**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|  |  |  |
| --- | --- | --- |
| PA Public Utility CommissionOffice of Consumer Advocate Guillermo BarbosaErle GrubbYvette LawsonAdrian and Diane MartencoJohn Litakv.Community Utilities of Pennsylvania, Inc. – Water Division | ::::::: | R-2016-2538660C-2016-2540738C-2016-2548235C-2016-2548262C-2016-2549382C-2016-2549995C-2016-2556961 |
|  |  |  |

**PROTECTIVE ORDER**

An Order has been requested to grant the Motion of Community Utilities of Pennsylvania, Inc. for a Protective Order, which was submitted to the Administrative Law Judge via electronic filing on October 3, 2016, 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.” 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. 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.” 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” 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” 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,” 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: October 4, 2016 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Eranda Vero

 Administrative Law Judge

**APPENDIX A**

Re: Pennsylvania Public Utility Commission v. Community Utilities of Pennsylvania Inc. Water Divisions; Docket No. R-2016-2538660, *et al.*

TO WHOM IT MAY CONCERN:

The undersigned is the independent expert of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The undersigned has read and understands the Protective Order, which 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

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 EMPLOYER

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**R-2016-2538660 - PA PUBLIC UTILITY COMMISSION v. COMMUNITY UTILITIES OF PENNSYLVANIA INC**

**SERVICE LIST**

THOMAS J SNISCAK ESQUIRE

CHRISTOPHER M ARFAA ESQUIRE

WILLIAM E LEHMAN ESQUIRE

HAWKE MCKEON AND SNISCAK LLP

100 NORTH TENTH STREET

HARRISBURG PA 17101

**717-236-1300**

***Accepts e-Service***

CHRISTINE M HOOVER ESQUIRE

KRISTINE E MARSILIO

OFFICE OF CONSUMER ADVOCATE

5TH FLOOR FORUM PLACE

555 WALNUT STREET

HARRISBURG PA 17101-1923

**717-783-5048**

***Accepts e-Service***

PHILLIP C KIRCHNER ESQUIRE

400 NORTH STREET

2ND FLOOR WEST

HARRISBURG PA 17120

**717-783-6151**

***Accepts e-Service***

ERLE GRUBB

7609 34TH AVENUE

APT # 415

JACKSON HEIGHTS, NY 11372

GUILLERMO BARBOSA

279 SPICEBUSH DRIVE

EAST STROUDSBURG, PA 18301

YVETTE LAWSON

1273 BRENTWOOD DRIVE

EAST STROUDSBURG, PA 18301

ADRIAN MARTENCO

3137 GREENBRIAR DRIVE

EAST STROUDSBURG PA 18301

JOHN LITAK

855 W MACADA ROAD

BETHELHEM PA 18017