel and its employee-witnesses are given unfettered access to Peoples' Proprietary Information. Duquesne's arguments, however, are unconvincing and should be rejected by the DCALJ.

First and foremost, Duquesne is unconvincing in arguing that Duquesne is not a competitor of Peoples. With regard to combined heat and power (“CHP”) projects, for example, it is beyond question that a gas-fired CHP project can reduce electric load for the electric distribution company serving that location. This is just one example of fuel-switching making Duquesne and Peoples constant competitors. If Peoples would be required to provide its prospective customer's names or its marketing plans to Duquesne, Duquesne could take actions

¹ Competitive Activities are defined in Peoples' Answer as activities relating to competition relating to customer load, CHP and other distributed generation projects, purchasing or entering into a public-private partnership with the Pittsburgh Water and Sewer Authority, and hiring and retaining personnel. Peoples' Answer pp. 3-4.

to thwart Peoples' efforts to encourage fuel-switching. This result would harm Peoples' legitimate business interests and place Peoples at a competitive disadvantage. These are precisely the types of adverse impacts that Section 5.365 was adopted to prevent. Duquesne cannot use the public interest in open administrative proceedings as a guise for pursuing its own competitive interests in this proceeding.

Second, Duquesne claims that it is not able to fully examine Peoples' ratemaking practices if its employee witnesses and attorneys are not given complete access to Proprietary Information. Duquesne, however, fails to acknowledge that its outside counsel and outside expert received the Proprietary Information they requested and Duquesne was able to prepare testimony utilizing that information.

Third, Duquesne fails to explain why this case is any different from any other rate case – including Duquesne's – in which a non-producing party's employees (including in-house attorneys) are prohibited from being a "Reviewing Representative" with regard to Proprietary Information meriting a heightened level of confidential protection. Duquesne Protective Order ¶ 6b. It is worth noting, in this regard, that even the Duquesne Protective Order did not establish a blanket rule allowing all employees of a non-producing party to obtain access to Proprietary Information where, as here, the customer is a competitor of the producing party. Duquesne Protective Order ¶ 7 (defining a "Restricted Person" as including certain employees of a competitor of a party).

IV. CONCLUSION

The Proposed Protective Order is a standard form protective order that is commonly used in Commission rate proceedings. Given the competition that obviously exists between Duquesne

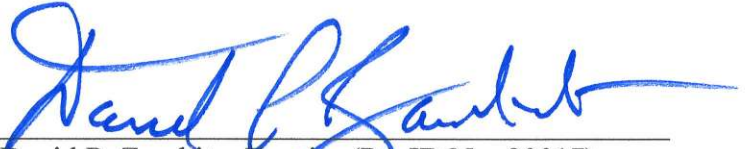
and Peoples, the Proposed Protective Order should be modified to adopt an appropriate rebuttable presumption preventing harm to Peoples' competitive interests unless Duquesne can establish that a specific individual is not engaged in Competitive Activities. This rebuttable presumption should help minimize the litigation that would otherwise be necessary to resolve disputes over who is and is not permitted to receive and review Peoples' Proprietary Information. The Proposed Protective Order should not be weakened to provide Peoples' Proprietary Information any less protection than was accorded to Duquesne's Proprietary Information in Duquesne's rate case.

Consequently, Peoples Natural Gas Company LLC continues to request that the Honorable Deputy Chief Administrative Law Judge Joel H. Cheskis:

- (i) grant Peoples' Motion for a Protective Order and issue the Protective Order without modification, subject to inclusion of special provisions identifying Duquesne Light Company as a competitor of Peoples Natural Gas Company LLC;
- (ii) establish a presumption that Duquesne Light Company's employees are "Restricted Persons" under the Protective Order for purposes of "Confidential" and "Highly Confidential" information regarding the Competitive Activities; and,

- (iii) require Duquesne Light Company employees to execute a Duquesne Affidavit before receiving any “Confidential” or “Highly Confidential” information regarding the Competitive Activities.

Respectfully submitted,



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Dated May 9, 2019

Counsel for *Peoples Natural Gas Company LLC*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2018-3000124
	:	R-2018-3000829
	:	
Office of Consumer Advocate	:	C-2018-3001029
Jason Dolby	:	C-2018-3001074
Peoples Natural Gas Company LLC	:	C-2018-3001152
Office of Small Business Advocate	:	C-2018-3001566
Duquesne Industrial Intervenors	:	C-2018-3001713
	:	
v.	:	
	:	
Duquesne Light Company	:	
1308(d) Proceeding	:	

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order that was filed by Duquesne Light Company on May 31, 2018 in the base rate proceeding captioned above;

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" (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) To the extent that it is consistent with 52 Pa. Code § 5.365(e), the producing Party may also seek special restrictions of 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 use of special restrictions.

4. Proprietary Information shall be made available to counsel for the nonproducing 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 and not in any other proceedings or matters. 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. Proprietary Information that is filed or otherwise provided to the Commission and placed in the Commission's report folders, shall not be subject to public disclosure in accordance with routine Commission procedures. 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) Parties may also restrict access to "CONFIDENTIAL" information and 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. In such cases, this CONFIDENTIAL information would be

available to a Reviewing Representative that has signed a Non-Disclosure Agreement and who is:

- (i) an attorney for a statutory advocate pursuant to 52 Pa. Code §1.8 or an outside counsel 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 designated as a Reviewing Representative pursuant to Paragraph 10.

If Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission's rules of Practice and Procedure, 52 Pa. Code §§ 5.362, 5.365(e), the producing Party may, by subsequent motion or objection, seek further protection with respect to "CONFIDENTIAL" material, including but not limited to, total prohibition of disclosure or limitation of disclosure only to particular Parties.

7. Proprietary Information shall not be made available to a "Restricted Person." For the purpose of this Protective Order, "Restricted Person" shall mean: (a) an officer, director, stockholder, partner, owner or employee of any competitor of a Party or an employee of such an entity if the employee's primary duties involve the development, marketing or pricing of the competitor's products or services; (b) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of a Party (including any association of competitors of a Party) or an employee of such an entity if the employee's primary duties involve the development, marketing or pricing of the competitor's products or services; (c) an officer, director, stockholder, owner or employee of a competitor of a Party's customer if the Proprietary Information concerns a specific, identifiable customer of a Party; and (d) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a Party's customer if the

Proprietary Information concerns a specific, identifiable customer of a Party; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 (excluding mutual funds) or constituting more than 1% interest in a business establishes a significant motive for violation.

8. If an expert for a Party, another member of the expert's firm or the expert's firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (1) identify for the Parties each Restricted Person and each expert or consultant; (2) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (3) if segregation of such personnel is impractical, the expert shall give to the producing Party written assurances that the lack of segregation will in no way jeopardize the interests of the Parties or their customers. The producing Party retains the right to challenge the adequacy of the written assurances that the nonproducing Party or its customers' interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

9. A qualified "Reviewing Representative" for CONFIDENTIAL materials subject to special restrictions may review and discuss the "CONFIDENTIAL" material that has been so restricted with his or her client or with the entity with which he or she is employed or associated, to the extent that the client or entity is not a "Restricted Person," but may not share with or permit the client or entity to review the "CONFIDENTIAL" material that has been so restricted, provided, however, that counsel for the Bureau of Investigation and Enforcement ("I&E"), Office of Consumer Advocate and Office of Small Business Advocate may share Proprietary Information with the I&E Deputy Chief Prosecutor, I&E Director, 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.

10. 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. For I&E, the I&E Prosecutor may afford access to Proprietary Information made available by Duquesne Light only to I&E's assigned and identified internal expert(s) who are full-time I&E employees and therefore subject to the terms of this Protective Order by virtue of the signature of the I&E Prosecutor affixed to his executed Non-Disclosure Certificate. Prior to making the provided Proprietary Information available to its full-time employed expert as provided above, the I&E Prosecutor shall notify said internal expert of the existence of the Protective Order and shall provide a copy of it to that expert with an admonition that he or she is bound by its provisions for the duration of the proceeding. Said I&E Prosecutor is responsible for ensuring that each and every individual to whom he or she provides Proprietary Information complies with all terms and conditions of the Protective Order.

11. 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.

12. (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.

13. A producing Party shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "CONFIDENTIAL" or otherwise noting that the materials are subject to special restrictions. 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"

14. The nonproducing Party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in Section 335(d) of the Public Utility Code, 66 Pa. C.S. § 335(d), and is within the definition of "confidential proprietary information" in the Pennsylvania Right to Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, until such time as the information is found to be non-proprietary. In the event that any person or entity seeks to compel the disclosure of Proprietary Information, the nonproducing Party shall promptly notify the producing Party in order to provide the producing Party an opportunity to oppose or limit such disclosure.

15. 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.

16. 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 references 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.

17. The nonproducing Party shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and any special restrictions on the review and discussion of such information with a Restricted Person. 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.

18. 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.

19. Within thirty (30) days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty (30) 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 nonproducing Party shall certify in writing to the producing Party that the Proprietary Information has been destroyed.

Dated: June 1, 2018

Katrina L. Dunderdale
Administrative Law Judge