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File #: 149302

December 13, 2012

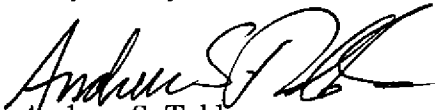
Honorable Dennis J. Buckley  
Administrative Law Judge  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor East  
PO Box 3265  
Harrisburg, PA 17105-3265

**RE: Petition of Duquesne Light Company for Approval of an Energy Efficiency and Conservation Plan - Docket No. M-2012-2334399**

Dear Judge Buckley:

Enclosed is the Motion of Duquesne Light Company for a Protective Order in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully Submitted,



Andrew S. Tubbs

AST/jl

Enclosures

cc: Rosemary Chiavetta, Secretary  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

### VIA E-MAIL & FIRST CLASS MAIL

Sharon E. Webb, Esquire  
Office of Small Business Advocate  
Commerce Building  
300 North Second Street, Suite 1102  
Harrisburg, PA 17101

Theodore Robinson, Esquire  
Citizen Power  
2121 Murray Avenue  
Pittsburgh, PA 15217  
*Citizen Power*

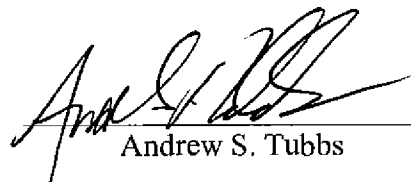
David T. Evrard, Esquire  
Brandon J. Pierce, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923

Joseph L. Vullo, Esquire  
1460 Wyoming Avenue  
Forty Fort, PA 18704  
*Community Action Association of  
Pennsylvania*

Patrick M. Cicero, Esquire  
Harry S. Geller, Esquire  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17102  
*CAUSE-PA*

Pamela C. Polacek, Esquire  
Teresa K. Schmittberger, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
PO Box 1166  
Harrisburg, PA 17108-1166  
*Duquesne Industrial Intervenors*

Date: December 13, 2012

  
\_\_\_\_\_  
Andrew S. Tubbs



2. In addition to the Petition, the Company submitted written direct testimony from David Defide and William V. Pfrommer, along with supporting Exhibits, which included the Company's Phase II EE&C Plan.

3. On November 28, 2012, a Prehearing Conference Order was issued setting a prehearing conference for December 10, 2012.

4. On December 1, 2012, a notice of Duquesne Light's November 15, 2012 filing was published in the *Pennsylvania Bulletin* establishing that comments on the Phase II EE&C Plan are due December 21, 2012.

5. On December 5, 2012, the Office of Small Business Advocate filed a Notice of Intervention.

6. The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") filed a Petition to Intervene on December 6, 2012.

7. On December 6, 2012, the Community Action Association of Pennsylvania ("CAAP") filed a Petition to Intervene. Also on December 6, 2012, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention.

8. A Petitions to Intervene were filed on December 7, 2012 by the Duquesne Industrial Intervenors ("DII") and Citizen Power.

9. This proceeding has been assigned to Administrative Law Judge Dennis J. Buckely (the "ALJ") for hearings and to certify the record to the Commission by March 14, 2013.

10. A prehearing conference was held on Monday, December 11, 2012. Duquesne Light, the OCA, the OSBA, Citizen Power, CAAP, CAUSE-PA and DII participated in the prehearing conference before the ALJ. At the prehearing conference, the ALJ established a litigation schedule for this proceeding.

11. The parties are engaging in the discovery process in this proceeding. The parties will continue to engage in discovery consistent with the litigation schedule established by the ALJ.

12. Proprietary Information within the definition of 52 Pa. Code § 5.423 may be requested during the course of this proceeding, which justifies the issuance of a Protective Order. For example, Parties may seek information that is customarily treated as sensitive, proprietary, or highly confidential, including but not limited to specific pricing information, highly sensitive contract terms or other information. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.423 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

13. Under 52 Pa. Code §§ 5.362(a)(7) and 5.423, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential commercial information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others; and the potential value of such information to the party and the party's competitors. 52 Pa. Code §§ 5.423(a)(1) – (3).

14. The attached proposed Protective Order defines two categories of protected information. The first is "Confidential," which is defined in Paragraph 3 of the attached proposed Protective Order as "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.” The second is “Highly Confidential,” which is defined in Paragraph 3 of the attached proposed Protective Order as “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.”

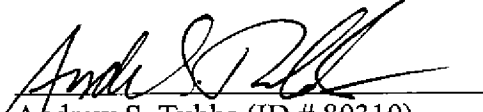
15. Paragraph 17 of the attached proposed Protective Order protects against overly broad designations of protected information by giving all Parties the right to question or challenge the confidential or proprietary nature of the “Confidential” or “Highly Confidential” information.

16. Limitation on the disclosure of “Confidential” or “Highly 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.

17. Duquesne Light notes that it has provided an advance copy of this Motion and Protective Order to the parties in this proceeding. All of the active parties in this proceeding that participated in the prehearing conference, including OCA, OSBA, CAUSE-PA, CAAP, DII and Citizen Power, have informed Duquesne Light that they do not oppose the Motion and Protective Order.

18. The attached proposed Protective Order will protect the confidential information while allowing the Parties to use such information for purposes of the instant litigation.

Respectfully Submitted,



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Phone: (412) 393-1514  
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Date: December 13, 2012

Attorneys for Duquesne Light Company





(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 for a statutory advocate pursuant to 52 Pa. Code §1.8 or a 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 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. Proprietary Information shall not be made available 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; (b) an officer, director, stockholder, partner, owner or employee of any affiliate of a competitor of a Party (including any association of competitors of a Party); (c) an officer, director, stockholder, owner or employee of a competitor of a customer of a Party 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 customer of a Party 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 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 "HIGHLY CONFIDENTIAL" material may review and discuss "HIGHLY CONFIDENTIAL" material with their client or with the entity with which they are 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 "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.

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.

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 "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.”

14. 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.

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 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.

17. 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.

17. 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.

18. 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 nonproducing Party shall certify in writing to the producing Party that the Proprietary Information has been destroyed.

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

\_\_\_\_\_  
Administrative Law Judge  
Dennis J. Buckley

