

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2023-3040151
		(Wastewater)
Office of Small Business Advocate	:	C-2023-3044243
Office of Consumer Advocate	:	C-2023-3044570
	:	
v.	:	
	:	
Greater Hazleton Community Area	:	
New Development Organization, Inc.	:	
t/a CAN DO, Inc.	:	
	:	
	:	
Pennsylvania Public Utility Commission	:	R-2023-3040153 (Water)
Office of Small Business Advocate	:	C-2023-3044253
Spears Mfg. Hazle Township	:	C-2023-3044287
Office of Consumer Advocate	:	C-2023-3044571
	:	
v.	:	
	:	
Greater Hazleton Community Area	:	
New Development Organization, Inc.	:	
t/a CAN DO, Inc.	:	

**INTERIM ORDER**  
**GRANTING RESPONDENT’S PETITION FOR PROTECTIVE ORDER**

**Rate Filings**

Respondent Greater Hazleton Community Area New Development Organization, Inc. t/a CAN DO, Inc. (CAN DO or Respondent), Utility Code 211135, is a jurisdictional public utility serving only commercial and industrial customers. CAN DO serves approximately 119 water and 87 wastewater customers in Luzerne County and Carbon County, Pennsylvania.

On November 3, 2023, CAN DO filed Tariff Wastewater – Pa. P.U.C. No. 4 and Tariff Water – PA P.U.C. No. 4 with the Pennsylvania Public Utility Commission (Commission) at Docket No. R-2023-3040151 and Docket No. R-2023-3040153, respectively, to become effective January 2, 2024. The proposed water tariff would increase the level of rates that CAN DO charges for providing service to its water customers to recover an estimated annual increase in water base rate revenues of \$999,900. This represents an approximate 43.1% increase in CAN DO’s annual revenues at current rates. CAN DO is not proposing a rate increase to its wastewater customers.

CAN DO also proposes changes to the rules and regulations set forth in its Wastewater and Water Tariffs, including but not limited to additional rules regarding limitations of liability. However, the tariff changes to both Tariffs seem the same or very similar.

### **Complaints, Appearance, Withdrawal, Petition for Protective Order**

On November 10, 2023, Daniel E. Sabo (Mr. Sabo), on behalf of Spears Mfg. Hazle Township (Spears), filed a Formal Complaint at Docket No. C-2023-3044287, against CAN DO’s water rate filing.

On November 16, 2023, the Office of Small Business Advocate (OSBA) filed a Formal Complaint at Docket No. C-2023-3044243 against CAN DO’s wastewater rate filing and a Formal Complaint at Docket No. C-2023-3044253 against CAN DO’s water rate filing.

On November 28, 2023, the Commission’s Bureau of Investigation and Enforcement (I&E) filed Data Requests upon CAN DO concerning the company’s wastewater and water rate filings, thereby effectively entering I&E’s appearance in this proceeding.

On December 4, 2023, the Office of Consumer Advocate (OCA) filed a Formal Complaint at Docket No. C-2023-3044570 against CAN DO’s wastewater rate filing and a Formal Complaint at Docket No. C-2023-3044571 against CAN DO’s water rate filing.

By email dated December 5, 2023, I informed the parties that I anticipated the Commission would suspend the subject tariff filing at a public meeting before the January 2, 2024, effective date, and that the proceeding would be assigned to me. Accordingly, I directed the parties to discuss their availability for a prehearing conference.

By email directed to me and CAN DO's counsel on December 11, 2023, Mr. Sabo, Plant/Operations Manager for Spears, indicated that Spears was withdrawing its Formal Complaint against CAN DO at Docket No. C-2023-3044287. By email dated December 12, 2023, I informed the parties that an order would be issued addressing this withdrawal matter.

On December 12, 2023, CAN DO (Water Division) filed a Petition for Protective Order, representing that respective counsel for I&E, OCA, and OSBA, did not object to the entry of the proposed protective order, which was attached to the Petition.

By email dated December 12, 2023, CAN DO's counsel informed me that the parties were available for a prehearing conference at 1:30 p.m. on January 4, 2024.

### **Rate Suspension and Investigation**

By Orders entered December 21, 2023, the Commission instituted formal investigations at Docket Nos. R-2023-3040151, (Wastewater) and R-2023-3040153 (Water) to determine the lawfulness, justness and reasonableness of the CAN DO's existing and proposed rates, rules, and regulations. Accordingly, the Wastewater Tariff Supplement and Water Tariff Supplement were suspended by operation of law until August 2, 2024, unless permitted by Commission order to become effective at an earlier date. Under the Commission's Orders, CAN DO, within ten (10) days of the Orders and pursuant to 52 Pa. Code § 53.71, was directed to efile (or file) with the Commission tariff supplements, which would bear no effective date, and post the tariff supplements at the offices of Greater Hazleton Community-Area New Development Organization, Inc. t/a CAN DO, Inc. announcing that the aforementioned tariffs are suspended until August 2, 2024. A sample copy of a suspension supplement was in Attachment A of the Orders. On December 22, 2023, CAN DO filed the required suspension tariffs.

The proceedings were assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

**Prehearing Conference Notice and Order**

On December 21, 2023, a Notice was issued to the Parties informing them the proceedings were assigned to me as the presiding Administrative Law Judge (ALJ) and that a telephonic prehearing conference would be held on January 4, 2024, at 1:30 p.m. Also, on December 21, 2023, I issued a Prehearing Conference Order concerning regulations pertaining to prehearing conferences, 52 Pa.Code §§ 5.221-5.224, and directed the Parties to file and serve their respective Prehearing Memorandums by January 2, 2024. Various parties filed Prehearing Memorandums. The Prehearing Conference Order cautioned the parties that you must participate in the prehearing conference and that failure to do so would result in dismissal of your case and removal from the Service List.

The prehearing conference convened as scheduled on January 4, 2024. Respective counsel for CAN DO, I&E, OCA and OSBA were present for the prehearing conference. No one was present on behalf of Complainant Spears. Various matters were discussed during the prehearing conference, resulting in the establishment of a litigation schedule.

**Prehearing Order**

On January 9, 2024, I issued a Prehearing Order setting forth the litigation schedule and consolidating CAN DO's wastewater rate filing, and the Complaints filed in this proceeding with CAN DO's water rate filing at Docket No. R-2023-3040153. The Prehearing Order noted that CAN DO's Petition for a Protective Order (Petition), to which there was no objection to during the conference, would be addressed in a separate order.

The Prehearing Order also stated that considering Spears' email essentially withdrawing its Formal Complaint against CAN DO's water rate filing, Spears would be removed from the Service List. Additionally, Spears' withdrawal matter would be addressed in a separate order at Docket No. C-2023-3044287.

## **CAN DO's Petition for Protective Order**

In its Petition CAN DO seeks to limit the disclosure of confidential and proprietary information (Confidential Information). In part, the Petition reads as follows:

9. The discovery materials that have already been exchanged, along with additional materials that CAN DO anticipates exchanging in this proceeding pursuant to Commission rules and regulations, formal and informal discovery procedures, testimony, or oral examination, or as a courtesy to parties, contain information that CAN DO considers confidential and proprietary.

11. Disclosure of confidential and proprietary information contained in the materials CAN DO has exchanged, or anticipates will be exchanged during these proceedings, would cause CAN DO unfair economic or competitive disadvantage because the information that CAN DO would seek to protect is not generally known, is valuable to CAN DO, derives value in part due to CAN DO's efforts to maintain the confidentiality of the information, and could be valuable to competitors (and, in turn, harmful to CAN DO) if disclosed publicly.

12. The issuance of a protective order adequate to cover all parties and establish procedures in accordance with 52 Pa. Code § 5.365 for the provision of information believed to be confidential or proprietary would serve administrative economy and efficiency by obviating the need for parties to address confidential/proprietary concerns on a piecemeal basis every time confidential/proprietary information is requested.

Petition ¶¶ 9, 11, 12. CAN DO included a proposed Protective Order with its Petition.

### **Criteria for Protective Order**

Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the ALJ or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential 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 the following: 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).

Information provided in these rate proceedings by a public utility is generally highly valuable to the public utility and generally unknown to others; consequently, such Protective Orders are issued as standard practice to protect the confidentiality of the public utility's information.<sup>1</sup>

### **Consideration of the Petition and Order**

Upon due consideration of the Petition for Protective Order filed in this proceeding by CAN DO on December 12, 2023, representing that proprietary or confidential information is being sought or requested during discovery, and there being no objection to the granting of the Petition, the Petition will be granted in the ordering paragraphs below.

THEREFORE,

IT IS ORDERED THAT:

1. That the Respondent CAN DO's Petition for a Protective Order is granted with respect to all materials and information identified in Paragraph 2 below, which are filed with the Pennsylvania Public Utility Commission, produced in discovery, or otherwise presented during these proceedings. All persons now and 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. That materials subject to this Protective Order are all correspondence,

---

<sup>1</sup> E.g., *Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket No. R-2013-2355276, Protective Order — Order #5 (July 11, 2013) (Administrative Law Judges Angela T. Jones and Darlene Davis Heep); *Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket No. R-2011-2232243, Prehearing Order (July 11, 2011) (Administrative Law Judges Angela T. Jones and Eranda Vero); *Pa. P.U.C. v. Pennsylvania-American Water Co. (Wastewater)*, Docket Nos. R-20102166208, 2010-2166210, 2010-2166212 and 2010-2166214, Prehearing Order (July 12, 2010) (Chief Administrative Law Judge Charles E. Rainey, Jr.); *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No. R-2009-2132019, Order Granting Issuance Of Protective Order (March 16, 2010) (Administrative Law Judge Angela T. Jones).

data, information, excerpts, summaries, studies, methodologies, and other materials (including materials derived therefrom) which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, formal and informal discovery procedures, testimony or oral examination, or provided as a courtesy to a party to this proceeding, which are claimed to be of a proprietary or confidential nature and which are designated “PROPRIETARY INFORMATION” or “CONFIDENTIAL AND PROPRIETARY” or “PRIVILEGED AND CONFIDENTIAL” (hereinafter collectively referred to as “Proprietary Information”).

3. That, in addition, the parties may designate extremely sensitive Proprietary Information as “HIGHLY CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL MATTER” (hereinafter referred to as “Highly Confidential Information”) and thus secure the additional protections set forth in this Protective Order pertaining to such material.

4. That Proprietary Information and Highly Confidential Information produced in this proceeding shall be made available, solely for use in this proceeding, to CAN DO, Inc. (Water Division) (CAN DO); the Bureau of Investigation and Enforcement (I&E); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA) and additional parties, if any. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures since the report folders are not subject to public disclosure. To the extent that Proprietary Information or Highly Confidential 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 and Highly Confidential Information shall be permitted only in accordance with this Protective Order.

5. That Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures:

a. Proprietary Information. To the extent required for participation in this proceeding, a party’s counsel, upon execution of the attached Appendix A,

may afford access to Proprietary Information made available by another party (the producing party ) to the party's expert(s) and staff (except that the Consumer Advocate, the Deputy Consumer Advocate, the Small Business Advocate, and support staff in OCA and OSBA need not execute Appendix A, provided that OCA's and OSBA's counsel execute Appendix A). Any information provided under this provision may be used only for and to the extent that it is necessary for participation in this proceeding. Any person obtaining information disclosed through this provision may not use that information to gain any commercial advantage and any person obtaining information may not forward it to any person to gain commercial advantage.

b. Highly Confidential Information. Where information is asserted to be Highly Confidential Information, it will be made available for inspection and review as provided for in this Protective Order and copying only as specified herein. The producing party shall permit counsel for I&E, OCA, OSBA (individually "public advocate" and collectively the "public advocates"), and other counsel to take custody of a copy of such Highly Confidential Information, provided that it shall not be copied, except for counsel, and the public advocates' in-house staff, independent consultants, or non-lawyer representatives, in accordance with the protocols set forth below and shall be returned as provided for in this Protective Order. Such Highly Confidential Information may be provided by a public advocate to the Consumer Advocate, the Deputy Consumer Advocate, the Small Business Advocate, or eligible in-house staff without the need for execution of Appendix A. Additionally, such Highly Confidential Information may be provided by a public advocate or other counsel to its eligible independent consultants (as defined in 52 Pa. Code § 5.365(d)) or other non-lawyer representatives who are assisting counsel with these proceedings, provided that such consultants and non-lawyer representatives execute and return the attached Appendix A to the producing party pursuant to Paragraph 6 of this Protective Order.

c. No other persons may have access to the Proprietary or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive, or who is afforded access to any Proprietary or Highly Confidential Information, shall use, or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

6. Prior to making Proprietary or Highly Confidential Information available to any independent consultant or non-lawyer representatives, counsel shall, except as specifically exempted under Paragraph 5(b) of this Protective Order, deliver a copy of this Protective Order to such person, and shall receive a written acknowledgment from that person in the form attached to this Protective Order and designated as Appendix A. Counsel shall promptly deliver to the producing party, a copy of the executed Appendix A.

7. A producing party shall designate data or documents as constituting or containing Proprietary or Highly Confidential Information by affixing an appropriate proprietary stamp or type-written designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary or Highly Confidential Information, the producing party shall designate only the specific data or pages of documents which constitute or contain Proprietary or Highly Confidential Information.

8. Any public reference to Proprietary or Highly Confidential Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary or Highly Confidential Information to fully understand the reference and not more. The Proprietary or Highly Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

9. Part of any record of this proceeding containing Proprietary or Highly Confidential 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 8 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary or Highly Confidential Information is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to Order of the Administrative Law Judge, the Commission or appellate court. Unresolved challenges arising under Paragraph 10 shall be decided on petition by the presiding officer or the Commission as provided by 52 Pa. Code § 5.365(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent that such guidance is available.

10. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary or Highly Confidential Information; to question or challenge the admissibility of Proprietary or Highly Confidential Information; to refuse or object to the production of Proprietary or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary or Highly Confidential Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary or Highly Confidential Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary or Highly Confidential, the party claiming that the information is Proprietary or Highly Confidential retains the burden of demonstrating that the designation is necessary and appropriate.

11. This Protective Order shall continue to be binding throughout and after the conclusion of this proceeding.

12. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary or Highly Confidential Information, shall be immediately returned upon request to the party furnishing such Proprietary or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary or Highly Confidential Information have been destroyed.

Dated: May 21, 2024

  
Conrad A. Johnson  
Administrative Law Judge

**R-2023-3040153, R-2023-3040151, C-2023-3044253, C-2023-3044571, C-2023-3044243, C-2023-3044570 PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al. v. GREATER HAZLETON COMMUNITY AREA DEVELOPMENT ORGANIZATION, INC. t/a CAN DO, INC.**

*Service List*

JONATHAN P NASE ESQUIRE  
COZEN O'CONNOR  
17 NORTH SECOND STREET  
SUITE 1410  
HARRISBURG PA 17101  
**717.773.4191**  
[jnase@cozen.com](mailto:jnase@cozen.com)  
*Counsel for CAN DO, Inc.*  
Accepts eService

MELANIE J EL ATIEH ESQUIRE  
CONSUMER ADVOCATE  
OFFICE OF CONSUMER ADVOCATE  
555 WALNUT STREET  
FORUM PLACE 5TH FLOOR  
HARRISBURG PA 17101-1923  
**717-783-5048**  
[MelAtieh@paoca.org](mailto:MelAtieh@paoca.org)  
*Counsel for OCA*  
Accepts eService

MICHAEL A PODSKOCH JR ESQUIRE  
PENNSYLVANIA PUBLIC UTILITY  
COMMISSION  
BUREAU OF INVESTIGATION AND  
ENFORCEMENT COMMONWEALTH  
KEYSTONE BUILDING  
400 NORTH STREET  
HARRISBURG PA 17120  
[mpodskoch@pa.gov](mailto:mpodskoch@pa.gov)  
**717.783.6151**  
*Counsel for I&E*  
Accepts eService

STEVEN C GRAY ESQUIRE  
OFFICE OF SMALL BUSINESS  
ADVOCATE  
FORUM PLACE  
555 WALNUT STREET 1ST FLOOR  
HARRISBURG PA 17101  
**717.783.2525**  
[sgray@pa.gov](mailto:sgray@pa.gov)  
*Counsel for OSBA*

**APPENDIX A**  
**BEFORE THE**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2023-3040153 (Water)
	:	R-2023-3040151
	:	(Wastewater)
v.	:	
	:	
Greater Hazleton Community Area	:	
New Development Organization, Inc.	:	
t/a CAN DO, Inc.	:	

**ACKNOWLEDGMENT**

TO WHOM IT MAY CONCERN:

The undersigned is the \_\_\_\_\_ of \_\_\_\_\_ (the receiving party).

The undersigned has read the Protective Order Dated May 21, 2024, and understands that it deals with the treatment of Proprietary and Highly Confidential Information. The undersigned agrees to be bound by, and to comply with, the terms and conditions of said Protective Order. In the case of an independent expert, the undersigned represents that he/she has complied with the provisions of Paragraph 5 of the Protective Order prior to submitting this Acknowledgement.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_

\_\_\_\_\_

---

EMPLOYER

---

DATE