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October 17, 2019

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**Re: Jeannette and Craig Pavlick v. West Penn Power Company**  
**Docket No. C-2018-3002723**

Dear Secretary Chiavetta:

Enclosed please find the Petition for Protective Order of West Penn Power Company with regard to the above-captioned matter. This document has been served on the Complainants as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Tori L. Giesler

krak  
Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JEANNETTE AND CRAIG PAVLICK**

**V.**

**WEST PENN POWER COMPANY**

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**Docket No. C-2018-3002723**

**PETITION FOR PROTECTIVE ORDER**

West Penn Power Company (the “Company” or “West Penn”) files this Petition pursuant to 52 Pa. Code § 5.423(b) for the entry of a Protective Order, in the form attached hereto as Appendix A, to limit the disclosure of confidential and proprietary information (Confidential Information) produced in discovery or submitted for the record by any party in the above-referenced matter. In further support of this Petition, West Penn states as follows:

1. On June 14, 2018, Jeannette Pavlick and Craig Pavlick (collectively, hereinafter, “Complainants”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding 4200 Colonial Drive, Murrysville, Pennsylvania 15668 (“Service Location”) which was electronically served on the Company the same date.
2. The Formal Complaint was assigned to Administrative Law Judge Jeffrey A. Watson (“ALJ Watson”).
3. On September 14, 2018, the Company propounded interrogatories upon the Complainants (the “Company’s Discovery Requests”) to which the Complainants objected on September 27, 2019.
4. On October 2, 2018, the Company filed a Motion to Compel and, by letter dated October 9, 2018, the Complainants responded to the Motion.

5. On November 28, 2018, ALJ Watson entered an Interim Order which granted the Company's Motion to Compel and directed the Complainants to respond to the Company's Discovery Requests no later than December 14, 2018. This deadline was subsequently extended upon the Complainants' request to January 17, 2019 by an Interim Order entered on January 4, 2019.

6. On March 7, 2019, the Company filed a Motion to Dismiss due to the Complainants' failure to respond to the Company's Discovery Requests and, on April 25, 2019, the Complainants responded to the Motion to Dismiss.

7. On May 31, 2019, the Company re-issued the Company's Discovery Requests and provided the Complainants with a Stipulated Protective Agreement for their review and consideration.

8. By letter dated June 20, 2019, the Complainants provided non-substantive and incomplete responses to the Company and, in response, the Company filed a Motion to Compel on June 28, 2019. The Complainants then filed a response to the Motion to Compel on July 10, 2019.

9. On October 1, 2019, ALJ Watson entered an Interim Order which directed, in part, that the parties shall confer on or before October 10, 2019 and attempt to agree or stipulate to the terms of a protective order to address the disclosure and use of medical information and documentation and other sensitive information in this proceeding. Further, the parties were directed to submit a stipulated protective order or, in the event an agreement is not reached by the parties, either party may submit a request for a protective order and a proposed protective order on or before October 17, 2019.

10. The Company's Discovery Requests request the production of Confidential Information or documents containing Confidential Information. Additionally, in the course of this proceeding, the Company and Complainants may be requested to produce further information and documents that may be considered confidential. Accordingly, the entry of a Protective Order covering Confidential Information produced by any party in response to discovery and Confidential Information that parties may seek to introduce in evidence will facilitate the orderly and efficient progress of this proceeding.

11. The form of the Protective Order attached as Exhibit A is the same or similar to Protective Orders regularly entered in other proceedings for the Companies and other utilities.<sup>1</sup>

12. On October 4, 2019, in an effort to comply with ALJ Watson's directive in the Interim Order issued October 1, 2019, the Company sent a copy of the proposed protective order to the Complainants for their review, which substantially mirrored that which the Company had proposed to the Complainants on May 31, 2019.

13. By letter dated October 10, 2019, the Complainants have indicated that they object to "various aspects" of the proposed protective order as well as the previously provided Stipulated Protective Agreement. The Complainants state that the proposed protective order does not address unintentional disclosure of confidential information and how to rectify any breach. Additionally, while the Complainants state that they may want to sign a stipulated protective agreement "regarding other confidential information" disclosed during the discovery process, they will not be providing any health information, despite the directives of the presiding ALJ. The Complainants do not specify which portions they take issue with, nor do they propose an alternative form of protective order.

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<sup>1</sup> *E.g., Pa. P.U.C. v. West Penn Power Company*, Docket No. R-2016-253749, et al., Protective Order (June 22, 2016) (Administrative Law Judge Mary D. Long).

14. The Company avers that the proposed protective order would protect that information from production or use outside the bounds of this docketed proceeding.

WHEREFORE, for all of the foregoing reasons, this Petition should be granted and a Protective Order in the form attached hereto as Exhibit A should be issued.

Respectfully submitted,

Date: October 17, 2019

  
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*Counsel for West Penn Power Company*

**EXHIBIT A**

**FORM OF PROTECTIVE ORDER**

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JEANNETTE AND CRAIG PAVLICK**

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**V.**

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**Docket No. C-2018-3002723**

:

**WEST PENN POWER COMPANY**

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**PROTECTIVE ORDER**

Upon request of Jeannette Pavlick and Craig Pavlick (collectively, the “Complainants”) for a Protective Order:

IT IS ORDERED THAT:

1. The Motion is hereby granted and this Protective Order is issued to establish procedures for the protection of all materials and information identified in Paragraphs 2 and 3 below, which are or will be filed with the Pennsylvania Public Utility Commission (“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, including the Complainants and West Penn Power Company (the “Company”), shall use and disclose such information only in accordance with this Order.

2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, in whatever form produced, stored or contained, including computerized memory, magnetic, electronic or optical media, 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 in this Protective 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 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. 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, argument, or settlement discussions 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. Nothing in this Protective Order precludes the use by the Commission and its staff, consistent with this Protective Order, of Proprietary Information produced in this proceeding and made part of the record.

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

- i. An attorney who has formally entered an appearance in this proceeding on behalf of a party; or
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i) above.

7. 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, but may not share with, or permit the client or entity to review or have access to, the HIGHLY CONFIDENTIAL protected material.

8. 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(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.

9. (a) 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 the attorney’s 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.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this 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 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.

11. The Commission and all parties will consider and treat the Proprietary Information as within the definition of “confidential proprietary information” in Section 102 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.102 and subject to the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act (65 P.S. § 67.101 et seq.) until such information is found by a tribunal with jurisdiction to be not confidential or subject to one or more exemptions.

12. Any public reference to Proprietary Information by a party or its Reviewing Representative 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. The part(s) of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits (including discovery responses made part of the record), writings, testimony, cross examination, and argument, and including reference thereto as mentioned in Paragraph 12 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.

14. 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 producing party retains the burden of demonstrating that the designation is appropriate.

15. 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.

16. Within 30 days after a Commission final order is entered in the above-captioned proceedings, 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 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 a receiving 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, upon

request, the receiving party shall certify in writing to the producing party that the Proprietary Information has been destroyed.

Date: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey A. Watson  
Administrative Law Judge

APPENDIX A

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

~~JEANNETTE AND CRAIG PAVLICK~~ :

V. :

WEST PENN POWER COMPANY :

Docket No. C-2018-3002723

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ACKNOWLEDGMENT OF  
PROTECTIVE ORDER

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TO WHOM IT MAY CONCERN:

The undersigned, Lauren M. Lapkoski (NAME) is  
Attorney (TITLE), in the Proceeding as defined in the Protective Order. The undersigned has read and understands the Protective Order granted in the Proceeding, which Protective Order deals with the treatment of Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Protective Order.

Lauren Lapkoski  
NAME

2800 Pottsville Pike  
Reading, PA 19612-6001  
ADDRESS

FirstEnergy Service Company  
EMPLOYER

DATE: 10/17/19

APPENDIX A

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

~~JEANNETTE AND CRAIG PAVLICK~~ :

V. :

Docket No. C-2018-3002723

WEST PENN POWER COMPANY :

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ACKNOWLEDGMENT OF  
PROTECTIVE ORDER

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TO WHOM IT MAY CONCERN:

The undersigned, Toni L. Giesler (NAME) is  
Attorney (TITLE), in the Proceeding as defined in the Protective Order. The  
undersigned has read and understands the Protective Order granted in the Proceeding, which  
Protective Order deals with the treatment of Confidential Information. The undersigned agrees to be  
bound by, and comply with, the terms and conditions of said Protective Order.

Toni L. Giesler  
NAME

2800 Pottsville Pike  
Reading PA 19605  
ADDRESS

FirstEnergy Service Company  
EMPLOYER

DATE: 10/17/19

