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January 26, 2021

VIA ELECTRONIC MAIL

Administrative Law Judge Eranda Vero
Commonwealth of Pennsylvania Public Utility Commission
801 Market Street,
4th Floor, Suite 4063
Philadelphia, Pennsylvania 19107
evero@pa.gov

RE: Petition of Pike County Light & Power for Approval of Its Default Service Plan and Waiver of Commission Regulations and *Nunc Pro Tunc* Treatment for the Period June 1, 2021 through May 31, 2024; Docket No. P-2020-3022988;
UNOPPOSED MOTION FOR PROTECTIVE ORDER

Dear Judge Vero:

Enclosed you will find the Unopposed Motion for Protective Order of Pike County Light & Power Company in the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

This motion is served electronically pursuant to the COVID-19 Suspension Emergency Order dated March 20, 2020 and ratified March 26, 2020.

If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

/s/ Whitney E. Snyder

Thomas J. Sniscak
Whitney E. Snyder
Counsel to Pike County Light & Power Company

TJS/WES/das

Enclosure

cc: Rosemary Chiavetta, Secretary (Via electronic filing)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Pike County Light & Power for	:	
Approval of Its Default Service Plan and	:	P-2020-3022988
Waiver of Commission Regulations and	:	
<i>Nunc Pro Tunc</i> Treatment for the Period	:	
June 1, 2021 through May 31, 2024	:	

**UNOPPOSED MOTION OF
PIKE COUNTY LIGHT & POWER COMPANY
FOR PROTECTIVE ORDER**

TO ADMINISTRATIVE LAW JUDGE ERANDA VERO:

Pike County Light & Power Company (“Pike”), by and through its attorneys, Hawke McKeon & Sniscak LLP, 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). Pike has corresponded with the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”), and each has indicated they do not oppose the attached Protective Order. In support thereof, Pike represents as follows:

1. On November 23, 2020, Pike County Light & Power (Pike) filed a Petition for Approval of its Default Service Plan at Docket No. P-2020-3022988. The Petition was filed pursuant to Section 2807(e) of the Public Utility Code and 52 Pa. Code 54.181-54.190.

2. The Petition was published in the *Pennsylvania Bulletin* on December 12, 2020, with an Answer/Protest date of December 29, 2020.

3. In its Petition, Pike admits that it should have filed this Petition by June 1, 2020, and that the nine-month time frame for Commission decision in this proceeding would run after the date of expiration of Pike’s current DSP Plan. Consequently, Pike is requesting *nunc pro tunc*

treatment of its filing as well as an expedited proceeding to allow the Commission to decide this matter at its May 20, 2021 public meeting.

4. The proceeding has been assigned to Administrative Law Judge Eranda Vero ("ALJ Vero") for hearings and issuance of a Recommended Decision.

5. On December 15, 2020, ALJ Vero issued an Order at the above referenced docket requiring Pike to file a written explanation of the reasons that led to the late filing, as well as the grounds on which the filing should be granted *nunc pro tunc* and expedited treatment with the Secretary's Bureau by no later than December 21, 2020. In compliance with this order, Pike filed the required written explanation of the late filing on December 21, 2020.

6. ALJ Vero's December 15, 2020 Order also required Pike to file its pre-filed written Direct Testimony by no later than December 24, 2020, at 11:00 am. Pike will comply with this requirement.

7. The pre-filed testimony contains confidential and proprietary information which requires the entry of a Protective Order in this proceeding.

8. Because confidential and proprietary information within the definition of 52 Pa. Code § 5.365 will be shared via the pre-filed testimony there is justification for the issuance of a Protective Order. Specifically, testimony submitted by Pike contains confidential and proprietary information regarding Pike's proposed hedging strategy and past transactions. 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 the regulation.

9. 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

Proprietary Information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the Proprietary 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).

10. The attached proposed Protective Order defines "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." The proposed Protective Order defines "Highly Confidential" information as "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." Clearly, protecting this type of information from disclosure is appropriate.

11. Limitation on the disclosure of Proprietary 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. As noted previously, Pike has corresponded with OCA, I&E, and OSBA. Those parties do not oppose the Motion or attached proposed Protective Order.

13. The attached proposed Protective Order will protect the Proprietary Information 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 Eranda Vero grant this Motion and issue the attached Protective Order.

Respectfully submitted,

/s/ Whitney E. Snyder

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Counsel for Pike County Light & Power Company

Date: January 26, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Pike County Light & Power for	:	
Approval of Its Default Service Plan and	:	P-2020-3022988
Waiver of Commission Regulations and	:	
<i>Nunc Pro Tunc</i> Treatment for the Period	:	
June 1, 2021 through May 31, 2024	:	

PROPOSED PROTECTIVE ORDER

An Order has been requested to grant the Unopposed Motion of Pike County Light & Power Company (“Pike”) for a Protective Order, which was submitted to the Administrative Law Judge via electronic filing on January 26, 2021 pursuant to the provisions of 52 Pa. Code § 5.36(a).

THEREFORE,

IT IS ORDERED:

1. That a Protective order is hereby granted with respect to all materials and information identified in Paragraphs 2, 3 and 4 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, 3 and 4 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 includes testimony and exhibits 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. That “Confidential” materials are those material 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. Together, these materials will be referred to as “Proprietary Information” for the purposes of this Protective Order.

4. That the information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are proprietary or confidential in nature and which are so designated by being marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Such materials will be referred to below as “Proprietary Information.” “Requesting Party” shall mean a Party that either requests or receives Proprietary Information, and “Producing Party” shall mean the Party that produces or otherwise supplies Proprietary Information to another Party.

5. That Proprietary Information shall be made available to counsel for Requesting Parties subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of participating in this proceeding. Counsel for Requesting Parties shall not disclose Proprietary Information to anyone other than counsel for the Parties, except that, to the extent required for participation in this proceeding, counsel for a Requesting Party may disclose Proprietary Information to the Requesting Party’s independent expert(s) subject to the terms of this Protective Order and provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the in-house analysts, paralegals,

secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so but shall be made aware that such information is not for public disclosure except under the terms in the Protective Order. Additionally, counsel for the Bureau of Investigation and Enforcement and the Office of Consumer Advocate may share Proprietary Information with the I&E Director, and the Consumer Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided, however, that these individuals otherwise abides by the terms of this Protective Order. Nothing in this Protective Order shall be deemed to restrict the right of the original Producing Party to disclose or use its own Proprietary Information.

6. That, prior to disclosing Proprietary Information to an independent expert as provided in paragraph 5, a Requesting Party shall deliver a copy of this Protective Order to the expert and obtain from the expert a written acknowledgment of the terms of the Protective Order in the form of Appendix A attached hereto. Each party shall promptly notify the other parties of the identity of all persons provided access to Proprietary Information pursuant to this paragraph and paragraph 5.

7. That the Producing Party shall designate information or documents as constituting or containing Proprietary Information by marking 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, shall designate as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" only the specific data, passages or pages of documents which constitute or contain Proprietary Information. One permissible means of designating portions of a document to be Proprietary Information shall be to mark the first page of the document and on each page thereof containing Proprietary

Information with the word “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in bold, capital letters.

8. The Parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the 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.

9. That any public reference to Proprietary Information by a Party or its independent expert(s) 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.

10. That the part of any record in this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, direct testimony, cross-examination, argument and responses to discovery, including any reference thereto as mentioned in paragraph 9 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 an order of the Administrative Law Judge or the Commission.

11. The parties retain the right to require additional protection for Proprietary Information that it deems to be “Highly Confidential.” To the extent that a Producing Party identifies any information or materials to be of a highly confidential nature, said Party will contact the Requesting Party to negotiate specific treatment for such materials. However, such additional requirements shall not preclude counsel for a party from viewing any materials so designated.

12. Each Party 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. Nothing herein shall be construed to remove the right of a Party to present such question or challenge to the Administrative Law Judge or the Commission. If a Party challenges the designation of a document or information as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the Producing Party retains the burden of demonstrating that the designation is appropriate.

13. That 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.

14. That within 30 days after a request by a Producing Party, the other party shall either destroy or return to the Producing Party all copies of all documents and other materials which contain any Proprietary Information. In the event that the Requesting 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 Requesting Party shall certify in writing to the Producing Party that the documents and other materials containing Proprietary Information have been destroyed.

Date: _____

Eranda Vero
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

BY ELECTRONIC AND FIRST CLASS MAIL

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/s/ Whitney E. Snyder
Thomas J. Sniscak
Whitney E. Snyder

Dated this 26th day of January, 2021