



ATTORNEYS AT LAW

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

Todd S. Stewart
Office: 717 236-1300 x 242
Direct: 717 703-0806
tsstewart@hmslegal.com

Christopher M. Arfaa
Office: 717 236-1300 x231
Direct: 717-703-0802
cmarfaa@hmslegal.com

August 15, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
Harrisburg, PA 17120

Re: Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane,
Through the Bureau of Consumer Protection and Tanya J. McCloskey, Acting
Consumer Advocate v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas &
Electric; Docket No. C-2014-2427656; **ENERGY SERVICE PROVIDERS,
INC. d/b/a PENNSYLVANIA GAS & ELECTRIC'S PETITION FOR
PROTECTIVE ORDER**

Dear Secretary Chiavetta:

Enclosed please find Energy Service Providers, Inc. d/b/a Pennsylvania Gas & Electric's
Petition for Protective Order in the above-captioned matter. Copies will be provided as indicated
on the Certificate of Service

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

Very truly yours,

Todd S. Stewart
Christopher M. Arfaa

CMA/das
Enclosures

cc: Administrative Law Judge Elizabeth Barnes (by email and first class mail)
Administrative Law Judge Joel H. Cheskis (by email and first class mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by
Attorney General KATHLEEN G. KANE,
Through the Bureau of Consumer Protection,
and
TANYA J. McCLOSKEY, Acting Consumer
Advocate,

Docket No. C-2014-2427656

Complainants,

v.

ENERGY SERVICES PROVIDERS, INC.
d/b/a PENNSYLVANIA GAS & ELECTRIC,

Respondent.

PETITION FOR PROTECTIVE ORDER

Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (“ESPI”), by and through its undersigned counsel, hereby requests that the Presiding Officer enter a Protective Order in this proceeding pursuant to the provisions of 52 Pa. Code § 5.423(a), and in support thereof represents as follows:

1. This proceeding was initiated by the filing of a joint complaint by the Attorney General through the Bureau of Consumer Protection (“OAG”) and the Acting Consumer Advocate (“OCA”) (the “Joint Complaint”). The Joint Complaint contains allegations regarding ESPI’s marketing of electric generation services to the public in the Commonwealth of Pennsylvania.

2. Discovery requests propounded in this proceeding have sought the production of confidential proprietary information and confidential customer information by ESPI. ESPI anticipates that in the course of this proceeding further discovery requests, testimony, exhibits

and briefing in this proceeding will seek or present similar confidential information. Such information includes or may include commercially sensitive information relating to the business of ESPI and its customers, as well as personal information of ESPI customers and personnel.

3. All parties – OAG, OCA and intervenors the Office of Small Business Advocate (“OSBA”) and the Bureau of Investigation and Enforcement (“I&E”) – have agreed to protect the confidentiality of ESPI’s confidential or proprietary information pursuant to the terms of the attached proposed Protective Order pending its issuance.

4. Section 5.365(a) of the Commission’s rules of practice and procedure provide that a petition for protective order will be granted “when a party demonstrates that the potential harm to the party of providing the information would be substantial and that 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.” 52 Pa. Code § 5.365(a).

5. Here, the proprietary information in question – pricing, marketing, business strategies – goes the heart of ESPI’s business -- the competitive supply of electric power. Public disclosure of such information would cause ESPI substantial competitive harm, for it would provide its competitors with an unfair advantage and deprive ESPI of the much of the value of its proprietary business practices. *See* 52 Pa. Code §§ 5.365(a)(1), (3).

6. Conversely, while ESPI acknowledges the public’s interest in free and open access to the administrative hearing process, that interest is outweighed in this case by the potential harm to ESPI of public disclosure of such competitively sensitive, confidential proprietary information. ESPI notes that OAG, OCA, OSBA and I&E are charged with representing various segments of the public and that each of them has been and will continue to be provided access to protected information pursuant to the terms of the proposed Order.

7. The attached proposed Protective Order complies with the requirements of Section 5.365 of the Commission's rules. It applies "the least restrictive means of limitation which will provide the necessary protections from disclosure" in that it specifies only one category of protected information (Proposed Order ¶ 2), and it allows protected information to be disclosed to a party's counsel and representatives consistent with Section 5.365(d) (Proposed Order ¶ 4). The restrictions it imposes are those permitted by Section 5.365(c)(1)-(3), and the Order guards against overbroad designation of information as "confidential" or "proprietary by expressly providing parties the means of challenging such designations. *See* 52 Pa. Code § 5.365(c)(5).

8. ESPI has consulted with all other active parties to this proceeding and is authorized to represent that none of them opposes issuance of the attached Protective Order.

WHEREFORE, for all the reasons set forth above, ESPI, with the concurrence of the other parties in this proceeding, respectfully requests that the Presiding Officer issue the attached Protective Order.

Respectfully submitted,



Date: August 15, 2014

Todd Stewart
Attorney I.D. No. 75556
Christopher M. Arfaa
Attorney I.D. No. 57047
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O Box 1778
Harrisburg, PA 17105-1778
Telephone: 717-236-1300
Facsimile: 717-236-4841
tsstewart@hmslegal.com
cmarfaa@hmslegal.com

Christopher A. Lewis, Esquire
PA Attorney I.D. No. 29375
Charles A. Fitzpatrick IV, Esquire
PA Attorney I.D. No. 309113
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19130
Telephone: (215) 569-5500
Lewis@BlankRome.com
Fitzpatrick-C@BlankRome.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by
Attorney General KATHLEEN G. KANE,
Through the Bureau of Consumer Protection,
and
TANYA J. McCLOSKEY, Acting Consumer
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Docket No. C-2014-2427656

Complainants,

v.

ENERGY SERVICES PROVIDERS, INC.
d/b/a PENNSYLVANIA GAS & ELECTRIC,

Respondent.

PROTECTIVE ORDER

IT IS HEREBY ORDERED THAT:

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

2. The materials subject to this Order are all correspondence, documents, data, information, studies, methodologies, audio recordings and other materials in any form that a party or an affiliate 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, or the disclosure of which would cause substantial harm to the

competitive position of the person that submitted the information, and which are designated “PROPRIETARY” or “CONFIDENTIAL” (hereinafter collectively referred to as “Proprietary Information”).

3. 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.

4. 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:

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 a hearing or trial. It shall be the 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. 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.

5. Prior to making Proprietary Information available to any person as provided in Ordering Paragraph No. 4, 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 "Appendix A". Counsel shall promptly deliver to the Producing Party a copy of this executed acknowledgement form.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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. 11, below, shall be decided on motion or petition by the presiding officer and/or the Commission as provided in 52 Pa. Code §5.423(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, and precedent to the extent such guidance is available.

11. 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.

12. 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 in accordance with the agency's records retention policy. This provision shall not apply to the Commission and its Staff.

13. 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.

Dated: _____

APPENDIX A
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Commonwealth of Pennsylvania, by	:	
Attorney General KATHLEEN G. KANE,	:	
Through the Bureau of Consumer Protection,	:	
	:	
AND	:	
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	Docket No. C-2014-2427656
Advocate,	:	
	:	
Complainants,	:	
	:	
v.	:	
	:	
ENERGY SERVICES PROVIDERS, INC.	:	
d/b/a	:	
PENNSYLVANIA GAS & ELECTRIC,	:	
	:	
Respondent.	:	

The undersigned has read and understands the Protective Order issued in the above-captioned proceeding, which deals with the treatment of Proprietary and 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(a)(ii) of this Order prior to submitting this Affidavit. The undersigned agrees that any Proprietary and 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

Date

Job Title and Job Description

Business Address

Employer

If Independent Expert, List Persons/Entities Retaining You

Role in Proceeding

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true and correct copy of the foregoing document on the persons listed below by the means indicated:

First Class Mail, Postage Prepaid, and Electronic Mail

John M. Abel, Esq.
Senior Deputy Attorney General
Nichole R. Beck, Esq.
Deputy Attorney General
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
jabel@attorneygeneral.gov
nbeck@attorneygeneral.gov

Sharon E. Webb, Esq.
Assistant Small Business Advocate
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, Pennsylvania 17101
swebb@pa.gov

Candis A. Tunilo, Esq.
Assistant Consumer Advocate
Brandon J. Pierce, Esq.
Assistant Consumer Advocate
Kristine E. Robinson, Esq.
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
ctunilo@paoca.org
bpierce@paoca.org
krobinson@paoca.org

Michael L. Swindler, Esq., Prosecutor
Stephanie M. Wimer, Esq., Prosecutor
Wayne T. Scott, Esq., Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, Pennsylvania 19105-3265
mswindler@pa.gov
stwimer@pa.gov
wascott@pa.gov

DATED: August 15, 2014



Todd S. Stewart, Esq. (Pa. ID No. 75556)
Christopher M. Arfaa, Esq. (Pa. ID No. 57047)