

# Buchanan

Ingersoll · Rooney

**John F. Povilaitis**  
717 237 4825  
john.povilaitis@bipc.com

409 North Second Street  
Suite 500  
Harrisburg, PA 17101-1357  
T 717 237 4800  
F 717 233 0852

August 19, 2020

## VIA EFILING

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

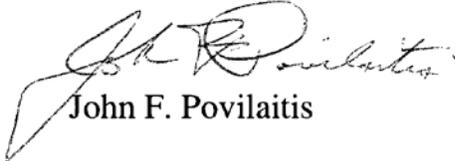
Re: *NetSpeed LLC v. Duquesne Light Company*;  
Docket No. C-2020-3020212

Dear Secretary Chiavetta:

On behalf of NetSpeed LLC (“NetSpeed”), I enclose for electronic filing a Motion for Stay of Proceeding and Petition for Leave to Withdraw Complaint (“Petition”) in the above-captioned proceeding. Please note that NetSpeed has requested a stay of all due dates in this proceeding, pending disposition of the Petition by the Presiding Officer.

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

Sincerely,



John F. Povilaitis

JFP/tlg

Enclosure

cc: Certificate of Service  
The Honorable Steven K. Haas

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**MOTION FOR STAY OF PROCEEDING AND PETITION FOR LEAVE TO  
WITHDRAW COMPLAINT**

---

**TO ADMINISTRATIVE LAW JUDGE STEVEN K. HAAS:**

AND NOW, NetSpeed LLC (“NetSpeed” or “Company”), by and through their counsel, hereby file this Petition for Leave to Withdraw Complaint and Stay of Proceeding pursuant to Sections 5.103(a) and 5.94 of the Pennsylvania Public Utility Commission (“Commission”) regulations at 52 Pa. Code §§ 5.103(a), 5.94(a) as follows:

**I. Background**

1. On June 2, 2020, NetSpeed filed a Pole Attachment Complaint (“Complaint”) against Duquesne Light Company (“DLC”) seeking relief with respect to certain DLC pole attachment permitting and fee 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 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. On July 17, 2020, NetSpeed filed its Answer to Duquesne Light's New Matter.

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

7. On July 20, 2020, the Administrative Law Judge ("ALJ") issued the Scheduling Order, which established a litigation schedule for the proceeding and modified certain of the Commission's otherwise applicable discovery rules.

8. NetSpeed has issued one Set of Discovery in this proceeding and DLC has propounded two sets of discovery on NetSpeed. Objections to these sets of discovery have been served by NetSpeed and DLC. Discovery has been contentious with substantial time and effort required to resolve disputed matters without having to invoke the resources of the ALJ. Informal efforts to resolve one of NetSpeed's objections to DLC discovery were unsuccessful and NetSpeed was required to file a formal objection to a DLC interrogatory on August 17, 2020.

9. On August 14, 2020, NetSpeed received DLC's responses to its Set I discovery. DLC withheld alleged confidential information in five (5) of its responses to NetSpeed's Set I requests. NetSpeed's efforts to resolve the matter informally with DLC were unsuccessful. On August 17, 2020, NetSpeed filed a Motion to Compel Sufficient Interrogatory Responses and Modify Litigation Schedule as Sanction ("Motion"). The Motion, *inter alia*, requested that the August 17, 2020 due date for Direct Testimony be suspended until a ruling on the sufficiency of DLC's responses was rendered. The ALJ denied the Motion to stay the August 17, 2020 due date for Direct Testimony and set a future date for disposition of the remainder of the Motion.

10. On August 17, 2020, NetSpeed filed its Direct Testimony in this proceeding as required by the procedural schedule for this proceeding.

11. While this proceeding has been litigated, NetSpeed has also actively participated in the Commission's mediation process. The mediation has not resulted in settlement or resolution of any issue.

12. Even though this proceeding has only reached the stage of submission of the first of three rounds of testimony and the early stages of mediation, NetSpeed has been required to expend substantial amounts of its personnel resources. Completion of the litigation and continued participation in the mediation process is expected to require significantly more financial and personnel resources. While the complaint litigation and mediation processes have been proceeding, NetSpeed employees have been meeting their responsibilities to their customers as a communications services provider. Continued participation in the Commission's litigation and mediation processes jeopardizes NetSpeed's ability to maintain high quality service to its customers.

13. To preserve NetSpeed's limited resources and to ensure continuation of its high quality service to customers, the Company requests that the procedural schedule and all related deadlines governed by the Prehearing Order in this case be stayed pending the ALJ's disposition of this Petition in accordance with 52 Pa. Code § 5.94(a).

## **II. Withdrawal and Termination of Formal Complaint**

14. NetSpeed requests withdrawal and termination of its formal complaint in accordance with Section 5.94(a) of the Commission's regulations. 52 Pa. Code § 5.94(a). It is in the public interest for the Company to be granted leave to withdraw its Complaint. Termination of this Complaint proceeding will preserve NetSpeed's resources needed to ensure continuation of high quality service to its existing customers. NetSpeed continues to believe that it has raised valid issues justifying Commission intervention on pole attachment issues in the Pittsburgh market,

however the Company has determined that the current formal complaint proceeding cannot be conducted at reasonable cost and without jeopardizing service to its existing customers. As there has been no disposition of any of the substantive issues in this case, NetSpeed's withdrawal should be granted. The Commission may wish to consider generic proceedings or a more stream-lined and cost-effective process for resolving pole attachment complaints.

WHEREFORE, for the foregoing reasons, NetSpeed respectfully requests that the ALJ grant this Petition for Stay of Proceeding and Leave to Withdraw Complaint and mark this matter closed.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

By: s/John F. Povilaitis

John F. Povilaitis (PA ID No. 28944)

Alan M. Seltzer (PA ID No. 27890)

409 North Second Street, Suite # 500

Harrisburg, PA 17101-1357Tel:

(717) 237-4800

[john.povilaitis@bipc.com](mailto:john.povilaitis@bipc.com)

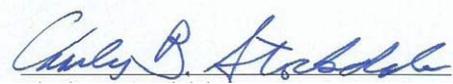
[alan.seltzer@bipc.com](mailto:alan.seltzer@bipc.com)

*Counsel for NetSpeed LLC*

Dated: August 19, 2020

**VERIFICATION**

I, Charles B. Stockdale, Vice President of Operations and Regulatory Affairs for NetSpeed LLC, hereby verify that the information in the foregoing Motion for Stay of Proceeding and Petition for Leave to Withdraw Complaint, is true and correct to the best of my information, knowledge, and belief. I understand that the statements are made subject to the penalties of 18 Pa. C.S. § 4904, relating to the unsworn falsification to authorities.



Charles B. Stockdale  
Vice President of Operations and  
Regulatory Affairs

DATED: August 19, 2020

**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  
Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower – 44<sup>th</sup> Floor  
600 Grant Street  
Pittsburgh, PA 15219  
[bfreedson@eckertseamans.com](mailto:bfreedson@eckertseamans.com)  
[lburge@eckertseamans.com](mailto:lburge@eckertseamans.com)  
*Attorneys for Duquesne Light Company*

Date: August 19, 2020

  
\_\_\_\_\_  
John F. Povilaitis