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July 16, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission, et al. v. The York Water Company
Docket Nos. R-2018-300019 & C-2018-3002564 & C-2018-3002811**

Secretary Chiavetta:

Enclosed for filing is The York Water Company's Petition For A Protective Order in the above-captioned proceeding. Copies will be provided as indicated on the enclosed Certificate of Service.

Respectfully submitted,

Devin Ryan

DTR/se
Enclosures

cc: Honorable Benjamin J. Myers (*Via Email & First Class Mail*)
Certificate of Service

CERTIFICATE OF SERVICE

R-2018-3000019

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

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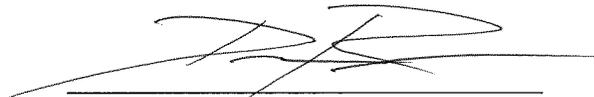
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Date: July 16, 2018



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2018-3000019
Office of Consumer Advocate	:		C-2018-3002564
Office of Small Business Advocate	:		C-2018-3002811
	:		
v.	:		
	:		
The York Water Company	:		

**PETITION OF THE
YORK WATER COMPANY FOR
A PROTECTIVE ORDER**

TO ADMINISTRATIVE LAW JUDGE BENJAMIN J. MYERS:

The York Water Company (“York Water” or the “Company”) hereby petitions, pursuant to the provisions of 52 Pa. Code §§ 5.41 and 5.365, for the issuance of a protective order with respect to confidential or highly confidential information that might need to be filed with the Pennsylvania Public Utility Commission (“Commission”), produced in discovery, or otherwise introduced into the record in the above-captioned, consolidated proceeding. In support thereof, the Company states the following:

1. York Water is a public utility engaged in the business of supplying water and wastewater service in Pennsylvania subject to the regulatory jurisdiction of the Commission. *See* 66 Pa. C.S. § 102. York Water provides water service to approximately 67,300 customers throughout its certificated service territory, which includes the City of York and surrounding municipalities in portions of York and Adams Counties, Pennsylvania. York Water provides wastewater service to approximately 2,300 customers in portions of York County.

2. On May 30, 2018, York Water filed with the Commission Supplement No. 130 to its Tariff Water – Pa. P.U.C. No. 14 (“Supplement No. 130”) and Supplement No. 6 to Tariff Wastewater – Pa. P.U.C. No. 1 (“Supplement No. 6”), along with supporting information required by 52 Pa. Code §§ 53.52 and 53.53. In Supplement No. 130, York Water proposes a general increase in water rates of \$6,398,961 per year, and in Supplement No. 6, the Company proposes a general increase in wastewater rates of \$288,623 per year.

3. Proprietary Information within the definition of 52 Pa. Code § 5.365 has been requested during the course of this proceeding, which justifies the issuance of a Protective Order. For example, information has been sought that is customarily treated as confidential or highly confidential, including, but not limited to, specific information about the Company’s customers. During the course of the proceeding, additional confidential and highly confidential information may be requested, including proprietary information about York Water’s operations and facilities.

4. The attached proposed Protective Order defines two categories of protected information. The first is “Confidential,” which is defined in Paragraph 3 of the attached proposed Protective Order as “those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public or which, if disclosed freely, would subject that party or others to risk of competitive disadvantage or other business injury.” The second is “Highly Confidential,” which is defined in Paragraph 4 of the attached proposed Protective Order as “those materials that are of such a commercially sensitive or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials.”

5. 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 § 5.365, the presiding Administrative Law Judge may issue a Protective Order to limit or prohibit disclosure of confidential and proprietary information where “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.” 52 Pa. Code § 5.365(a).

7. 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 is known by others and used in similar activities; the worth or value of the information to the party and to the party’s competitors; the difficulty and costs of developing the information, and other statute and regulations dealing specifically with disclosure of the information. 52 Pa. Code § 5.365(a)(1)-(5).

8. The release of non-public information about York Water’s customers, operations, and facilities could cause harm to customers who do not want their information released to the public, cause unfair economic or competitive damage to the Company, and place the Company and the public at risk if confidential information about York Water’s customers, operations, and facilities are publicly disclosed.

9. Conversely, the language proposed in the attached Protective Order protects against overly broad designations of protected information by giving all parties the right to

“question or challenge the confidential or proprietary nature” of information marked as “Confidential” or “Highly Confidential” by a producing party.

10. The limitation on the disclosure of proprietary information proposed in the attached Protective Order fairly balances the interests of the parties, the public, and the Commission and will neither prejudice the rights of the participants to develop a full record, nor frustrate the prompt and fair resolution of this proceeding.

11. York Water represents that it has consulted with the other parties about the terms of the proposed Protective Order, and none of them object to the instant Motion being granted.

WHEREFORE, York Water respectfully requests that Administrative Law Judge Benjamin J. Myers issue a protective order substantially in the form attached in **Exhibit A** to this petition.

Respectfully submitted,



Michael W. Hassell (ID # 34851)
Devin T. Ryan (ID # 316602)
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Of Counsel:

Post & Schell, P.C.

Date: July 16, 2018

Counsel for The York Water Company

EXHIBIT A
Protective Order

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2018-3000019
Office of Consumer Advocate	:		C-2018-3002564
Office of Small Business Advocate	:		C-2018-3002811
	:		
v.	:		
	:		
The York Water Company	:		

PROTECTIVE ORDER

Upon consideration of the Petition for a Protective Order that was filed by The York Water Company:

IT IS ORDERED THAT:

1. The Petition is hereby granted with respect to all materials and information identified in Paragraphs 3 and 4 below.

2. That the materials subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are believed by the producing party to be of a proprietary or confidential nature and which are so designated by being stamped "Confidential" or "Highly Confidential." Such materials will be referred to below as "Proprietary Information."

3. That 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 or which, if disclosed freely, would subject that party or others to risk of competitive disadvantage or other business injury.

4. That the parties may designate as "Highly Confidential" those materials that are of such a commercially sensitive or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials. For

example but without limitation, “Highly Confidential” information may include Proprietary Information that constitutes or describes: (1) customer names, addresses, annual volumes of water usage, or other customer-identifying information; or (2) highly sensitive security information about the Company’s operations and facilities.

5. That Proprietary Information 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, argument, or settlement discussions in this proceeding. To the extent required for participation in this proceeding, counsel for a non-producing party may afford access to Proprietary Information subject to the conditions set forth herein.

6. Proprietary Information produced in this proceeding shall be made available to the Pennsylvania Public Utility Commission (“Commission”) and its Staff. 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 Protected Information shall be permitted only in accordance with this Protective Order.

7. That “Confidential” information may be made available to a “Reviewing Representative” who is a person who has signed a Non-Disclosure Certificate in the form attached as **Appendix A** hereto and who is: (i) an attorney for one of the parties who has entered an appearance in this proceeding; (ii) an attorney, paralegal, or other employee associated for

purposes of this proceeding with an attorney described in subparagraph (i); (iii) an expert or an employee of an expert retained by a party for the purpose of advising, preparing for or testifying in this proceeding; (iv) an employee or other representative of a party with significant responsibility in this proceeding; or (v) a person mutually agreed to by the producing and non-producing parties.

8. That no Reviewing Representative may be a “Restricted Person.” For the purpose of this Protective Order, “Restricted Person” shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of a party to this Protective Order or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of a party to this Protective Order (including any association of competitors of a party) or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of a party to this Protective Order if the Proprietary Information concerns any specific, identifiable customer of a party; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of a party to this Protective Order if the Proprietary Information concerns a specific, identifiable customer of the party; 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 direct ownership interests (excluding ownership in mutual funds) valued at more than \$10,000 or constituting more than a one percent interest in a business establishes a significant motive for violation.

9. That if an expert for a party to this Protective Order, another member of the expert's firm or the expert's firm also serves as an expert for, or as a consultant or advisor to, a Restricted Person (to the extent reasonably known by the non-producing party), said expert must: (i) identify for the other party to this Protective Order each Restricted Person and each expert or consultant; (ii) 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 (iii) 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 the party or its customers. The parties retain the right to challenge the adequacy of the written assurances that the parties or their customers' interests will not be jeopardized.

10. That "Highly Confidential" information may be made available to a "Reviewing Representative" who has signed a Non-Disclosure Certificate in the form attached as **Appendix A** hereto and who is: (i) an attorney for one of the parties who has entered an appearance in this proceeding; (ii) an attorney, paralegal, or other employee associated for purposes of this proceeding with an attorney described in subparagraph (i); (iii) an expert or an employee of an expert retained by a party for the purpose of advising, preparing for or testifying in this proceeding; or (iv) a person mutually agreed to by the producing and non-producing parties.

11. That a Reviewing Representative of Highly Confidential information shall not be a "Restricted Person" as defined in Paragraph 8 or include any employee or agent of a customer of a party subject to this Protective Order, a competitor of a party subject to this Protective Order, or a competitor of a customer of a party subject to this Protective Order whose duties include: (i) the marketing, sale or purchase of water supply services or wastewater services; (ii) management regarding or supervision of any employee whose duties include the marketing, sale

or purchase of water supply services or wastewater services for a competitor of a party subject to this Protective Order or a customer of the party; (iii) consulting services for a competitor of a party subject to this Protective Order or a customer of the party regarding the marketing, sale or purchase of water supply services or wastewater services; or (iv) responsibility regarding other strategic business activities in which use of market sensitive information could be reasonably expected to cause competitive harm to a party or to a customer of a party subject to this Protective Order.

12. That no other persons may have access to the Proprietary Information except as authorized by order of the Commission or the Presiding Administrative Law Judge; provided, however, that counsel for the Bureau of Investigation and Enforcement (“I&E”), Office of Consumer Advocate and Office of Small Business Advocate may share Proprietary Information with the I&E Deputy Chief Prosecutor, I&E Director, Consumer Advocate and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, so long as these individuals otherwise abide by the terms of the Protective Order.

13. That Proprietary Information shall be treated by non-producing parties subject to this Protective Order and by all Reviewing Representatives in accordance with the certificate attached as **Appendix A** and executed pursuant to Paragraphs 7 and 10. Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person’s responsibilities in this proceeding.

14. That Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any commercial advantage. If

a party wishes to designate as a Reviewing Representative a person not described in Paragraphs 7 and 10 above, the party shall seek agreement from the party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative with respect to those materials. If no agreement is reached, the party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

15. That a Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate, provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

16. That attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

17. That none of the parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

18. That the producing party shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "Confidential" or "Highly Confidential." Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, 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 in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked "Confidential" or "Highly Confidential."

19. That any federal agency that has access to 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.

20. That any state agency that has access to or receives copies of the Proprietary Information will consider and treat the Proprietary Information as within the definition of "confidential information" in Section 102 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.102, and subject to exemptions from disclosure as provided for in Section 708 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.708, until the information is found by a tribunal with jurisdiction to be not confidential or subject to one or more exemptions.

21. That any public reference to Proprietary Information by a party shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully 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.

22. That, when a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

23. That any part of the record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination and argument,

and including reference thereto as mentioned in Paragraph 21 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 to this Protective Order or pursuant to an order of the Commission.

24. That the parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

25. That the parties shall retain the right to object to the production of Proprietary Information on any proper ground; to refuse to produce Proprietary Information pending the adjudication of the objection; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order.

26. That within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within 30 days after appeals are finally decided, the non-producing party, upon request, shall either destroy or return to the producing party all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that the non-producing party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the producing party, the non-producing party shall certify in writing to the other party that the Proprietary Information has been destroyed.

Dated: _____

Honorable Benjamin J. Myers
Administrative Law Judge

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2018-3000019
Office of Consumer Advocate	:		C-2018-3002564
Office of Small Business Advocate	:		C-2018-3002811
	:		
v.	:		
	:		
The York Water Company	:		

TO WHOM IT MAY CONCERN:

The undersigned is _____ of _____ (the non-producing party) and has read and understands the Protective Order that deals with the treatment of Proprietary Information in the above-captioned proceeding. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. In the case of a witness or expert, the undersigned represents that he or she has complied with the applicable provisions of the Order.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE: _____