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March 5, 2021

By Email

Honorable Mary D. Long
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place
301 Fifth Avenue, Suite 220
Pittsburgh, PA 15222
malong@pa.gov

Re: Pike County Light & Power Company 2020 General Base Rate Increase (Gas) and
(Electric) Filing; Docket No. R-2020-3022134 and R-2020-3022135;
UNOPPOSED MOTION FOR PROTECTIVE ORDER

Dear Judge Long:

Enclosed you will find Pike County Light & Power Company's (Gas) and (Electric)
Unopposed Motion for Protective Order in the above-captioned proceeding.

Copies have been served in accordance with the attached Certificate of Service. Should
you have any questions, please feel free to contact me directly.

Very truly yours,

/s/ Bryce R. Beard

Thomas J. Sniscak, Esq.
Whitney E. Snyder, Esq.
Kevin J. McKeon, Esq.
Bryce R. Beard, Esq.

Counsel for Pike County Light and Power Company

BRB/das
Enclosures

cc: Rosemary Chiavetta, Secretary (by electronic filing)
Marc Hoffer (via email mhoffer@pa.gov)
Marissa Boyle (via email maboyle@pa.gov)
Jordan Van Order (via email jvanorder@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al.	:	
	:	
v.	:	R-2020-3022134
	:	
Pike County Light and Power Company - Gas	:	
Pennsylvania Public Utility Commission, et al.	:	
	:	
v.	:	R-2020-3022135
	:	
Pike County Light and Power Company - Electric	:	

**UNOPPOSED MOTION OF PIKE COUNTY LIGHT & POWER COMPANY – GAS
AND ELECTRIC FOR A PROTECTIVE ORDER**

TO ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Pike County Light & Power Company – Gas and Electric (PCLP), by and through its attorneys, Hawke McKeon & Sniscak LLP, hereby requests that the attached Protective Order be entered in the above-captioned proceedings pursuant to the provisions of 52 Pa. Code § 5.365(a). The attached Protective Order was previously circulated to all active parties to the proceeding (collectively referred to as “Parties”). No Party opposes the proposed Protective Order. In support thereof, PCLP represents as follows:

1. On October 26, 2020, Pike County Light & Power Company (PCLP), filed Supplement No. 110 to Tariff Gas - Pa. P.U.C. No. 6 to become effective December 28, 2020, and docketed at R-2020-3022134 (Gas Filing). Tariff 6 contains proposed changes in rates, rules, and regulations calculated to produce \$262,000 (16%) in additional annual revenues.

2. Also, on October 26, 2020, Pike County Light & Power Company (PCLP), filed Supplement No. 82 to Tariff Electric - Pa. P.U.C. No. 8 (Tariff No. 8) to become effective December 28, 2020, and docketed at R-2020-3022135 (Electric Filing). Tariff No. 8 contains proposed changes in rates, rules, and regulations calculated to produce an increase of \$1,933,600 (24.7%) in additional annual revenues.

3. The proceeding has been assigned to Administrative Law Judge Mary D. Long (the “ALJ”) for hearings and issuance of a Recommended Decision.

4. A prehearing conference was held on January 11, 2021, at which time a litigation schedule was established.

5. The Parties to this proceeding engaged in discovery prior to and following the prehearing conference.

6. Proprietary Information within the definition of 52 Pa. Code § 5.365 has been requested in discovery during the course of this proceeding. Some of this information has may be included in the testimony of certain Parties, which justifies the issuance of a Protective Order. Parties may also desire to use confidential or proprietary information for cross-examination purposes. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of this 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.

7. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the 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 participant and the participant's competitors and trade partners. 52 Pa. Code §§ 5.365(a)(1) – (3).

8. The documents sought to be protected by the Proposed Order also contain proprietary information as described in 66 Pa.C.S. § 335(d), which provides:

if a document contains trade secrets or proprietary information and it has been determined by the commission that harm to the person claiming the privilege would be substantial or if a document required to be released under this section contains identifying information which would operate to the prejudice or impairment of a person's reputation or personal security, or information that would lead to the disclosure of a confidential source or subject a person to potential economic retaliation as a result of their cooperation with a commission investigation, or information which, if disclosed to the public, could be used for criminal or terroristic purposes, the identifying information may be expurgated from the copy of the document made part of the public record.

Therefore, treatment of such information as set forth in the attached proposed Protective Order is justified under 66 Pa.C.S. § 335(d).

9. Moreover, the Commission has an affirmative duty to protect from release Confidential Security Information, which is not subject to disclosure to third parties under the provisions and procedures specified in The Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and the PUC's regulations implementing such Act at 52 Pa. Code §§ 102.1 – 102.4.

10. The attached proposed Protective Order defines three categories of protected information. The first is "Confidential" information in Paragraph 3 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." Clearly, protecting this type of information from disclosure

is appropriate. The second is “HIGHLY CONFIDENTIAL,” which is also defined in Paragraph 3 of the attached proposed Protective Order as “those materials that are of such a commercially sensitive nature among the parties; 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.” The third category is “CONFIDENTIAL SECURITY INFORMATION” which is defined as “Confidential Security Information pursuant to the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6).”

11. Limitation on the disclosure of “Confidential,” “HIGHLY CONFIDENTIAL”, or “CONFIDENTIAL SECURITY INFORMATION” 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.

12. PCLP has included Paragraph 7 of the attached Order to preserve the ALJ’s and the Commission’s rights to allow persons, other than those who otherwise fit within the terms of the Order, to review Proprietary Information.

13. The attached proposed Protective Order will protect the confidential, HIGHLY CONFIDENTIAL, and CONFIDENTIAL SECURITY INFORMATION materials while allowing the Parties to use such information for purposes of the instant litigation.

WHEREFORE, for all the foregoing reasons, Pike County Light & Power Company requests that Administrative Law Judge Mary D. Long grant this Motion and issue the attached Protective Order.

Respectfully submitted,

/s/ Bryce R. Beard

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Counsel for Pike County Light & Power Company

Dated: March 5, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al.	:	
	:	
v.	:	R-2020-3022134
	:	
Pike County Light and Power Company - Gas	:	

Pennsylvania Public Utility Commission, et al.	:	
	:	
v.	:	R-2020-3022135
	:	
Pike County Light and Power Company - Electric	:	

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order that was filed by Pike County Light & Power Company on March 5, 2021;

IT IS ORDERED THAT:

1. The Protective Order is hereby granted with respect to the material and information identified in Paragraphs 2 and 3 below, which have been or will be filed with the Commission, have been or will be disclosed 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 material or information subject to this Protective Order includes discovery, testimony, and exhibits that may be filed by various witnesses and parties that contains Proprietary Information. To the extent any additional Proprietary Information is filed with the Commission or presented in this proceeding, such information shall also be subject to this Protective Order.

3. “CONFIDENTIAL” materials are 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. “HIGHLY CONFIDENTIAL” materials are those materials that are of such a commercially sensitive nature among the parties 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. For example but without limitation, “HIGHLY CONFIDENTIAL” information may include Proprietary Information that constitutes or describes: (i) customer names or customers’ prospects’ names, addresses, annual usage, or other customer-identifying information; (ii) competitive strategies or service alternatives; (iii) competitive pricing or discounting information; and (iv) marketing materials that have not yet been used. “CONFIDENTIAL SECURITY INFORMATION” materials are those deemed Confidential Security Information pursuant to the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6). Moreover, information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4 will also be designated as “CONFIDENTIAL SECURITY INFORMATION.” Pursuant to the Commission’s rules regarding the handling of Confidential Security Information, no information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4 will be provided electronically to the Commission, Administrative Law Judge, Secretary’s Bureau, or any other Commission staff, and such information must be filed with the Commission in hard copy only. Together, these

Confidential, Highly Confidential, and Confidential Security Information materials will be referred to as “Proprietary Information” for the purposes of this Protective Order.

4. Proprietary Information shall be made available to counsel who has entered an appearance in this proceeding and does not have responsibilities constituting a Restricted Party 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.

5. In addition, information deemed as “CONFIDENTIAL” material shall be made available to a “Reviewing Representative” who is a person who is:

- (i) An expert or an employee of an expert retained by a party for the purpose of advising, preparing for or testifying in this proceeding; or
- (ii) Employees or other representatives of a party appearing in this proceeding with significant responsibility for this docket.

Information deemed as “HIGHLY CONFIDENTIAL” and “CONFIDENTIAL SECURITY INFORMATION” material may be provided to a “Reviewing Representative” who is:

- (i) An expert or an employee of an expert retained by a party for the purposes of advising, preparing for or testifying in this proceeding; or
- (ii) A person designated by agreement between the producing party and the non-producing party as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL and CONFIDENTIAL SECURITY INFORMATION; and who is
- (iii) Not a “Restricted Party” as defined in Paragraph 6 of this Protective Order.

A qualified “Reviewing Representative” for “HIGHLY CONFIDENTIAL” and “CONFIDENTIAL SECURITY INFORMATION” material may review and discuss “HIGHLY CONFIDENTIAL” and “CONFIDENTIAL SECURITY INFORMATION” 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” and “CONFIDENTIAL SECURITY INFORMATION” material. Such discussions must be general in nature and not disclose specific “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL SECURITY INFORMATION” information. However, counsel for I&E, OCA, and OSBA may share Proprietary Information with the I&E Director, Consumer Advocate, and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided that these individuals otherwise abide by the terms of this Protective Order.

6. A Reviewing Representative or counsel entering appearance may not be a “Restricted Party.” “Restricted Party” 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 the Party; (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 the Party; (e) an officer, director, stockholder, owner or employee of an entity which has sold electricity to a Party in the last twenty-four (24) months; 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 a 1% interest in a business establishes a significant motive for violation.

7. The Office of Small Business Advocate's consultant, Mr. Robert D. Knecht, will not be considered to be a "Restricted Person" and Paragraph 6 will not apply to Mr. Knecht, provided that Mr. Knecht does not share, distribute, or discuss the Proprietary Information with any person except authorized OSBA representatives.

8. No other person may have access to the Proprietary Information except as authorized by order of the Commission or the Presiding Administrative Law Judge. Such persons shall use and disclose such information only in accordance with this Protective Order.

9. 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 Proprietary Information shall be permitted only in accordance with this Protective Order.

10. 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.

11. Any public reference to Proprietary Information by a Party 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.

12. Part of any record of this proceeding containing Proprietary Information 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 an order of the Administrative Law Judge, the Commission or appellate court.

13. 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 within the definition established in paragraph 3 of this Protective Order, the Party providing the information retains the burden of demonstrating that the designation is appropriate.

14. 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 other than confidentiality; 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.

15. 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
Mary D. Long

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL ONLY

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Dated: March 5, 2021