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August 22, 2019

***VIA ELECTRONIC AND FIRST CLASS MAIL***

Administrative Law Judge Joseph Brady  
Commonwealth of Pennsylvania Public Utility Commission  
801 Market Street,  
4<sup>th</sup> Floor, Suite 4063  
Philadelphia, Pennsylvania 19107

RE: Community Utilities of Pennsylvania Inc. Water and Wastewater Divisions;  
Docket Nos. R-2019-3008947, C-2019-3009591, R-2019-3008948, and C-2019-  
3009592; **MOTION FOR PROTECTIVE ORDER**

Dear Judge Brady:

Enclosed you will find Community Utilities of Pennsylvania Inc. Water and Wastewater Division's Motion for Protective Order in the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

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

Very truly yours,

Thomas J. Sniscak  
Whitney E. Snyder  
Bryce R. Beard  
*Counsel to Community Utilities of Pennsylvania  
Inc. Water and Wastewater Divisions*

TJS/WES/BRB/das

Enclosure

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission (water)	:	R-2019-3008947
Office of Consumer Advocate	:	C-2019-3009591
	:	
v.	:	
	:	
Community Utilities of Pennsylvania, Inc. (water)	:	
	:	
and	:	
	:	
Pennsylvania Public Utility Commission	:	
(wastewater)	:	R-2019-3008948
Office of Consumer Advocate	:	C-2019-3009592
	:	
v.	:	
	:	
Community Utilities of Pennsylvania, Inc.	:	
(wastewater)	:	

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**COMMUNITY UTILITIES OF PENNSYLVANIA INC. MOTION  
FOR PROTECTIVE ORDER**

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**TO ADMINISTRATIVE LAW JUDGE JOSEPH BRADY:**

Community Utilities of Pennsylvania Inc. Water and Wastewater Divisions (“CUPA”), by and through its attorneys, Hawke McKeon & Sniscak LLP, 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, CUPA represents as follows:

1. On April 1, 2019<sup>1</sup>, CUPA filed Supplement No. 5 to Tariff Water – Pa. PUC No. 1, to become effective on June 1, 2019. This filing contained proposed changes in rates, rules, and regulations for the service territories formally known as Penn Estates Utilities, Inc. (“Penn Estates”) and Utilities, Inc. – Westgate (“Westgate”).

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<sup>1</sup> CUPA Water submitted an Amended Supplement No. 5 on April 2, 2019.

2. Also, on April 1, 2019<sup>2</sup>, CUPA filed Supplement No. 2 to Tariff Wastewater – PA. PUC No. 1, to become effective June 1, 2019. This filing contained proposed changes in rates, rules, and regulations for the service territories formally known as Penn Estates and Westgate.

3. On or about June 7, 2019, CUPA, the Office of Consumer Advocate (“OCA”) and the Bureau of Investigation and Enforcement (“I&E”) entered into a Protective Agreement designed to protect against non-authorized disclosure of Confidential and Highly Confidential material.

4. CUPA has served and intends to enter into the record portions of its testimony and exhibits that contain Proprietary Information within the definition of 52 Pa. Code § 5.365. Such information has been shared pursuant to the Protective Agreement between the parties to the case. Some of this information has been included in CUPA’s testimony and exhibits, which justifies the issuance of a Protective Order. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of this information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to the regulation.

5. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of Proprietary Information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the Proprietary Information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the

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<sup>2</sup> CUPA Wastewater submitted an Amended Supplement No. 2 on April 2, 2019

information may already be known by others; and the potential value of such information to the participant and the participant's competitors and trade partners. 52 Pa. Code §§ 5.365(a)(1) – (3).

6. The attached proposed Protective Order defines "Confidential" information in Paragraph 3 as "those materials which customarily are treated by that Party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its clients to risk of competitive disadvantage or other business injury." The proposed Protective Order defines "Highly Confidential" information as "materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials." Clearly, protecting this type of information from disclosure is appropriate.

7. 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.

8. As noted previously, CUPA, OCA and I&E have entered into a Protective Agreement in this proceeding. The Protective Order is substantially based upon the terms and conditions contained in the Protective Agreement.

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

WHEREFORE, Community Utilities of Pennsylvania Inc. requests that Administrative Law Judge Joseph Brady grant this Motion and issue the attached Protective Order.

Respectfully submitted,



Thomas J. Sniscak, Esquire, I.D. #33891  
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*Counsel for  
Community Utilities of Pennsylvania Inc.*

Date: August 22, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission (water) : R-2019-3008947  
Office of Consumer Advocate : C-2019-3009591

v.

Community Utilities of Pennsylvania, Inc. (water) :

and

Pennsylvania Public Utility Commission :  
(wastewater) : R-2019-3008948  
Office of Consumer Advocate : C-2019-3009592

v.

Community Utilities of Pennsylvania, Inc. :  
(wastewater) :

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**PROPOSED PROTECTIVE ORDER**

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Community Utilities of Pennsylvania, Inc. has requested that a Protective Order be entered in this proceeding via Motion dated August 22, 2019 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 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 materials which customarily are treated by CUPA as sensitive or proprietary, which are not available to the public or which, if disclosed freely, would subject CUPA or others to risk of competitive disadvantage or other business injury. "Highly Confidential" materials are those materials that are of such a commercially sensitive or of such a private, personal nature that CUPA 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: (a) customer names or customer prospects' names, addresses, annual volumes of water or wastewater usage, or other customer-identifying information; (b) marketing plans; (c) competitive strategies or service alternatives; (d) market share projections; (e) competitive pricing or discounting information; and (f) marketing materials that have not yet been used. Together, these materials will be referred to as "Proprietary Information" for the purposes of this Protective Order.

4. That the information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are proprietary or confidential in nature and which are so designated by being

marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Such materials will be referred to below as "Proprietary Information." "Requesting Party" shall mean a Party that either requests or receives Proprietary Information, and "Producing Party" shall mean the Party that produces or otherwise supplies Proprietary Information to another Party.

5. That Proprietary Information shall be made available to counsel for Requesting Parties subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of participating in this proceeding. Counsel for Requesting Parties shall not disclose Proprietary Information to anyone other than counsel for the Parties, except that, to the extent required for participation in this proceeding, counsel for a Requesting Party may disclose Proprietary Information to the Requesting Party's independent expert(s) subject to the terms of this Protective Order and provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the in-house analysts, paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so but shall be made aware that such information is not for public disclosure except under the terms in the Protective Order. Additionally, counsel for the Bureau of Investigation and Enforcement and the Office of Consumer Advocate may share Proprietary Information with the I&E Director, and the Consumer Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided, however, that these individuals otherwise abides by the terms of this Protective Order. Nothing in this Protective Order shall be deemed to restrict the right of the original Producing Party to disclose or use its own Proprietary Information.

6. That, prior to disclosing Proprietary Information to an independent expert as provided in paragraph 5, a Requesting Party shall deliver a copy of this Protective Order to the expert and obtain from the expert a written acknowledgment of the terms of the Protective Order



in the form of Appendix A attached hereto. Each party shall promptly notify the other parties of the identity of all persons provided access to Proprietary Information pursuant to this paragraph and paragraph 5.

7. That the Producing Party shall designate information or documents as constituting or containing Proprietary Information by marking the documents “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the Producing Party, insofar as reasonably practicable, shall designate as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” only the specific data, passages or pages of documents which constitute or contain Proprietary Information. One permissible means of designating portions of a document to be Proprietary Information shall be to mark the first page of the document and on each page thereof containing Proprietary Information with the word “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in bold, capital letters.

8. The Parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Right to Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, until such time as the information is found to be non-proprietary.

9. That any public reference to Proprietary Information by a Party or its independent expert(s) shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

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

and responses to discovery, including any reference thereto as mentioned in paragraph 9 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the Parties or pursuant to an order of the Administrative Law Judge or the Commission.

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

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

13. That Proprietary Information produced in this proceeding shall be made available to the Commission and its Staff. For purposes of filing, to the extent that Proprietary Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission’s

testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Proprietary Information shall be permitted only in accordance with this Protective Order.

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Joseph Brady  
Administrative Law Judge

**APPENDIX A**

Re: Pennsylvania Public Utility Commission v. Community Utilities of Pennsylvania Inc.  
Water Division; Docket No. R-2019-3008947

Office of Consumer Advocate v. Community Utilities of Pennsylvania Inc. Water  
Division; Docket No. C-2019-3009591

Pennsylvania Public Utility Commission v. Community Utilities of Pennsylvania Inc.  
Wastewater Division; Docket No. R-2019-3008948

Office of Consumer Advocate v. Community Utilities of Pennsylvania Inc. Wastewater  
Division; Docket No. C-2019-3009592

**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: \_\_\_\_\_

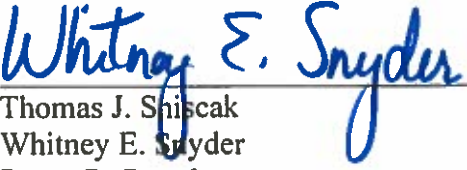
## CERTIFICATE OF SERVICE

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

### BY ELECTRONIC AND FIRST CLASS MAIL

Allison C. Kaster  
Deputy Chief Prosecutor  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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Harrisburg, PA 17120  
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Christine Maloni Hoover, Esquire  
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\_\_\_\_\_  
Thomas J. Spiscak  
Whitney E. Snyder  
Bryce R. Beard

Dated this 22<sup>nd</sup> day of August, 2019