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September 10, 2020

Via Electronic Filing

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

In re: Docket No. R-2020-3019612
Pennsylvania Public Utility Commission v. Reynolds Disposal Company

Dear Secretary Chiavetta:

We are counsel to Reynold Disposal Company in the above matter and are submitting, via electronic filing with this letter, the Company's Petition for Protective Order. Copies of the Petition are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
The Honorable Emily I. DeVoe, Administrative Law Judge (via email, w/encl.)
Bradley R. Gosser, CPA (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al.	:	Docket No. R-2020-3019612, et al.
	:	
v.	:	
	:	
Reynolds Disposal Company	:	

**PETITION OF REYNOLDS DISPOSAL COMPANY
FOR PROTECTIVE ORDER**

AND NOW comes Reynolds Disposal Company (“Reynolds” or the “Company”), by its attorneys, and, pursuant to 52 Pa. Code § 5.365, petitions for entry of a Protective Order. In support thereof, Reynolds submits as follows:

1. This proceeding concerns Reynolds’s Supplement No. 5 to Tariff Sewage – Pa. P.U.C. No. 4 (“Supplement No. 5”) filed on June 30, 2020. Supplement No. 5 would increase Reynolds’s annual wastewater revenue by \$215,646 based on a future test year ending December 31, 2020.

2. By Order entered August 27, 2020, at R-2020-3019612, the Public Utility Commission (“Commission”) suspended Supplement No. 5 and instituted an investigation into the reasonableness of the proposed rates. The matter was assigned to Administrative Law Judge Emily I. DeVoe.

3. There is a likelihood that materials which Reynolds and other parties will be furnishing in this proceeding pursuant to Commission rules and regulations, formal and informal discovery procedures, testimony or oral examination or as a courtesy to parties will contain information that the producing party considers confidential or proprietary.

4. The issuance of a protective order adequate to cover all parties and establish procedures in accordance with 52 Pa. Code § 5.365 for the provision of information believed to be confidential or proprietary would serve administrative economy and efficiency by obviating

the need for parties to address confidential/proprietary concerns on a piecemeal basis every time confidential/proprietary information is requested.

5. The proposed protective order included with this Petition is in the usual accepted form, consistent with due process rights and evidentiary burdens. It allows parties to retain the right to question or challenge the confidential or proprietary nature of information; to challenge the admissibility of confidential or proprietary information; to refuse or object to the production of confidential or proprietary information on any proper ground; to seek disclosure of confidential or proprietary information beyond that allowed in the Protective Order; and to seek additional measures of protection beyond those provided in the Protective Order. The Protective Order also provides that the party claiming that the information is confidential or proprietary retains the burden of demonstrating that such designation is necessary and appropriate.

6. Counsel for Reynolds has contacted Counsel for the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate and they advise that they do not object to the entry of the proposed protective order.

WHEREFORE Reynolds Disposal Company requests that the Pennsylvania Public Utility Commission enter the Protective Order included with this Petition.

Respectfully submitted,

REYNOLDS DISPOSAL COMPANY

By 

Thomas T. Niesen
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Counsel for Reynolds Disposal Company

Date: September 10, 2020

PROPOSED PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al.	:	Docket No. R-2020-3019612, et al.
	:	
v.	:	
	:	
Reynolds Disposal Company	:	

PROTECTIVE ORDER

Upon due consideration of the Petition of Reynolds Disposal Company (“Reynolds” or the “Company”) for a Protective Order, filed September 10, 2020, pursuant to 52 Pa. Code § 5.365, and without objection by the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate:

IT IS ORDERED THAT:

1. The Petition is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which are or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated with it. All persons now or hereafter granted access to the materials and information identified in Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Order.

2. The information subject to this Protective Order is 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 “PROPRIETARY INFORMATION” or “CONFIDENTIAL AND PROPRIETARY” or “PRIVILEGED AND CONFIDENTIAL,” and hereinafter referred to as “Proprietary Information.” 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.

3. This Protective Order applies to the following categories of materials:

(A) 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 to risk of competitive disadvantage or other injury;

(B) the parties may designate as “HIGHLY CONFIDENTIAL” or “HIGHLY CONFIDENTIAL MATTER” those materials that are of such an extremely sensitive nature among the parties that the producing party is able to justify a heightened level of confidential protection with respect to those materials. The parties shall endeavor to limit their designation of information as “HIGHLY CONFIDENTIAL.”

4. Proprietary Information shall be made available, solely for use in this proceeding, to the Commission and its Staff, and to counsel for a 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 subject to the conditions set forth in this Protective Order.

5. That Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures:

a. Proprietary Information. To the extent required for participation in this proceeding, a party’s counsel, upon execution of the attached Appendix A, may afford access to Proprietary Information made available by another party (“the producing party”) to the party’s expert(s) and staff. Any information provided under this provision may be used only for and to the extent that it is necessary for participation in this proceeding. Any person obtaining information disclosed through this provision may not use that information to gain any commercial advantage and any person obtaining information may not forward it to any person to gain commercial advantage.

b. Highly Confidential Information. Where information is asserted to be Highly Confidential Information, it will be made available for inspection and review as

provided for in this Protective Order and copying only as specified herein. The producing party shall permit counsel for BIE and OCA (individually “public advocate” and collectively the “public advocates”) and other counsel to take custody of a copy of such Highly Confidential Information, provided that it shall not be copied, except for counsel, and the public advocates’ in-house staff, independent consultants, or non-lawyer representatives, in accordance with the protocols set forth below and shall be returned as provided for in this Protective Order. Such Highly Confidential Information may be provided by a public advocate to its eligible in-house staff without the need for execution of Appendix A. Additionally, such Highly Confidential Information may be provided by a public advocate or other counsel to its eligible independent consultants (as defined in 52 Pa.Code § 5.365(d)) or other non-lawyer representatives who are assisting counsel with these proceedings, provided that such consultants and non-lawyer representatives execute and return the attached Appendix A to the producing party pursuant to Paragraph 6 of this Protective Order.

c. No other persons may have access to the Proprietary or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive, or who is afforded access to any Proprietary or Highly Confidential Information, shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

6. Prior to making Proprietary or Highly Confidential Information available to any independent consultant or non-lawyer representatives, counsel shall, except as specifically exempted under Paragraph 5(b) of this Protective Order, 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. Counsel shall promptly deliver to the producing party a copy of the executed Appendix A.

7. A producing party shall designate data or documents as constituting or containing Proprietary or Highly Confidential Information by affixing an appropriate proprietary stamp or type-written designation on such data or documents. Where only part of data

compilations or multi-page documents constitutes or contains Proprietary or Highly Confidential Information, the producing party shall designate only the specific data or pages of documents which constitute or contain Proprietary or Highly Confidential Information.

8. Any public reference to Proprietary or Highly Confidential 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 or Highly Confidential Information to fully understand the reference and not more. The Proprietary or Highly Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

9. Part of any record of this proceeding containing Proprietary or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery, and including reference thereto as mentioned in Ordering paragraph 8 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary or Highly Confidential 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. Unresolved challenges arising under paragraph 10 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.

10. 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 or Highly Confidential Information; to question or challenge the admissibility of Proprietary or Highly Confidential Information; to refuse or object to the production of Proprietary or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary or Highly Confidential Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary or Highly Confidential Information beyond those provided

in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary or Highly Confidential, the party claiming that the information is Proprietary or Highly Confidential retains the burden of demonstrating that the designation is necessary and appropriate.

11. This Protective Order shall continue to be binding throughout and after the conclusion of this proceeding.

12. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary or Highly Confidential Information, shall be immediately returned upon request to the party furnishing such Proprietary or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary or Highly Confidential Information have been destroyed.

Dated: September, 2020

Emily I. DeVoe
Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	
v.	:	
	:	
Reynolds Disposal Company	:	

ACKNOWLEDGMENT

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the receiving party).

The undersigned has read the Protective Order dated September , 2020, and understands that it deals with the treatment of Proprietary and Highly Confidential Information. The undersigned agrees to be bound by, and to comply with, the terms and conditions of said Protective Order. In the case of an independent expert, the undersigned represents that he/she has complied with the provisions of paragraph 5 of the Protective Order prior to submitting this Acknowledgement.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE: _____

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al.	:	Docket No. R-2020-3019612, et al.
	:	
v.	:	
	:	
Reynolds Disposal Company	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of September 2020, served a true and correct copy of the foregoing Petition of Reynolds Disposal Company for Protective Order, upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

The Honorable Emily DeVoe
Administrative Law Judge
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VIA FIRST CLASS MAIL, POSTAGE PREPAID

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