**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|  |  |  |
| --- | --- | --- |
| Pennsylvania Public Utility Commission  Office of Small Business Advocate  Daniel Killmeyer  Office of Consumer Advocate  Elizabeth F. Smith  v.  Peoples Natural Gas Company LLC | **: : : : : :**  **:**  **:**  **:** | R-2013-2350914  C-2013-2354071  C-2013-2355180  C-2013-2355226  C-2013-2359509 |
|  |  |  |

**FIRST INTERIM ORDER GRANTING RESPONDENT PEOPLES**

**NATURAL GAS COMPANY’S MOTION FOR PROTECTIVE ORDER**

AND NOW, this 24th day of May, 2013, upon consideration of the Motion for a Protective Order that was filed on May 3, 2013, by Peoples Natural Gas Company LLC, demonstrating that highly confidential and proprietary information has been sought in discovery and presented in exhibits in this proceeding that is commercially-sensitive data to Peoples and its customers; and there being no objections filed by any other party to the Motion;

**IT IS HEREBY ORDERED:**

1. That the Motion is hereby granted with respect to all materials and information identified in Paragraphs 3 and 4 below.
2. That the materials subject to this Protective Order are 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 stamped “Confidential” or “Highly Confidential.” Such materials will be referred to below as “Proprietary Information.”

1. That 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 or which, if disclosed freely, would subject that party or others to risk of competitive disadvantage or other business injury.
2. That the parties may designate as “Highly Confidential” those materials that are of such a commercially sensitive 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. For example but without limitation, “Highly Confidential” information may include Proprietary Information that constitutes or describes the producing party’s or, in the event that the information involves a specific customer of Peoples, such customer’s (i) names or customers’ prospects’ names, addresses, annual volumes of gas usage, or other customer-identifying information, (ii) marketing plans, (iii) competitive strategies or service alternatives, (iv) market share projections, (v) competitive pricing or discounting information; and (vi) marketing materials that have not yet been used.
3. That Proprietary Information shall be made available to counsel for the non-producing 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 for settlement discussions in this proceeding. To the extent required for participation in this proceeding, counsel for a non-producing party may afford access to Proprietary Information subject to the conditions set forth herein.
4. That 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.
5. That “Confidential” information 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; or, (iv) an employee or other representative of a party with significant responsibility in this proceeding.
6. 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 to this Protective Order 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 to this Protective Order (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 to this Protective Order 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 to this Protective Order 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 ownership interests valued at more than $10,000 or constituting more than a 1 percent interest in a business establishes a significant motive for violation.
7. That 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.
8. 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); or (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.
9. 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 competitor of a party subject to this Protective Order or a competitor of a customer of the party whose duties include the marketing, sale or purchase of natural gas; or management regarding supervision of any employee whose duties include the marketing, sale or purchase of natural gas for a competitor of a party subject to this Protective Order or a customer of the party; 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 responsibility regarding other strategic business activities in which use of market sensitive information could be reasonably expected to cause competitive harm to a party subject to this Protective Order.
10. That 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 all active parties and 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.
11. That no other persons may have access to the Proprietary Information except as permitted pursuant to the Commission’s Rules of Administrative Practice and Procedure, relating to restrictions on the disclosure of sensitive, confidential and/or proprietary materials, or as authorized by order of the Commission or the Presiding Administrative Law Judges.
12. 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 material, provided however that counsel for the Bureau of Investigation and Enforcement (I&E), Office of Consumer Advocate and Office of Small Business Advocate 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, provided however that these individuals otherwise abide by the terms of the Protective Order.
13. 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**. 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.
14. 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 Judges for resolution.
15. 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.
16. 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.
17. That this Order shall not be construed as a waiver by any party of 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.
18. That when filing “Confidential” or “Highly Confidential” and/or “Proprietary Information” with the Secretary’s Bureau, the Producing Party shall so mark the filing and also submit said information on a separate Compact Disc (CD) pursuant to the Commission’s Implementation Order entered at Docket No. M-2012-2331973 governing electronic access to testimony and exhibits. The parties shall store, transmit and file “Confidential” or “Highly Confidential” and/or “Proprietary Information” separate and apart from the remaining testimony, evidence and exhibits to be filed electronically. All hard copies of information filed and marked as “Confidential” or “Highly Confidential” and/or “Proprietary Information” shall be sealed in accordance with the terms of this Order and the Commission’s Rules of Administrative Practice and Procedure, relating to restrictions on the disclosure of sensitive, confidential and/or proprietary materials, and shall not be subject to public disclosure, subject to the terms of this Order.
19. That the non-producing party will consider and treat the Proprietary Information as within the definition of “confidential information” in Section 102 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.102 and subject to exemptions from disclosure as provided for in Section 708 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.708, until the information is found by a tribunal with jurisdiction to be not confidential or subject to one or more exemptions.
20. 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.
21. 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.
22. 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 to this Protective Order or pursuant to an order of the Commission, the Administrative Law Judges or an Appellate Court.
23. 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.
24. 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.

1. That 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 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.
2. That all Proprietary Information submitted for filing with the Commission or served upon any party to this proceeding shall be made available to the Commission and its Staff for use in this and any related proceeding and for all internal Commission analyses, studies or investigations related to the same. 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 for Proprietary Information inasmuch as the report folders are not subject to public disclosure. To the extent the 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 Order. Public inspection of the Proprietary Information shall be permitted only in accordance with the Commission’s Rules of Administrative Practice and Procedure, relating to restrictions on the disclosure of sensitive, confidential and/or proprietary materials and this Protective Order.
3. That when designating any documents or information as Proprietary Information, as set forth in this Order, or when filing such documents or information with the Secretary’s Bureau, the Producing Party shall file with the Secretary’s Bureau and serve upon the parties and the Administrative Law Judges, a list of all such documents or information designated as “Confidential” or “Highly Confidential” and/or “Proprietary Information” and update the list upon each subsequent filing or production of such documents or information, clearly setting forth the portions of the document, information, statement or exhibit thereof that constitute Proprietary Information and identifying the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference to said material.



\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Jeffrey Watson

Administrative Law Judge

**APPENDIX A**

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|  |  |  |
| --- | --- | --- |
| Pennsylvania Public Utility Commission  Office of Small Business Advocate  Daniel Killmeyer  Office of Consumer Advocate  Elizabeth F. Smith  v.  Peoples Natural Gas Company LLC | **: : : : : :**  **:**  **:**  **:** | R-2013-2350914  C-2013-2354071  C-2013-2355180  C-2013-2355226  C-2013-2359509 |
|  |  |  |

**TO WHOM IT MAY CONCERN:**

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

The undersigned has read and understands the Protective Order issued in the above-captioned proceeding, which Order deals with the treatment of information designated as “HIGHLY CONFIDENTIAL INFORMATION,” “CONFIDENTIAL INFORMATION” or “PROPRIETARY INFORMATION.” The undersigned agrees that any Highly Confidential, Confidential or Proprietary Information shall be used or disclosed only for purposes of preparation for, and conduct of the above-captioned proceedings, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PRINT NAME

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ADDRESS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EMPLOYER

DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**R-2013-2350914, C-2013-2354071, C-2013-2355180, & C-2013-2355226 – PUC, ET AL V. PEOPLES NATURAL GAS COMPANY LLC**

**LIMITED SERVICE LIST**

***Revised 5/24/13***

MICHAEL W GANG ESQUIRE

ANTHONY D KANAGY ESQUIRE

ANDREW S TUBBS ESQUIREPOST & SHELL PC17 NORTH SECOND STREET

12TH FLOORHARRISBURG PA 17101-1601**717.731.1970**

mgang@postshell.com

akanagy@postshell.com

atubbs@postshell.com

RICHARD KANASKIE ESQUIRECARRIE B WRIGHT ESQUIRE

PA PUC BUREAU OF INVESTIGATION

& ENFORCEMENT LEGAL TECHNICALPO BOX 3265

400 NORTH STREETHARRISBURG PA 17105-3265**717.783.6184**rkanaskie@pa.gov

carwright@pa.gov

ARON J BEATTY ESQUIRE

BRANDON J PIERCE ESQUIRE

OFFICE OF CONSUMER ADVOCATE5TH FLOOR FORUM PLACE555 WALNUT STREETHARRISBURG PA 17101-1923**717.783.5048**ABeatty@paoca.org

BPierce@paoca.org

ELIZABETH ROSE TRISCARI ESQUIREOFFICE OF SMALL BUSINESS ADVOCATESUITE 1102300 NORTH SECOND STREET

HARRISBURG PA 17101**717.783.2525**

etriscari@pa.gov

DANIEL KILLMEYER

184 MCKAY ROAD

SAXONBURG PA 16056

**724.352.5029**

ELIZABETH F SMITH

305 PINE STREET

ZELIENOPLE PA 16063

**724.473.0784**

**C-2013-2359509**