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January 8, 2013

**Via Electronic Filing**

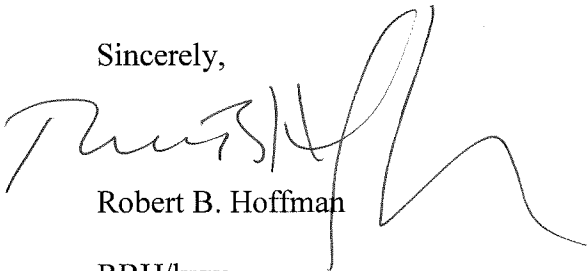
Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: PA Public Utility Commission, Bureau of Investigation and Enforcement v. Glacial  
Energy of Pennsylvania, Inc., Docket No. C-2012-2297092

Dear Secretary Chiavetta:

Enclosed for electronic filing please find a Joint Motion for Entry of a Protective Order along with a proposed order. Copies have been served in accordance with the attached Certificate of Service.

Sincerely,



Robert B. Hoffman

RBH/lww

Enclosure

cc: Cert. of Service w/enc.



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC</b>	:	
<b>UTILITY COMMISSION, BUREAU</b>	:	
<b>OF INVESTIGATION AND</b>	:	
<b>ENFORCEMENT,</b>	:	<b>Docket No. C-2012-2297092</b>
<b>        Petitioner,</b>	:	
	:	
<b>        v.</b>	:	
	:	
	:	
<b>GLACIAL ENERGY OF</b>	:	
<b>PENNSYLVANIA, INC.,</b>	:	
	:	
<b>        Respondent.</b>	:	
	:	
	:	

**JOINT MOTION FOR ENTRY OF A PROTECTIVE ORDER**

TO ADMINISTRATIVE LAW JUDGE DAVID A. SALAPA:

The Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“I&E”), and Glacial Energy of Pennsylvania, Inc. (“Glacial PA”), by their respective counsel, hereby move that a Protective Order be entered in this proceeding pursuant to the provisions of 52 Pa. Code § 5.423(a). In support of this joint motion, I&E and Glacial PA represent as follows:

1. On or about April 5, 2012, I&E filed a Formal Complaint against Glacial PA, seeking to revoke Glacial PA’s certificate of public convenience as an electric generation supplier (“EGS”). Glacial PA timely filed an Answer with New Matter, to which I&E responded on May 21, 2012.

2. On or about November 7, 2012, I&E sent Glacial PA its First Set of Interrogatories and Requests for Production of Documents. Among those requests was one for “all e-mails and other written correspondence between Gary Mole and Franklin personnel from

November 2003 through the revocation of Franklin's Retail Electric Provider (REP) certification."

3. On November 29, 2012, Glacial PA responded to I&E's First Set of Interrogatories and Requests for Production of Documents. With respect to the e-mails referenced in paragraph 2 above, Glacial PA contends that the documents potentially responsive to this request contain information that is of sensitive, proprietary or other confidential nature and should be subject to the proposed Protective Order. In addition, these documents contain information protected from disclosure under Pennsylvania's Right-to-Know Law, such as personal e-mail addresses and other personal identification information.

4. Thus, I&E and Glacial PA expect that, in the course of this consolidated proceeding, confidential and/or proprietary information within the definition of 52 Pa. Code § 5.423 may be presented or requested that justifies the issuance of a protective order. Some of that information may be of a highly sensitive and/or confidential nature.

5. Therefore, treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information may not be in the public interest, and because unrestricted disclosure of such information may result in an unfair competitive advantage. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.423 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

6. Under 52 Pa. Code §§ 5.362(7) and 5.423, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential 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 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 §§ 5.423(a)(1) – (3).

7. The attached proposed Protective Order will protect confidential information while allowing the parties to use such information for purposes of the instant litigation. Limitation on the disclosure of confidential and/or proprietary information will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. Accordingly, the proposed Protective Order balances the interests of the parties, the public, and the Commission. Furthermore, the information to be protected under this Order is currently the subject of protective orders in two related proceedings, *Petras v. Mole*, 11-cv-1402 (N.D. Tex.), and P.U.C. of Texas administrative proceedings (Docket No. 40090). Therefore, issuance of the proposed Protective Order here would be consistent with the protections already in place, and would further of the objectives of those existing protective orders.

WHEREFORE, for all the foregoing reasons, I&E and Glacial PA respectfully requests that Administrative Law Judge David A. Salapa grant this Motion and issue the attached Protective Order.

Respectfully submitted,

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*Attorneys for Pennsylvania Public Utility  
Commission, Bureau of Investigation and  
Enforcement*

Dated: January 7, 2012

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION, BUREAU OF  
INVESTIGATION AND ENFORCEMENT,  
Petitioner,**

v.

**GLACIAL ENERGY OF PENNSYLVANIA,  
INC.,  
Respondent.**

**DOCKET NO. C-2012-2297092**

**PROTECTIVE ORDER**

IT IS HEREBY ORDERED THAT:

1. This Protective Order is granted with respect to all materials identified in Ordering Paragraph Nos. 2 and 3, below, which are filed with the Commission, produced in discovery or otherwise presented during this proceeding. All persons now, and hereafter, granted access to the information identified in Ordering Paragraph Nos. 2 and 3 shall use and disclose such information only in accordance with this Order.

2. The information subject to this Order includes all correspondence, documents, data, and all other materials or information that any party or an affiliate of any party (“the producing party”) furnishes in this proceeding pursuant to filing, discovery or evidentiary procedures, or otherwise may provide as a courtesy to other active parties in this proceeding, which are claimed to be of a sensitive, proprietary or other confidential nature and which are designated “CONFIDENTIAL INFORMATION.” The information subject to this Order includes, without limitation, information fixed in any medium, including records on a computer

disk, CD-ROM, flash drive, video or audio tape, or other similar electronic storage medium, as well as hard copy documents. "Confidential Information" subject to this Order includes, but is not limited to, e-mails and other written correspondence between Gary Mole and Franklin personnel from November 2003 through the revocation of Franklin's Retail Electric Provider ("REP") certificate by the Public Utility Commission of Texas ("PUCT"), any information protected from disclosure under The Pennsylvania Right-to-Know Act, 65 P.S. §67.101 et seq., such as personal email addresses and other personal identification information, and any other information that is either specified as confidential by its terms or pertains to business practices, operations or financial matters that are commercially sensitive or that is ordinarily considered and treated as confidential by the producing party.

3. Confidential Information shall be disclosed solely to the Pennsylvania Public Utility Commission (the "Commission"), its Staff, counsel to the parties in this proceeding, the parties' employees, officers and members (as applicable) who are directly responsible for reviewing, preparing or presenting evidence, cross-examination or argument in this proceeding, and outside expert consultants retained by the parties' counsel for this proceeding. Confidential Information shall be specifically marked "CONFIDENTIAL INFORMATION," as more particularly set forth in paragraph 7 below.

4. Where specific Confidential Information is highly sensitive, it shall be provided solely to other parties' counsel. Such highly sensitive information may be copied only for the limited purpose of review by a party's expert or consultant. Such specific prohibition from copying such Confidential Information shall be clearly designated on the face of the information. In such cases, the producing party shall permit other parties' counsel to take custody of such Confidential Information, provided that it shall not be copied, except as provided for in this

Ordering Paragraph, and shall be returned or destroyed as provided for in Ordering Paragraph No. 10, below. The producing party may designate certain highly sensitive Confidential Information that may not be viewed by the employees of an inspecting party who are involved in competitive activities, or other non-parties to this proceeding, absent agreement of the producing party.

5. Confidential Information shall be made available to the Commission and its Staff for use in this and any related proceeding and for all internal Commission analyses, studies or investigations related to the same. For purposes of filing, to the extent that Confidential Information is placed in the Commission's report folders, testimony folders or other document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order. The Confidential Information shall be considered and treated as "confidential proprietary information" as defined in The Pennsylvania Right-to-Know Act, 65 P.S. §67.101 et seq. Public inspection of the Confidential Information shall be permitted only in accordance with this Protective Order.

6. Confidential Information shall be made available only as permitted by this Order and only for purposes of reviewing, preparing or presenting evidence, cross-examination or argument in this proceeding. No counsel, expert, employee, officer or member (as applicable) will be afforded access to Confidential Information until a signed acknowledgement of this Protective Order in the form attached to this Order, from each such individual, has been returned to the producing party. No other persons may have access to the Confidential Information, except as specifically authorized by further order of the Commission or the Administrative Law Judge. No person may be entitled to receive, or if afforded access to any Confidential Information shall possess, use or disclose Confidential Information for the purpose of business or

competition or any purpose (including use in other pending litigation or proceedings) other than the preparation for, and conduct of, this proceeding or any administrative or judicial review thereof.

7. The producing parties shall designate data or documents as constituting or containing Confidential Information by affixing an appropriate stamp or typewritten designation on all such data or documents. Where only part of a compilation or multi-page document constitutes or contains Confidential Information, the producing party shall designate only the specific data or pages of documents, which constitute or contain Confidential Information. Upon request from another party, the producing party shall produce a redacted (public) version of any such partially confidential compilation or multi-page document within a reasonable period of time.

8. Any public reference to Confidential Information by the Commission or 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 Confidential Information to understand the reference fully and not more. Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review. Part of any record of this proceeding containing Confidential Information, including but not limited to all exhibits, writings, direct testimony, cross-examination, argument, and responses to discovery, and including reference thereto as mentioned in the above Ordering Paragraphs, shall be sealed for all purposes, including administrative and judicial review, unless such Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to a further order of the Administrative Law Judge or the Commission.

9. The parties affected by the terms of this Order shall retain the right to question or challenge the confidential nature of the Confidential Information; to question or challenge the admissibility of Confidential Information; to refuse or object to the production of Confidential Information on any proper ground, including but not limited to irrelevance, immateriality, or undue burden; and to seek additional measures of protection of Confidential Information beyond those provided in this Order. If a challenge is made to the designation of a document or information as Confidential Information, the party claiming that the information is proprietary or otherwise confidential 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, whether written or oral, which contain any Confidential Information, shall be immediately returned to the party furnishing such Confidential Information or destroyed. This provision, however, shall not apply to the Commission or its Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, or any other party receiving the consent of the producing party; except, however, that highly sensitive Confidential Information provided to any party pursuant to Ordering Paragraph No. 4, above, shall be returned to the producing party or destroyed in all cases. In the event that a party elects to destroy all copies of documents and other materials containing Confidential Information instead of returning the copies to the producing party, that party shall certify in writing to the producing party that all copies of the documents and other materials containing Confidential Information have been destroyed.

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

\_\_\_\_\_  
David A. Salapa  
Administrative Law Judge

