

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	Docket Nos. R-2024-3046523, <i>et al.</i>
	:	
Duquesne Light Company	:	

**PROTECTIVE ORDER**

Upon consideration of the Motion for a Protective Order that was filed by Duquesne Light Company (Duquesne Light) on May 14, 2024.

IT IS HEREBY ORDERED:

1. That the Motion 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 Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. That 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 marked “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “CONFIDENTIAL SECURITY INFORMATION,” or “CRITICAL ENERGY INFRASTRUCTURE INFORMATION.” Such materials will be collectively referred to below as “Proprietary Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

3. That the parties 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. The parties may designate as “HIGHLY CONFIDENTIAL” 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 parties shall endeavor to limit their designation of information as HIGHLY CONFIDENTIAL. The parties agree that materials containing specific, individual customer information shall be identified as HIGHLY CONFIDENTIAL and that access to these materials may be further restricted by the producing party. The parties may designate as “CONFIDENTIAL SECURITY INFORMATION” those materials, as defined in Section 2 of Act 156 of 2006, P.L. 1425, No. 156, 35 P.S. § 2141.2 et seq. “The Public Utility Confidential Security Information Disclosure Protection Act,” the disclosure of which creates a reasonable likelihood of endangering the physical security of public utility resources, infrastructure, facility, or information storage system; and information regarding computer hardware, software, and networks, including administrative and technical records, which, if disclosed, would be reasonably likely to jeopardize computer security. The parties may designate materials containing critical energy infrastructure information (“CEII”), as defined in 18 C.F.R. § 388.113(c)(1),<sup>1</sup> as “CRITICAL ENERGY INFRASTRUCTURE INFORMATION.” If the material contains CEII, the Parties producing such information shall mark on each page containing information the words “HIGHLY CONFIDENTIAL – CEII – Contains Critical Energy Infrastructure Information – DO NOT RELEASE.”

4. That Proprietary Information shall be made available to counsel for a 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, argument,

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<sup>1</sup> 18 C.F.R. § 388.113(c)(2) defines “Critical Energy Infrastructure Information” as “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and (iv) Does not simply give the general location of the critical infrastructure.” Moreover, 18 C.F.R. § 388.113(c)(4) defines “Critical Infrastructure” as “existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.”

or settlement 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. That information and materials deemed as “CONFIDENTIAL”, shall be made available to a “Reviewing Representative” who is a person that has signed a Non-Disclosure Certificate attached as Appendix A or Appendix B, and who is:

- (a) An attorney who has entered an appearance in this proceeding for a party or a statutory advocate pursuant to 52 Pa. Code § 1.8, if not an attorney;
- (b) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in subparagraph 5(a);
- (c) 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
- (d) Employees or other representatives of a party appearing in this proceeding with significant responsibility for this docket.

6. That information and materials deemed as “HIGHLY CONFIDENTIAL” may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate attached as Appendix B and who is:

- (a) An attorney who has entered an appearance in this proceeding for a party or a statutory advocate pursuant to 52 Pa. Code § 1.8, if not an attorney;
- (b) An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph 6(a);
- (c) 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; or
- (d) A person designated as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL information and materials.

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), any party may, by subsequent objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL information and materials, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

7. That information deemed as "CONFIDENTIAL SECURITY INFORMATION" may be provided to a "Reviewing Representative" who has signed a Non-Disclosure Certificate attached as Appendix B and who is:

- (a) An attorney who has entered an appearance in this proceeding for a party or a statutory advocate pursuant to 52 Pa. Code § 1.8, if not an attorney;
- (b) An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph 7(a); or
- (c) 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.

CONFIDENTIAL SECURITY INFORMATION will only be provided for inspection via in-person review at the offices of Post & Schell, P.C., 17 N. Second Street, 12th Floor, Harrisburg, PA 17101, or upon request of a statutory advocate or an attorney for a statutory advocate, at another location in the Harrisburg-metro area of the Commonwealth, between the hours of 9 A.M. to 5 P.M., Monday through Friday. Such review may be proctored, and the Reviewing Representatives are prohibited from reproducing such information in any form without the prior authorization of Duquesne Light's counsel (including taking detailed notes, making photocopies, or taking pictures). If a statutory advocate determines that it is necessary to use CONFIDENTIAL SECURITY INFORMATION as part of their presentation of evidence in this proceeding, such statutory advocate shall request a copy from counsel for Duquesne Light, which permission shall not be unreasonably withheld and subject to that party confirming it understands and will abide by the terms of this Protective Order concerning use of such materials.

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), any party may, by subsequent objection or motion, seek further protection with respect to CONFIDENTIAL SECURITY INFORMATION, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

8. That information deemed as "CRITICAL ENERGY INFRASTRUCTURE INFORMATION" may be made available for inspection and review by a "Reviewing Representative" who has signed a Non-Disclosure Certificate attached as Appendix B and who is:

- (a) An attorney who has entered an appearance in this proceeding for a party;
- (b) An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph 8(a); or
- (c) 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.

CRITICAL ENERGY INFRASTRUCTURE INFORMATION will only be provided for inspection via in-person review at the offices of Post & Schell, P.C., 17 N. Second Street, 12th Floor, Harrisburg, PA 17101. Such review may be proctored, and the Reviewing Representatives are prohibited from reproducing such information in any form without the prior authorization of Duquesne Light's counsel (including taking detailed notes, making photocopies, or taking pictures). This provision does not apply to attorneys, expert witnesses and/or employees of the parties that are otherwise authorized to review CEII.

Reviewing Representatives who gain access to CRITICAL ENERGY INFRASTRUCTURE INFORMATION undertake the obligation to protect the confidentiality of CEII and undertake all other obligations resulting from having access to this confidential information, in accordance with 18 C.F.R. 388.113(h), as well as all other applicable federal and

state laws and other legal rules, which are incorporated by reference herein. Any copies of CEII shall also be deemed to be CRITICAL ENERGY INFRASTRUCTURE INFORMATION.

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), any party may, by subsequent objection or motion, seek further protection with respect to CRITICAL ENERGY INFRASTRUCTURE INFORMATION, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

9. That for purposes of this Protective Order, a Reviewing Representative may not be a "Restricted Person."

(a) A "Restricted Person" shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; 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.

(b) 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: (i) identify for the parties each Restricted Person and each expert or consultant; (ii) 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 (iii) 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.

10. That in the event that a party wishes to designate as a Reviewing Representative a person not described in Paragraphs 5(a) through 5(d), 6(a) through 6(c), 7(a) through 7(c), or 8(a) through 8(c), above, or a person that is a Restricted Person under Paragraph 9, the party shall seek agreement from the party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative 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.

11. That a qualified "Reviewing Representative" for "HIGHLY CONFIDENTIAL" material may review and discuss "HIGHLY CONFIDENTIAL" material 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, provided, however, that counsel for the Bureau of Investigation and Enforcement ("I&E"), Office of Consumer Advocate ("OCA"), and Office of Small Business Advocate ("OSBA") may share Proprietary Information with the I&E Director, Consumer Advocate, the Deputy 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 Stipulated Protective Agreement.

12. That Proprietary Information shall be treated by the nonproducing Party and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 14(a).

(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.

(b) 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 Stipulated Protective Agreement 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 Stipulated Protective Agreement 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 and each full-time employed expert is personally responsible for ensuring that the I&E Prosecutor each and every full-time employed expert provided with Proprietary Information complies with all terms and conditions of the Stipulated Protective Agreement. The terms of Paragraph 11(b) are applicable only to I&E.

(c) In addition, OSBA's consultant, Mr. Robert D. Knecht, will not be considered to be a Restricted Person, and Paragraphs 9 and 11 will not apply to Mr. Knecht provided that Mr. Knecht does not share or discuss the Proprietary Information with any person except authorized OSBA representatives.

13. That 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.

14. That Reviewing Representatives shall execute a Non-Disclosure Certificate in order to obtain access to Proprietary Information, and will be subject to the following conditions:

(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, 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 the Protective Order.

15. That none of the parties 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. The parties shall designate data or documents as constituting or containing Proprietary Information by marking the documents "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," "CONFIDENTIAL SECURITY INFORMATION," or "HIGHLY CONFIDENTIAL – CEII – Contains Critical Energy Infrastructure Information – DO NOT RELEASE." 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. The Proprietary Information shall be served upon the parties hereto only and the materials shall be separate from the nonproprietary materials and conspicuously marked “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “CONFIDENTIAL SECURITY INFORMATION,” or “HIGHLY CONFIDENTIAL – CEII – Contains Critical Energy Infrastructure Information – DO NOT RELEASE.” For filing purposes, Proprietary Information shall be filed separately from the nonproprietary materials and conspicuously marked “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “CONFIDENTIAL SECURITY INFORMATION,” or “HIGHLY CONFIDENTIAL – CEII – Contains Critical Energy Infrastructure Information – DO NOT RELEASE.”

16. That the parties 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 the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, 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.

17. That any public reference to Proprietary Information by a party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully 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.

18. That part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, arguments, and responses to discovery, and including reference thereto as mentioned in Paragraph 17 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 to this proceeding or pursuant to an order of the Commission.

19. That the parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a 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.

20. That 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 parties, upon request, shall either destroy or return to the parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that a 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 parties, the party shall certify in writing to the producing party that the Proprietary Information has been destroyed.

Dated: 5/31/2024

\_\_\_\_\_  
/s/  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

**APPENDIX A**

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	Docket Nos. R-2024-3046523, <i>et al.</i>
	:	
Duquesne Light Company	:	

**NON-DISCLOSURE CERTIFICATE  
CONFIDENTIAL INFORMATION AND MATERIALS**

TO WHOM IT MAY CONCERN:

The undersigned is a Reviewing Representative of the \_\_\_\_\_, a party to this proceeding (“Party”), and is not, or has no knowledge or basis for believing that he/she is a “Restricted Person” as that term is defined in Paragraph 9 of the Protective Order executed on behalf of the Party with regard to the above-referenced proceeding. The undersigned has read and understands the Protective Order 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.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Employer

**APPENDIX B**

Pennsylvania Public Utility Commissi :  
*et al.* : Docket Nos.  
 : R-2024-3046523, *et al.*  
v. :  
 :  
Duquesne Light Company :

**NON-DISCLOSURE CERTIFICATE  
CONFIDENTIAL INFORMATION AND MATERIALS**

TO WHOM IT MAY CONCERN:

The undersigned is a Reviewing Representative of the \_\_\_\_\_, a party to this proceeding (“Party”), and is not, or has no knowledge or basis for believing that he/she is a “Restricted Person” as that term is defined in Paragraph 9 of the Protective Order. The undersigned has read and understands the Protective Order and the required treatment of information and materials designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “CONFIDENTIAL SECURITY INFORMATION,” or “HIGHLY CONFIDENTIAL – CEII – Contains Critical Energy Infrastructure Information – DO NOT RELEASE” as defined in the Protective Order. The undersigned agrees to be bound by and comply with the terms and conditions of said Protective Order. The undersigned understands and agrees that, pursuant to Paragraphs 5, 6, and 7 a party providing HIGHLY CONFIDENTIAL information and materials, CONFIDENTIAL SECURITY INFORMATION, or “HIGHLY CONFIDENTIAL – CEII – Contains Critical Energy Infrastructure Information – DO NOT RELEASE” may seek further protection, including, but not limited to, total prohibition of disclosure as to particular individuals, even where Appendix B has been executed.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_

Signature

Employer

**R-2024-3046523 - PENNSYLVANIA PUBLIC UTILITY COMMISSION v. DUQUESNE LIGHT COMPANY**

*Revised: May 30, 2024*

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