

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SCH USA, LLC	:	
	:	C-2022-3036893
v.	:	C-2022-3037118
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

PROTECTIVE ORDER

Upon consideration of the Joint Motion for Protective Order jointly filed by SCH USA, LLC (“SCH USA”) and Aqua Pennsylvania Wastewater, Inc. (“Aqua”) on April 18, 2024, **IT IS ORDERED THAT:**

1. The Motion is hereby granted with respect to all materials and information identified in Paragraph 2-3 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 2-3 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, statements, exhibits, 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 which are so designated by being stamped or marked “CONFIDENTIAL” or “HIGHLY 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. 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” 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.”

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, testimony, cross examination, argument, or settlement in these dockets. To the extent required for participation in these dockets, counsel for a party may afford access to Proprietary Information subject to the conditions set forth in this Protective Order.

5. Information deemed “CONFIDENTIAL” shall be made available to a “Reviewing Representative.” For purposes of “CONFIDENTIAL” Proprietary Information, a “Reviewing Representative” is a person who has signed a Non-Disclosure Certificate attached hereto as Appendix A or Appendix B, 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 proceeding 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 that party or testifying in this proceeding on behalf of that party; 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” may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate attached hereto as Appendix B 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 these dockets 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 purpose of advising that party or testifying in this proceeding on behalf of that party; or

(d) A person designated as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL material.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission’s regulations, 52 Pa. Code §§ 5.362, 5.365(e), any party may, by subsequent objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL material, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

7. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person,” defined as:

(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 (excluding ownership interest where the expert has no direct knowledge of such interest, or control over investment or business decisions, such as a mutual fund) 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 these dockets 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.

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 11. 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 these dockets and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

9. 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 Paragraphs 5(a) through 5(d), or 6(a) through 6(d) above or a person that is a Restricted Person under Paragraph 7, 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 with respect to those materials. If no agreement is reached, the party seeking to have a person designated as a Reviewing Representative shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

10. A qualified "Reviewing Representative" for "HIGHLY CONFIDENTIAL" material may review and discuss "HIGHLY CONFIDENTIAL" 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" material. Such discussions must be general in nature and not disclose specific "HIGHLY CONFIDENTIAL" information.

11. 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 or Appendix B, provided, however, that if an attorney or expert 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. Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

12. The parties shall designate data or documents as constituting or containing Proprietary Information by marking the documents "CONFIDENTIAL" or "HIGHLY 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 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" or "HIGHLY CONFIDENTIAL." For filing purposes, Proprietary Information shall be filed separately from the nonproprietary materials and conspicuously marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."

13. The Commission and all 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.*, (the "RTKL") until such 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 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.

14. 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.

15. 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 14 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.

16. 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.

17. 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.

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

Dated: April 26, 2024

/s/
John M. Coogan, Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SCH USA, LLC	:	
	:	Docket Nos. C-2022-3036893
v.	:	C-2022-3037118
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

NON-DISCLOSURE CERTIFICATE – FOR CONFIDENTIAL MATERIALS

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____
(the receiving 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, which are incorporated herein by reference.

DATE

SIGNATURE

NAME (Printed)

ADDRESS

EMPLOYER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SCH USA, LLC	:	
	:	Docket Nos. C-2022-3036893
v.	:	C-2022-3037118
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

NON-DISCLOSURE CERTIFICATE – FOR HIGHLY CONFIDENTIAL MATERIALS

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____
(the receiving party). The undersigned has read and understands the Protective Order and the required treatment of information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” as defined in the Protective order. The undersigned agrees to be bound by and comply with the terms and conditions of said Protective Order, which are incorporated herein by reference. The undersigned understands and agrees that, pursuant to Paragraph 6, a party providing HIGHLY CONFIDENTIAL material may seek further protection, including, but not limited to, total prohibition of disclosure as to particular individuals, even where Appendix B has been executed.

DATE

SIGNATURE

NAME (Printed)

ADDRESS

EMPLOYER

C-2022-3036893 et al. - SCH USA, LLC v. AQUA PENNSYLVANIA WASTEWATER, INC.

Revised: 03/16/23

CARLOS PADILLA
SCH USA LLC
634 ROUTE 940
LAKE HARMONY PA 18624-0567
570.722.9111
313.878.5388
carlospadilla@icdsitra.com
Served via email

LAUREN M BURGE ESQUIRE
ECKERT SEAMANS CHERIN & MELLOTT LLC
600 GRANT STREET 44TH FLOOR
PITTSBURGH PA 15219
412.566.2146
502.352.0691
lburge@eckertseamans.com
Accepts eService
(Representing SCH USA, LLC)

CARL SHULTZ ESQUIRE
BRYCE R BEARD ESQUIRE
ECKERT SEAMANS CHERIN & MELLOTT LLC
213 MARKET STREET 8TH FLOOR
HARRISBURG PA 17101
717.237.6000
cshultz@eckertseamans.com
bbeard@eckertseamans.com
Accepts eService
(Representing SCH USA, LLC)

MARGARET MORRIS ESQUIRE
REGER RIZZO & DARNALL
CIRA CENTRE 13TH FLOOR
2929 ARCH STREET
PHILADELPHIA PA 19104
215.495.6524
215.870.5785
mmorris@regerlaw.com
Accepts eService
(Representing Aqua Pennsylvania Wastewater, Inc.)