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July 26, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: PA PUC v. PWSA-Water; Docket No. R-2018-3002645, *et al.*
PA PUC v. PWSA-Wastewater; Docket No. R-2018-3002647, *et al.*

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Pittsburgh Water and Sewer Authority's ("PWSA") Motion for Protective Order with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Carl R. Shultz

CRS/jls
Enclosure

cc: Hon. Mark A. Hoyer, ALJ (w/enc)
Hon. Conrad A. Johnson, ALJ (w/enc)
Certificate of Service (w/enc)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PWSA's Motion for Protective Order, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

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Dated: July 26, 2018



Carl R. Shultz, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	Docket No. R-2018-3002645, <i>et al.</i>
	:	
Pittsburgh Water and Sewer Authority - Water	:	
	:	
Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	Docket No. R-2018-3002647, <i>et al.</i>
	:	
Pittsburgh Water and Sewer Authority -	:	
Wastewater	:	

MOTION FOR PROTECTIVE ORDER

To Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law

Judge Conrad A. Johnson:

The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”), by its counsel, hereby moves that a Protective Order be entered in this proceeding pursuant to the provisions of 52 Pa. Code § 5.423(a). In support of this motion, PWSA represents as follows:

1. On July 2, 2018, PWSA filed Water Service Tariff - PA. P.U.C. No. 1 (“Water Tariff”) and Wastewater Service Tariff - - PA. P.U.C. No. 1 (“Wastewater Tariff”) (collectively, the “Tariffs”) to become effective on August 31, 2018. The Tariffs, if approved by the Commission, would implement a base rate increase of \$27.0 million per year.

2. Proprietary information within the definition of 52 Pa. Code § 5.423 is expected to be requested in discovery during this proceeding. Parties are likely to seek information and materials that are customarily treated as confidential or highly confidential (collectively “Proprietary Information”). Parties may desire to use or otherwise present such Proprietary

Information during the course of this proceeding. Treatment of such Proprietary Information as set forth in the attached proposed Protective Order (Attachment A) is justified because unrestricted disclosure of such information could harm the disclosing party and will not be in the public interest. 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.

3. 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 Proprietary Information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the Proprietary 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).

4. The attached proposed Protective Order will protect Proprietary Information while allowing the parties to use such information for purposes of the instant litigation. 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. Accordingly, the proposed Protective Order balances the interests of the parties, the public, and the Commission.

5. PWSA has consulted the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement and Pittsburgh

United, and none of them has expressed an objection to the granting of this Motion or the entry of the attached Protective Order.

WHEREFORE, for all the foregoing reasons, PWSA requests that Your Honors grant this Motion and issue the attached Protective Order.

Respectfully submitted,



Daniel Clearfield, Esq.
(PA Attorney ID No. 26183)

Deanne M. O'Dell, Esq.
(PA Atty I.D. 80614)

Carl R. Shultz, Esq.
(PA Attorney ID No. 70328)

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Dated: July 26, 2018

Counsel for
The Pittsburgh Water and Sewer Authority

Attachment A

Text of Proposed Protective Order

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	Docket No. R-2018-3002645, <i>et al.</i>
	:	
Pittsburgh Water and Sewer Authority - Water	:	
	:	
Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	Docket No. R-2018-3002647, <i>et al.</i>
	:	
Pittsburgh Water and Sewer Authority -	:	
Wastewater	:	

PROTECTIVE ORDER

Upon consideration of the Motion for Protective Order that was filed by The Pittsburgh Water and Sewer Authority ("PWSA" or "Authority"):

IT IS ORDERED:

1. This Protective Order is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which are or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated with it. All persons now or hereafter granted access to the materials and information identified in Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. The information subject to this Protective Order is all correspondence, documents, statement, exhibit ,data, information, studies, methodologies and other materials, whether produced or reproduced or stored on paper, cards, tape, disk, film, electronic facsimile, magnetic or optical memory, computer storage devices or any other devices or media, including, but not

limited to, electronic mail (e-mail), furnished in this proceeding that the producing party believes to be of a proprietary or confidential nature and are so designated by being stamped or marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" protected material. Such materials are referred to in this Order as "Proprietary Information." 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.

3. For purposes of this Protective Order there are two categories of Proprietary Information: "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL" protected material. 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 or its clients to the risk of competitive disadvantage or other business injury. A producing party may designate as "HIGHLY CONFIDENTIAL" those materials that are of such a commercially sensitive nature, relative to the business interests of parties to this proceeding, or of such a private or personal nature, that the producing party is able to justify a heightened level of confidential protection with respect to those materials. The parties shall endeavor to limit the information designated as "HIGHLY CONFIDENTIAL" protected material.

4. Proprietary Information shall be provided to counsel for a party, subject to the terms of this Protective Order, who meets the criteria of a "Reviewing Representative" as set forth below. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross examination or argument in this proceeding. To the extent required for participation in this proceeding, such counsel may allow others to have

access to Proprietary Information only in accordance with the conditions and limitations set forth in this Protective Order.

5. Information deemed “CONFIDENTIAL” shall be provided to a “Reviewing Representative.” For purposes of “CONFIDENTIAL” Proprietary Information, a “Reviewing Representative” is a person who has signed a Non-Disclosure Certificate and is:

- a. An attorney for a public advocate pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;
- b. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (a) above;
- c. An expert or an employee of an expert retained by a party for the purpose of advising that party or testifying in this proceeding on behalf of that party; or
- d. Employees or other representatives of a party to this proceeding who have significant responsibility for developing or presenting the party’s positions in this docket.

6. Information deemed “HIGHLY CONFIDENTIAL” protected material shall be provided to a Reviewing Representative, provided, however that a Reviewing Representative, for purposes of “HIGHLY CONFIDENTIAL” protected material, is limited to a person who has signed a Non-Disclosure Certificate and is:

- a. An attorney for a public advocate pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;
- b. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (a);

- c. An outside expert or an employee of an outside expert retained by a party for the purposes of advising that party or testifying in this proceeding on behalf of that party; or
- d. A person designated as a Reviewing Representative for purposes of Highly Confidential protected material pursuant to Paragraph 11.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.431(e) of the Commission's Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.431(e)) any party may, by objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL protected material, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

7. For purposes of this Protective Order, a Reviewing Representative may not be a "Restricted Person" absent agreement of the party producing the Proprietary Information. A "Restricted Person" shall mean: (a) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services or advising another person who has such duties; (b) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services or advising another person who has such duties; (c) an officer, director, stockholder, owner, agent or employee of a competitor of a customer of the parties or of a competitor of a vendor of the parties if the Proprietary Information concerns a specific, identifiable customer or vendor of the parties; and (d) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; 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 violating 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 or constituting more than a 1% interest in a business establish a significant motive for violation.

8. If an expert for a 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, that expert must: (1) identify for the parties each Restricted Person and all personnel in or associated with the expert's firm that work on behalf of the Restricted Person; (2) take all reasonable steps 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 adversely affect the interests of the parties or their customers. The parties retain the right to challenge the adequacy of the written assurances that the parties' or their customers' interests will not be adversely affected. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

9. Reviewing Representatives qualified to receive "HIGHLY CONFIDENTIAL" protected material may discuss HIGHLY CONFIDENTIAL protected material with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a "Restricted Person," but may not share with, or permit the client or entity to review or have access to, the HIGHLY CONFIDENTIAL protected material. Provided, however, that counsel for I&E, the Office of Consumer Advocate, and Office of Small Business Advocate may share proprietary information with the I&E Director, I&E Deputy Chief Prosecutor, Consumer

Advocate, and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided however, that these individuals otherwise abide by the terms of the Protective Order.

10. Proprietary Information shall be treated by the parties and by the Reviewing Representative in accordance with the terms of this Protective Order, which are hereby expressly incorporated into the certificate that must be executed pursuant to Paragraph 12(a). Proprietary Information shall be used as necessary, for the conduct of this proceeding and for no other purpose. Proprietary Information shall not 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.

11. Reviewing Representatives may not use anything contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a commercial advantage. In the event that a party wishes to designate as a Reviewing Representative a person not described in Paragraph 6 (i) through (iii) above, the party must first seek agreement to do so from the party providing the Proprietary Information. If an agreement is reached, the designated individual shall be a Reviewing Representative pursuant to Paragraph 6 (iv) above with respect to those materials. If no agreement is reached, the party seeking to have a person designated a Reviewing Representative shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

12. 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 in the form provided in Appendix A, provided, however, that if an attorney or expert qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under his or her instruction, supervision or control need not do so. A copy of each executed Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative. Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

13. The parties shall designate data or documents as constituting or containing Proprietary Information by stamping or marking the documents "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" protected material. 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.

14. That the Commission and all parties, including the statutory advocates and any other agency or department of state government, will consider and treat the Proprietary Information as within the exemptions from disclosure in Section 335(d) of the Public Utility Code, 66 Pa. C.S. § 335(d), and the Pennsylvania Right-to-Know Act, 65 P.S. §§ 67.101 *et seq.* (the "RTKL"), until such information is found by a tribunal with jurisdiction to be not confidential or subject to one or more exemptions. In the event that any person or entity seeks to compel the disclosure of Proprietary Information under Section 335(d) and/or the RTKL, the Commission and/or the party receiving such request shall promptly notify the producing party in

order to provide the producing party an opportunity to oppose or limit such disclosure. 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.

15. Any public reference to Proprietary Information by a party or its Reviewing Representatives 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.

16. 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, and including reference thereto as mentioned in Paragraph 15 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 proceeding or pursuant to an order of the Commission or a Court with jurisdiction over such matters.

17. 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.

18. The parties shall retain the right to object to the production of Proprietary Information on any proper ground, and to refuse to produce Proprietary Information pending the adjudication of the objection.

19. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the receiving party, upon request, shall either destroy or return to the parties 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 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 parties, upon request, the party shall certify in writing to the producing party that the Proprietary Information has been destroyed.

Date: _____

Mark A. Hoyer
Deputy Chief Administrative Law Judge

Conrad A. Johnson
Administrative Law Judge

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION	:	Docket No. R-2018-3002645
	:	R-2018-3002647
V.	:	
	:	
PITTSBURGH WATER AND SEWER	:	
AUTHORITY	:	

NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____
(the receiving party). The undersigned has read and understands the 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 Order, which are incorporated herein by reference.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE: _____