

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al.	:	R-2025-3055959
	:	
	:	
v.	:	
	:	
Energy Center Harrisburg LLC	:	

ORDER GRANTING PETITION FOR PROTECTIVE ORDER

On September 30, 2025, Energy Center Harrisburg LLC (ECH) filed a Petition for Protective Order (Petition) pursuant to 52 Pa. Code § 5.365(a) in the above-captioned proceeding. In support of its Petition, ECH averred “disclosure of confidential and proprietary information contained in the base rate filing and in materials ECH anticipates will be exchanged during these proceedings would cause ECH unfair economic or competitive disadvantage because the information that ECH would seek to protect is not generally known, is valuable to ECH, derives value in part due to ECH’s efforts to maintain the confidentiality of the information, and could be valuable to competitors (and, in turn, harmful to ECH) if disclosed publicly. Petition at 3, ¶9.

Additionally, ECH averred that the issuance of a protective order would 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. ECH further averred that the protective order 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 at 3, ¶ 10.

Moreover, the language in the proposed Protective Order provides as follows:

The parties...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... 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.

Proposed Protective Order at ¶ 12.

In its Petition, ECH advised that it consulted with all other parties in this proceeding: the Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA), and no party objects to the granting of the Petition. Petition at 4, ¶ 12.

By the authority granted under 52 Pa. Code §§ 5.362(a) and 5.365, and noting that there is no objection from the active parties in this matter, we will grant ECH's Petition for Protective Order filed on September 30, 2025.

THEREFORE,

IT IS ORDERED THAT:

1. The Petition for a Protective Order is granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which are filed with the Pennsylvania Public Utility Commission (Commission), produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and

information identified in Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. Materials subject to this Protective Order are all correspondence, documents, data, information, excerpts, summaries, studies, methodologies and other materials (including materials derived therefrom) 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), 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. 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. For example, but without limitation, “Highly Confidential” information may include Proprietary Information that constitutes or describes: (a) customer names or customer prospects’ names, addresses, or other customer-identifying information; (b) marketing plans; (c) competitive strategies or service alternatives; (d) market share projections; (e) competitive pricing or discounting information; and (f) marketing materials that have not yet been used.

4. Proprietary Information and Highly Confidential Information produced in this proceeding shall be made available, solely for use in this proceeding, to Energy Center Harrisburg LLC (ECH); 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 inasmuch as 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. Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures:

a. Information deemed "Proprietary" shall be provided to a "Reviewing Representative." For purposes of "Proprietary Information," a "Reviewing Representative" is a person who has signed a Non-Disclosure Certificate (except that the I&E Chief Prosecutor, I&E Deputy Chief Prosecutor, the Consumer Advocate, the Deputy Consumer Advocate, the Small Business Advocate, and support staff in I&E, the OCA, and the OSBA do not need to execute a Non-Disclosure Certificate, provided that I&E's, the OCA's, and the OSBA's counsel execute a Non-Disclosure Certificate) and is:

1. An attorney for a public advocate pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;

2. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph 5(a)(1) above;

3. 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;

4. Employees or other representatives of a party to this proceeding who have significant responsibility for developing or presenting the party's positions in this docket;
or

5. A person mutually agreed to by the party producing the Proprietary Information and the party requesting to designate a Reviewing Representative pursuant to this subparagraph.

b. Information deemed “HIGHLY CONFIDENTIAL” shall be provided to a Reviewing Representative, provided, however that a Reviewing Representative, for purposes of “HIGHLY CONFIDENTIAL” protected material, is limited to a person who has signed a Non-Disclosure Certificate (except that the I&E Chief Prosecutor, I&E Deputy Chief Prosecutor, Consumer Advocate, the Deputy Consumer Advocate, the Small Business Advocate, and support staff in I&E, the OCA, and the OSBA do not need to execute a Non-Disclosure Certificate, provided that I&E’s, the OCA’s, and the OSBA’s counsel execute a Non-Disclosure Certificate) and is:

1. An attorney for a public advocate pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;

2. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph 5(b)(1);

3. An outside expert or an employee of an outside expert retained by a party for the purposes of advising that party or testifying in this proceeding on behalf of that party;

4. A person designated as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL protected material pursuant to Paragraph 5(e), below; or

5. A person mutually agreed to by the party producing the Highly Confidential Information and the party requesting to designate a Reviewing Representative pursuant to this subparagraph.

c. Provided, further, that in accordance with the provisions of Sections 5.362 and 5.431(e) of the Commission’s Rules of Practice and Procedure, 52 Pa. Code §§ 5.362 and 5.431(e), any party may, by objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL protected material, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

d. 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 Judges. 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.

e. In the event that a receiving party wishes to designate as a Reviewing Representative for “HIGHLY CONFIDENTIAL” material a person not described in paragraph 5(b)(i) through (iv) above, the receiving party must first seek agreement to do so from the disclosing party. If an agreement is reached, the designated individual shall be a Reviewing Representative pursuant to Paragraph 5(b)(v) above with respect to those materials. If no agreement is reached, the OCA may submit the disputed designation to the presiding Administrative Law Judges for resolution.

6. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person” absent agreement of the party producing the Proprietary Information. A “Restricted Person” shall mean: (a) 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 or advising another person who has such duties; (b) 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 or advising another person who has such duties; (c) an officer, director, stockholder, owner, agent or employee of a competitor of a customer of the parties or of a competitor of a vendor of the parties if the Proprietary Information concerns a specific, identifiable customer or vendor of the parties; and (d) 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 violating 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 1% interest in a business (excluding ownership interests 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.

7. 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. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

8. Prior to making Proprietary or Highly Confidential Information available to any independent consultant or non-lawyer representatives, counsel shall 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.

9. 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.

10. 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.

11. 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 10 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(s), the Commission or appellate court. Unresolved challenges arising under Paragraph 12 shall be decided on petition by the presiding officer(s) 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.

12. 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 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.

13. The parties shall retain the right to object to the production of Proprietary Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden, and to refuse to produce Proprietary Information pending the adjudication of the objection.

14. That the Commission and all parties, including the statutory advocates and any other agency or department of state government, will consider and treat the Proprietary Information as within the exemptions from disclosure in Section 335(d) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 335(d), and the Pennsylvania Right-to-Know Act, 65 P.S. §§ 67.101 *et seq.* (the RTKL), until such information is found by a tribunal with jurisdiction to be not confidential 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 available remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

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

16. 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 receiving party, 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 the party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents

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