



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Anthony D. Kanagy

akanagy@postschell.com
717-612-6034 Direct
717-731-1985 Direct Fax
File #: 141701

January 21, 2016

VIA ELECTRONIC FILING

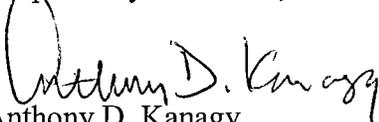
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Petition of Duquesne Light Company for Approval to Modify its Smart Meter
Procurement and Installation Plan
Docket No. P-2015-2497267**

Dear Secretary Chiavetta:

Enclosed please find 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,



Anthony D. Kanagy

ADK/skr
Enclosure

cc: Honorable Katrina L. Dunderdale
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).

VIA E-MAIL and FIRST CLASS MAIL

Johnnie E. Simms, Esquire
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265

Sharon Webb, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Aron J. Beatty, Esquire
David Evrard, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Pamela C. Polacek, Esquire
Teresa K. Schmittberger, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166

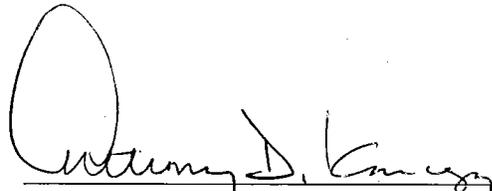
Divesh Gupta, Esquire
Constellation Energy Group, Inc.
100 Constellation Way, Suite 500C
Baltimore, MD 21202

Christopher A. Lewis, Esquire
Blank Rome LLP
One Logan Square
Philadelphia, PA 19103

Patrick M. Cicero, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101

Theodore S. Robinson, Esquire
Citizen Power Inc.
2121 Murray Avenue
Pittsburgh, PA 15217

Date: January 21, 2016


Anthony D. Kanagy

4. On August 31, 2015, the Office of Consumer Advocate (“OCA”) filed an Answer to the Petition. Therein, the OCA requested that the Company’s Petition be referred to the Office of Administrative Law Judge (“OALJ”) for further proceedings.

5. Also on August 31, 2015, Citizen Power, Inc. (“Citizen Power”) filed an Answer to the Petition. Citizen Power also requested that the matter be referred to the OALJ.

6. On October 2, 2015, the Commission issued a Notice of Prehearing Conference scheduling a prehearing conference for October 13, 2015.

7. This proceeding has been assigned to Administrative Law Judge Katrina L. Dunderdale (the “ALJ”) for hearings and issuance of a Recommended Decision.

8. On October 2, 2015, the presiding officer issued a Prehearing Conference Order which set forth certain rules for the prehearing conference and the proceeding, including an obligation to file prehearing memoranda prior to the date of the prehearing conference.

9. On October 13, 2015, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Public Statement.

10. A prehearing conference was also held on Tuesday, October 13, 2015. Duquesne Light, the OCA, the OSBA and Citizen Power (collectively “the Parties”) participated in the prehearing conference before the ALJ. At the prehearing conference, the ALJ ruled that the aforementioned parties, which filed petitions or notices in response to the Company’s Petition, would be listed as parties in this matter. In addition, a litigation schedule was established for this proceeding.

11. On November 13, 2015, Duquesne Light filed Statement No. 2B, Supplemental Testimony for Mr. Karcher, which included a Supplemental Confidential OMS Study.

12. On December 17, 2015, the OCA filed the Direct Testimony of Stacey L. Sherwood.

13. The Parties are engaging in the discovery process in this proceeding. The Parties will continue to engage in discovery consistent with the litigation schedule established by the ALJ.

14. 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. For example, Parties have sought information that is customarily treated as sensitive, proprietary, or highly confidential, including but not limited to, highly sensitive business documents. Treatment of such proprietary 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.

15. 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 is known by others and used in similar activities; the worth or value of the information to the party and to the party's competitors; the degree of difficulty and cost of developing the information; and other statutes or regulations dealing specifically with disclosure of the information. 52 Pa. Code §§ 5.365(a)(1) – (5).

16. 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 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 second is “Highly Confidential,” which is defined in Paragraph 3 of the attached proposed Protective Order as “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.”

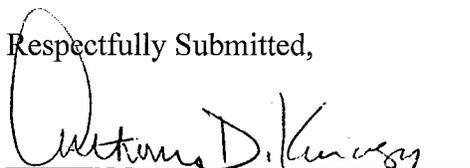
17. Paragraph 17 of the attached proposed Protective Order protects against overly broad designations of protected information by giving all Parties the right to question or challenge the confidential or proprietary nature of the “Confidential” or “Highly Confidential” information.

18. Limitation on the disclosure of “Confidential” or “Highly Confidential” 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.

19. Duquesne Light notes that it has provided an advance copy of this Motion and Protective Order to OCA, OSBA and Citizen Power. These parties have informed Duquesne Light that they do not oppose the Motion and Protective Order.

20. The attached proposed Protective Order will protect the confidential information while allowing the Parties to use such information for purposes of the instant litigation.

Respectfully Submitted,



Tishekia E. Williams (ID # 208997)
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219
Phone: (412) 393-1541
Fax: (412) 393-5757
E-mail: TWilliams@duqlight.com

Michael W. Gang (ID # 25670)
Anthony D. Kanagy (ID # 85522)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: mgang@postschell.com
E-mail: akanagy@postschell.com

Date: January 21, 2016

Attorneys for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company :
For Approval to Modify its Smart Meter : Docket No. P-2015-2497267
Procurement And Installation Plan :

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order that was filed by Duquesne Light Company on _____;

IT IS ORDERED THAT:

1. 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.

2. 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.

3. This Protective Order applies to the following materials:

(a) 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;

(b) 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."

4. 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.

5. 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.

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

(a) 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 6(a)(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) employees or other representatives of a Party appearing in this proceeding with significant responsibility for the docket.
- (v) a person designated as a Reviewing Representative for purposes of Confidential information pursuant to Paragraph 11.

(b) Information deemed as "HIGHLY CONFIDENTIAL," may be provided to a "Reviewing Representative" who has signed a Non-Disclosure Certificate and who is:

- (i) an attorney for a statutory advocate pursuant to 52 Pa. Code §1.8 or an outside counsel 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(b)(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) a person designated 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 5.365(e) of the Commission's rules of Practice and Procedure, 52 Pa. Code §§5.362, 5.365(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.

7. Proprietary Information shall not be made available to a "Restricted Person" to the extent reasonably known by the non-producing Party. For the purpose of this Protective Order, "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 if the employee's primary duties involve the development, marketing or pricing of the competitor's products or services; (b) an officer, director, stockholder, partner or owner of any affiliate of a competitor of the Parties (including any association of competitors of a Party) or an employee of such an entity if the employee's primary duties involve the development, marketing or pricing of the competitor's products or services; (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; and (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. For purposes of this Protective Order, stocks, partnership or other direct ownership interests (excluding ownership in mutual funds) valued at more than \$10,000 or constituting more than 1% interest in a business establishes a significant motive for violation.

8. 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 (to the extent reasonably known by the non-producing Party), 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 producing Party retains the right to challenge the adequacy of the written assurances that the non-producing Party or its customers' interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

9. 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, 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 and Office of Small Business Advocate 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, however, that these individuals otherwise abide by the terms of the Protective Order.

10. Proprietary Information shall be treated by the non-producing 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.

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 the non-producing 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 non-producing 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 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.

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

13. 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 it is 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. Upon request from another party, the producing party shall produce a redacted (public) version of any such partially confidential compilation or multi-page document within a reasonable period of time. The Proprietary Information shall be served upon the non-producing Party hereto only in an envelope separate from the non-proprietary materials, and the envelope shall be conspicuously marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

14. The non-producing Party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right to Know Law as set forth at 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.

15. 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.

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 or pursuant to order of the Administrative Law Judge, the Commission or appellate court.

17. The non-producing Party shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information. If a non-producing 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.

17. 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.

18. 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 non-producing 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 non-producing 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.

Dated: _____

Administrative Law Judge
Katrina L. Dunderdale

