**PUBLIC UTILITY COMMISSION**

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| Pennsylvania Public Utility Commission  v.Community Utilities of Pennsylvania Inc. – Water Division | ::::::: |  R-2021-3025206 |
| Pennsylvania Public Utility Commission  v.Community Utilities of Pennsylvania Inc. – Wastewater Division | :::::: |  R-2021-3025207 |

**PROTECTIVE ORDER**

 This Order is issued pursuant to the authority granted to presiding officers under the Commission’s regulation at 52 Pa. Code §5.483. On August 31, 2021, Community Utilities of Pennsylvania, Inc. (CUPA), Water and Wastewater Divisions, requested that a Protective Order be entered in this consolidated proceeding, filing a Motion pursuant to the provisions of 52 Pa. Code § 5.36(a). In its filing, CUPA noted the existence of prior protective agreements among the active parties and stated that Counsel for: the Office of Consumer Advocate (OCA), the Bureau of Investigation and Enforcement (I&E), and the Office of Small Business Advocate (OSBA), do not oppose the Motion.

THEREFORE,

IT IS ORDERED:

1. That a Protective order is hereby granted with respect to all materials and information identified in Paragraphs 2, 3 and 4 below, which have been or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated therewith. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraphs 2, 3 and 4 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.
2. That the materials or information subject to this Protective Order includes testimony and exhibits that contains Proprietary Information. To date, that testimony and exhibits subject to confidential treatment include the CONFIDENTIAL Exhibits CUPA W & WW Exhibit No. PB-2R and PB-3R. To the extent any additional Proprietary Information is filed with the Commission or presented in this proceeding, such information shall also be subject to this Protective Order.
3. That “Confidential” materials are those materials which customarily are treated by CUPA as sensitive or proprietary, which are not available to the public or which, if disclosed freely. would subject CUPA or others to risk of competitive disadvantage or other business injury. “Highly Confidential” materials are those materials that are of such a commercially sensitive or of such a private, personal nature that CUPA 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: (a) customer names or customer prospects' names, addresses, annual volumes of water or wastewater usage, or other customer-identifying information; (b) marketing plans; (c) competitive strategies or service alternatives; (d) market share projections; (e) competitive pricing or discounting information; and (f) marketing materials that have not yet been used. Together, these materials will be referred to as “Proprietary Information” for the purposes of this Protective Order.
4. That the information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are proprietary or confidential in nature and which are so designated by being marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Such materials will be referred to below as “Proprietary Information.” “Requesting Party” shall mean a Party that either requests or receives Proprietary Information, and “Producing Party” shall mean the Party that produces or otherwise supplies Proprietary Information to another Party.
5. That Proprietary Information shall be made available to counsel for Requesting Parties subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of participating in this proceeding. Counsel for Requesting Parties shall not disclose Proprietary Information to anyone other than counsel for the Parties, except that, to the extent required for participation in this proceeding, counsel for a Requesting Party may disclose Proprietary Information to the Requesting Party’s independent expert(s) subject to the terms of this Protective Order and provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the in-house analysts, paralegals, secretarial and clerical personnel under the attorney’s instruction, supervision or control need not do so but shall be made aware that such information is not for public disclosure except under the terms in the Protective Order. Additionally, counsel for the Bureau of Investigation and Enforcement and the Office of Consumer Advocate may share Proprietary Information with the I&E Director, and the Consumer Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided, however, that these individuals otherwise abides by the terms of this Protective Order. Nothing in this Protective Order shall be deemed to restrict the right of the original Producing Party to disclose or use its own Proprietary Information.
6. That, prior to disclosing Proprietary Information to an independent expert as provided in paragraph 5, a Requesting Party shall deliver a copy of this Protective Order to the expert and obtain from the expert a written acknowledgment of the terms of the Protective Order in the form of Appendix A attached hereto. Each party shall promptly notify the other parties of the identity of all persons provided access to Proprietary Information pursuant to this paragraph and paragraph 5.
7. That the Producing Party shall designate information or documents as constituting or containing Proprietary Information by marking the documents “CONFIDENTIAL” of “HIGHLY CONFIDENTIAL.” Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the Producing Party, insofar as reasonably practicable, shall designate as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” only the specific data, passages or pages of documents which constitute or contain Proprietary Information. One permissible means of designating portions of a document to be Proprietary Information shall be to mark the first page of the document and on each page thereof containing Proprietary Information with the word “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in bold, capital letters.
8. The Parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Right to Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, until such time as the information is found to be non-proprietary.
9. That any public reference to Proprietary Information by a Party or its independent expert(s) 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.
10. That the part of any record in this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, direct testimony, cross-examination, argument and responses to discovery, including any reference thereto as mentioned in paragraph 9 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 or pursuant to an order of the Administrative Law Judge or the Commission.
11. The parties retain the right to require additional protection for Proprietary Information that it deems to be “Highly Confidential.” To the extent that a Producing Party identifies any information or materials to be of a highly confidential nature, said Party will contact the Requesting Party to negotiate specific treatment for such materials.   However, such additional requirements shall not preclude counsel for a party from viewing any materials so designated.
12. Each Party 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. Nothing herein shall be construed to remove the right of a Party to present such question or challenge to the Administrative Law Judge or the Commission. If a Party challenges the designation of a document or information as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the Producing Party retains the burden of demonstrating that the designation is appropriate.
13. That Proprietary Information produced in this proceeding shall be made available to the 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 Proprietary Information shall be permitted only in accordance with this Protective Order.
14. That within 30 days after a request by a Producing Party, the other party shall either destroy or return to the Producing Party all copies of all documents and other materials which contain any Proprietary Information. In the event that the Requesting 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 Requesting Party shall certify in writing to the Producing Party that the documents and other materials containing Proprietary Information have been destroyed.

Date: \_\_8/31/21\_\_\_\_\_\_\_\_\_ \_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Dennis Buckley

 Administrative Law Judge

**APPENDIX A**

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| Pennsylvania Public Utility Commission  v.Community Utilities of Pennsylvania Inc. – Water Division | ::::::: | Docket No. R-2021-3025206 |
| Pennsylvania Public Utility Commission  v.Community Utilities of Pennsylvania Inc. – Wastewater Division | :::::: | Docket No. R-2021-3025207 |

TO WHOM IT MAY CONCERN:

The undersigned is the independent expert of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The undersigned has read and understands the Protective Order, which 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.

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 NAME

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 EMPLOYER

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**R-2021-3025206, R-2021-3025207 – PENNSYLVANIA PUBLIC UTILITY COMMISSION v. COMMUNITY UTILITIES OF PENNSYLVANIA, INC.**

*Revised: July 22, 2021*

THOMAS J. SNISCAK ESQUIRE
WHITNEY E. SNYDER ESQUIRE
BRYCE R. BEARD ESQUIREHAWKE MCKEON AND SNISCAK, LLP100 N TENTH STREETHARRISBURG PA 17101**717.236.1300**tjsniscak@hmslegal.comwesnyder@hmslegal.combrbeard@hmslegal.comAccepts eService
(*Representing Community Utilities of PA)*ERIN FURE ESQUIREOFFICE OF SMALL BUSINESS ADVOCATEFORUM PLACE555 WALNUT STREET, 1ST FLOORHARRISBURG PA 17101**717.783.2525**efure@pa.gov
ALLISON C. KASTER ESQUIREPA PUC BIE LEGAL TECHNICALSECOND FLOOR WEST400 NORTH STREETHARRISBURG PA 17120**717.783.7998**akaster@pa.govAccepts eService
ERIN L. GANNON ESQUIRE
OFFICE OF CONSUMER ADVOCATE5TH FLOOR FORUM PLACE555 WALNUT STREETHARRISBURG PA 17101717.783.5048
egannon@paoca.orgAccepts eService

KERREN RICKETTS101 SWARTSBURO DRIVETAMIMENT PA 18371**954.651.3156**kerrenricketts@yahoo.com
Accepts eService

JOHN HOOPINGARNER1110 LONG LAKE ROADTAMIMENT PA 18371jwhoop@ptd.net
Accepts eService

RAFAIL KOVALENKO2138 WILDERLAND ROADTAMIMENT PA 18371**718.637.4343**dmitrykov@outlook.comAccepts eService

PHILIP VILLONE401 UNDERHILL DRIVETAMIMENT PA 18371
philvil1@juno.com
Accepts eService

BRYAN DONNELLY221 RAVENHILL RDTAMIMENT PA 18371**848.203.4422**Bce3333@live.comAccepts eService

VINCENT AND JANINE MARINO501 BOMBUR LANETAMIMENT PA 18371**561.846.1809**janinem@abilitycommerce.comAccepts eService

DORITHA PALMER
127 BRANDYSHIRE DRIVE
TAMIMENT PA 18371
**609.468.0962**albpalmer@gmail.comAccepts eService

KATHLEEN RAPHAEL500 GALION DRIVETAMIMENT PA 18371**570.588.2574**khenkel@gmail.com

RICHARD AND SUSAN DI PIAZZA215 WITHYWINDLE WAYTAMIMENT PA 18371
impact451@hotmail.com
Accepts eService

SHARON TUNSTALL105 CONDOR DR, UNIT 34TAMIMENT PA 18371**347.510.8527**sharonbrowntunstall@gmail.comAccepts eService
COLVILLE OSWALD BROWNE208 TOMNODDY DRIVETAMIMENT PA 18371
elizabrowne@hotmail.com
Accepts eService

RONALD FRAIOLI325 SUNSET BOULEVARDWYCKOFF PA 18371**201.438.5522**rmflaw304@gmail.comAccepts eService

CHRIST R. NIELSEN513 GANDOLF ROADTAMIMENT PA 18371**570.431.0727**
cnielsen4u@yahoo.com
Accepts eServiceMONA ANNICARO81-12 153RD AVENUEHOWARD BEACH NY 11414**718.848.5227**annicaro@verizon.netAccepts eServiceSEVERO BARZA609 GALION DRTAMIMENT PA 18371
bobarz@yahoo.com
Accepts eService
BARBARA ANN MIRKOVIC126 CONDOR DRUNIT 14TAMIMENT PA 18371**570.832.1045**Mirkovicb@aol.comAccepts eService

GUSTAVO ESPINAL440 UNDERHILL DRIVETAMIMENT PA 18371**718.296.3670**karenel9@yahoo.com

DAVID FUCHS211 RAVENHILL ROADTAMIMENT PA 18371**917.922.0774**davidjfuchs@gmail.comAccepts eService

ROSE COCKLIN2104 TAMIMENT LNTAMIMENT PA 18371
tintofrose@aol.com
Accepts eServiceDOMINICK AND CINDY TOSCANO1115 UNDERHILL COURTTAMIMENT PA 18371**484.368.6597**domncin@gmail.comAccepts eService

DOUGLAS BECKWORTH210 SWARTSBORO DRIVETAMIMENT PA 18371**908.834.5097**Douglas0406@gmail.comAccepts eService

MARCUS & BERNALYN CLARKE517 GANDOLF ROADTAMIMENT PA 18371917.215.9599
bjonesclarke@aol.com
Accepts eService

KATHERINE CASSIDY514 CARROCK WAYTAMIMENT PA 18371**570.58.87877**kathy-valdes@hotmail.comAccepts eService

DAVID TOUMA136 RIVENDELL DRIVETAMIMENT PA 18371
neesie3464@yahoo.com
Accepts eService

WILLIAM AND DAHLIA MERRITT102 RAVENHILL ROADTAMIMENT PA 18371**917.882.3398**dahlia72rn@gmail.comAccepts eService

RONALD PORCORO1111 OAKENSHIELD LOOPTAMIMENT PA 18371**570.807.6439**ronporcoro@gmail.com

CHRISTINA G. BOERS157 OAKENSHIELD DRIVETAMIMENT PA 18371
christina.boers82@gmail.com
Accepts eService

JOHN KIS75 EASTVIEW DRVALHALLA NY 10595
john5063@aol.com
Accepts eService

BONNIE RUDESKI 112 TOMNODDY DRIVETAMIMENT PA 18371
elegant14u@me.com
Accepts eService
DAVID SQUILLICIOTTI104 CONDOR DRIVE APT # 2TAMIMENT PA 18371**646.733.6012**djsacme@yahoo.com

LOUIS ROMANO108 OLD TOOK DRTAMIMENT PA 18371**570.431.6161**louisromano72@gmail.comAccepts eService

GERALD & KATHLEEN RAPHAEL500 GALION DRIVETAMIMENT PA 18371**570.588.2574**graphael1223@yahoo.comAccepts eService

VANESSA DURCAN249 OAKENSHIELD DRIVETAMIMENT PA 18371**845.754.3382**vanessa.buchanan@wilkes.eduAccepts eService

BARRY TREMPER1111 UNDERHILL COURTTAMIMENT PA 18371**570.588.6148**suebah@ptd.net

GRAZYNA & ANNA PARYZKI212 GOLLUM LANETAMIMENT PA 18371**570.431.4988**ppemail@msn.com

MICHAEL MILLER
1204 RHODE ISLAND LN

DOWNINGTOWN PA 19335

miller.michael1097@gmail.com

 Accepts eService

PETER SALOMONE106 RIVENDELL DRTAMIMENT PA 18371
**570.534.9065**
Psalomone91@gmail.com
Accepts eService

ARNOLD REYES-PORTILLA224 RAVENHILL ROADTAMIMENT PA 18371**908.787.2226**nardyreyes@yahoo.com

SUSAN J. NIKOLAOU

111 TOMNODDY DRIVE

APT SUITE FLOOR ETC

TAMIMENT PA 18371 susankostelnik@hotmail.com
Accepts eService

CLARK SUTTON126 CONDOR DRIVE APT # 15TAMIMENT PA 18371**570.807.8060**csutton48@yahoo.com

WILLIAM J. SULLIVAN156 OAKENSHIELD DRTAMIMENT PA 18371**570.369.2638**wjsullivan1@yahoo.comAccepts eService

CHRISTINE THOMSON118 CONDOR DRIVE UNIT 12TAMIMENT PA 18371**917.423.5030**christ813@aol.com

GEORGE KELLY502 KILI WAYTAMIMENT PA 18371**570.588.1196**woodwkr@ptd.netAccepts eServiceMARITZA RIVERA507 DWALIN WAYTAMIMENT PA 18371**973.479.8378**omaeclud@yahoo.com

JOSEPH TORREGROSSA518 GANDOLF ROADTAMIMENT PA 18371-9431
joetqm@gmail.com
Accepts eServicePETER MAURO117 BRANDYSHIRE DRIVE TAMIMENT PA 18371**570.588.5833**pmauro@musician.org

RENE BRESSANT204 GOLLUM LANETAMIMENT PA 18371
Accepts eService

THOMAS HEMELESKI615 GANDOLF ROADTAMIMENT PA 18371**570.588.7324**tdh1@ptd.net

JEAN SOUDERS502 CARROCK WAYTAMIMENT PA 18371**570.245.5497**No emailMARIO CARLINO231 RAVENHILL RDTAMIMENT PA 18371**347.633.6448**carlinomario149@gmail.com

ASMENT BENJAMIN500 BOMBUR LANE TAMIMENT PA 18371**917.385.9431**asmentb@gmail.com

CHARLES BREITWEISER102 TOMNODDY TAMIMENT PA 18371**215.734.9616**Breitweisercharles5@gmail.com

ALDONA BASTEK377 UNDERHILL RDTAMIMENT PA 18371**917.376.3596**aldonabastek@yahoo.com

LARISA SHIN507 GANDOLF RD TAMIMENT PA 18371**646.897.5466**larisa\_shin@yahoo.com

DAVID SHOOK5141 HAMLOCK LANETAMIMENT PA 18371**570.807.3558**shookdad@ptd.net

WESLEY AND MILDRED MANN105 SWARTSBORO DRIVETAMIMENT PA 18371**570.431.6876**manntaz68@gmail.com

ROMULO BABAAN1105 LONG LAKE ROADTAMIMENT PA 18371**5720.588.7639**mulo1946@aol.com

CATHERINE GILCHRIST9 FORDHAM HILL OVAL
APARTMENT 5GBRONX NY 10468**718.365.0110**shardae110899@optimum.net

GWENDOLYN BECKFORD WILSON AND MARK LILLERY503 CARROCK WAYTAMIMENT PA 18371**570.844.0914**gberkford@yahoo.com

FRANCIS AND MAYRA SULLIVAN518 FORT WASHINGTON AVE. APT 1BNEW YORK NY 10033**570.994.7266**sullmay@yahoo.com

SHEILA HUNT272 OAKENSHIELD DRIVETAMIMENT PA 18371
sheilahunt4@gmail.com
Accepts eServiceDANIEL AND SUZIE NAPOLITANO1108 LONGLAKE ROAD TAMIMENT PA 18371**570.872.7701**
suzie.napolitano@gmail.com

TROY COLEMAN104 GOLLUM LNTAMIMENT PA 18371kingtc6566@yahoo.com

IVAN & THERESA AYALA109 SWARSTBORO DRIVETAMIMENT PA 18371**570.242.2771**No email

 MICHAEL KOTOWSKI605 CARROCK WAYTAMIMENT PA 18371**347.608.9876**michaelkotowski0318@gmail.com

JANINE BROWN225 OAKENSHIELD DRIVETAMIMENT PA 18371**718.916.9772**janinebrown59@gmail.com

MOSHE MITCHELL114 BRANDYSHIRE DRIVETAMIMENT PA 18371rumstamitch72@yahoo.com
Accepts eService

HENRY KOTOWSKI2103 TAMIMENT LANE TAMIMENT PA 18371**516.865.7649**bski3480gt@gmail.com

RICHARD RICE611 CARROCK WAY TAMIMENT PA 18371**570.588.7844**blackcoat5@verizon.net

THOMAS AND PATRICIA PARILLO211 WITHYWINDLE WAYTAMIMENT PA 18371pattipp2@comcast.net
Accepts eServiceOVIDIO AND AIXA MARTINEZ105 TOMNODDY DRTAMIMENT PA 18371**570.431.4091**
ovidioaixa@yahoo.com

GRACE MORO1106 LONG LAKE RDTAMIMENT PA 18371**516.312.6480**grace.moro@gmail.com

CONNIE FRIEDFEL212 TOMNODDY DRTAMIMENT PA 18371**570.856.3105**No emailKATHLEEN LAWSON206 TOMNODDYS DRTAMIMENT PA 18371**917.902.7306**kkskorner@aol.com

DOROTHY AND FEISAL KHAN1116 UNDERHILL COURTTAMIMENT PA 18371**347.552.1958**flkglobalreport@gmail.com

SHARON LLOYD107 BINDALE ROAD TAMIMENT PA 18371-9402**570.588.9667**blessed2@ptd.net
anheir107@gmail.com

USHA PARHAR605 GANDOLF RDTAMIMENT PA 18371**570.431.6690**
uparhar@gmail.com

GEORGE TIRADO616 GANDOLF ROADTAMIMENT PA 18371**917-623-0491**gino2thou@gmail.com

TIMOTHY WEAVER1102 UNDERHILL COURTTAMIMENT PA 18371**347-701-1223**weaverfuzzy@verizon.net

JOHN MURPHY103 BINDALE ROADTAMIMENT PA 18371**570.517.4880**likeafew@aol.com

DANIEL MCKOY151 OAKENSHIELD DRIVETAMIMENT PA 18371**917.635.2418**lisabjll5@gmail.com

YAJAIDA RODRIGUEZUTILITIES OF PENNSYLVANIA, INC214 BRANDYSHIRE DRIVETAMIMENT PA 18371
yajaidaluna@yahoo.com
Accepts eService ROBERT MOHR501 CARROCK WAYTAMIMENT PA 18371**908.612.9559**mlmrwm@aol.com

ROGER FREDERICKS509 GALION DRIVETAMIMENT PA 18371**570.588.6013**rfrede6599@aol.com

ROSALIE CAPITELLI165 OAKENSHIELDTAMIMENT PA 18371**570.588.0563**No email CHARLES WRIGHT610 BANBUR LANETAMIMENT PA 18371**570.431.4697**mcw\_nj@yahoo.com

TARYN MERRILL
204 RAVENHILL ROADTAMIMENT PA 18371
Tarynm79@hotmail.com
Accepts eServiceNICHOLAS CORFORTE508 CARRODE WAYTAMIMENT PA 18371**570.960.2169**deadman3@aol.com

CRAIG LOWE205 THISTLEBROOK COURTTAMIMENT PA 18371**570.588.4370**shellylowe64@icloud.com

STEPHEN AND KATHLEEN CONRAD393 UNDERHILL DRIVETAMIMENT PA 18371**570.851.1703**katwoman731@msn.com

CLIFFORD AND CINDY MCNEIL206 HOBBIT DRIVETAMIMENT PA 18371**267.294.7378**No email

MARYANN BOUCO1136 HUNTERS WOODS DRIVEEAST STROUDSBURG PA 18301**908.500.0151**mebouco@outlook.com

PATRICIA MERRILL188 OAKENSHIELD DRIVE TAMIMENT PA 18371**570.588.8873**pattyellenm13@aol.com

GAURAV PARHAR605 GANDOLF ROADTAMIMENT PA 18371**570.431.6690**uparhar@gmail.com

THOMAS AND MAXINE SHEPARD511 BOMBUR LANETAMIMENT PA 18371**570.588.1195**maxineshepard@yahoo.com

MARCIA J. MATHURA324 CLICKO LANEEAST STROUDSBURG PA 18301
mjmathura@gmail.com
Accepts eService