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February 4, 2021

Via Electronic Filing

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

Re: Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice A. Goodwin and Wayne Rauceo
v. Philadelphia Gas Works, Docket No. C-2019-3013933

Dear Secretary Chiavetta:

Enclosed for electronic filing, please find Philadelphia Gas Works' Unopposed Motion for Protective Order. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Karen O. Moury
Karen O. Moury

cc: Cert. of Service w/enc. (via email only)

Hon. Darlene Heep w/enc. (via email only)

CERTIFICATE OF SERVICE

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

Via Email Only

Karin M. Gunter, Esquire
Law Office of Karin M. Gunter
85 Old Cedarbrook Road
Wyncote, PA 19095
Kgunterlaw2@gmail.com

Dated: February 4, 2021

/s/ Karen O. Moury
Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dwayne Ackie, Miguel J. Chavarria, Jr.,	:	
Maurice A. Goodwin and Wayne Rauceo,	:	Docket No. C-2019-3013933
Complainants	:	
	:	
v.	:	
	:	
Philadelphia Gas Works,	:	
Respondent	:	

UNOPPOSED MOTION FOR PROTECTIVE ORDER

To The Honorable Darlene Heep:

Philadelphia Gas Works (“PGW”), by and through its counsel, hereby moves that a Protective Order be entered in this proceeding pursuant to the provisions of 52 Pa. Code § 5.365(a). In support of this motion, PGW represents as follows:

1. On October 31, 2019, Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice Goodwin and Wayne Rauceo (collectively, “Complainants”) filed a Complaint against PGW alleging “safety violations and other concerns.”
2. PGW timely filed an Answer on November 20, 2019 and filed Preliminary Objections on that date. Administrative Law Judge Darlene Heep (“ALJ Heep”) issued an Order Granting in Part and Denying in Part Preliminary Objections on January 3, 2020.
3. ALJ Heep convened a Prehearing Conference on February 6, 2020, at which time a procedural schedule was established. ALJ Heep issued a Hearing Notice on February 10, 2020 and an Order on February 11, 2020, in which she memorialized the original procedural schedule.
4. This procedural schedule was modified several times due to COVID-19 health directives and to accommodate the requests of the parties.

5. In accordance with the revised litigation schedule, Complainants served the Direct Testimony of Mr. Ackie, Mr. Chavarria, Mr. Goodwin, and Mr. Rauceo on July 2, 2020.

Complainants served the Amended Direct Testimony of Mr. Chavarria on July 27, 2020.

6. PGW served the Rebuttal Testimony of Raymond M. Snyder, Daniel J. Cassidy, and Brian McGuire on August 17, 2020, responding to Complainants' Direct Testimony.

7. Complainants served the Surrebuttal Testimony of Mr. Ackie and Mr. Rauceo on August 31, 2020, in which they responded to PGW's Rebuttal Testimony.

8. PGW served the Supplemental Rebuttal Testimony of Mr. McGuire on August 31, 2020, in which he addressed the Amended Direct Testimony of Mr. Chavarria.

9. Complainants served the Surrebuttal Testimony of Mr. Chavarria on September 14, 2020, responding to Mr. McGuire's Supplemental Rebuttal Testimony.

10. PGW filed a Motion in Limine on October 19, 2020 regarding certain alleged contested portions of testimony proffered by Mr. Ackie and Mr. Rauceo ("Motion in Limine I").

11. Complainants filed a Response in Opposition to PGW's Motion in Limine I on October 20, 2020.

12. A hearing in this proceeding was held on October 21, 2020. At the outset of the hearing, ALJ Heep ruled on PGW's Motion in Limine I denying the exclusion of certain portions of Mr. Rauceo's testimony, and granting in part and denying in part exclusion of certain portions of Mr. Ackie's testimony. Pursuant to an Interim Order of ALJ Heep dated November 30, 2020, PGW served the Surrebuttal Testimony of Mr. McGuire on December 18, 2020, responding to issues concerning an alleged valve incident on October 15-16, 2020, which Complainants were permitted to raise for the first time at the hearing.

13. Pursuant to an Interim Order of ALJ Heep dated November 24, 2020, allowing Complainants to supplement their prior testimony to reflect additional discovery responses provided by PGW after the hearing, Complainants served the Supplemental Direct Testimony of Mr. Rauceo on December 18, 2020.

14. Attached to the Supplemental Direct Testimony of Mr. Rauceo served on December 18, 2020 was a confidential Human Resources (“HR”) letter that Complainants obtained through their federal litigation. The parties reached an informal agreement for the confidential handling of this HR letter, which resulted in Complainants submitting Proprietary and Non-Proprietary Versions of Mr. Rauceo’s Supplemental Direct Testimony being served on January 12, 2021.

15. On January 8, 2021, regarding Mr. Rauceo’s Supplemental Direct Testimony, which was permitted by ALJ Heep’s November 24, 2020 Order, PGW filed a Motion in Limine (“Motion in Limine II”). On January 12, 2021, Complainants filed a Response in Opposition to PGW’s Motion in Limine II, which is pending.

16. On January 8, 2021, pursuant to ALJ Heep’s November 24, 2020 Order, PGW served the Supplemental Rebuttal Testimony of Mr. Cassidy, responding to Mr. Rauceo’s Supplemental Direct Testimony.

17. On January 8, 2021, pursuant to ALJ Heep’s November 30, 2020 Order, Complainants served the Reply Testimony of Mr. Ackie and Mr. Chavarria, to respond to Mr. McGuire’s Surrebuttal Testimony.

18. On January 15, 2021, pursuant to ALJ Heep's November 24, 2020 Order, Complainants served the Supplemental Surrebuttal Testimony of Mr. Rauceo, which was provided in response to Mr. Cassidy's Supplemental Rebuttal Testimony.

19. On January 19, 2021, regarding the Reply Testimony of Mr. Ackie and Mr. Chavarria, which was permitted by ALJ Heep's November 30, 2020 Order, PGW filed a Motion in Limine ("Motion in Limine III"). On January 22, 2021, Complainants filed an Answer in Opposition to PGW's Motion in Limine III, which is pending.

20. Information that PGW considers confidential has already been referenced in this proceeding and it is possible that additional Proprietary Information will be tendered. 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 § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

21. Under 52 Pa. Code §§ 5.362(7) and 5.365, 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 §§ 5.365(a)(1) – (3).

22. Paragraph 4 of the attached Protective Order defines “Proprietary Information” as “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 or personal injury including, but not limited to, reputation.” Clearly, protecting this type of information from disclosure is appropriate.

23. 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.

24. Paragraph 14 of the attached Protective Order protects against overly broad designations of protected information by giving parties the right to question or challenge the confidential or proprietary nature of the Proprietary Information.

25. PGW has provided an advance copy of this Motion and the proposed Protective Order to Complainants, who have indicated that they do not oppose the granting of this Motion or the entry of the attached Protective Order.

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

Respectfully submitted,

Karen O. Moury

Karen O. Moury, Esq. (PA ID # 36879)
Heather R. Olson, Esq. (PA ID # 92073)
Kristine E. Marsilio, Esq. (PA ID # 316479)
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213 Market Street, 8th Floor
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717.237.6000

Graciela Christlieb, Esq. (PA ID # 200760)
Philadelphia Gas Works
800 W. Montgomery Ave.
Philadelphia, PA 19122
215.684.6164

Dated: February 4, 2021

Counsel for Philadelphia Gas Works

Attachment A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dwayne Ackie, Miguel J. Chavarria, Jr.,	:	
Maurice A. Goodwin and Wayne Rauceo,	:	Docket No. C-2019-3013933
Complainants	:	
	:	
v.	:	
	:	
Philadelphia Gas Works,	:	
Respondent	:	

PROTECTIVE ORDER

Upon consideration of the Motion for Protective Order filed by Philadelphia Gas Works (“PGW”),

IT IS ORDERED:

1. This Protective Order is hereby granted with respect to all materials and information identified in Paragraph 2 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 Paragraph 2 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” 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. Nothing in this Protective Order shall prevent the parties from using in this proceeding CONFIDENTIAL Information as defined and permitted in the parties’ confidentiality stipulation and 502(d) orders, paragraph 7 dated August 12, 2020 in the federal lawsuits between parties. The federal lawsuit case numbers are: 2:19-cv-04275, 2:19-cv-04279, 2:19-cv-04428 and 2:19-cv-04429 and are filed in the U.S. District Court for the Eastern District of Pennsylvania. However, the parties reserve the right to seek the exclusion or admission of CONFIDENTIAL Information in this proceeding, on other grounds such as described in PGW’s Motions in Limine II and III, and the Responses of Complainants in Opposition to those pending Motions.

4. 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 of other business injury or personal injury including, but not limited to, reputation.

5. 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.

6. 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;
- 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; or
- e. An individual who is a named Complainant, and a party, in this proceeding.

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 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 (a) through (e) 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 5

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.

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. 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 or marking the documents "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.

11. 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.

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. 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 12 above, shall be sealed for all purposes, excluding 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.

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 party providing the information retains the burden of demonstrating that the designation is appropriate. The parties acknowledge that they have informally agreed to keep certain material CONFIDENTIAL pending the issuance of a Protective Order.

15. 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.

16. 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: _____

Darlene Heep
Administrative Law Judge

APPENDIX A
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Dwayne Ackie, Miguel J. Chavarria, Jr.,	:	
Maurice A. Goodwin and Wayne Rauceo,	:	Docket No. C-2019-3013933
Complainants	:	
	:	
v.	:	
	:	
Philadelphia Gas Works,	:	
Respondent	:	

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: _____