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August 14, 2020

VIA EFILING

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

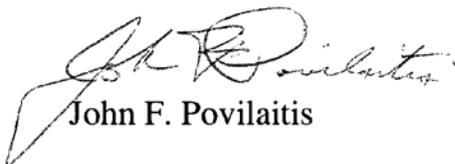
Re: *NetSpeed LLC v. Duquesne Light Company*;
Docket No. C-2020-3020212

Dear Secretary Chiavetta:

Enclosed please find the Joint Motion of NetSpeed LLC and Duquesne Light Company for a Protective Order in the above-captioned proceeding.

Copies have been served as indicated in the attached Certificate of Service.

Sincerely,



John F. Povilaitis

JFP/tlg

Enclosure

cc: Administrative Law Judge Steven Haas (*via email*)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NetSpeed LLC	:	
	Complainant,	:
	:	
v.	:	Docket No. C-2020-3020212
	:	
Duquesne Light Company	:	
	Respondent.	:

**JOINT MOTION OF NETSPEED LLC AND DUQUESNE LIGHT COMPANY
FOR A PROTECTIVE ORDER**

TO ADMINISTRATIVE LAW JUDGE STEVEN HAAS:

NetSpeed LLC ("NetSpeed" or the "Company") and Duquesne Light Company ("Duquesne Light") hereby requests that the attached Protective Order be entered in the above-captioned proceeding pursuant to the provisions of 52 Pa. Code § 5.365(a). In support thereof, NetSpeed states as follows:

I. Procedural History

1. On June 2, 2020, NetSpeed filed a Pole Attachment Complaint ("Complaint") against Duquesne Light seeking relief with respect to certain DLC pole attachment permitting practices.
2. On July 2, 2020, Duquesne Light filed an Answer and New Matter to the Complaint.
3. On July 8, 2020, NetSpeed submitted a letter to the Public Utility Commission requesting that the Pole Attachment Agreement attached to the Complaint as confidential document.

4. On July 9, 2020, a Notice was issued scheduling an initial prehearing conference for July 20, 2020.

5. A prehearing conference was held on July 20, 2020.

6. On July 20, 2020, On, Administrative Law Judge Steven Haas (“ALJ”) issued a Scheduling Order was entered establishing a litigation schedule for the proceeding and adopting modified discovery rules.

7. On July 17, 2020, NetSpeed filed their Answer to Duquesne Light’s New Matter.

8. The Parties are engaging in the discovery process in this proceeding.

9. Proprietary 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. Parties have sought information that is customarily treated as sensitive, proprietary, or highly confidential, including information regarding marketing, pricing, rate calculations, customer information and other sensitive information that could be detrimental to one or both parties if obtained by competitors or other entities outside of this litigation. 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 § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

10. 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 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 §§ 5.365(a)(1)-(3).

11. 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 that 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 private, personal nature that the producing Party is able to justify a heightened level of confidential protection with respect to those materials."

12. Paragraph 18 of the 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.

13. 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.

14. Both parties agree to the issuance of this Protective Order.

15. The attached proposed Protective Order will protect the Confidential and Highly Confidential information while allowing the Parties to use such information for purposes of the instant litigation.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, NetSpeed LLC and Duquesne Light Company respectfully requests that Administrative Law Judge Steven Haas grant this Joint Motion for Protective Order and issue the attached Protective Order pursuant to 52 Pa. Code § 5.365(a).

Respectfully submitted,

ECKERT SEAMANS CHERIN & MELLOTT LLC

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Counsel to Duquesne Light Company

And

BUCHANAN INGERSOLL & ROONEY PC

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Counsel for NetSpeed LLC

Dated: August 14, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NetSpeed LLC	:	
	Complainant,	:
		:
v.		Docket No. C-2020-3020212
		:
Duquesne Light Company	:	
	Respondent.	:

PROTECTIVE ORDER

Upon consideration of the Joint Motion for a Protective Order that was filed by NetSpeed, LLC and Duquesne Light Company on _____, 2020;

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 Pennsylvania Public Utility Commission (“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 furnished in this proceeding 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 that 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 material that are of such a commercially sensitive nature or of such 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.

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 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. However, no person shall use or disclose such Proprietary Information for any purpose other than the preparation for and conduct of the proceeding or any administrative or judicial review thereof.

5. Proprietary Information produced in this proceeding shall be made available to the Commission and its Staff. For purposes of filing or otherwise, 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 participating in this proceeding with significant responsibility for the docket; or
 - (v) a person designated as Reviewing Representative for purposes of Confidential Information pursuant to Paragraph 11.
- (b) Information deemed as "HIGHLY CONFIDENTIAL," may be provided to a "Reviewing Representative" who has signed a Non-Disclosure Certificate and who is:
 - (i) 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 designated 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 5.365(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" or "HIGHLY CONFIDENTIAL" material, including but not limited to, total prohibition of disclosure or limitation of disclosure only to particular Parties.

7. A Reviewing Representative may not be 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 the Parties or an employee of such an entity if the employee's 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 the Parties) or an employee of such an entity if the employee's 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. In the event of a dispute, all determinations about whether an

individual is a “Restricted Person” shall be made by the ALJ, on a case-by-case basis, based on the definition of “Restricted Person” above and the specific nature of Proprietary Information that such individual seeks to review. In the event of a dispute, all determinations about whether an individual is a “Restricted Person” shall be made by the ALJ.

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 Parties retain the right to challenge the adequacy of the written assurances that the Parties’ or their 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” materials subject to special restrictions, as agreed to by the Parties, which agreement shall not be unreasonably withheld, may review and discuss the “HIGHLY 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 “HIGHLY 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 non-producing Party and by the Reviewing Representative in accordance with the Non-Disclosure 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 or her 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. 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 non-producing 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 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. The Parties do not waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

14. The Parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "CONFIDENTIAL," "HIGHLY 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 that constitute or contain Proprietary Information. Upon request from another party, the producing

Party shall produce a redacted (Public) version of any such partially confidential compilation or multi-page document within a reasonable time period. The Proprietary Information shall be served upon the non-producing Party hereto only in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

15. The non-producing 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 as 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 non-producing Party shall promptly notify the producing Party in order to provide the producing Party an opportunity to oppose or limit such disclosure.

16. 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.

17. 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 16 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.

18. The non-producing 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 non-producing 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.

19. The Parties 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.

20. 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 non-producing 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, that contain any Proprietary Information. In the event that the non-producing 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: _____

Steven Haas
Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NetSpeed LLC	:	
	Complainant,	:
	:	
v.	:	Docket No. C-2020-3020212
	:	
Duquesne Light Company	:	
	Respondent.	:

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 executed on behalf of the Party in the above-referenced proceeding, which Protective Order deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Protective Order.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NetSpeed LLC

v.

Duquesne Light Company

:
:
:
:
:

Docket No. C-2020-3020212

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated.

Via First Class Mail and Email:

Brett Heather Freedson, Esquire
Lauren M. Burge, Esquire
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Attorneys for Duquesne Light Company

Date: August 14, 2020



John F. Povilaitis