**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Grays Ferry Cogeneration Partnership and :

Vicinity Energy Philadelphia, Inc. : Docket No. C-2021-3029259

:

v. :

:

Philadelphia Gas Works :

**PROTECTIVE ORDER**

Upon consideration of the Unopposed Motion for a Protective Order made by Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., filed on January 25, 2022 in this matter and absent any objections by the other parties to the matter:

This Protective Order is hereby GRANTED with respect to all documents and information, as identified below, produced or presented, or hereafter produced or presented, in this proceeding. All persons now or hereafter granted access to such documents and/or information shall use and maintain the same only in strict accordance with this Protective Order.

This Protective Order is being entered to facilitate the orderly production of information and documents during discovery and the presentation of evidence at the hearings in this case, and to provide adequate protection of Confidential Information without prejudicing the rights of parties to have reasonable access to information that becomes part of the evidentiary record.

**THEREFORE,**

**IT IS HEREBY ORDERED:**

1. The material or information subject to this Protective Order includes all correspondence, documents, data, information, studies, methodologies and other materials furnished in discovery in this proceeding, as well as written and oral testimony, exhibits, examination and cross-examination questions, motions, briefs, oral argument and other writings that may be filed by various witnesses and parties that contains Proprietary Information. To the extent any Proprietary Information is filed with the Commission or presented in this proceeding, such information shall also be subject to this Protective Order.
2. “CONFIDENTIAL” materials are 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.

“HIGHLY CONFIDENTIAL” materials are those materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party 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: (i) customer names or customers’ prospects’ names, addresses, annual usage, or other customer-identifying information; (ii) competitive strategies or service alternatives; (iii) competitive pricing or discounting information; and (iv) marketing materials that have not yet been used.

“CONFIDENTIAL SECURITY INFORMATION” materials are those deemed Confidential Security Information pursuant to the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6). Moreover, information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4 will also be designated as “CONFIDENTIAL SECURITY INFORMATION.” Pursuant to the Commission’s rules regarding the handling of Confidential Security Information, no information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52

Pa. Code §§ 102.1-102.4 will be provided electronically to the Commission, Administrative Law Judge, Secretary’s Bureau, or any other Commission staff, and such information must be filed with the Commission in hard copy only.

Together, these CONFIDENTIAL, HIGHLY CONFIDENTIAL, and CONFIDENTIAL SECURITY INFORMATION materials will be referred to as “Proprietary Information” for the purposes of this Protective Order.

The parties shall designate data or documents as constituting or containing Proprietary Information by stamping or marking the documents “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL SECURITY INFORMATION” 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.

1. Proprietary Information shall be made available to counsel for a party who has entered an appearance in this proceeding and does not have responsibilities constituting a Restricted Party for the nonproducing Party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination or argument in this proceeding.
2. In addition, information deemed as “CONFIDENTIAL” material shall be made available to a “Reviewing Representative” who is a person who has signed a Non-Disclosure Certificate and is:

(i) An attorney for a public advocate pursuant to 52 Pa. Code § 1.18 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 proceeding with an attorney described in (i) above;

(iii) An expert or an employee of an expert retained by a party for the purpose of advising, preparing for or testifying in this proceeding; or

(iv) Employees or other representatives of a party appearing in this proceeding with significant responsibility for this docket.

Information deemed as “HIGHLY CONFIDENTIAL” and “CONFIDENTIAL SECURITY INFORMATION” material may be provided to a “Reviewing Representative” who is a person who has signed a Non-Disclosure Certificate and is:

(i) An attorney for a public advocate pursuant to

52 Pa. Code § 1.18 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 proceeding with an attorney described in (i) above;

(iii) An expert or an employee of an expert retained by a party for the purposes of advising, preparing for or testifying in this proceeding; or

(iv) A person designated by agreement between the producing party and the non-producing party as a Reviewing Representative for purposes of Highly Confidential and CONFIDENTIAL SECURITY INFORMATION; and who is

(v) Not a “Restricted Party” as defined in Paragraph 5 of this Protective Order.

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.

A qualified “Reviewing Representative” for “HIGHLY CONFIDENTIAL” and “CONFIDENTIAL SECURITY INFORMATION” material may review and discuss “HIGHLY CONFIDENTIAL” and “CONFIDENTIAL SECURITY INFORMATION” 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 the “HIGHLY CONFIDENTIAL” and “CONFIDENTIAL SECURITY INFORMATION” material. Such discussions must be general in nature and not disclose specific “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL SECURITY INFORMATION” information. However, counsel for I&E, OCA, and OSBA 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 that these individuals otherwise abide by the terms of this Protective Order.

1. A Reviewing Representative or counsel entering appearance may not be a “Restricted Party.” “Restricted Party” shall mean: (a) an officer, director, stockholder, partner, owner or employee of any competitor of a Party; (b) an officer, director, stockholder, partner, owner or employee of any affiliate of a competitor of a Party (including any association of competitors of a Party); (c) an officer, director, stockholder, owner or employee of a competitor of a customer of a Party if the Proprietary Information concerns a specific identifiable customer of the Party; (d) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of a Party if the Proprietary Information concerns a specific identifiable customer of the Party; 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 violation of 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 establishes a significant motive for violation.

Regarding the definition of “Restricted Party”, all parties agree that employees of the parties who have significant responsibility with the docket and who have properly executed a Non-disclosure certificate shall not be considered a competitor of any other party to this proceeding and shall have access to information deemed CONFIDENTIAL material.

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.

1. The Office of Small Business Advocate’s consultant, Mr. Robert D. Knecht, will not be considered to be a “Restricted Person” and Paragraph 5 will not apply to Mr. Knecht, provided that Mr. Knecht does not share, distribute, or discuss the Proprietary Information with any person except authorized OSBA representatives.
2. Other than persons described in Paragraphs 4, 5, 6, 8 and 9, no other person may have access to the Proprietary Information except as authorized by order of the Commission or the Presiding Administrative Law Judge. Persons described in Paragraphs 4, 5, 6, 8 and 9 shall use and disclose such information only in accordance with this Protective Order and may allow others to have access to Proprietary Information only in accordance with the conditions and limitations set forth in this Protective Order.

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 5. 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.

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 5, 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.

1. 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.
2. The Commission and all nonproducing parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right to Know Law (“RTKL”), Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, effective January 1, 2009, until such time as the information is found by a tribunal with jurisdiction to be non-proprietary or subject to one or more exemptions. In the event that any person or entity seeks to compel the disclosures 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 available remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.
3. Any public reference to Proprietary Information by a Party shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to fully understand 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.
4. Part of any record of this proceeding containing Proprietary Information 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, the Commission or appellate court.
5. The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information. If a nonproducing Party challenges the designation of a document or information as within the definition established in paragraph 3 of this Protective Order, the Party providing the information retains the burden of demonstrating that the designation is appropriate.
6. The parties shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground other than confidentiality; 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.
7. 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 nonproducing 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 the nonproducing 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 nonproducing Party shall certify in writing to the producing Party that the Proprietary Information has been destroyed.

Date: February 3, 2021 /s/

Marta Guhl

Administrative Law Judge

**APPENDIX A**

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| --- | --- | --- |
| Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc.  v.  Philadelphia Gas Works | :  :  :  :  :  :  :  : | Docket No. C-2021-3029259 |

**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.

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| DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**C-2021-3029259 - GRAYS FERRY COGENERATION PARTNERSHIP AND VICINITY ENERGY PHILADELPHIA IMC v. PHILADELPHIA GAS WORKS**

SHARON E WEBB ESQUIREOFFICE OF SMALL BUSINESS ADVOCATEFORUM PLACE555 WALNUT STREET 1ST FLOORHARRISBURG PA 17101**717.783.2525**SWEBB@PA.GOV

CRAIG BERRY ESQUIRE   
PHILADELPHIA GAS WORKS800 WEST MONTGOMERY AVENUEPHILADELPHIA PA 19122**215.684.6982** \*Accepts EService  
CRAIG.BERRY@PGWORKS.COM

DENNIS WHITAKER ESQUIRE

KEVIN J MCKEON ESQUIRETODD S STEWART ESQUIRE  
HAWKE MCKEON AND SNISCAK LLP100 NORTH TENTH STREETHARRISBURG PA 17101**717.236.1300**DAWHITAKER@HMSLEGAL.COM

Accepts EService

DANIEL CLEARFIELD ESQUIRECARL SHULTZ ESQUIRE  
ECKERT SEAMANS CHERIN & MELLOTT LLC213 MARKET STREETHARRISBURG PA 17101**717.237.7173717.255.3742**  
Accepts EService

LAUREN M BURGE ESQUIREECKERT SEAMANS CHERIN & MELLOTT LLC600 GRANT STREET 44TH FLOORPITTSBURGH PA 15219**412.566.2146**Accepts EServiceHARRISON W BREITMAN ESQUIREOFFICE OF CONSUMER ADVOCATE555 WALNUT STREET 5TH FLOORFORUM PLACEHARRISBURG PA 17101**717.783.5048**  
Accepts EService