

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
(717) 234-1090 Fax (717) 234-1099
www.stevenslee.com

Direct Dial: (717) 255-7365
Email: mag@stevenslee.com
Direct Fax: (610) 988-0852

May 9, 2019

VIA ELECTRONIC FILING

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

RE: Pennsylvania Public Utility Commission v. Peoples Natural Gas Company, LLC
Docket No. R-2018-3006818
Correction to Duquesne Light Company Petition to Intervene

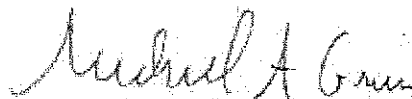
Dear Secretary Chiavetta:

Enclosed for filing please find Duquesne Light Company's Reply to People's Answer to the Motion for Protective Order filed in the above-referenced matter.

Copies of this filing have been served in accordance with the attached Certificate of Service. Should you have any questions, please feel free to contact me.

Best Regards,

STEVENS & LEE



Michael A. Gruin

Enclosure

cc: Administrative Law Judge Joel Cheskis
Certificate of Service

I. Peoples Has Not Met Its Burden of Proof and Its Request to Treat All Duquesne Employees as Restricted Persons is Not Supported by Law.

As previously stated, the Commission's regulation at 52 Pa. Code § 5.365 governs the issuance of Protective Orders. This regulation provides in part:

A petition for protective order to limit the disclosure of a trade secret or other confidential information on the public record will be granted only when a party demonstrates that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process. A protective order to protect trade secrets or other confidential information will apply the least restrictive means of limitation which will provide the necessary protections from disclosure.

(Emphasis added.)

Under this regulation, Peoples has the burden of proving the need for the level of protective treatment sought, and the regulation makes it clear that the least restrictive means of limitation must be applied. Peoples' proposed Protective Order and its Answer fail both of these requirements. First, notably absent from Peoples' Answer is any demonstration of substantial potential harm that would result from providing Confidential and Highly Confidential information to Duquesne Light. Peoples also make no attempt to show that its proposed "compromise" is the "least restrictive means of limitation which will provide the necessary protections from disclosure." In fact, Peoples' Answer makes no reference to the governing Commission regulations at all.

Peoples has not only failed to meet its burden of proof, it is attempting to inappropriately shift the burden to Duquesne Light. Peoples' newly created process is not supported by law, and poses a significant risk that parties – such as Duquesne Light – may be denied due process. In its Answer, Peoples has requested a Protective Order that would establish 1) a presumption that all Duquesne Light employees are Restricted Persons (because, for example, Duquesne Light and

Peoples “compete” for talent in the labor market) and 2) Duquesne Light employees should be required to make a demonstration via affidavit under penalty of false swearing (“Duquesne Affidavit”) that they are not involved in the Competitive Activities. These proposals are apparently borne of Peoples’ erroneous conclusion that Duquesne Light is a competitor of Peoples (further discussed below). As a result of this false conclusion, Peoples proposes to shift its burden of proof, and deny a party and customer in this case the ability to examine important issues related to Peoples’ revenues, expenses rates and tariff rules.

Assuming, for the sake of argument, that Duquesne Light was a competitor of Peoples, this would not justify Peoples’ proposed burden-shift to Duquesne Light. Nowhere in its Answer does Peoples explain why it would be appropriate to establish a presumption that all Duquesne Light employees, including its in-house counsel, are Restricted Persons. Simply repeating the request does not provide the factual justification for the request. Peoples has not met the standard established in the Commission’s regulations that it demonstrate substantial potential harm and utilize the least restrictive means.

Furthermore, Peoples’ requests to impose the presumption that Duquesne Light’s employees are all “Restricted Persons,” and to require Duquesne Light’s employees to sign “Duquesne Affidavits,” are procedurally improper. Peoples’ own Motion for Protective Order contained no mention of a “Restricted Person” presumption or a “Duquesne Affidavit.” Peoples’ Answer effectively asks the ALJ to modify a Protective Order that Peoples itself had proposed a mere four days prior. These untimely requests should be rejected out-of-hand.

II. Duquesne Light Is Not a Competitor of Peoples

At the outset, as Duquesne Light observed in its Answer, neither natural gas distribution companies (such as Peoples) nor electric distribution companies (such as Duquesne Light) operate in a competitive environment. With respect to electric distribution companies, the Pennsylvania Legislature has conclusively determined that “it is in the public interest for the transmission and distribution of electricity to continue to be regulated as a natural monopoly” 66 Pa. C.S. § 2802(16) (emphasis added). As a natural monopoly, Duquesne Light has exclusive ownership, through legal privilege, of electric distribution service in its certificated service territory. Peoples enjoys a similar privilege with respect to natural gas distribution service. For this reason, Duquesne Light is perplexed by Peoples’ repeated allegations that the companies operate in a highly competitive environment with respect to the respective companies’ services and rates. Simply put, that argument is a nonsensical perversion of the concept of competition.

Nonetheless, Duquesne Light will address the four areas of alleged competition (the so-called “Competitive Activities”) Peoples identifies beginning in paragraph 8 of its Answer:

1. *“Competition” for customer load*

Duquesne Light respectfully incorporates Sections III (Duquesne Light is not a Competitor of Peoples As A Matter of Law) and IV (Peoples’ Claims of Competition are Red Herrings) from its original Answer and Comments to the Motion for Protective Order as if fully stated herein. By way of additional response, as a certificated Electric Distribution Company, Duquesne Light is a default service provider of electric service, and does not compete with anyone for the distribution of electric load. Duquesne Light also does not compete with anyone

for the distribution of natural gas load, as Duquesne Light is not certificated to provide such service. Moreover, the fact that changes in electricity sales may have a temporary impact on Duquesne Light does not make it a competitor of Peoples.¹

2. *Combined heat and power ("CHP") and other distributed generation projects*

Peoples' allegation that it is pursuing a voluntary energy efficiency and conservation plan ("EE&CP"), and is therefore a competitor of Duquesne Light, is without merit. Duquesne Light has a statutory obligation to implement an EE&CP under Act 129 of 2008.² Per Act 129 of 2008, Duquesne Light is also permitted to recover its costs for those programs through a surcharge, and to account for impacts to sales in subsequent base rate cases. This is evidence of regulation – not competition – on the part of Duquesne Light.

3. *Interest in purchasing, or entering into a private-public partnership with, the Pittsburgh Water and Sewer Authority ("PWSA")*

Peoples' Answer's averments regarding the PWSA border on bad faith. To avoid any doubt, as Duquesne Light stated in its Answer: Duquesne Light has no intent to pursue a public-private partnership or acquisition of PWSA. Peoples presents a single newspaper article from February 22, 2018 in support of its claim that Peoples and Duquesne Light compete with respect to PWSA. This article from fourteen months ago in no way supports Peoples' claims. The article's sole discussion of Duquesne Light reads as follows:

¹ Duquesne Light notes that the passage of Act 58 of 2018, which provides for revenue decoupling, makes the allegation that Peoples and Duquesne Light compete for load even more bizarre. When examined closely, Peoples' attempt misstate Duquesne Lights' motives and interest in this matter fail.

² As Duquesne Light observed in its Answer and Comments, Duquesne Light has no CHP program beyond the rebates available through its EE&CP.

IMG chairman Steve Steckler said his group followed up on eight expressions of interest, including those from Peoples, Pennsylvania American Water Co., Duquesne Light and Aqua Pennsylvania. Pennsylvania American and Duquesne Light representatives said their firms made no formal proposals and that discussions, if they occurred, were of the most general nature.

(Emphasis added.) A full copy of the article is attached hereto as Exhibit A, and no fair reading of this article suggests that Duquesne Light is “competing” with Peoples over PWSA. This article illustrates the baseless and frivolous nature of Peoples’ claims of “competition.”

4. The Labor Market

Peoples’ argument that Peoples and Duquesne Light are “competitors” because they hire from the same or overlapping labor pools is facially absurd. Every party to this proceeding (other than *pro se* customer complainants) likely has interest in hiring individuals with experience working with utilities or in energy. Peoples’ argument would transmute this common interest into “competition” warranting extraordinary restrictions on discovery. Such argument cannot hold.

III. Peoples is Acting in Bad Faith by Continuing to Withhold Information That It Acknowledges Is Not Related to the So-Called “Competitive Activities.”

In paragraph 6 of its Answer, Peoples admits that not all information it has identified as “Confidential” or “Highly Confidential” information relates to the so-called “Competitive Activities.”³ This means that even under Peoples’ own fallacious conception of “Competitive Activities,” none of Duquesne Light’s employees could possibly be “Restricted Persons” with respect to such information, and Peoples never should have withheld it in the first place. Yet

³ For example, Peoples does not claim that its discovery responses regarding its advertising expenses implicate any “Competitive Activity.”

Peoples admits it has still not released this information to be viewed by Duquesne Light's employees or in-house counsel. Peoples has absolutely no basis – other than bad faith – to continue to withhold this information.

Instead, Peoples proposes in its Answer to provide "Confidential" and "Highly Confidential" information not related to the so-called "Competitive Activities" to Duquesne Light employees who execute the standard Protective Order Acknowledgement ("Acknowledgment"). Peoples notably did not offer to provide this information prior to the entry of a Protective Order, notwithstanding Duquesne Light's offer to treat the information as proprietary consistent with 52 Pa. Code § 5.365(c)(4).⁴ Peoples, by its own admission, has failed to comply with the Commission's regulations in accordance with 52 Pa. Code § 5.365(c)(4), which states:

Prior to the issuance of a protective order, a party may not refuse to provide information which the party reasonably believes to be proprietary to a party who agrees to treat the information as if it were covered by a protective order until the presiding officer or the Commission issues the order or determines that issuance of the order would not be appropriate. The party claiming the privilege shall file a petition for protective order under subsection (a) within 14 days of the date the request for information was received.

Following the Commission's regulations is not a compromise. Peoples is not being benevolent by agreeing to eventually follow the law. To date, employee representatives for Duquesne Light are still without critical discovery responses and party testimony, due to Peoples' clear and continuing violation of the Commission's regulations.

⁴ As Duquesne Light observed in its Answer, to date, with the exception of five discovery responses, Peoples has refused to provide any information marked "Confidential" or "Highly Confidential" to Duquesne Light's in-house counsel of record. Except for those five responses, Peoples failed to provide information marked "Confidential" or "Highly Confidential" to any representative of Duquesne Light – including its outside counsel – until being instructed by ALJ Cheskis to do so on May 2, 2019.

IV. Conclusion

As stated in its Answer and Comments, Duquesne Light certainly believes a Protective Order is appropriate in this case, but not an overly broad or unduly restrictive Protective Order. To the extent Duquesne Light's representatives and employees receive confidential information, those representatives and employees will sign the acknowledgement that they will not disclose or disseminate the information except as permitted in the context of this proceeding. It is also important to remember that Duquesne Light's internal attorneys are bound by the rules of professional ethics, which provides an additional assurance that confidential material will be treated properly. Those protections are sufficient to protect Peoples' interests and Peoples has not met its burden of proving otherwise.

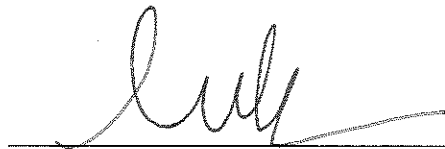
Attached as Exhibit B hereto is a redlined draft Protective Order reflecting Duquesne Light's proposed edits to the Order. Duquesne Light has circulated this redlined version to all parties in the proceeding, and all of the parties except Peoples have indicated that they do not object to Duquesne Light's proposed version.

Due to the upcoming May 28, 2019 deadline for the service of Rebuttal testimony, and the large volume of discovery responses and testimony that Duquesne Light's internal counsel and witnesses have been prevented from viewing, Duquesne Light respectfully requests a ruling on this issue at the earliest possible time.

WHEREFORE, for the reasons set forth above, Duquesne Light Company respectfully requests a ruling which:

- 1) confirms that Duquesne Light is not a competitor of Peoples;
- 2) confirms that Duquesne Light in-house counsel and employee witnesses are not Restricted Persons for purposes of the Protective Order, and that they are therefore permitted to receive and view material that is marked Confidential or Highly Confidential in this proceeding; and
- 3) issues the version of the Protective Order proposed by Duquesne Light.

Respectfully submitted,



Linda R. Evers (PA ID No. 81428)
Michael A. Gruin (PA ID No. 78625)
Stevens & Lee
111 N. Sixth Street
Reading, PA 19601
Phone: (610) 478-2265
Fax: (610) 988-0855
email: lre@stevenslee.com
mag@stevenslee.com

May 9, 2019

EXHIBIT A

Peoples Natural Gas sought \$1 billion-plus agreement with PWSA

February 22, 2018 7:30 AM

By Adam Smeltz, Anya Litvak and Rich Lord / Pittsburgh Post-Gazette

The region's biggest natural gas utility floated a pitch worth more than \$1 billion to help restore and manage the troubled Pittsburgh Water and Sewer Authority, trying for months to curry support within Mayor Bill Peduto's administration.

Peoples Natural Gas is among nearly 20 companies that have shown unsolicited interest in fixing up PWSA over the past 18 months, Mr. Peduto said Wednesday, although it's the only firm that confirmed to the Pittsburgh Post-Gazette that it approached the city. Kevin Acklin, the former Peduto chief of staff who dealt with Peoples and other suitors, now works for the North Shore-based gas company.

Mr. Acklin left city hall in January and joined Peoples as vice president and chief legal officer. A lawyer, he said the job offer — and others elsewhere — materialized only after he declared in December his intent to leave the administration.

"My connections to city hall are deep. I would never misuse them," said Mr. Acklin, who vowed not to "take advantage of those relationships."

He said PWSA, and whether Peoples might have an eventual role there, never came up when he discussed a job with the company. Likewise, Mr. Peduto said he sees no conflict in Mr. Acklin's new role. City and state rules ban former public workers from paid lobbying before their prior government employers for at least a year after departure.

Still, PWSA board member Deborah Gross bristled when told about Peoples' contact with the city. Email correspondence obtained by the Post-Gazette shows CEO Morgan O'Brien foreshadowed a forthcoming "indicative offer" to the administration in December 2016, three months before Mr. Peduto's office announced a public blue-ribbon panel to assess restructuring options for PWSA.

At least two PWSA board members, not including Ms. Gross, helped supply the authority's financial details to Peoples. Ms. Gross also sits on city council.

"I thought we were having really a shared conversation with our public and with our administration, and now it sounds to me that some people were not sharing," she said.

"What is this conversation?" she went on. "I feel I was misled. We were having a public conversation on the future of our water system. And it seems that other people were having a separate, private conversation."

While Peduto spokesman Timothy McNulty declined to respond Wednesday night, Mr. Acklin maintained earlier that "we were very public about the fact that there were numerous conversations underway." He cast as routine a nondisclosure agreement with Peoples that's referenced in administration correspondence.

Generally, Mr. Acklin said, the Peoples proposal was for a partnership under which the company would have assumed roughly \$1 billion in PWSA debt, invested private money in deteriorated infrastructure and kept rates from skyrocketing.

A copy of the plan wasn't immediately available, but the terms could divide future proceeds between Peoples and the PWSA, Mr. Acklin said. Mr. O'Brien confirmed the previously undisclosed overture, saying his company could replace gas and water lines at the same time. Peoples also could employ its call center and billing practices for PWSA accounts, he said.

PWSA has struggled the past few years with customer service, boil-water advisories, broken pipes and lead contamination, among other woes.

"Unasked or uninvited, I made [a] proposal to the mayor that we'd be interested in privatizing or a public-private partnership to try to fix it," Mr. O'Brien said. The company's effort, now effectively dormant, never crossed into negotiations, he said.

Private-sector interest in the city-owned PWSA gained speed in mid-2016, around the time state regulators ordered mandatory replacements of lead service lines, Mr. Acklin said. The Peduto administration assembled the blue-ribbon panel largely to evaluate those expressions of interest and what approaches might work best to strengthen PWSA, he said.

Ms. Gross said such direct offers "would be news to me, and I would certainly like to read them, as a board member and council member."

The panel chose Infrastructure Management Group of Washington, D.C., to help with the evaluation. Council and the PWSA board agreed to pay the consultant up to \$550,000.

IMG chairman Steve Steckler said his group followed up on eight expressions of interest, including those from Peoples, Pennsylvania American Water Co., Duquesne Light and Aqua Pennsylvania. Pennsylvania American and Duquesne Light representatives said their firms made no formal proposals and that discussions, if they occurred, were of the most general nature.

In a statement, Aqua Pennsylvania said it would “welcome the chance to be part of the solution” at PWSA, but did not confirm an actual offer.

Mr. Peduto and Mr. Acklin maintained that Peoples received no better treatment than any other company that came calling. PWSA board member Paul Leger said he learned about the Peoples talks because he was asked to assemble documents on the authority’s finances and share them with the company.

“All of that is public information, so anyone who would ask for that would get it. They just asked for some basic financial information,” Mr. Leger said. Although “they weren’t the only private company that has expressed interest over the years,” he said, they are the only one for which he pulled together financial details.

Meanwhile, Mr. Peduto reiterated Wednesday his promise to keep PWSA publicly owned. He’s following a panel recommendation in December to restructure board governance at the authority, a process that will likely require approval from city council.

Should the authority pursue help from the private sector, the mayor said, it will follow a “fair and open” process to request formal proposals and evaluate each one.

Mr. O’Brien said Peoples remains interested. Jim Turner, a PWSA board member since May, said he heard only rumors of proposals from private entities. Chaton Turner, who joined the board at the same time, said she didn’t know Peoples had made a concrete offer.

Debbie Lestitian, who chaired the board last year and now serves as the authority’s chief corporate counsel and chief of administration, was not available for comment, according to an authority spokesman. Robert Weimar, the PWSA interim executive director, said he’s focused on keeping PWSA a public agency.

“I have seen nothing,” he said of Peoples’ overtures, adding that he didn’t need to know the details. “I’m sure it’s all about trying to help the city with debt and other things, which is notable.”

Adam Smeltz: 412-263-2625, asmeltz@post-gazette.com, @asmeltz. Anya Litvak: 412-263-1455, alitvak@post-gazette.com. Rich Lord: 412-263-1542, rlord@post-gazette.com.

EXHIBIT B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2018-3006818
Office of Consumer Advocate	:		C-2019-3007711
Office of Small Business Advocate	:		C-2019-3007752
Peoples Industrial Intervenors	:		C-2019-3008506
Daniell Killmeyer	:		C-2019-3007635
Charles Hagins	:		C-2019-3007698
Sean D. Ferris	:		C-2019-3007904
Samuel Givens	:		C-2019-3007959
James E. Boudreau	:		C-2019-3008800
Edward A. and Ann D. Bugosh	:		C-2019-3008884
	:		
	:		
v.	:		
	:		
Peoples Natural Gas Company LLC	:		

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order that was filed by Peoples Natural Gas Company LLC:

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 3 and 4 below.
2. That the materials subject to this Protective Order are 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." Such materials will be referred to below as "Proprietary Information."
3. That 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, ~~or~~ and which, if disclosed freely, would subject that party or others to risk of competitive

disadvantage or other business injury. “Confidential” materials shall expressly include Excel copies of Black & Veatch Management Consulting, LLC’s cost of service models and supporting workpapers.

4. That the parties may designate as “Highly Confidential” those materials that are of such a commercially sensitive 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. For example, but without limitation, “Highly Confidential” information may include Proprietary Information that constitutes or describes: (i) customer names or customer prospects’ names, addresses, annual volumes of gas usage, or other customer-identifying information; (ii) marketing plans; (iii) competitive strategies or service alternatives; (iv) market share projections; (v) competitive pricing or discounting information; and (vi) marketing materials that have not yet been used.

5. That 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 or for settlement discussions in this proceeding. To the extent required for participation in this proceeding, counsel for a non-producing party may afford access to Proprietary Information subject to the conditions set forth herein.

6. Proprietary Information produced in this proceeding shall be made available to the Pennsylvania Public Utility Commission (“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.

7. That "Confidential" information may be made available to a "Reviewing Representative" who is a person who has signed a Non-Disclosure Certificate in the form attached as **Appendix A** hereto and who is: (i) an attorney for one of the parties who has entered an appearance in this proceeding; (ii) an attorney, paralegal, or other employee associated for purposes of this proceeding with an attorney described in subparagraph (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) an employee or other representative of a party with significant responsibility in this proceeding; or (v) a person mutually agreed to by the producing and non-producing parties.

8. Provided, however, that no Reviewing Representative may be a "Restricted Person." For the purpose of this Protective Order, "Restricted Person" shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of a party or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of a party (including any association of competitors of a party) or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of a party if the Proprietary Information concerns any specific, identifiable customer of a party; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of

a party if the Proprietary Information concerns a specific, identifiable customer of the party; 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 a one percent interest in a business establishes a significant motive for violation.

9. If an expert for a party to this Protective Order, another member of the expert's firm or the expert's firm also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (i) identify for the other party to this Protective Order each Restricted Person and each expert or consultant; (ii) 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 (iii) 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 party or its 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.

10. That "Highly Confidential" information may be made available to a "Reviewing Representative" who has signed a Non-Disclosure Certificate in the form attached as **Appendix A** hereto and who is: (i) an attorney for one of the parties who has entered an appearance in this proceeding; (ii) an attorney, paralegal, or other employee associated for purposes of this proceeding with an attorney described in subparagraph (i); (iii) an employee of one of the Parties who prepares testimony,

testifies, or advises in the preparation of testimony, or an expert or an employee of an expert retained by a party for the purpose of advising, preparing for or testifying in this proceeding; or (iv) a person mutually agreed to by the producing and non-producing parties.

11. Provided, however, that a Reviewing Representative of Highly Confidential information shall not be a “Restricted Person” as defined in Paragraph 8 or include any employee or agent of a customer of a party subject to this Protective Order, a competitor of a party subject to this Protective Order, or a competitor of a customer of a party subject to this Protective Order whose duties include: (i) the marketing, sale, or purchase of natural gas or natural gas transportation services; (ii) management regarding or supervision of any employee whose duties include the marketing, sale, or purchase of natural gas or natural gas transportation services for a competitor of a party subject to this Protective Order or a customer of the party; (iii) consulting services for a competitor of a party subject to this Protective Order or a customer of the party regarding the marketing, sale or purchase of natural gas or natural gas transportation services; or (iv) responsibility regarding other strategic business activities in which use of market sensitive information could be reasonably expected to cause competitive harm to a party or to a customer of a party subject to this Protective Order.

12. If any person who has had access to Proprietary Information subsequently is assigned to perform any duties which would make that person ineligible to be a Reviewing Representative of “Confidential” or “Highly Confidential” information, that person shall immediately inform the producing party of his or her new duties, shall dispose of any Proprietary Information and any information derived therefrom in his or her possession and shall continue to

comply with the requirements of this Protective Order with regard to the Proprietary Information to which that person previously had access.

13. That no other persons may have access to the Proprietary Information except as authorized by order of the Commission or the Presiding Administrative Law Judge.

14. That qualified "Reviewing Representatives of Highly Confidential" information may review and discuss "Highly Confidential" information 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" information. Such discussions must be general in nature and not disclose specific "Highly Confidential" information; provided, however, that counsel for the Bureau of Investigation and Enforcement ("I&E"), Office of Consumer Advocate ("OCA") and Office of Small Business Advocate ("OSBA") may share Proprietary Information with the I&E Deputy Chief Prosecutor, I&E Director, Consumer Advocate and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided that these individuals otherwise abide by the terms of the Protective Order.

15. That Proprietary Information shall be treated by non-producing parties subject to this Protective Order and by all Reviewing Representatives in accordance with the certificate attached as **Appendix A** and executed pursuant to Paragraph 17. 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.

16. That Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any commercial advantage. If a party wishes to designate as a Reviewing Representative a person not described in Paragraphs 7 and 10 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.

17. That 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. 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.

18. That attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

19. That none of the parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

20. That the 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 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 in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked “Confidential” or “Highly Confidential.”

21. That the non-producing party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in Section 335(d) of the Public Utility Code, 66 Pa. C.S. § 335(d), as applicable, and is within the definition of “confidential proprietary information” in 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. 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.

22. That any public reference to Proprietary Information by a party 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.

23. That, 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.

24. That any part of the record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination and argument,

and including reference thereto as mentioned in Paragraph 22 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 subject to this Protective Order or pursuant to an order of the Commission.

25. That 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.

26. That the parties shall retain the right 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.

27. That within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within 30 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 other party that the Proprietary Information has been destroyed.

Dated: _____

Honorable Joel H. Cheskis

APPENDIX A
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2018-3006818
Office of Consumer Advocate	:		C-2019-3007711
Office of Small Business Advocate	:		C-2019-3007752
Peoples Industrial Intervenors	:		C-2019-3008506
Daniell Killmeyer	:		C-2019-3007635
Charles Hagins	:		C-2019-3007698
Sean D. Ferris	:		C-2019-3007904
Samuel Givens	:		C-2019-3007959
James E. Boudreau	:		C-2019-3008800
Edward A. and Ann D. Bugosh	:		C-2019-3008884
	:		
v.	:		
	:		
Peoples Natural Gas Company LLC	:		

TO WHOM IT MAY CONCERN:

The undersigned is a Reviewing Representative of the _____, a party to this proceeding (“Party”), and is not or has no knowledge or basis for believing that he/she is a “Restricted Person” based upon reasonable knowledge and efforts as that term is defined in Paragraph 8 of the Protective Order, or prohibited from being a “Reviewing Representative of Highly Confidential information” pursuant to Paragraph 11 of the Protective Order. 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.

Name

Address

Signature

Employer

Erika L. McLain, Esq.
Carrie B. Wright, Esq.
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
400 North Street
Harrisburg, PA 17120
(*Counsel for BIE*)

Scott J. Rubin, Esq.
333 Oak Lane
Bloomsburg, PA 17815
(*Counsel for Utility Works Union of America,
Local 612*)

Pamela C. Polacek, Esq.
Vasiliki Karandrikas, Esq.
Errin T. McCaulley, Jr., Esq.
McNees Wallace & Nurick, LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108
(*Counsel for Synder Brothers*)

Daniel Clearfield, Esq.
Carl Shultz, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market St. 8th Fl.
Harrisburg, PA 17101
(*Counsel for Direct Energy Business, LLC*)


Charis Mincavage
Alessandra Hylander, Esq.
McNees Wallace & Nurick, LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108
(*Counsel for PII*)

Patrick Cicero, Esq.
John Sweet, Esq.
Kadeem Morris, Esq.
The Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
(*Counsel for CAUSE-PA*)

Kevin J. Moody, Esq.
Pennsylvania Independent Oil & Gas
Association
212 Locust St., Suite 300
Harrisburg, PA 17101-1510
(*Counsel for PIOGA*)

Tanya Leshko, Esq.
Alan Seizter, Esq.
Buchanan Ingersoll & Rooney PC
409 North 2nd St., Suite 500
Harrisburg, PA 17101-1357
(*Counsel for Equitrans, L.P.*)

David P. Zambito, Esq.
Jonathan Nase, Esq.
Cozen O'Connor
17 North Second St., Suite 1410
Harrisburg, PA 17101
(*Counsel for Peoples*)



Michael A. Gruin

DATE: May 9, 2019