

# Morgan Lewis

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June 3, 2020

## **VIA eFILING**

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

**Re: Pennsylvania Public Utility Commission v.  
Pennsylvania-American Water Company  
Docket Nos. R-2020-3019369 and R-2020-3019371**

Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced matter is the **Petition of Pennsylvania-American Water Company for Protective Order**. Copies have been served on presiding Administrative Law Judge Conrad A. Johnson and all parties of record as indicated on the attached Certificate of Service.

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

Very truly yours,



Kenneth M. Kulak

KMK/ap  
Enclosures

c: Per Certificate of Service (w/encls.)

DB1/ 114317778.1

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION</b>	:	<b>Docket No. R-2020-3019369</b>
	:	<b>Docket No. R-2020-3019371</b>
	:	
<b>v.</b>	:	
	:	
<b>PENNSYLVANIA-AMERICAN WATER COMPANY</b>	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of the **Petition of Pennsylvania-American Water Company for Protective Order** in the above-referenced proceedings on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA ELECTRONIC MAIL**

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Dated: June 3, 2020

*Counsel for*  
*Pennsylvania-American Water Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY</b>	<b>:</b>	<b>Docket No. R-2020-3019369</b>
<b>COMMISSION</b>	<b>:</b>	<b>Docket No. R-2020-3019371</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>PENNSYLVANIA-AMERICAN WATER</b>	<b>:</b>	
<b>COMPANY</b>	<b>:</b>	

**PETITION OF PENNSYLVANIA-AMERICAN WATER COMPANY FOR  
PROTECTIVE ORDER**

Pennsylvania-American Water Company (“PAWC” or the “Company”) files this Petition pursuant to 52 Pa. Code § 5.423(b) for the entry of a Protective Order, in the form attached hereto as Appendix A, to limit the disclosure of confidential and proprietary information (“Confidential Information”) produced in discovery or submitted for the record by any party in the above-referenced matter, including Confidential Information filed as part of PAWC’s supporting data. In further support of this Petition, PAWC states as follows:

1. On April 29, 2020 filed Original Tariff Water — Pa. P.U.C. No. 5 and Original Tariff Wastewater — Pa. P.U.C. No. 16 together with the supporting data required by the Commission’s regulations at 52 Pa. Code § 53.52 *et seq.*, requesting a general rate increase under Section 1308(d) of the Public Utility Code (66 Pa. C.S. § 1308(d)).

2. As part of its supporting data, PAWC efiled documents containing Confidential Information directly to Pennsylvania Public Utility Commission Secretary Rosemary Chiavetta. The documents containing Confidential Information were submitted by PAWC bearing a legend stating that appropriate protection of such Confidential Information had been requested, and pending further action by the Commission, such Confidential Information should not be disclosed to the public. The Commission’s regulations at 52 Pa.

Code § 5.365(b) provide that the Commission will not disclose such documents or the information contained therein pending its decision on a Petition for Protective Order.

3. PAWC has received, and expects to continue to receive, interrogatories that may require the production of Confidential Information or documents containing Confidential Information. Additionally, in the course of this proceeding, parties other than PAWC may be requested to produce information and documents they consider confidential. Accordingly, the entry of a Protective Order covering Confidential Information produced by any party in response to discovery and Confidential Information that parties may seek to introduce in evidence will facilitate the orderly and efficient progress of this proceeding.

4. The form of Protective Order attached as Appendix A is the same or similar to Protective Orders entered in other proceedings involving PAWC and other utilities.<sup>1</sup>

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<sup>1</sup> *E.g.*, *Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket No. R-2013-2355276, Protective Order — Order #5 (July 11, 2013) (Administrative Law Judges Angela T. Jones and Darlene Davis Heep); *Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket No. R-2011-2232243, Prehearing Order (July 11, 2011) (Administrative Law Judges Angela T. Jones and Eranda Vero); *Pa. P.U.C. v. Pennsylvania-American Water Co. (Wastewater)*, Docket Nos. R-20102166208, 2010-2166210, 2010-2166212 and 2010-2166214, Prehearing Order (July 12, 2010) (Chief Administrative Law Judge Charles E. Rainey, Jr.); *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No. R-2009-2132019, Order Granting Issuance Of Protective Order (March 16, 2010) (Administrative Law Judge Angela T. Jones).

WHEREFORE, for all of the foregoing reasons, this Petition should be granted and a Protective Order in the form attached hereto as Appendix A should be issued.



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Dated: June 3, 2020

*Counsel for*  
*Pennsylvania-American Water Company*

**APPENDIX A**

**FORM OF PROTECTIVE ORDER**



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY</b>	<b>:</b>	<b>Docket No. R-2020-3019369</b>
<b>COMMISSION</b>	<b>:</b>	<b>Docket No. R-2020-3019371</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>PENNSYLVANIA-AMERICAN WATER</b>	<b>:</b>	
<b>COMPANY</b>	<b>:</b>	

**PROTECTIVE ORDER**

This Protective Order is hereby GRANTED with respect to all documents and information, as identified below, produced or presented, or hereafter produced or presented in this proceeding. All persons now or hereafter granted access to such documents and/or information shall use and maintain the same only in strict accordance with this Protective Order.

This Protective Order is being entered to facilitate the orderly production of information and documents during discovery and the presentation of evidence at the hearings in this case and to provide adequate protection of Confidential Information without prejudicing the rights of parties to have reasonable access to information that becomes part of the evidentiary record.

**THEREFORE, IT IS ORDERED THAT:**

1. Any information provided to the Pennsylvania Public Utility Commission (“Commission”) or any parties in connection with the above-captioned proceeding that a producing party claims constitutes or contains Confidential Information shall be specifically identified and marked as Confidential Information. The producing party shall designate data or documents as constituting or containing Confidential Information by affixing a conspicuous “CONFIDENTIAL” stamp or typewritten designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Confidential Information, the producing party, insofar as reasonably practicable within time constraints

imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Confidential Information and shall serve such documents separately from non-confidential information.

2. Each document and the information contained therein designated as “Confidential Information” shall be used by the recipient solely for purposes relating to the prosecution, review and processing of this proceeding and for no other purpose; and such documents and information shall be maintained in secure files, separate from public information, until returned to the producing party or destroyed pursuant to the terms hereof.

3. With respect to all Confidential Information, it is further ORDERED that:

(a) Access to the documents designated as “Confidential Information,” and to the information contained therein, shall be limited to the parties and their identified attorneys, employees, and consultants whose examination of the Confidential Information is required for the conduct of this proceeding.

(b) Recipients of Confidential Information shall not disclose the contents of the documents produced pursuant to this Protective Order to any person(s) other than their identified employees and any identified witnesses/consultants whom they may retain in connection with this proceeding, irrespective of whether any such expert is retained specially and is not expected to testify, or is called to testify in this proceeding. All employees (except Bureau of Investigation & Enforcement (“BI&E”) witnesses who are full-time employees and shall be entitled to receive documents without individually executing a Certification), consultants or experts of any of the parties bound by this Protective Order who are to receive copies of documents or information produced pursuant to this Protective Order shall have executed a copy of the Certification attached hereto as Appendix A, which executed

Certification shall be forthwith provided to counsel for the producing party with copies to counsel for other parties. The BI&E Prosecutors who enter an appearance in this proceeding shall represent that all BI&E witnesses/employees will be bound by this Protective Order.

(c) No other disclosure of Confidential Information shall be made to any person or entity except with the express written consent of the producing party or upon further order of the Commission or of any Court of competent jurisdiction which may review these matters.

4. The acceptance by the parties of documents or information which has been identified and marked as Confidential Information shall not serve to create a presumption that the material is in fact entitled to any special status in these or any other proceedings. Accordingly, as provided in 52 Pa. Code § 5.365, a party receiving Confidential Information retains the right, either before or after receipt of such Confidential Information, to challenge the legitimacy of the claim that the information is proprietary. Any party may initiate such a challenge by notifying the Commission, with reasonable notice to all other parties, that it wishes to challenge the designation of the material as Confidential Information. In that event, the producing party, as the provider of the Confidential Information, shall have the burden of proving that the material is entitled to protected status. However, notwithstanding such challenge, all parties shall continue to treat the documents and information subject to challenge as Confidential Information in accordance with the terms of this Protective Order, pending resolution by the Commission of the dispute as to its status.

5. The producing party retains the right to seek restrictions on the production, distribution and use by other parties of the Confidential Information beyond the protection expressly afforded such Confidential Information by this Protective Order.

6. This Protective Order shall not operate as a determination, for any purpose, that any documents or information produced pursuant to this Protective Order are either admissible or inadmissible in these or any other proceedings.

7. Documents or other materials containing Confidential Information filed with the Commission in this proceeding, including but not limited to pre-filed testimony and pre-filed exhibits, shall be labeled “CONFIDENTIAL” and shall be deemed filed under seal. During evidentiary hearings, if any, in this proceeding, all persons present for such hearings shall be subject to the terms of this Protective Order and may be required to so affirm for purposes of the record. The portion of the record containing the Confidential Information, including the portions of transcripts of oral testimony discussing Confidential Information, shall be placed under seal.

8. The Commission and any other state agency that may have access to, or receive copies of, the Confidential Information will deem and treat such information as within the exemption from disclosure provided in the Pennsylvania Right-to-Know Act set forth in 65 P.S. § 67.708(b) until such time as the information may be found to be non-proprietary by the Commission or by a court of competent jurisdiction.

9. Confidential Information which is placed on the record of this proceeding under seal shall remain with the Commission under seal after the conclusion of the proceeding. If such Confidential Information is provided to appellate courts for the purposes of appeal(s) from this proceeding, such information shall be provided, and shall remain, under seal.

10. Upon the final resolution of proceedings in which Confidential Information has been provided, which includes the exhaustion of appeals, if any, all documents and other materials containing Confidential Information shall, within thirty (30) days of the producing party’s request, be either: (1) returned to counsel for the producing party; or (2) destroyed. If a

receiving party chooses to destroy the Confidential Information, then it shall, in the case of the BI&E, notify the producing party, and in the case of all other parties, certify to the producing party, that the Confidential Information has been destroyed by it and its employees, consultants, and other representatives, and that the terms of this Protective Order have been satisfied.

Provided, however, that the BI&E, the OCA, and the Office of Small Business Advocate may maintain in their official files copies of all pleadings, briefs, statements, exhibits and transcripts in this proceeding and, further provided, that all such pleadings, briefs, statements, exhibits and transcripts containing Confidential Information shall remain subject to the terms of this Protective Order.

11. A single copy of documents returned to the producing party or certified as destroyed upon resolution of this proceeding, as provided in this Protective Order, shall be kept on file at the producing party's offices for two years after the final resolution of this proceeding, as defined previously, for review by the parties under the terms of this Protective Order upon at least twenty days' notice to counsel for the producing party.

12. The issuance of this Protective Order shall not prejudice the producing party's right to challenge the production of any documents or information sought in discovery by any party on the grounds that such documents or information are not properly discoverable.

**IT IS HEREBY ORDERED:**

Dated: \_\_\_\_\_, 2020

\_\_\_\_\_  
Administrative Law Judge Conrad A. Johnson

**APPENDIX A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY</b>	<b>:</b>	<b>Docket No. R-2020-3019369</b>
<b>COMMISSION</b>	<b>:</b>	<b>Docket No. R-2020-3019371</b>
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	<b>:</b>	
<b>PENNSYLVANIA-AMERICAN WATER</b>	<b>:</b>	
<b>COMPANY</b>	<b>:</b>	

TO WHOM IT MAY CONCERN:

The undersigned is the \_\_\_\_\_ of \_\_\_\_\_  
(the receiving party).

The undersigned has read, and understands that, the Protective Order deals with the treatment of Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order, -which are incorporated herein by reference.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_

\_\_\_\_\_  
EMPLOYER

\_\_\_\_\_  
DATE