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April 24, 2012

*Via Electronic and First Class Mail*

Honorable Christopher P. Pell  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
801 Market Street  
Philadelphia, PA 19107

RE: Pennsylvania Public Utility Commission v. Audubon Water Company;  
Docket Nos. R-2012-2286118 and C-2012-2291571; **PETITION FOR  
PROTECTIVE ORDER**

Dear Judge Pell:

In connection with the above-captioned matter, enclosed are a (1) Petition for Protective Order, and (2) proposed Protective Order. Counsel for the Office of Consumer Advocate and the Commission's Bureau of Investigation and Enforcement have each reviewed the attached documents and have indicated no objections.

If you have any questions, please feel free to contact either of the undersigned.

Very truly yours,

Thomas J. Sniscak

Janet L. Miller

*Counsel for Audubon Water Company*

JLM/das  
Enclosures

cc: Christine Maloni Hoover, Esquire  
Erin L. Gannon, Esquire  
Charles Daniel Shields, Esquire  
Rosemary Chiavetta, Secretary

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Administrative Law Judge Christopher P. Pell

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Pennsylvania Public Utility Commission : Docket No. R-2012-2286118  
:   
v. :   
:   
Audubon Water Company :

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**PETITION FOR ISSUANCE  
OF A PROTECTIVE ORDER**

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Audubon Water Company (Audubon or Company), by and through its attorneys in this matter, hereby files this Petition for Issuance of a Protective Order pursuant to the provisions of 52 Pa. Code § 5.423. Audubon respectfully requests that Administrative Law Judge Christopher P. Pell grant protective or confidential treatment to certain information that has been or will be disclosed in connection with this matter. In support of this request, the Company submits the following:

1. On January 27, 2012, Audubon filed Tariff Water - Pa. PUC No. 4 with the Pennsylvania Public Utility Commission (Commission), to become effective March 27, 2012, containing proposed changes in rates, rules and regulations calculated to produce \$540,686 (27%) in additional annual revenues based on a future test year ended September 30, 2012.

2. By Order entered March 15, 2012, the Commission (a) suspended Tariff Water - Pa. PUC No. 4 until October 27, 2012; (b) ordered that an investigation into the Company's current and proposed rates be initiated; and (c) assigned the proceeding to the Office of Administrative Law Judge. ALJ Pell is the presiding officer hearing and deciding this case.

3. The Commission's Bureau of Investigation and Enforcement (I&E) and the Pennsylvania Office of Consumer Advocate (OCA) have issued in excess of 90 discovery requests to Audubon covering the issues of (a) quality of service; (b) rate base; (c) revenue requirement; (d) rate of return; and (e) rate structure. Certain of the I&E and OCA discovery requests seek specific information pertaining to Audubon's physical facilities and operational procedures and with respect to individual employee compensation and benefits.

4. The Public Utility Confidential Security Information Disclosure Protection Act (Act)<sup>1</sup> provides that "Confidential Security Information" is protected from public disclosure. Confidential Security Information includes, *inter alia*,

Information contained within a record maintained by an agency in any form, the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, public property or public utility facilities, including, but not limited to....

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A plan, map or other drawing or data which shows the location or reveals location data on community drinking water wells and surface water intakes.

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Specific information, including portions of financial statements, about security devices or personnel, designed to protect against sabotage or criminal or terrorist acts.<sup>2</sup>

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<sup>1</sup> 35 P.S. §§ 2141.1 – 2141.6.

<sup>2</sup> 35 P.S. § 2141.2.

Public utility “facilities” include all plant and equipment owned, operated, used, controlled, furnished or supplied in connection with the business of furnishing utility service to the public.<sup>3</sup>

5. The Commission adopted the protections provided by the Act in Chapter 102 of its Regulations.<sup>4</sup>

6. In addition to the Act and the Commission’s Regulations, the Right-To-Know Law<sup>5</sup> provides protection against disclosure of information, “the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a ... public utility, resource, infrastructure, facility or information storage system....”<sup>6</sup> Relevant to this proceeding, the Right-To-Know Law specifically protects against the disclosure of:

[B]uilding plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, ... fire suppression [or] ...water ... systems.

\*\*\*\*\*

A record of an individual’s ... enrollment in a health care program ... including ... workers’ compensation and unemployment compensation; or related information that would disclose individually identifiable health information.

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A record containing all or part of a person’s Social Security number, driver’s license number, personal financial information, ... employee number or other confidential personal identification number.<sup>7</sup>

7. At the time I&E and OCA issued their discovery requests, this proceeding had not yet been suspended for investigation or assigned to the Office of Administrative Law Judge. As a result, no protective order was in place or had been requested. In order to respond to the discovery requests, the Company signed separate Stipulated Protective Agreements with I&E

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<sup>3</sup> 35 P.S. § 2141.2.

<sup>4</sup> 52 Pa. Code §§ 102.1 – 102.4.

<sup>5</sup> 65 P.S. §§ 67.101 – 67.3104.

<sup>6</sup> 65 P.S. § 67.708 (b)(3).

<sup>7</sup> 65 P.S. § 67.708(b).

and OCA. One of the terms of the Stipulated Protective Agreements was that a formal Protective Order would be sought if this matter were to result in a litigated proceeding.

8. The Commission's Regulations allow for the issuance of a protective order:

[T]o limit the disclosure of ... confidential information on the public record ... [if] the potential harm to the party of providing the information would be substantial and ... 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.... In considering whether a protective order to limit the availability of proprietary information should issue, the Commission or the presiding officer should consider, along with other relevant factors, the following:

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The extent to which the information is known by others and used in similar activities.

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Other statutes or regulations dealing specifically with disclosure of the information.<sup>8</sup>

9. Limiting the disclosure of the confidential information requested by I&E and OCA in their discovery requests, by allowing use and disclosure of that information only in connection with this litigation, will not frustrate the prompt, orderly and fair resolution of this proceeding, nor will it infringe upon the due process rights of the other parties involved. Restricting the use and disclosure of the confidential information will, however, protect Audubon, its water system and its customers from possible attack by criminal or terroristic individuals or entities. Therefore, good cause exists for entry of the requested Protective Order.

10. For the forgoing reasons, Audubon requests that Your Honor issue a Protective Order granting proprietary and confidential treatment to the protected information that is described above and that the Protective Order prohibit disclosure of this information to any person except as provided by such Order.

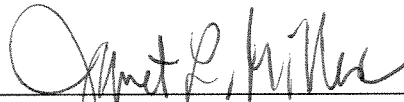
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<sup>8</sup> 52 Pa. Code § 5.423(a).

11. Further, Audubon requests that the described documents be sealed and not be made available for public inspection in the Commission's files. The Protective Order should restrict the use and/or disclosure of the protected information except in testimony, written advocacy, and initial or final decisions issued by Your Honor and the Commission in this proceeding and, when so used, should require that the document(s) or information provided be designated as containing proprietary and confidential information, and be sealed and filed separately from the public record.

WHEREFORE, Audubon Water Company respectfully requests that Your Honor enter the attached proposed Protective Order.

Respectfully submitted,



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Thomas J. Sniscak (Attorney ID #33891)

Janet L. Miller (Attorney ID #63491)

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*Counsel for Audubon Water Company*

DATED: April 24, 2012

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket No. R-2011-2286118
	:	
v.	:	
	:	
Audubon Water Company	:	

**PROTECTIVE ORDER**

An Order has been issued granting the Petition for Issuance of Protective Order filed by Audubon Water Company (Audubon or Company).

THEREFORE;

IT IS ORDERED:

1. That a Protective Order is hereby granted for use in this proceeding with respect to all materials and information identified at Paragraph 2 of this Protective Order that are filed with the Commission, produced in discovery, offered or admitted into evidence or are otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. The materials subject to this Protective Order include all correspondence, documents, data, information, studies, methodologies and other materials that a party, an affiliate of a party or a party's consultant(s) furnishes in this proceeding pursuant to the Commission's Rules and Regulations, discovery procedures, written testimony or cross-examination or provided as a courtesy to the active parties in this proceeding, which materials are claimed to be of a proprietary or confidential nature and which are designated "PROPRIETARY

INFORMATION,” “CONFIDENTIAL INFORMATION,” “CONFIDENTIAL” and/or “PROPRIETARY” (hereinafter collectively referred to as the Proprietary Information).

3. Proprietary Information shall be made available to the Commission and its advisory staff, to the Bureau of Investigation and Enforcement (I&E) and to the Office of Consumer Advocate (OCA) and its consultants for use in this proceeding. 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 for Proprietary Information inasmuch as the report folders are not subject to public disclosure. Public inspection of Proprietary Information shall be permitted only in accordance with this Protective Order.

4. Proprietary Information shall be made available to parties, their counsel of record and their consultants in this proceeding, subject to the following:

(a) To the extent required for participation in this proceeding, a party may afford access to Proprietary Information made available by another party (the Producing Party) to the “Receiving Party’s” consultants, provided that such consultant has not previously violated the terms of a Commission Protective Order and the consultant executes **Appendix A** to this Protective Order before reviewing such information, and provided that the consultant is not an officer, director, stockholder, partner, owner or employee of an affiliate or competitor of the Producing Party. A consultant will not be ineligible on account of being a stockholder, partner or owner of a competitor or affiliate unless the ownership interest is valued at more than \$10,000 or constitutes a more than 1% interest, or both.

(b) No other person or persons may have access to Proprietary 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 Information shall use or disclose such information for the purposes of business or competition, or for any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof. The Proprietary Information may not be publicly disclosed.

5. Prior to making Proprietary Information available to any person as provided in Paragraph 4 of this Protective Order, the Receiving Party intending to provide such access shall deliver a copy of this Protective Order to such person and shall receive a written acknowledgement from that person in the form attached to this Protective Order and designated as **Appendix A**. The Receiving Party shall promptly deliver a copy of the executed acknowledgment form to the Producing Party. By virtue of their status as full time employees of the Commission, the I&E counsel of record and assigned technical staff experts are hereby automatically bound by and will comply with all terms and conditions of this Protective Order and, as such, need not provide the written acknowledgement designated as Appendix A.

6. A Producing Party shall designate data or documents as constituting or containing Proprietary Information by affixing an appropriate proprietary stamp or similar designation on such data or documents. Where only part of a data compilation or multi-page document constitutes or contains Proprietary Information, the Producing Party shall designate only the specific data or pages of documents that constitute or contain Proprietary Information.

7. 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 this proceeding or for administrative or judicial review thereof.

8. Parts of any record in 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 an Order of the presiding Administrative Law Judge or the Commission. Unresolved challenges arising under Paragraph 9, below, shall be decided by the presiding officer or the Commission as provided by 52 Pa. Code § 5.423.

9. The parties affected by the terms of this Protective Order shall retain the right to (a) question or challenge the confidential or proprietary nature of Proprietary Information; (b) question or challenge the admissibility of Proprietary Information; (c) refuse or object to the production of Proprietary Information on any proper ground; and (d) 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, Audubon retains the burden of demonstrating that the designation is necessary and appropriate.

10. 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 Information, shall be immediately returned upon request to the Producing Party of such Proprietary Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information have been destroyed.

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Christopher P. Pell  
Administrative Law Judge

Dated: \_\_\_\_\_, 2012

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket No. R-2012-2286118
	:	
v.	:	
	:	
Audubon Water Company	:	

**TO WHOM IT MAY CONCERN:**

The undersigned has read and understands the Protective Order that deals with the treatment of Proprietary Information in connection with the above-captioned proceeding. The undersigned agrees to be bound by, and to comply with, the terms and conditions of said Protective Order. The undersigned is not precluded from being provided access to Proprietary Information by virtue of Paragraph 4 of the Protective Order.

\_\_\_\_\_  
SIGNATURE

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

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
EMPLOYER

DATED: \_\_\_\_\_