

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2024-3045945
Office of Small Business Advocate	:	C-2024-3047498
Office of Consumer Advocate	:	C-2024-3047727
	:	
v.	:	
	:	
Peoples Natural Gas Company LLC	:	
1307(f) Proceeding	:	

PROTECTIVE ORDER

On April 1, 2024, Peoples Natural Gas Company LLC (Peoples Natural Gas, the Company or PNG) filed its Supplement to Tariff Gas Pa. P.U.C. No.47 and to the Peoples Gas Division’s Retail Tariff Gas- Pa. P.U.C. No 8, to provide for projected changes in tariff rates resulting from changes in purchased gas costs.

On April 8, 2024, the presiding officer conducted the prehearing conference with the parties present. At the prehearing conference, the parties considered issues raised by the filings, discussed prehearing matters and established a litigation schedule. Thereafter, the presiding officer issued the Prehearing Order on April 15, 2024.

On May 22, 2024, PNG filed a Motion for a Protective Order (Motion) pursuant to 52 Pa.Code § 5.362(a)(7) and § 5.365. Peoples Natural Gas requests the presiding officer issue a Protective Order because Proprietary Information (within the definition of 52 Pa. Code § 5.365 and as described in 66 Pa.C.S. § 335(d), was presented or will be presented during this proceeding, which justifies the issuance of a Protective Order. PNG contends the confidential treatment of such information is justified because unrestricted disclosure of such information would not be in the public interest. Peoples Natural Gas avers these considerations constitute cause for the restrictions specified in 52 Pa.Code §§ 5.362 and 5.365, and in Administrative Law

Judge or Commission Orders granting relief pursuant to said regulation. In addition, Peoples Natural Gas contends the unrestricted disclosure of this information has a real potential for economic, societal and/or competitive harm if disclosed. PNG asserts limiting disclosure will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. As such, PNG avers the proposed Protective Order balances the interests of the parties, the public, and the Commission. In its Motion, PNG asserts it provided a draft of the Motion to BIE, OCA, OSBA and PIOGA, but no party objected to the Motion or the form of Protective Order included with the Motion.

Upon consideration of the Motion for a Protective Order that was filed by PNG on May 22, 2024, and noting no party objected to its issuance:

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to the material and information identified in Paragraph 2, which have been or will be filed with the Pennsylvania Public Utility Commission (Commission), 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 Paragraph 2 of this Protective Order shall use such information only in accordance with this Protective Order.

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 reasonably believed by the producing Party to be of a proprietary or confidential nature and which are so designated by being marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. 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. In addition, this Protective Order applies to the following categories of materials: (a) the producing Party 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; (b) the producing Party may designate as “HIGHLY CONFIDENTIAL” protected material those materials which, in the producing Party’s reasonable judgment, 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. This material may include: (1) customer names, prospective customer names, addresses, annual gas usage volumes or customer-identifying information; (2) marketing plans; (3) competitive strategies or service alternatives; (4) market share projections; (5) competitive pricing or discounting information; and (6) marketing material that have not been used yet. The producing Party shall endeavor to limit their designation of information as CONFIDENTIAL or HIGHLY CONFIDENTIAL protected material. The Parties agree that materials containing specific, individual customer information shall be identified as HIGHLY CONFIDENTIAL and that access to these materials may be further restricted by the producing party.

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. Proprietary Information produced in this proceeding shall be made available to the Pennsylvania Public Utility Commission (“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 Protected Information shall be permitted only in accordance with this Protective Order.

6. That “Confidential I” may be made available to a “Reviewing Representative” who is a person who has signed a Non-Disclosure Certificate in the form attached as **Appendix A** hereto and who is: (i) an attorney for one of the parties who has entered an appearance in this proceeding; (ii) an attorney, paralegal, or other employee associated for purposes of this proceeding with an attorney described in subparagraph (i); (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; (iv) an employee or other representative of a party with significant responsibility in this proceeding; or (v) a person mutually agreed to by the producing and non-producing parties.

7. Provided, however, that no Reviewing Representative may be a “Restricted Person.” For the purpose of this Protective Order, “Restricted Person” shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of a party 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 a party (including any association of competitors of a party) 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 a party if the Proprietary Information concerns any specific, identifiable customer of a party; and (iv) 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 direct ownership interests (excluding ownership in mutual funds) valued at more than \$10,000 or constituting more than a one percent interest in a business establishes a significant motive for violation. The Office of Small Business Advocate’s (“OSBA”) consultant, Mr. Mark

Ewen, will not be considered a “Restricted Person,” provided that Mr. Ewen does not share, distribute, or discuss the Proprietary Information with any person except authorized OSBA representatives.

8. If an expert for a party to this Protective Order, another member of the expert’s firm or the expert’s firm also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (i) identify for the other party to this Protective Order 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 party or its 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.

9. That “Highly Confidential” information may be made available to a “Reviewing Representative” who has signed a Non-Disclosure Certificate in the form attached as **Appendix A** hereto and who is: (i) an attorney for one of the parties who has entered an appearance in this proceeding; (ii) an attorney, paralegal, or other employee associated for purposes of this proceeding with an attorney described in subparagraph (i); (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) a person mutually agreed to by the producing and non-producing parties.

10. Provided, however, that a Reviewing Representative of Highly Confidential information shall not be a “Restricted Person” as defined in Paragraph 8 or include any employee or agent of a customer of a party subject to this Protective Order, a competitor of a party subject to this Protective Order, or a competitor of a customer of a party subject to this Protective Order whose duties include: (i) the marketing, sale, or purchase of natural gas or natural gas transportation services; (ii) management regarding or supervision of any employee whose duties include the marketing, sale, or purchase of natural gas or natural gas transportation

services for a competitor of a party subject to this Protective Order or a customer of the party; (iii) consulting services for a competitor of a party subject to this Protective Order or a customer of the party regarding the marketing, sale or purchase of natural gas or natural gas transportation services; or (iv) responsibility regarding other strategic business activities in which use of market sensitive information could be reasonably expected to cause competitive harm to a party or to a customer of a party subject to this Protective Order.

11. If any person who has had access to Proprietary Information subsequently is assigned to perform any duties which would make that person ineligible to be a Reviewing Representative of “Confidential” or “Highly Confidential” information, that person shall immediately inform the producing party of his or her new duties, shall dispose of any Proprietary Information and any information derived therefrom in his or her possession and shall continue to comply with the requirements of this Protective Order with regard to the Proprietary Information to which that person previously had access.

12. That no other persons may have access to the Proprietary Information except as authorized by order of the Commission or the Presiding Administrative Law Judge.

13. That qualified “Reviewing Representatives of Highly Confidential” information may review and discuss “Highly Confidential” information 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” information. Such discussions must be general in nature and not disclose specific “Highly Confidential” information; provided, however, that counsel for the Bureau of Investigation and Enforcement (“I&E”), Office of Consumer Advocate (“OCA”) and the OSBA may share Proprietary Information with the I&E Deputy Chief Prosecutor, I&E Director, Consumer Advocate, Deputy 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 the Protective Order.

14. That Proprietary information shall be treated by non-producing parties subject to this Protective Order and by all Reviewing Representatives in accordance with the certificate attached as **Appendix A** and executed pursuant to Paragraph 17. 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.

15. That Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any commercial advantage. If a party wishes to designate as a Reviewing Representative a person not described in Paragraphs 7 and 10 above, 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 Judge for resolution.

16. That 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 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.

17. That attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

18. That 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.

19. That the producing party shall designate data or documents as constituting or containing Proprietary Information by stamping 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 which constitute or contain Proprietary Information. The Proprietary Information shall be served in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked “Confidential” or “Highly Confidential.”

20. That the non-producing party 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), as applicable, and is within the definition of “confidential proprietary information” in the Pennsylvania 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. 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.

21. That 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 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.

22. That, 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.

23. That any part of the record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination and argument, and including reference thereto as mentioned in Paragraph 22 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 subject to this Protective Order or pursuant to an order of the Commission.

24. That 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.

25. That the parties shall retain the right to object to the production of Proprietary Information on any proper ground; 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.

26. That 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 non-producing 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 non-producing 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 non-producing party shall certify in writing to the other party that the Proprietary Information has been destroyed.

APPENDIX A

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NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN:

The undersigned is a Reviewing Representative of the _____, a party to this proceeding (“Party”), and is not or has no knowledge or basis for believing that he/she is a “Restricted Person” based upon reasonable knowledge and efforts as that term is defined in Paragraph 8 of the Protective Order, or prohibited from being a “Reviewing Representative of Highly Confidential information” pursuant to Paragraph 11 of the Protective Order. The undersigned has read and understands the Protective Order in the above-referenced proceeding, which 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 Protective Order.

Name

Address

Signature

Employer

**R-2024-3045945 - PENNSYLVANIA PUBLIC UTILITY COMMISSION V. PEOPLES
NATURAL GAS COMPANY LLC 1307(F)**

Revised: April 23, 2024

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