



Fox Rothschild LLP
ATTORNEYS AT LAW

2000 Market Street, 20th Floor
Philadelphia, PA 19103-3222
Tel 215.299.2000 Fax 215.299.2150
www.foxrothschild.com

Barnett Satinsky
Direct Dial: (215) 299-2088
Internet Address: bsatinsky@foxrothschild.com

March 7, 2014

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission v. Veolia Energy Philadelphia, Inc.
Docket Nos: R-2013-2386293, C-2014-2402292, C-2014-2407095 and C-2014-2407105

Dear Secretary Chiavetta:

Enclosed for filing is Veolia Energy Philadelphia, Inc.'s Motion for Protective Order Conference Memorandum in the above captioned rate case and related complaint proceedings. Copies are being served on Administrative Law Judge Angela T. Jones, Mediator Herbert Nurick and the parties of record as reflected on the attached Certificate of Service. Thank you for your cooperation.

Very truly yours,

Barnett Satinsky

BS:mo

Enclosure

cc: Angela T. Jones, Admin. Law Judge (w/encl.) (*via email & First Class Mail*)
Herbert Nurick, Mediation Coordinator (w/encl.) (*via email & First Class Mail*)
Parties of Record (w/encl.) (per attached Certificate of Service)
Lindsey Sands, Esquire, Corporate Counsel (*via email*)
Michael J. Smedley, Vice President & General Manager (*via email*)
Christine Soares, Esquire (*via email*)
Roman Petyk, Esquire (*via email & First Class Mail*)

A Pennsylvania Limited Liability Partnership

California Colorado Connecticut Delaware District of Columbia
Florida Nevada New Jersey New York Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al.

v.

Veolia Energy Philadelphia, Inc.

Docket Nos. R-2013-2386293

C-2014-2402292

C-2014-2407095

C-2014-2407105

VEOLIA ENERGY PHILADELPHIA, INC. MOTION FOR PROTECTIVE ORDER

TO: ADMINISTRATIVE LAW JUDGE ANGELA T. JONES

Veolia Energy Philadelphia, Inc. (“Veolia”), by and through its counsel, Fox Rothschild LLP, hereby requests that the proposed form of Protective Order attached as Exhibit “A” be approved and entered in the above-captioned proceeding pursuant to the provisions of 52 Pa. Code §§ 5.362 and 5.365. In support thereof, Veolia respectfully submits as follows:

1. On December 18, 2013, Veolia filed with the Pennsylvania Public Utility Commission (the “Commission”) Supplement No. 14 to Tariff Heating and Cooling PA. P.U.C. No. 4:

2. Following a February 6, 2014 Order by the Commission suspending Supplement No. 14 for a period of 6 months from the proposed March 1, 2014 effective date, the matter was assigned to Administrative Law Judge Angela T. Jones (the “ALJ”).

3. Following the filing of several Complaints and Petitions to Intervene, all active Parties agreed to seek to resolve the issues in the case with the assistance of the Commission’s Mediation Coordinator, whereupon Veolia voluntarily further postponed the proposed effective date of the tariff changes until December 1, 2014.

4. The Parties in this matter have engaged in discovery prior to the initial prehearing conference that has been scheduled for March 10, 2014. Specifically, the Bureau of

Investigations and Enforcement has propounded 69 Data Requests, most of which have been answered by Veolia, but two of which Veolia believes will require it to reveal highly confidential business information about Veolia and its affiliated companies. Veolia believes that similar issues of confidentiality may be raised by the Parties during additional discovery in this proceeding.

5. Proprietary Information within the definition of 52 Pa. Code § 5.365 may be presented or requested during the course of this proceeding, which justifies the issuance of a Protective Order. For example, parties may seek information that is customarily treated as sensitive, proprietary, or highly confidential. Therefore, treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such 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 said regulation.

6. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365(a), the 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 used in similar activities; and the worth or value of such information to the party and to the party's competitors. 52 Pa. Code §§ 5.365(a)(1)-(3).

7. The Proposed Protective Order provides protection for information deemed by a producing party to be proprietary, confidential or highly confidential, but protects against overly

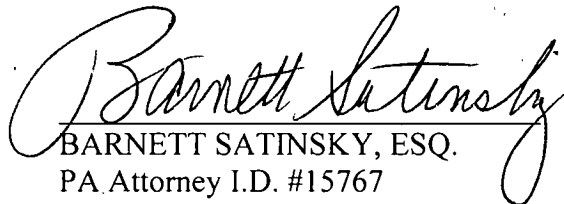
broad designations of protected information by giving all parties the right to question or challenge the proprietary, confidential or highly confidential nature of such information.

8. 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.

9. Counsel for Veolia circulated to Counsel for the other Parties on February 28, 2014, a form of Proposed Stipulated Protective Order which is, in substance, identical to the proposed Protective Order attached to this Motion.

10. As of the date and time of this filing, some of the Counsel for other Parties have advised Counsel for Veolia that they do not object to the form of the proposed Stipulated Protective Order, and no Counsel have advised Counsel for Veolia of any proposed changes to its content.

WHEREFORE, for all the foregoing reasons, Veolia Energy Philadelphia, Inc. respectfully requests that Administrative Law Judge Angela T. Jones grant this Motion and issue the attached Protective Order.



BARNETT SATINSKY, ESQ.

PA Attorney I.D. #15767

CHRISTINE SOARES, ESQ.

PA Attorney I.D. #203497

Fox Rothschild LLP

2000 Market Street, 20th Floor

Philadelphia, PA 19103-3222

(215) 299-2088 (phone)

(215) 299-2150 (fax)

bsatinsky@foxrothschild.com

csoares@foxrothschild.com

Attorneys for Veolia Energy Philadelphia, Inc.

Dated: March 7, 2014

EXHIBIT "A"

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al.	:	Docket Nos. R-2013-2386293
	:	C-2014-2402292
v.	:	C-2014-2407095
	:	C-2014-2407105
Veolia Energy Philadelphia, Inc.	:	

PROTECTIVE ORDER

Upon the uncontested Motion of Veolia Energy Philadelphia, Inc. seeking a Protective Order to protect the disclosure of certain sensitive, proprietary, confidential and/or highly confidential documents in these proceedings, and finding that such an Order is necessary in order for the parties to analyze, study or investigate these proceedings while protecting the confidentiality of information, in accordance with 52 Pa. Code § 5.365, I hereby enter the following Order:

1. This Protective Order is applicable to all information identified at Paragraphs 2 or 3 below, which the parties may produce in these proceedings or may file with the Pennsylvania Public Utility Commission (the "Commission"). The parties only shall use and disclose the information identified in Paragraphs 2 or 3 in accordance with this Protective Order.

2. The materials subject to this Order are all correspondence, documents, data, information, studies, methodologies and other materials in any form that a party or an affiliate or agent of a party furnishes in this proceeding pursuant to the Commission's rules and regulations, discovery procedures or cross-examination which are claimed to be of a proprietary or confidential nature and which are designated "PROPRIETARY" or "CONFIDENTIAL" (hereinafter collectively referred to as "Proprietary Information").

3. In addition, a Party may designate extremely sensitive Proprietary Information as "HIGHLY CONFIDENTIAL" (hereinafter referred to as "Highly Confidential Information") and thus secure the additional protections set forth in this Order pertaining to such material. Such

Highly Confidential Information, for purposes of this proceeding, shall be only such Proprietary Information, if any, that constitutes or describes a Party's or a Party's corporate affiliates' or, in the event that the information involves a specific customer, such customer's (i) customer names or customer prospect names, addresses, annual volumes of steam usage, or other customer-identifying information; (ii) nonpublic financial information¹ and marketing plans; (iii) competitive strategies or service alternatives; (iv) market share projections; (v) competitive pricing or discounting information; (vi) marketing materials that have not yet been used; (vii) settlement agreements; and, (viii) agreements that have been designated by the signatory parties to the agreements as confidential. A Party may subsequently petition the Commission or the Administrative Law Judge to include additional types of items in the designation of Highly Confidential Information,

4. Proprietary Information shall be made available to the Commission and its Staff 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 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 Order. Public inspection of Proprietary Information shall be permitted only in accordance with this Order.

5. Proprietary 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 may afford access to Proprietary Information made available by another party ("the Producing Party") to:

¹ The term "non-public financial information" refers to income statements, balance sheets, tax returns, debt instruments, and similar financial documents describing the financial condition of a Party, a Party's corporate affiliates or a customer. The term does not include *inter alia* cost information related to the operation, maintenance, or improvement of a Party's steam system.

- i. The Commission at any hearing in this proceeding or in connection with motions filed in this proceeding;
 - ii. Counsel (including "in-house" counsel) to the named parties to this action and the paralegal, clerical and secretarial staff employed by such counsel;
 - iii. court reporters;
 - iv. any witness during the course of that witness's deposition;
 - v. experts and/or advisors consulted by the named parties or their counsel in connection with this action, whether or not retained to testify at trial; Provided that prior to any such disclosure counsel for the party making the disclosure shall deliver a copy of this Protective Order to the expert and/or advisor, shall explain its terms to the expert and/or advisor, and shall secure the signature of the expert and/or advisor on a letter in the form attached hereto as Exhibit A. It shall be the further obligation of counsel, upon learning of any breach or threatened breach of this Protective Order by any expert and/or advisor, promptly to notify opposing counsel of such breach or threatened breach;
 - vi. one corporate representative selected by each corporate party to this litigation, who shall be designated by Counsel for that party; and
 - vii. any other person as to whom the producing party agrees in writing prior to disclosure.
- b. For purposes of the foregoing paragraph, disclosure to a party's expert(s) shall be subject to the following additional restrictions:
- i. Such expert(s) may not hold any of the following positions with any competitor of the producing party: (a) an officer, board member, significant stockholder, partner, owner (other than owner of stock) or an employee of any competitor of the producing party who is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the producing party; or (b) an officer, board member, significant stockholder, partner, owner (other than owner of stock) of

any affiliate of a competitor of the producing party; provided, however, that any expert shall not be disqualified on account of being a stockholder, partner, or owner unless his/her interest in the business constitutes a significant potential for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Order, stocks, partnership, or other ownership interest valued at more than \$10,000 or constituting more than a 1% interest in a business establishes a significant potential for violation.

ii. If a party's independent expert, another member of the independent expert's firm or the independent expert's firm generally also serves as an expert for, or as a consultant or advisor to a competitor or any affiliate of a competitor of the Producing Party, said independent expert must: (1) advise the Producing Party of the competitor's or affiliate's name(s); (2) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a competitor or any affiliate of a competitor of the Producing Party; and (3) if segregation of such personnel is impractical, the independent expert shall give to the Producing Party written assurances that the lack of segregation will in no way jeopardize the interests of the Producing Party. The Producing Party retains the right to challenge the adequacy of the written assurances that its interests will not be jeopardized.

c. No other persons may have access to the 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.

d. Highly Confidential Information. Highly Confidential Information shall be produced for inspection by a Party's counsel of record only. The Producing Party and the requesting Party shall work in good faith to determine a mutually-convenient time and

location for inspection. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to persons other than counsel of record, she or he shall submit a written request to the Producing Party's counsel. Except as otherwise provided herein, copies of Highly Confidential Information (including Customer-Specific Discount Information, as defined infra) shall be provided to Counsel for I&E, and Counsel for OSBA. Counsel for I&E and OSBA may make such information available to their expert witnesses upon the expert witness's execution of a letter in the form attached to this Protective Order as Exhibit A. If the requesting Party and Producing Party are unable to reach agreement with respect to such a request, either may submit the issue to the presiding Administrative Law Judge for resolution. No other persons may have access to the 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 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 Information available to any person as provided in Ordering Paragraph No. 5, above, counsel for a party of record shall deliver a copy of this Order to such person and shall receive a written acknowledgement from that person in the form attached to this Order and designated as "Exhibit A". Counsel shall promptly deliver to the Producing Party a copy of this executed acknowledgement form.

7. A producing party shall designate data or documents as constituting or containing Proprietary Information by affixing an appropriate proprietary stamp or typewritten or handwritten designation on such data or documents. Where only part of data compilations or

multi-page documents constitutes or contains Proprietary Information, the producing party, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents that constitute or contain Proprietary Information.

8. Any federal agency that has access to and/or receives copies of the Proprietary Information will consider and treat the Proprietary Information as within the exemption from disclosure provided in the Freedom of Information Act as set forth at 5 U.S.C. §552(b)(4) until such time as the information is found to be non-proprietary.

9. Any state agency which has access to and/or receives copies of the Proprietary Information will consider and treat the Proprietary Information as "Confidential Proprietary Information" that is exempt from disclosure under Section 708(b)(11) of the Pennsylvania Right-to-Know Law (65 P.S. § 67.708(b)(11)) until such time as the information is found to be non-proprietary.

10. Any public reference to Proprietary 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 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 administrative or judicial review.

11. Part of any record of any of proceedings containing the Proprietary 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 No. 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 an Administrative Law Judge or the Commission. Unresolved challenges arising under Ordering Paragraph No. 12, below, shall be decided on motion or petition by the presiding officer and/or the Commission. All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, and precedent to the extent such guidance is available.

12. 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 Information; to question or challenge the admissibility of Proprietary Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary Information beyond that allowed in this Protective Order; and to 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, the party claiming that the information is Proprietary retains the burden of demonstrating that the designation is necessary and appropriate.

13. Upon completion of this proceeding, including any administrative or judicial review thereof, all copies of all documents and other materials, including notes, which contain any Proprietary Information, shall be immediately returned upon request to the party furnishing 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. This provision shall not apply to the Commission and its Staff.

14. Nothing contained in this Protective Order shall be construed as inferring that any type of confidential document or Proprietary Information must be produced. Rather, this Protective Order is intended to set forth how confidential documents and Proprietary Information are handled by other parties to this matter if voluntarily or upon Order of the Commission are produced to other parties in this matter.

Angela T. Jones
Administrative Law Judge

Dated:

EXHIBIT A
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, et al.	:	
	:	Docket Nos. R-2013-2386293
v.	:	C-2014-2402292
	:	C-2014-2407095
Veolia Energy Philadelphia, Inc.	:	C-2014-2407105

The undersigned has read and understands the Protective Order issued in the above-captioned proceeding, which deals with the treatment of Proprietary and Confidential Information, including Highly Confidential Information. The undersigned agrees to be bound by, and 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(b)(ii) of this Order prior to submitting this Affidavit. The undersigned agrees that any Proprietary and Confidential Information, including Highly Confidential Information, as addressed and defined in the Protective Order, shall be used and disclosed only for purposes of preparation for, and the conduct of, the above-captioned proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.

Signature

Print Name

Job Title and Job Description

Business Address

Employer

If Independent Expert, List Persons/Entities Retaining You

Role in Proceeding

Date

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission : Docket Nos. R-2013-2386293
v. : C-2014-2402292
Veolia Energy Philadelphia, Inc. : C-2014-2407095
: C-2014-2407105

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of March 2014, served a copy of Veolia Energy Philadelphia, Inc.'s Motion for Protective Order upon the participants listed below in the manner stated, pursuant to 52 Pa. Code §1.54, postage prepaid:

Carrie B. Wright, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Via e-service and first class mail

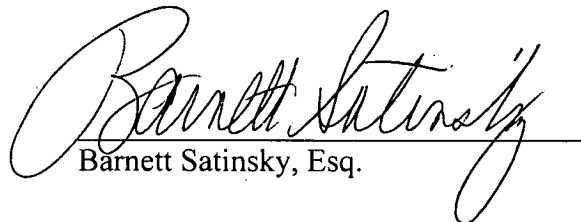
David P. Zambito, Esquire
Joshua L. Belcher, Esquire
Cozen O'Connor
305 North Front Street
Suite 400
Harrisburg, PA 17101
Via e-service and first class mail

Charis Mincavage, Esquire
Elizabeth P. Trinkle, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Via e-service and first class mail

Sharon E. Webb, Esquire
Office of Small Business Advocate
Department of Community and
Economic Development
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17120
Via e-service and first class mail

ALJ Angela T. Jones
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia PA 19107
Via email and first class mail

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Via electronic filing and Federal Express


Barnett Satinsky, Esq.