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File #: 166407

November 13, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Application of Duquesne Light Company filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 138 kV Transmission Lines Associated with the Brunot Island – Crescent Project in the City of Pittsburgh, McKees Rocks Borough, Kennedy Township, Robinson Township, Moon Township, and Crescent Township, Allegheny County, Pennsylvania
Docket No. A-2019-3008589 and A-2019-3008652**

Dear Secretary Chiavetta:

Enclosed for filing is the Motion of Duquesne Light Company for a Protective Order in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Garrett P. Lent

GPL/jl
Enclosures

cc: Honorable Mary D. Long
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

BY ELECTRONIC MAILING ONLY

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BY US MAILING ONLY

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Date: November 13, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Duquesne Light Company :
Filed for Pursuant to 52 Pa. Code Chapter : Docket No. A-2019-3008589
57, Subchapter G, for Approval of the : A-2019-3008652
Siting and Construction of the 138kV :
Transmission Lines Associated with the :
Brunot Island- Crescent Project in the :
City of Pittsburgh, McKees Rocks Borough :
Kennedy Township, Robinson Township :
Moon Township, and Crescent Township, :
Allegheny County, Pennsylvania

**MOTION OF DUQUESNE LIGHT COMPANY
FOR A PROTECTIVE ORDER**

TO ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Duquesne Light Company ("Duquesne Light" or the "Company") 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, Duquesne Light states as follows:

I. Procedural History

1. On March 15, 2019, Duquesne Light Company filed an application for approval to site and construct 138 kV transmission lines associated with the Brunot Island-Crescent Project ("BI-Crescent Project" or the "Project") in the City of Pittsburgh, McKees Rocks Borough, Kennedy Township, Robinson Township, Moon Township and Crescent Township, Allegheny County. (Docket No. A-2019-3008589). Duquesne Light also filed an application for eminent domain to acquire a certain portion of the lands of George N. Schaefer of Moon Township, Allegheny County, in connection with the transmission line project. (Docket No. A-2019-3008652).

2. Protests were filed by Victoria Adams, John P. and Jennifer Crowe, Richard Gable, Folezia Marinkovic, Zachariah Nave, Joseph G. and Suzanne Rabosky, Aaron and Rebecca Siegel, Cynthia and Patrick Wilson, and Dennis J. and Jeanne Zona.

3. Prehearing conferences were held on April 29, 2019 and June 6, 2019.

4. On September 10, 2019, the Protestants offered testimony at an evidentiary hearing.

5. A public input hearing was held in Moon Township on October 9, 2019.

6. Technical evidentiary hearings were scheduled to begin on October 29, 2019.

7. On October 22, 2019, Duquesne Light filed a motion to continue the October 29, 2019 hearing in order to permit the Company time to file an amendment to the application under consideration.

8. By Interim Order entered October 24, 2019, Duquesne Light's motion was granted.

9. On August 10, 2020, Duquesne Light filed an amended application, which modified the original proposal to eliminate the construction of one of the two circuits to 345 kV engineering standards, and reducing the height of the poles that will be constructed as part of the amended Project.

10. On August 24, 2020, Administrative Law Judge Mary D. Long ("ALJ") issued a Prehearing Conference Order.

11. On September 18, 2020 a petition to intervene was filed by the Allegheny County Sanitary Authority ("ALCOSAN").

12. A further prehearing conference was held as scheduled on September 25, 2020.

13. Protestants Victoria Adams, Jennifer Crowe, Richard Gable, Folezia Marinkovic, Zachariah Nave, Joseph Rabosky, Cynthia Wilson and Dennis Zona appeared. The petition to intervene of ALCOSAN was granted.

14. On September 28, 2020, the ALJ issued an Interim Order, which set a litigation schedule for the proceeding on the amended application.

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

16. 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. 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.

17. 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).

18. 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 CEII,” which is defined in Paragraph 3 of the attached proposed Protective Order as materials containing Critical Energy Infrastructure Information (“CEII”).

19. 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.

20. Limitation on the disclosure of “Confidential” or “Highly Confidential CEII” 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.

21. Duquesne Light notes that it has provided an advance copy of this Motion and Protective Order to each of the Parties that has provided an e-mail address in this proceeding. None of these parties have indicated objection to the Motion or the Protective Order.

22. The attached proposed Protective Order will protect the proprietary 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, Duquesne Light Company respectfully requests that Administrative Law Mary D. Long grant this Motion for Protective Order and issue the attached Protective Order pursuant to 52 Pa. Code § 5.365(a).

Respectfully submitted,



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November 13, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Duquesne Light Company	:	
Filed for Pursuant to 52 Pa. Code Chapter	:	Docket No. A-2019-3008589
57, Subchapter G, for Approval of the	:	A-2019-3008652
Siting and Construction of the 138kV	:	
Transmission Lines Associated with the	:	
Brunot Island- Crescent Project in the	:	
City of Pittsburgh, McKees Rocks Borough	:	
Kennedy Township, Robinson Township	:	
Moon Township, and Crescent Township,	:	
Allegheny County, Pennsylvania	:	

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order that was filed by Duquesne Light Company (“Duquesne Light” or the “Company”) on November __, 2020;

IT IS ORDERED THAT:

1. 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 with it. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. The information subject to this Protective Order includes 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 – CEII – Contains Critical Energy Infrastructure Information – DO NOT RELEASE**”. Such materials will be 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. This Protective Order applies to the following categories of materials: (A) 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; and (B) the Parties may designate materials as Containing Critical Energy Infrastructure Information, as defined in 18 C.F.R. § 388.113(c)(1)¹. If the material contains Critical Energy Infrastructure Information (“**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. (a) Proprietary Information shall be made available to a Reviewing Representative for a party, subject to the terms of this Protective Order. Such Reviewing Representative shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross

¹ 18 C.F.R. § 388.113(c)(1) 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)(2) 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.

examination or argument in this proceeding. To the extent required for participation in this proceeding, counsel for a party may make Proprietary Information available to a Reviewing Representative subject to the conditions set forth in this Protective Order. A “Reviewing Representative” for **CONFIDENTIAL** information is a person that (a) has signed a Non-Disclosure certificate, (b) qualifies as a Reviewing Representative under Paragraph 5, and (c) is not excluded as a Restricted Person under Paragraph 8 of this Protective Order. A “Reviewing Representative” for **HIGHLY CONFIDENTIAL CEII** is a person that (a) has signed a Non-Disclosure Certificate, (b) qualifies as a Reviewing Representative under Paragraph 6, and (c) is not excluded as a Restricted Person under Paragraph 8 of this Protective Order.

(b) 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.

5. 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 5(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) Parties, employees or other representatives of a party appearing in this proceeding with significant responsibility for this docket; or
- (v) A person designated as a Reviewing Representative for purposes of Confidential Information pursuant to paragraph 11.

6. Information deemed as “**HIGHLY CONFIDENTIAL CEII**”, as defined in 18 CFR § 388.113(c)(1), may be made available for inspection and review but not copied by a “Reviewing Representative,” consistent with the parameters outlined in Paragraph 7 and who is:

- (i) An attorney 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 6(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) An employee of Duquesne Light or the Allegheny County Sanitary Authority (“ALCOSAN”) that has significant responsibility for this docket; or
- (v) A person designated as a Reviewing Representative for purposes of Critical Energy Infrastructure Information pursuant to paragraph 11.

Reviewing Representatives who gain access to “**HIGHLY CONFIDENTIAL CEII**” 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 CFR 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 **HIGHLY CONFIDENTIAL CEII**.

7. **HIGHLY CONFIDENTIAL CEII** shall only be made available for inspection at the Company’s offices, except that this provision does not apply to attorneys, experts and/or employees

of Duquesne Light or ALCOSAN that are otherwise authorized to review HIGHLY CONFIDENTIAL CEII.

8. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person.” A “Restricted Person” shall mean: (a) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity; (b) 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; (c) 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; (d) 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; (e) as to “CEII,” a person who is ineligible to receive CEII or otherwise is precluded in any other way by law or other legal rule from accessing this confidential information; and (f) as to Proprietary Information that would be valuable or confer an unfair advantage in negotiations and dealings with Duquesne Light or its representatives and agents, a person whose interests are in conflict with those of Duquesne Light and who could gain an unfair advantage in negotiations and dealings with Duquesne Light if the person were to have access to the particular 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.

9. 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.

10. Proprietary Information shall be treated by the parties 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.

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 a Party wishes to designate as a Reviewing Representative a person not described in paragraph 5(i) through (iv) or paragraph 6(i) through (iii) above, 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.

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 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.

(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.

13. The parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents “**CONFIDENTIAL**” 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 parties, 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 parties hereto only in an envelope separate from the nonproprietary materials, and the envelope shall

be conspicuously marked “**CONFIDENTIAL**” or “**HIGHLY CONFIDENTIAL - CEII- Contains Critical Energy Infrastructure Information – DO NOT RELEASE**”.

14. The party will consider and treat the Proprietary Information as within the exemptions from disclosure provided 66 Pa. C.S. § 335(d) and also exempt under 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 or non-CEII.

15. 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.

16. 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 paragraph 15 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.

17. Any Propriety Information that is inadvertently disclosed shall be promptly returned to the producing party upon request without waiver of the “**CONFIDENTIAL**” and “**HIGHLY**

CONFIDENTIAL - CEII- Contains Critical Energy Infrastructure Information – DO NOT RELEASE” designations.

18. 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.

19. Any party may, by subsequent objection or motion, seek further protection with respect to **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL CEII**, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

20. 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; and to refuse to produce Proprietary Information pending the adjudication of the objection.

21. 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, all parties, 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 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 producing party, that party shall certify in writing to the producing party that the Proprietary Information has been destroyed.

Dated: _____

Mary D. Long
Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Duquesne Light Company	:	
Filed for Pursuant to 52 Pa. Code Chapter	:	Docket No. A-2019-3008589
57, Subchapter G, for Approval of the	:	A-2019-3008652
Siting and Construction of the 138kV	:	
Transmission Lines Associated with the	:	
Brunot Island- Crescent Project in the	:	
City of Pittsburgh, McKees Rocks Borough	:	
Kennedy Township, Robinson Township	:	
Moon Township, and Crescent Township,	:	
Allegheny County, Pennsylvania	:	

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the retaining party). The undersigned has read and understands the Protective Order issued in the above captioned proceedings, which Order deals with the treatment of information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - CEII - Contains Critical Energy Infrastructure Information – DO NOT RELEASE.” The undersigned agrees to be bound by the terms of the Protective Order and to abide by it, including without limitation the requirement that any Proprietary Information shall be used or disclosed only for purposes of preparation for, and conduct of the above captioned proceedings, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever. The undersigned additionally certifies and agrees that Critical Energy Infrastructure Information (“CEII”) will only be used for the purpose for which it was requested; CEII may only be discussed with authorized recipients; CEII must be kept in a secure place in a manner that would prevent unauthorized access; CEII must be destroyed or returned to the party who provided it upon request; the Commission may audit the recipient's compliance with the Protective Order and the confidentiality obligations undertaken by the undersigned; CEII provided pursuant to the agreement is not subject to release under either FOIA or Sunshine Laws; the undersigned and any other recipients are obligated to protect the CEII even after a designation has lapsed until the Commission or another competent authority determines the information should no longer be designated as CEII under 18 CFR § 388.113 et seq.; the undersigned is required to promptly report all unauthorized disclosures of CEII to the Commission and the party who provided the Proprietary Information; and the undersigned undertakes all obligations resulting from gaining access to CEII as described in the Protective Order, in 18 CFR § 388.113 et seq., and under any other applicable federal or state law or legal rule.

SIGNATURE

PRINT NAME

APPENDIX A

ADDRESS

EMPLOYER

DATE: _____