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Devin Ryan  
Principal

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File #: 192362

May 19, 2022

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission v. UGI Utilities, Inc. - Gas Division  
Docket Nos. R-2021-3030218, et al.**

Dear Secretary Chiavetta:

Attached for filing in the above-referenced proceeding is an Amended Motion for Protective Order on behalf of UGI Utilities, Inc. – Gas Division.

Copies will be provided per the Certificate of Service.

Respectfully submitted,



Devin Ryan  
Principal

DR/kl  
Attachments

cc: Honorable Joel H. Cheskis (*via email; w/att.*)  
Honorable Gail M. Chiodo (*via email; w/att.*)  
Certificate of Service

## CERTIFICATE OF SERVICE

(Docket Nos. R-2021-3030218, et al.)

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

### VIA E-MAIL

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Christy M. Appleby, Esquire  
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*Commission on Economic Opportunity*

John W. Sweet, Esquire  
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**VIA FIRST-CLASS MAIL**

Sam Galdieri  
1162 Division Street  
Scranton, PA 18504-2573

Date: May 19, 2022



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Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2021-3030218, et al.
	:	
UGI Utilities, Inc. – Gas Division	:	

**AMENDED MOTION FOR PROTECTIVE ORDER**

**TO THE ADMINISTRATIVE LAW JUDGES JOEL H. CHESKIS AND GAIL M. CHIODO:**

UGI Utilities, Inc. – Gas Division (“UGI Gas”) hereby requests that the Honorable Administrative Law Judges Joel H. Cheskis and Gail M. Chiodo (the “ALJs”) enter the attached 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. On January 28, 2022, UGI Gas filed Supplement No. 32 to UGI Gas Tariff - Pa. P.U.C. Nos. 7 and 7S (“Supplement No. 32”) with the Pennsylvania Public Utility Commission (“Commission”) to be effective for service rendered on or after March 29, 2022. The Company proposed changes to UGI Gas’s base retail distribution rates designed to produce an increase in revenues of approximately \$82.7 million, based upon data for a fully projected future test year ending September 30, 2023 (“2022 Base Rate Case”). The filing was made in compliance with the Commission’s regulations and contains all supporting data and testimony required to be submitted in conjunction with a tariff change seeking a general rate increase.

2. Proprietary Information within the scope 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, through discovery, statutory advocates and intervenors have sought information that is customarily treated as sensitive, proprietary, or highly confidential. This motion requests that such

Proprietary Information be appropriately protected against public disclosure throughout the course of this proceeding. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information is not in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judges or Commission Orders granting relief pursuant to said regulation.

3. 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. 52 Pa. Code § 5.365(a)(1)-(3).

4. The attached proposed Protective Order defines four categories of protected information. The first is "CONFIDENTIAL" information, which is defined in Paragraph 3 of the attached proposed Protective Order 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." The second is "HIGHLY CONFIDENTIAL PROTECTED MATERIAL," which is defined in Paragraph 3 of the attached proposed Protective Order as 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." The third is "CONFIDENTIAL SECURITY INFORMATION," which is defined in

Paragraph 3 of the attached proposed Protective Order as “those materials, as defined in Section 2 of Act 156 of 2006, P.L. 1425, No. 156, 35 P.S. § 2141.2 et seq. ‘The Public Utility Confidential Security Information Disclosure Protection Act,’ the disclosure of which creates a reasonable likelihood of endangering the physical security of public utility resources, infrastructure, facility or information storage system; and information regarding computer hardware, software and networks, including administrative and technical records, which, if disclosed, would be reasonably likely to jeopardize computer security.”

5. Paragraph 18 of the attached proposed Protective Order guards 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,” “HIGHLY CONFIDENTIAL PROTECTED MATERIAL,” or “CONFIDENTIAL SECURITY INFORMATION.”

6. Limitation on the disclosure of information deemed “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL PROTECTED MATERIAL,” or “CONFIDENTIAL SECURITY INFORMATION” 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.

7. The attached Protective Order sought by UGI Gas also 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.

8. UGI Gas previously filed a Motion for Protective Order on April 15, 2022.

9. After filing, the ALJs raised certain questions regarding the proposed Protective Order.

10. The parties had a call with the ALJs on April 25, 2022, to discuss the proposed Protective Order.

11. The Company hereby submits this Amended Motion for Protective Order based on the April 25, 2022 discussion between the parties and the ALJs.

12. UGI Gas has consulted with the parties and intervenors to this proceeding including the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Office of Small Business Advocate, the Commission on Economic Opportunity, and NRG Energy, Inc. Although UGI Gas has not heard back from individual customer complainants about the proposed Protective Order (as amended), UGI Gas is authorized to represent that all other parties do not object to the proposed Protective Order (as amended).

WHEREFORE, for all the reasons set forth above, UGI Utilities, Inc. – Gas Division respectfully requests that Your Honors issue the attached Protective Order.

Respectfully submitted,



Kent Murphy (ID # 44793)  
Michael S. Swerling (ID # 94748)  
Timothy McHugh (ID # 317906)  
UGI Corporation  
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Dated: May 19, 2022

Counsel for UGI Utilities, Inc. – Gas Division



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2021-3030218, et al.
	:	
UGI Utilities, Inc. – Gas Division	:	

**PROTECTIVE ORDER**

Upon consideration of the Amended Motion for a Protective Order that was filed by UGI Utilities, Inc. – Gas Division on May 19, 2022:

**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, furnished in this proceeding, which are believed by the producing party to be of a proprietary or confidential nature and which are so designated by being marked “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL PROTECTED MATERIAL”, or “CONFIDENTIAL SECURITY INFORMATION.” Such materials will be 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. 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 or other business injury. The parties may designate as “HIGHLY CONFIDENTIAL

PROTECTED MATERIAL” 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. The parties shall endeavor to limit their designation of information as “HIGHLY CONFIDENTIAL PROTECTED MATERIAL.” The parties may designate as “CONFIDENTIAL SECURITY INFORMATION” those materials, as defined in Section 2 of Act 156 of 2006, P.L. 1425, No. 156, 35 P.S. § 2141.2 et seq. “The Public Utility Confidential Security Information Disclosure Protection Act,” the disclosure of which creates a reasonable likelihood of endangering the physical security of public utility resources, infrastructure, facility or information storage system; and information regarding computer hardware, software and networks, including administrative and technical records, which, if disclosed, would be reasonably likely to jeopardize computer security.

4. Proprietary Information shall be made available to counsel for a 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, argument, or settlement in this proceeding. To the extent required for participation in this proceeding, counsel for a party may afford access to Proprietary Information subject to the conditions set forth in this Protective Order.

5. Information deemed as “CONFIDENTIAL” shall be made available to a “Reviewing Representative” who is a person that has signed a Non-Disclosure Certificate attached as Appendix A and who is:

- (a) An attorney who has entered an appearance in this proceeding for a party or a statutory advocate pursuant to 52 Pa. Code § 1.8, if not an attorney;
- (b) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in subparagraph 5(a);

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

6. Information deemed as “HIGHLY CONFIDENTIAL PROTECTED MATERIAL” may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate attached as Appendix A and who is:

- (a) An attorney who has entered an appearance in this proceeding for a party or a statutory advocate pursuant to 52 Pa. Code § 1.8, if not an attorney;
- (b) An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph 6(a);
- (c) An outside expert or an employee of an outside expert retained by a party for the purposes of advising, preparing for, or testifying in this proceeding; or
- (d) A person designated as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL PROTECTED MATERIAL information.

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), any party may, by subsequent objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL PROTECTED MATERIAL documentation, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

7. Information deemed as “CONFIDENTIAL SECURITY INFORMATION” may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate attached as Appendix A and who is:

- (a) An attorney who has entered an appearance in this proceeding for a statutory advocate pursuant to 52 Pa. Code § 1.8, or a statutory advocate if not an attorney;

- (b) An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph 7(a); or
- (c) An outside expert or an employee of an outside expert retained by a statutory advocate for the purposes of advising, preparing for, or testifying in this proceeding.

CONFIDENTIAL SECURITY INFORMATION will only be provided for inspection via:

(a) in-person review at the offices of Post & Schell, P.C., 17 N. Second Street, 12th Floor, Harrisburg, PA 1701; (b) in-person review, or upon request of a statutory advocate or an attorney for a statutory advocate, at another location in the Harrisburg-metro area of the Commonwealth, between the hours of 9 A.M. to 5 P.M., Monday through Friday; or (c) secure video-conference link that will be supplied by Post & Schell, P.C., upon request of a statutory advocate or any attorney for a statutory advocate that is subject to COVID-19 restrictions that would prohibit in-person review. Such review may be proctored, and the Reviewing Representatives are prohibited from reproducing such information in any form without the prior authorization of UGI Gas's counsel (including taking detailed notes, making photocopies, or taking pictures). If a statutory advocate determines that it is necessary to use CONFIDENTIAL SECURITY INFORMATION as part of their presentation of evidence in this proceeding, such statutory advocate shall request a copy from counsel for UGI Gas, which permission shall not be unreasonably withheld and subject to that party confirming it understands and will abide by the terms of this Protective Order concerning use of such materials.

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), any party may, by subsequent objection or motion, seek further protection with respect to CONFIDENTIAL SECURITY INFORMATION, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

8. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person.”

(a) A “Restricted Person” shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; 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.

(b) 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, said expert must: (i) identify for the parties each Restricted

Person and each expert or consultant; (ii) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (iii) 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 jeopardize 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 jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

(c) The Office of Small Business Advocate's ("OSBA") consultant, Mr. Robert D. Knecht, will not be considered to be a Restricted Person, and Paragraphs 8(a) and 8(b) will not apply to Mr. Knecht, provided that Mr. Knecht does not share or discuss the Proprietary Information with any person except authorized OSBA representatives.

9. In the event that a party wishes to designate as a Reviewing Representative a person not described in Paragraphs 5(a) through 5(d), 6(a) through 6(c), or 7(a) through 7(c) above or a person that is a Restricted Person under Paragraph 8, the party shall seek agreement from the party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative 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.

10. A qualified "Reviewing Representative" for "HIGHLY CONFIDENTIAL PROTECTED MATERIAL" may review and discuss the "HIGHLY CONFIDENTIAL PROTECTED 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 PROTECTED MATERIAL.” Such discussions must be general in nature and not disclose specific “HIGHLY CONFIDENTIAL PROTECTED MATERIAL”; provided, however, that counsel for the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate, and the OSBA may share proprietary information with the I&E Director, Consumer Advocate, and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, so long as these individuals otherwise abide by the terms of the Protective Order.

11. Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall it 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 information contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a commercial advantage.

12. Reviewing Representatives shall execute a Non-Disclosure Certificate in order to obtain access to Proprietary Information, and will be subject to the following conditions:

- (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, provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals,

secretarial personnel, and clerical personnel under the attorney's instruction, supervision, or control need not do so. A copy of each 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 the Protective Order.

13. 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.

14. The parties shall designate data or documents as constituting or containing Proprietary Information by marking the documents "CONFIDENTIAL," "HIGHLY CONFIDENTIAL PROTECTED MATERIAL," or "CONFIDENTIAL SECURITY INFORMATION." 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 that constitute or contain Proprietary Information. The Proprietary Information shall be served upon the parties hereto only, and the materials shall be separate from the nonproprietary materials and conspicuously marked "CONFIDENTIAL," "HIGHLY CONFIDENTIAL PROTECTED MATERIAL," or "CONFIDENTIAL SECURITY INFORMATION." For filing purposes, Proprietary Information shall be filed separately from the nonproprietary materials and conspicuously marked "CONFIDENTIAL," "HIGHLY CONFIDENTIAL PROTECTED MATERIAL," or "CONFIDENTIAL SECURITY INFORMATION."



15. The parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in Section 335(d) of the Public Utility Code, 66 Pa. C.S. § 335(d), and the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, until such time as the information is found to be non-proprietary. In the event that any person or entity seeks to compel the disclosure of Proprietary Information, the non-producing party shall promptly notify the producing party in order to provide the producing party an opportunity to oppose or limit such disclosure.

16. 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.

17. 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 16 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.

18. 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.

19. 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; and to refuse to produce Proprietary Information pending the adjudication of the objection.

20. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within 30 days after appeals are finally decided, the parties, 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 a 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, the party shall certify in writing to the producing party that the Proprietary Information has been destroyed.

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

\_\_\_\_\_  
The Hon. Joel H. Cheskis and Gail M. Chiodo

**APPENDIX A**

Pennsylvania Public Utility Commission :  
 :  
 v. : Docket Nos. R-2021-3030218, et al.  
 :  
 UGI Utilities, Inc. – Gas Division :

**NON-DISCLOSURE CERTIFICATE FOR  
PROPRIETARY INFORMATION**

TO WHOM IT MAY CONCERN:

The undersigned is the \_\_\_\_\_ of  
\_\_\_\_\_ (the retaining party). The undersigned has  
read and understands the Protective Order and the required treatment of Proprietary Information.  
The undersigned agrees to be bound by and comply with the terms and conditions of said Protective  
Order.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (Printed)

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
EMPLOYER