



June 7, 2018

VIA E-FILE

Jonathan P. Nase

Direct Phone 717-773-4191

Direct Fax 215-372-2340

jnase@cozen.com

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

**Re: PENNSYLVANIA PUBLIC UTILITY COMMISSION V. SUEZ WATER PENNSYLVANIA
INC., DOCKET NOS. R-2018-3000834 AND C-2018-3001786**

MOTION FOR PROTECTIVE ORDER

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Motion of Suez Water Pennsylvania Inc. for Protective Order. Copies have been served per the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: Jonathan P. Nase
Counsel for *SUEZ Water Pennsylvania Inc.*

JPN:kmg
Enclosure

cc: Honorable David A. Salapa
Per Certificate of Service
John D. Hollenbach, P.E., General Manager and Vice President
Timothy J. Michaelson, Director of Regulatory Business

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2018-3000834
	:	
SUEZ Water Pennsylvania Inc.	:	

CERTIFICATE OF SERVICE


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

VIA E-MAIL AND FIRST CLASS MAIL

Scott B. Granger, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
400 North Street, 2 West
Harrisburg, PA 17120
E-mail: sgranger@pa.gov

Sharon E. Webb, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101
E-mail: swebb@pa.gov

Erin L. Gannon, Esquire
Christy M. Appleby, Esquire
Barrett C. Sheridan, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
E-mail: EGannon@paoca.org
E-mail: CAppleby@paoca.org
E-mail: BSheridan@paoca.org



Jonathan P. Nase, Esquire
Counsel for SUEZ Water Pennsylvania Inc.

Date: June 7, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	Docket Nos. R-2018-3000834
v.	:	C-2018-3001786
	:	
SUEZ Water Pennsylvania Inc.	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103(c), you are hereby notified that, if you wish to contest the motion, an answer or other responsive pleading to the enclosed Motion for Protective Order must be filed within **twenty (20) days** from service of the above-referenced motion. Any such reply must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served on counsel for SUEZ Water Pennsylvania Inc. and, where applicable, the Administrative Law Judge presiding over the case.

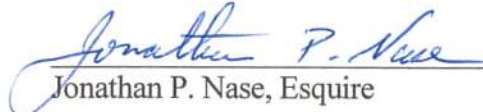
File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

David P. Zambito, Esquire (PA ID #80017)
Jonathan P. Nase, Esquire (PA ID #44003)
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101

Dated: June 7, 2018


Jonathan P. Nase, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	Docket Nos. R-2018-3000834
v.	:	C-2018-3001786
	:	
SUEZ Water Pennsylvania Inc.	:	

**MOTION OF SUEZ WATER PENNSYLVANIA INC.
FOR PROTECTIVE ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE DAVID A. SALAPA:

SUEZ Water Pennsylvania Inc. (“SUEZ” or the “Company”), by and through its attorneys, Cozen O’Connor, 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, SUEZ represents as follows:

1. On April 30, 2018, SUEZ filed proposed Supplement No. 53 to Water – Pa. P.U.C. No. 7 (“Supplement No. 53”), to be effective June 29, 2018, proposing an increase in rates designed to produce an increase in base rate revenues of approximately \$6.2 million per year.

2. On April 30, 2018, SUEZ also filed the following materials as supporting data, as required by 52 Pa. Code §§ 53.52 and 53.53:

- (a) Statement of Reasons;
- (b) Testimony Binder;

- (1) Direct Testimony of John D. Hollenbach, Operations and Capital Additions;
- (2) Direct Testimony of Constance E. Heppenstall, Income Statement, Operating Revenue, Expense Adjustments, and Rate Base;
- (3) Direct Testimony of James C. Cagle, Tax Impact;
- (4) Direct Testimony of Harold Walker, III, Lead Lag Study;
- (5) Direct Testimony of Dylan W. D'Ascendis, Rate of Return;
- (6) Direct Testimony of Paul R. Herbert, Cost of Service Allocation and Customer Rate Design;
- (7) Direct Testimony of John J. Spanos, Depreciation Expense;
- (c) Exhibit Binder;
- (d) Exhibit JJS-1;
- (e) Exhibit JJS-2;
- (f) Exhibit JJS-3;
- (g) Minimum Filing Requirements I through IV Binder;
- (h) Minimum Filing Requirements V through XI Binder; and
- (i) Confidential Filing Requirements Binder.

3. On May 4, 2018, counsel for the Pennsylvania Public Utility Commission's ("Commission's") Bureau of Investigation and Enforcement ("I&E") entered his appearance. On May 10, 2018, the Office of Consumer Advocate ("OCA") filed a Notice of Appearance and a Formal Complaint, which was docketed at C-2018-3001786. On May 22, 2018, counsel for the Office of Small Business Advocate ("OSBA") entered her appearance.

4. By Order entered May 17, 2018, the Commission suspended Supplement No. 53 by operation of law until January 29, 2019, unless permitted by Commission Order to become effective at an earlier date.

5. The proceeding has been assigned to Administrative Law Judge David A. Salapa for hearings and issuance of a Recommended Decision.

6. A prehearing conference was held on May 25, 2018, at which a litigation schedule was established.

7. The parties to this proceeding have engaged in substantial formal and informal discovery prior to the prehearing conference. The parties will continue to engage in discovery consistent with the litigation scheduled established by Administrative Law Judge Salapa.

8. Proprietary Information within the definition of 52 Pa. Code § 5.365 may be presented or requested during the course of this proceeding, which justifies the issuance of a Protective Order. For example, parties may seek information that is customarily treated as sensitive, proprietary, or highly confidential. Therefore, 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.

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 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; and the worth or value of such information to the party and the party's competitors. 52 Pa. Code §§ 5.365(a)(1) – (3).

10. Paragraph 3 of the attached proposed Protective Order defines "Proprietary Information" 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." Clearly, protecting this type of information from disclosure is appropriate.

11. Paragraph 13 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 "Proprietary Information."

12. 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.

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

14. SUEZ has provided advance copies of this Motion and the proposed Protective Order to all active Parties participating in this proceeding, specifically the Office of Consumer Advocate, the Office of Small Business Advocate and the Commission's Bureau of Investigation & Enforcement. These active Parties have indicated that they do not oppose the instant Motion.

WHEREFORE, for all the foregoing reasons, SUEZ Water Pennsylvania Inc. respectfully requests that Administrative Law Judge David A. Salapa grant this Motion and issue the attached Protective Order.

Respectfully submitted,

Dated: June 7, 2018



David P. Zambito, Esquire (PA ID No. 80017)
Jonathan P. Nase, Esquire (PA ID No. 44003)
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101
Phone: 717-703-5892
Fax: 215-989-4216
E-mail: dzambito@cozen.com
jnase@cozen.com

Counsel for *SUEZ Water Pennsylvania Inc.*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	Docket Nos. R-2018-3000834
v.	:	C-2018-3001786
	:	
SUEZ Water Pennsylvania Inc.	:	

PROTECTIVE ORDER

Upon consideration of the Motion for Protective Order that was filed by SUEZ Water Pennsylvania Inc. on June 7, 2018, and the record as a whole;

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 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 furnished in this proceeding, which are believed by a party to be of a proprietary or confidential nature and which are so designated by being stamped or otherwise marked "CONFIDENTIAL." 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 appropriately designated as such for the record.

3. 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.

4. Proprietary Information produced in this proceeding 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 only to a party’s expert(s), subject to the conditions set forth in this Protective Order. However, said expert(s) may not be a “Restricted Person.”

5. Proprietary Information shall not be made available to a “Restricted Person.”

(a) For the purpose of this Protective Order, “Restricted Person” shall mean:

(a) an officer, director, stockholder, partner, owner, or employee of any competitor of SUEZ Water Pennsylvania Inc. (“SUEZ” or the “Company”), (b) an officer, director, stockholder, partner, owner or employee of any affiliate of a competitor of SUEZ (including any association of competitors of SUEZ); (c) an officer, director, stockholder, owner, or employee of a competitor of a customer of SUEZ if the Proprietary Information concerns a specific, identifiable customer of SUEZ; and (d) an officer, director, stockholder, owner, or employee of an affiliate of a competitor of a customer of SUEZ if the Proprietary Information concerns a specific, identifiable customer of SUEZ; 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 ownership interests valued at more than \$10,000 (excluding mutual funds) or constituting more than a 1% interest in a business establishes a significant motive for violation.

(b) If an expert for the 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 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 SUEZ or its customers. SUEZ shall have the right to challenge the adequacy of the written assurances that SUEZ 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.

6. Prior to making Proprietary Information available to any person as provided in Paragraph 4 of this Protective Order, counsel shall deliver a copy of this Protective Order to such person and shall receive a written acknowledgment from that person in the form attached to this Protective Order and designated as "Appendix A." A party's expert(s) shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless and until an executed Non-Disclosure Certificate has been provided to the producing party. Attorneys and outside experts are responsible for ensuring that persons under their supervision or control comply with this Protective Order. The producing party shall be notified promptly of the identity of all persons

provided access to Proprietary Information pursuant to this paragraph and shall be provided with a copy of each acknowledgment signed by each expert.

7. Counsel for the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and the Bureau of Investigation and Enforcement (“I&E”), may share Proprietary Information with the Consumer Advocate, Small Business Advocate, and I&E Director, respectively, without obtaining a Non-Disclosure certificate for these individuals, provided however, that these individuals otherwise abide by the terms of this Protective Order. Likewise, counsel and experts for OCA, OSBA and I&E may discuss Proprietary Information with each other if the experts have executed the Non-Disclosure acknowledgment set forth in “Appendix A.”

8. A producing party shall designate data or documents as constituting or containing Proprietary Information by stamping or otherwise 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 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 or other sealed package separate from the nonproprietary materials, and the envelope shall be conspicuously marked “CONFIDENTIAL.”

9. 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.

10. The parties 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 nonproducing party shall promptly notify the producing party in order to provide the producing party an opportunity to oppose or limit such disclosure.

11. Any public reference to Proprietary Information by counsel or persons afforded access thereto 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.

12. 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 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.

13. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information; to question or challenge the admissibility of Proprietary Information; to refuse or object to the

production of Proprietary Information on any proper ground, including but not limited to relevance, materiality, or undue burden; to seek an order permitting disclosure of Proprietary Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary Information, the party claiming that the information is Proprietary Information retains the burden of demonstrating that the designation is necessary and appropriate.

14. Unresolved challenges arising under Paragraph 13 shall be decided on petition by the presiding officer or the Commission as provided by 52 Pa. Code § 5.365(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent that such guidance is available.

15. Within thirty (30) days from completion of this proceeding, including any administrative or judicial review, upon request of the producing party, all copies of all documents and other materials, including notes, which contain any Proprietary Information shall be either immediately returned to the party furnishing such Proprietary Information or destroyed. Further, all electronic communications containing information marked as "CONFIDENTIAL" shall immediately be deleted by all recipients. Parties shall provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information have been returned or destroyed and that all electronic communications containing Proprietary Information have been deleted.

Dated: _____

Administrative Law Judge
David A. Salapa

APPENDIX A

Re: Pennsylvania Public Utility Commission
v.
SUEZ Water Pennsylvania Inc.
Docket No. R-2018-3000834

TO WHOM IT MAY CONCERN:

The undersigned is an independent expert of _____, a party to this proceeding (“Party”), and is not, or has no knowledge or basis for believing that he/she is a “ Restricted Person” as that term is defined in the Protective Order with regard to the above-referenced proceeding. The undersigned has read and understands the Protective Order in the above-referenced proceeding, which Protective Order 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.

Signature

Print Name

Address

Employer