**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2018-3000834

 :

Office of Consumer Advocate : C-2018-3001786

 :

Office of Small Business Advocate : C-2018-3002132

 :

 v. :

 :

Suez Water Pennsylvania, Inc. :

**ORDER GRANTING MOTION FOR PROTECTIVE ORDER**

 On June 7, 2018, Suez Water Pennsylvania, Inc. (Suez) filed a motion requesting that I issue a protective order in this proceeding, pursuant to 52 Pa.Code § 5.365(a), and enclosed a proposed order with its motion. The motion asserts that Suez has provided copies of the motion to the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and the Commission’s Bureau of Investigation and Enforcement (I&E) and that none of those entities object to the issuance of a protective order.

The Commission’s Rules of Practice and Procedure permit the Commission to issue protective orders limiting the availability of certain proprietary or confidential information. 52 Pa. Code §§5.362. The party seeking the protective order has the burden to establish that the potential harm to the party 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. Petition for Protective Order of GTE North Inc., 1996 Pa PUC LEXIS 95, Docket No. G-00940402, (Order entered August 8, 1996); ITT Communications Services’ Petition for a Protective Order, 1991 Pa PUC LEXIS 193, Docket No. R-912017, (Order entered November 5, 1991).

In determining whether to issue a protective order, the Commission, pursuant to 52 Pa. Code §5.365(a), should consider the following factors:

 (1)  The extent to which the disclosure would cause unfair economic or competitive damage.

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

    (3)  The worth or value of the information to the party and to the party’s competitors.

    (4)  The degree of difficulty and cost of developing the information.

    (5)  Other statutes or regulations dealing specifically with disclosure of the information.

The proposed protective order contains provisions addressing “Proprietary Information”. “Proprietary Information” includes all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding that the producing party believes to be of a proprietary or confidential nature and are marked as “CONFIDENTIAL”.

The proposed protective order states that a producing party may designate as CONFIDENTIAL those materials that are customarily treated by that party as sensitive or proprietary, that are not available to the public, and that, if generally disclosed, would subject that party to the risk of competitive disadvantage or other business injury.

The proposed protective order provides that Proprietary Information shall be provided to counsel for a party. Counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross-examination or argument in this proceeding. Counsel may allow a party’s experts access to Proprietary Information, subject to the conditions set forth in the proposed protective order.

The Commission’s regulation at 52 Pa. Code §5.365 requires that a protective order apply the least restrictive means of limitation that will provide the necessary protections from disclosure. The proposed protective order does this. Therefore, I will grant the Suez’ motion filed June 7, 2018, for issuance of a protective order.

THEREFORE,

IT IS ORDERED:

 1. That the motion for a protective order filed June 7, 2018 by Suez Water Pennsylvania, Inc. is granted.

 2. The proposed protective order attached to the motion for protective order filed June 7, 2018, is approved, adopted and incorporated into this order. A copy of the protective order is attached.

Date: June 8, 2018 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 David A. Salapa

 Administrative Law Judge

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Suez Water Pennsylvania, Inc. :

**PROTECTIVE ORDER**

Upon consideration of the Motion for Protective Order that was filed by SUEZ Water

Pennsylvania Inc. on June 7, 2018, and the record as a whole;

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to all materials and information

identified in Paragraphs 2 and 3 below, which have been or will be filed with the Commission,

produced in discovery, or otherwise presented during the above-captioned proceeding and all

proceedings consolidated therewith. All persons previously or hereafter granted access to the

materials and information identified in Ordering Paragraphs 2 and 3 of this Protective Order shall

use and disclose such information only in accordance with this Protective Order.

2. The materials or information subject to this Protective Order are all

correspondence, documents, data, information, studies, methodologies, and other materials

furnished in this proceeding, which are believed by a party to be of a proprietary or confidential

nature and which are so designated by being stamped or otherwise marked "CONFIDENTIAL."

Such materials will be referred to below as "Proprietary Information." When a statement or

exhibit is identified for the record, the portions thereof that constitute Proprietary Information

shall be appropriately designated as such for the record.

3. 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 or its clients to risk of competitive

disadvantage or other business injury.

4. Proprietary Information produced in this proceeding shall be made available to

counsel for the non-producing 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

only to a party's expert(s), subject to the conditions set forth in this Protective Order. However,

said expert(s) may not be a "Restricted Person."

5. Proprietary Information shall not be made available to a "Restricted Person."

(a) For the purpose of this Protective Order, "Restricted Person" shall mean:

(a) an officer, director, stockholder, partner, owner, or employee of any competitor of SUEZ

Water Pennsylvania Inc. ("SUEZ" or the "Company"), (b) an officer, director, stockholder,

partner, owner or employee of any affiliate of a competitor of SUEZ (including any association

of competitors of SUEZ); (c) an officer, director, stockholder, owner, or employee of a

competitor of a customer of SUEZ if the Proprietary Information concerns a specific, identifiable

customer of SUEZ; and (d) an officer, director, stockholder, owner, or employee of an affiliate of

a competitor of a customer of SUEZ if the Proprietary Information concerns a specific,

identifiable customer of SUEZ; provided, however, that no expert shall be disqualified on

account of being a stockholder, partner, or owner unless that expert's interest in the business

would provide a significant motive for violation of the limitations of permissible use of the

Proprietary Information. For purposes of this Protective Order, stocks, partnership, or other

ownership interests valued at more than $10,000 (excluding mutual funds) or constituting more

than a 1% interest in a business establishes a significant motive for violation.

(b) If an expert for the party, another member of the expert's firm, or the

expert's firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted

Person, said expert must: (1) identify each Restricted Person and each expert or consultant; (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 Restricted Person; and (3) if

segregation of such personnel is impractical the expert shall give to the producing party written

assurances that the lack of segregation will in no way jeopardize the interests of SUEZ or its

customers. SUEZ shall have the right to challenge the adequacy of the written assurances that

SUEZ or its customers' interests will not be jeopardized. No other persons may have access to

the Proprietary Information except as authorized by order of the Commission.

6. Prior to making Proprietary Information available to any person as provided in

Paragraph 4 of this Protective Order, counsel shall 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." A party's expert(s) shall not be permitted to

inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary

Information pursuant to this Protective Order unless and until an executed Non-Disclosure

Certificate has been provided to the producing party. Attorneys and outside experts are

responsible for ensuring that persons under their supervision or control comply with this

Protective Order. The producing party shall be notified promptly of the identity of all persons

provided access to Proprietary Information pursuant to this paragraph and shall be provided with

a copy of each acknowledgment signed by each expert.

7. Counsel for the Office of Consumer Advocate ("OCA"), the Office of Small

Business Advocate ("OSBA") and the Bureau of Investigation and Enforcement ("I&E"), may

share Proprietary Information with the Consumer Advocate, Small Business Advocate, and I&E

Director, respectively, without obtaining a Non-Disclosure certificate for these individuals,

provided however, that these individuals otherwise abide by the terms of this Protective Order.

Likewise, counsel and experts for OCA, OSBA and I&E may discuss Proprietary Information

with each other if the experts have executed the Non-Disclosure acknowledgment set forth in

"Appendix A."

8. A producing party shall designate data or documents as constituting or containing

Proprietary Information by stamping or otherwise marking the documents "CONFIDENTIAL."

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 which constitute or contain Proprietary Information. The Proprietary

Information shall be served upon the nonproducing party hereto only in an envelope or other

sealed package separate from the nonproprietary materials, and the envelope shall be

conspicuously marked "CONFIDENTIAL."

9. 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 Protective Order. Public inspection of Proprietary Information shall be permitted

only in accordance with this Protective Order.

10. The parties will consider and treat the Proprietary Information as within the

exemptions from disclosure provided in the Pennsylvania Right-to-Know Law as set forth at 65

P.S. § 67.101 et seq., until such time as the information is found to be non-proprietary. In the

event that any person or entity seeks to compel the disclosure of Proprietary Information, the

nonproducing party shall promptly notify the producing party in order to provide the producing

party an opportunity to oppose or limit such disclosure.

11. 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 administrative or judicial review.

12. Part of any record of 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 order of the Administrative Law

Judge, the Commission or appellate court.

13. 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; to refuse or object to the

production of Proprietary Information on any proper ground, including but not limited to

relevance, materiality, 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 Information,

the party claiming that the information is Proprietary Information retains the burden of

demonstrating that the designation is necessary and appropriate.

14. Unresolved challenges arising under Paragraph 13 shall be decided on petition by

the presiding offer 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.

15. Within thirty (30) days from completion of this proceeding, including any

administrative or judicial review, upon request of the producing party, all copies of all

documents and other materials, including notes, which contain any Proprietary Information shall

be either immediately returned to the party furnishing such Proprietary Information or destroyed.

Further, all electronic communications containing information marked as "CONFIDENTIAL"

shall immediately be deleted by all recipients. Parties shall provide an affidavit of counsel

affirming that the materials containing or reflecting Proprietary Information have been returned

or destroyed and that all electronic communications containing Proprietary Information have

been deleted.

Dated:

 David A. Salapa

 Administrative Law Judge

**APPENDIX A**

Re: Pennsylvania Public Utility Commission

v. SUEZ Water Pennsylvania Inc.

Docket No. R-2018-3000834

TO WHOM IT MAY CONCERN:

The undersigned is an independent expert of , a party to this proceeding ("Party"), and is not, or has no knowledge or basis for believing that he/she is a " Restricted Person" as that term is defined in the Protective Order with regard to the above-referenced proceeding. The undersigned has read and understands the Protective Order in the above-referenced proceeding, which Protective Order deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Protective Order.

 Signature

 Print Name

 Address

 Employer

**R-2018-3000834 & C-2018-3001786- PENNSYLVANIA PUBLIC UTILITY COMMISSION & OFFICE OF CONSUMER ADVOCATE v. SUEZ WATER PENNSYLVANIA, INC.**DAVID P ZAMBITO ESQUIRECOZEN O'CONNOR17 NORTH SECOND ST SUITE 1410HARRISBURG PA 17101**717.703.5892**
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