**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company for Approval : M-2015-2515375

of its Act 129 Phase III Energy Efficiency and :

Conservation Plan :

**PROTECTIVE ORDER**

Upon consideration of the Motion for a Protective Order filed on January 22, 2016 by Duquesne Light Company, there being no objection from the Office of Consumer Advocate (OCA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Office of Small Business Advocate (OSBA), Wal-Mart Stores East, L.P. and Sam’s East, Inc. (collectively Walmart), Citizen Power, and the Duquesne Industrial Intervenors (DII),

IT IS ORDERED THAT:

# 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 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.

# The materials or information subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies and other materials 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.

# This Protective Order applies to the following materials:

## 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;

## 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.

# 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.

# 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.

# Proprietary Information shall be made available to a Reviewing Representative in this proceeding pursuant to the following procedures:

## 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:

### an attorney who has made an appearance in this proceeding for a Party;

### attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Paragraph (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;

### employees or other representatives of a Party appearing in this proceeding with significant responsibility for the docket.

## Information deemed as “HIGHLY CONFIDENTIAL,” may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate and who is:

### an attorney who has made an appearance in this proceeding for a Party;

### an attorney, paralegal, or other employee associated for purposes of this case with an attorney described in Paragraph (i);

### 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;

### 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.

# 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, 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.

# 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.

# 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.

# 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.

## Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

# 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.”

# 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.

# 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.

# 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 paragraphs 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.

# 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.

# 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.

# 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 non-producing Party shall certify in writing to the producing Party that the Proprietary Information has been destroyed.

Date: January 22, 2016

 Katrina L. Dunderdale

 Administrative Law Judge

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company for Approval : M-2015-2515375

of its Act 129 Phase III Energy Efficiency and :

Conservation Plan :

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 in the above-referenced proceeding, and agrees to be bound by, and comply with, the terms and conditions of said Protective Order. The undersigned agrees that any Proprietary Information shall be used or disclosed only for purposes of preparation for, and conduct of, the above-captioned proceeding, or any administrative or judicial review thereof, and shall not be disclosed of used for any other purposes.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE:

**M-2015-2515375 – PETITION OF DUQUESNE LIGHT COMPANY - FOR APPROVAL OF ITS ACT 129 PHASE III ENERGY EFFICIENCY AND CONSERVATION PLAN**

***(Revised 1/22/16)***

\*ROBERT HOAGLUND ESQUIRE

ADRIENNE KURTANICH ESQUIRE

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