

January 16, 2019

Via Electronic filing

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

**Re: Docket No. C-2018-3001805
Larry J. Salone v. Aqua Pennsylvania, Inc.
Motion for Protective Order of Aqua PA**

Dear Secretary Chiavetta:

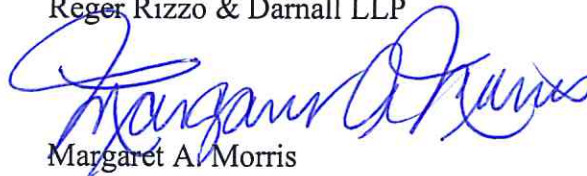
Attached for filing is the Motion for Protective Order of Aqua Pennsylvania, Inc. in the above referenced proceeding. **Please note counsel for the Complainant has waived the notice provision under 52 Pa. Code § 5.102.**

A copy of the Motion for Protective Order has been provided to Mr. Zwick, the Complainant's counsel, in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM
Enclosure

cc: Hon. Conrad Johnson, PA PUC, OALJ [w/enc.]
Mary McFall Hopper, Esquire, Aqua Pennsylvania Inc. [w/enc.]
C.J. Zwick, Esquire, Zwick Law [w/enc.]

**Re: Docket No. C-2018-3001805
Larry J. Salone v. Aqua Pennsylvania, Inc.
Motion for Protective Order of Aqua PA**

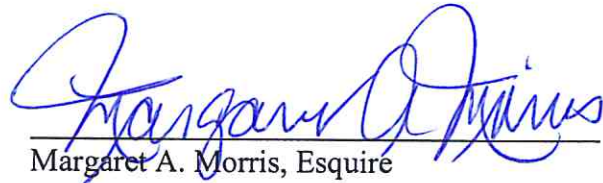
CERTIFICATE OF SERVICE

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

Via Electronic and First Class Mail

C.J. Zwick, Esquire
171 Beaver Drive
P.O. Box 1127
DuBois, PA 15801
cjz@zwick-law.com

Dated: January 16, 2019


Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LARRY SALONE

V.

AQUA PENNSYLVANIA, INC.

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C-2018-3001805

MOTION OF AQUA PENNSYLVANIA, INC. FOR PROTECTIVE ORDER

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON:

Aqua Pennsylvania, Inc. (“Aqua” or “Company”) hereby requests that the Honorable Administrative Law Judge Conrad A. Johnson (“ALJ”) enter a Protective Order in this proceeding pursuant to the provisions of 52 Pa. Code §§ 5.362(a)(7) and 5.365(a), and in support thereof represents as follows:

1. Aqua is a public utility engaged in the business of supplying water service in Pennsylvania subject to the regulatory jurisdiction of the Commission. See 66 Pa.C.S. § 102. Aqua provides water service to approximately 428,000 customers throughout its certificated service territory, which include the Treasure Lake Division located in Clearfield County, Pennsylvania.

2. On May 8, 2018, Larry Salone (“Salone”) filed with the Pennsylvania Public Utility Commission (“Commission”), a formal complaint against the Company, requesting that the Commission, pursuant to the Order of the Court of Common Pleas of Clearfield County entered on December 5, 2017, determine issues of liability as set forth in Salone’s formal complaint.

3. Confidential and proprietary information may include, but not be limited to, confidential information about the Company’s customers, operations and facilities.

4. 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, the parties have sought information that is customarily treated as sensitive, proprietary, or highly confidential. 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.

5. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential commercial 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: (1) the extent to which disclosure would cause unfair economic or competitive damage; (2) the extent to which the information is known by others and used in similar activities; and (3) the worth or value of the information to the party and to the party's competitors. *See* 52 Pa. Code § 5.365(a)(1)-(3).

6. 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 that are customarily are treated by a Party as sensitive or proprietary, that are not available to the public, and that, if generally disclosed, would subject Aqua or its customers to the risk of competitive disadvantage or other business injury." The second is "HIGHLY CONFIDENTIAL" protected material, which is also defined in Paragraph 3 of the attached proposed Protective Order as "those materials that are of such a

commercially sensitive nature, relative to the business interests of a Party, or of such a private, personal nature that a Party is able to justify a heightened level of confidential protection with respect to those materials.”

7. Paragraph 14 of the attached proposed 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 the information deemed “CONFIDENTIAL” and/or “HIGHLY CONFIDENTIAL” protected material.

8. Limitation on the disclosure of information deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material 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.

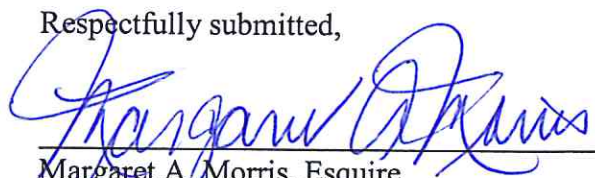
9. The attached Protective Order sought by Aqua will protect the proprietary nature of competitively valuable information while allowing the parties to use such information for purposes of the instant litigation. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

10. Salone agrees to waive responsive notice period under 66 Pa.C.S. § 102.

11. Salone has reviewed the Motion and does not object to the proposed Protective Order.

WHEREFORE, for all the reasons set forth above, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. respectfully requests that Your Honors issue the attached Protective Order.

Respectfully submitted,



Margaret A. Morris, Esquire
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Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
Telephone: (814) 495-6524
E-mail: mmorris@regerlaw.com

Date: January 16, 2019

Counsel for Aqua Pennsylvania, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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C-2018-3001805

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order that was filed by Aqua Pennsylvania, Inc. (“Aqua”) on January _____, 2019:

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 2 – 3 below.

2. The information subject to this Protective Order is all correspondence, documents, 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 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. Such materials are 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 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. The Parties may designate as “CONFIDENTIAL” those materials that are customarily treated by a Party as sensitive or proprietary, that are not available to the public, and that, if generally

disclosed, would subject Aqua or its customers to the risk of competitive disadvantage or other business injury. The Parties may designate as “HIGHLY CONFIDENTIAL” those materials that are of such a commercially sensitive nature, relative to the business interests of a Party, or of such a private or personal nature that a 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. Neither “CONFIDENTIAL” nor “HIGHLY CONFIDENTIAL” protected material shall include any such material that evidences fraud or other wrongdoing.

4. Subject to the terms of this Protective Order, Proprietary Information shall be provided to counsel for a Party 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:

- i. A statutory advocate, or an attorney for a statutory 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;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i) above;
- iii. An outside expert or an employee of an outside expert retained by a Party for the purpose of advising that Party or testifying in this proceeding on behalf of the Party; or
- iv. Employees or other representatives of the Party 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:

- i. An attorney for a statutory 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;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i);
- iii. 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 the Party; or
- iv. 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 5.365(e) of the Commission's Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.365(e)) a 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. 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 9. 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.

8. Reviewing Representatives may not use anything contained in any Proprietary Information obtained through this proceeding to give any Party or any competitor of Aqua a commercial advantage. In the event that a Party wishes to designate as a Reviewing Representative a person not described in Paragraphs 6 (i) through (iii) above, that Party must first seek agreement to do so from Aqua. 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 shall submit the disputed designation to the presiding Administrative Law Judges for resolution.

9. 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; and Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

10. The Parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the designating 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.

11. The Parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act (65 P.S. § 67.101 *et seq.*) until such time as the information is found to be non-proprietary.

12. 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.

13. Any 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 an order of the Commission.

14. The Parties 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 designating Party retains the burden of demonstrating that the designation is appropriate.

15. Aqua shall retain the right to object to the production of Proprietary Information on any proper ground, including, but not limited to, relevance, materiality or undue burden, to refuse to produce Proprietary Information pending the adjudication of the objection.

16. Within thirty 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 Parties, upon request, shall either destroy or return to Aqua all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In its request, Aqua may specify whether such materials should be destroyed or returned. In the event that the materials are destroyed instead of returned, the destroying Party shall certify in writing to Aqua that the Proprietary Information has been destroyed. In the event that the materials are returned instead of destroyed, the returning Party shall certify in writing to Aqua that no copies of materials containing the Proprietary Information have been retained.

Dated: _____

The Hon. Administrative Law Judge Conrad A. Johnson

APPENDIX "A"

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LARRY SALONE

V.

AQUA PENNSYLVANIA, INC.

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C-2018-3001805

NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN;

The undersigned is the expert, counsel, employee, member or officer of

_____.

The undersigned has read and understands Protective Order entered in the above-captioned proceeding 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. The undersigned agrees that any Proprietary Information shall be used or disclosed only for purposes of preparation for, and conduct of the above-captioned proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for purposes of business or competition.

Signature

Print Name

Address

Date: _____

Employer