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File #: 174711

October 15, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission v. Aqua Pennsylvania, Inc. and Aqua
Pennsylvania Wastewater, Inc.
Docket Nos. R-2018-3003558 and R-2018-3003561**

Dear Secretary Chiavetta:

Enclosed please find the Motion for Protective Order in the above-referenced proceeding.
Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Michael W. Hassell

MWH/skr
Enclosure

cc: Honorable Angela T. Jones
Honorable F. Joseph Brady
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

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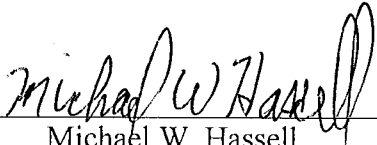
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Date: October 15, 2018



Michael W. Hassell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	
v.	:	DOCKET NOS. R-2018-3003558
	:	R-2018-3003561
AQUA PENNSYLVANIA, INC.	:	
AND AQUA PENNSYLVANIA	:	
WASTEWATER, INC.	:	

MOTION FOR PROTECTIVE ORDER

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES ANGELA T. JONES AND F. JOSEPH BRADY:

Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) hereby requests that the Honorable Administrative Law Angela T. Jones and F. Joseph Brady (the “ALJs”) enter a Protective Order in this proceeding pursuant to the provisions of 52 Pa. Code §§ 5.362(a)(7) and 5.365(a), and in support thereof represents as follows:

1. On August 17, 2018, Aqua filed with the Pennsylvania Public Utility Commission (“Commission”) Original Tariff Water – Pa. P.U.C. No. 2 (“Tariff Water No. 2”) and Original Tariff Sewer – Pa. P.U.C. No. 2 (“Tariff Sewer No. 2”) to become effective on October 16, 2018.¹ The financial data submitted in support of Tariff Water No. 2 and Tariff Sewer No. 2 reflects an increase in total annual operating revenues of \$71,768,833, or approximately 16.13% over the level of revenues anticipated for the fully projected future test year ending March 31, 2020. By Order entered September 20, 2018, the Commission instituted a formal investigation at Docket Nos. R-2018-3003558 and R-2018-3003561 to determine the lawfulness, justness and

¹ By its Secretarial Letter issued July 3, 2018, the Commission granted Aqua’s request to depart from the requirements of 52 Pa. Code § 53.53(b)(2), and extend by 19 days, the 120-day interval for filing a general rate increase after the end of a historic test year.

reasonableness of the Company's existing and proposed rates, rules and regulations. Accordingly, Tariff Water No. 2 and Tariff Sewer No. 2 were suspended by operation of law until May 16, 2019, unless permitted by Commission order to become effective at an earlier date.

2. Proprietary Information within the definition of 52 Pa. Code § 5.365 has been requested during the course of this proceeding, which justifies the issuance of a Protective Order. For example, parties have sought information that is customarily treated as sensitive, proprietary, or highly confidential. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

3. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential commercial 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 extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information is known by others and used in similar activities; and the worth or value of the information to the party and to the party's competitors. 52 Pa. Code § 5.365(a)(1)-(3).

4. The attached proposed Protective Order defines two categories of protected information. The first is "CONFIDENTIAL," which is defined in Paragraph 3 of the attached proposed Protective Order as "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 second is “HIGHLY CONFIDENTIAL” protected material, which is also defined in Paragraph 3 of the attached proposed Protective Order as “those materials that are of such a commercially sensitive nature relative to the business interests of a Party or of such a private, personal nature that a Party is able to justify a heightened level of confidential protection with respect to those materials.”

5. Paragraph 17 of the attached proposed Protective Order protects against overly broad designations of protected information by giving all parties the right to question or challenge the confidential or proprietary nature of the information deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material.

6. Limitation on the disclosure of information deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the parties, the public, and the Commission.

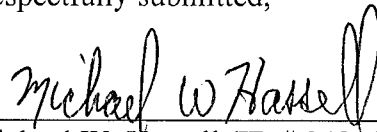
7. The attached Protective Order sought by Aqua will protect the proprietary nature of competitively valuable information while allowing the parties to use such information for purposes of the instant litigation. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

8. Aqua has consulted with all other parties to this proceeding including the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Aqua Large Users Group, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania, Pennsylvania American Water Company,

Treasure Lake Property Owners Association, Inc., and Masthope Mountain Community Property Owners Council. No parties are opposing the proposed Protective Order.

WHEREFORE, for all the reasons set forth above, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. respectfully requests that Your Honors issue the attached Protective Order.

Respectfully submitted,



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Date: October 15, 2018

*Counsel for Aqua Pennsylvania, Inc. and Aqua
Pennsylvania Wastewater, Inc.*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	
v.	:	DOCKET NOS. R-2018-3003558
	:	R-2018-3003561
AQUA PENNSYLVANIA, INC. AND AQUA PENNSYLVANIA WASTEWATER, INC.	:	
	:	
	:	

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order that was filed by Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (“Aqua”) on October 15, 2018:

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 2 – 3 below.
2. The information subject to this Protective Order is all correspondence, documents, 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 are so designated by being stamped “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. Such materials are 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. For purposes of this Protective Order, there are two categories of Proprietary Information: “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL” protected material. The Parties may designate as “CONFIDENTIAL” those materials that are customarily treated by a

Party as sensitive or proprietary, that are not available to the public, and that, if generally disclosed, would subject Aqua or its customers to the 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, relative to the business interests of a Party, or of such a private or personal nature that a Party is able to justify a heightened level of confidential protection with respect to those materials. The Parties shall endeavor to limit the information designated as “HIGHLY CONFIDENTIAL” protected material.

4. Subject to the terms of this Protective Order, Proprietary Information shall be provided to counsel for a Party who meets the criteria of a “Reviewing Representative” as set forth below. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross examination or argument in this proceeding. To the extent required for participation in this proceeding, such counsel may allow others to have access to Proprietary Information only in accordance with the conditions and limitations set forth in this Protective Order.

5. Information deemed “CONFIDENTIAL” shall be provided to a “Reviewing Representative.” For purposes of “CONFIDENTIAL” Proprietary Information, a “Reviewing Representative” is a person who has signed a Non-Disclosure Certificate and is:

- i. A statutory advocate, or an attorney for a statutory 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;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i) above;
- iii. 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 the Party; or
- iv. Employees or other representatives of the Party who have significant responsibility for developing or presenting the Party’s positions in this

docket.

6. Information deemed “HIGHLY CONFIDENTIAL” protected material 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 and is:

- i. An attorney for a statutory 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;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i);
- iii. 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 the Party; or
- iv. A person designated as a Reviewing Representative for purposes of “HIGHLY CONFIDENTIAL” protected material pursuant to Paragraph 11.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission’s Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.365(e)) a 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.

7. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person” absent agreement of Aqua. A “Restricted Person” shall mean: (a) an officer, director, stockholder, partner, or owner of any competitor of Aqua, or an employee, agent or representative of any competitor of Aqua, if such person’s duties involve (i) marketing or pricing of the competitor’s products or services, or (ii) strategic business decisions and activities in which the use of the Proprietary Information could be reasonably expected to cause

competitive harm to Aqua; (b) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of Aqua (including any association of competitors of Aqua), or an employee, agent or representative of any competitor of Aqua, if such person's duties involve (i) marketing or pricing of the competitor's products or services, or (ii) strategic business decisions and activities in which the use of the Proprietary Information could be reasonably expected to cause competitive harm to Aqua; (c) an officer, director, stockholder, owner, representative, agent or employee of a competitor of a customer of Aqua or of a competitor of a vendor of Aqua if the Proprietary Information concerns a specific, identifiable customer or vendor of the parties; (d) an officer, director, stockholder, owner, representative, agent or employee of an affiliate of a competitor of a customer of Aqua if the Proprietary Information concerns a specific, identifiable customer of Aqua; or (e) an employee, agent or representative of any individual or entity described in subparts (a) through (d) of this paragraph, whose duties include advising and/or counseling any individual or entity described in subparts (a) through (d) of this paragraph; 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 Agreement, stocks, partnership or other ownership interests (excluding mutual funds) valued at more than \$10,000 or constituting more than a 1% interest in a business establish a significant motive for violation.

8. 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 Aqua 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 Aqua written assurances that the lack of segregation will in no way adversely affect the interests of Aqua or its customers. Aqua retains the right to challenge the adequacy of the written assurances that Aqua's or its 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.

9. Reviewing Representatives qualified to receive "HIGHLY CONFIDENTIAL" protected material may discuss "HIGHLY CONFIDENTIAL" protected 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 or have access to, the "HIGHLY CONFIDENTIAL" protected material. However, counsel for the Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate, and the 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 that these individuals otherwise abide by the terms of this Protective Order.

10. 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 12. 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 this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

11. Reviewing Representatives may not use anything contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of Aqua a commercial advantage. In the event that a Party wishes to designate as a Reviewing Representative a person not described in Paragraphs 6 (i) through (iii) above, that Party must first seek agreement to do so from Aqua. If an agreement is reached, the designated individual shall be a Reviewing Representative pursuant to Paragraph 6 (iv) above 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.

12. 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, provided, however, that if an attorney or expert qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under his or her instruction, supervision or control need not do so. A copy of each executed Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative; and Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

13. The Parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "CONFIDENTIAL" or "HIGHLY

CONFIDENTIAL” protected material. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the designating Party, 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.

14. The Parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act (65 P.S. § 67.101 *et seq.*) until such time as the information is found to be non-proprietary.

15. 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.

16. Any 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 15 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 or pursuant to an order of the Commission.

17. The Parties 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 designating party retains the burden of demonstrating that the designation is appropriate.

18. Aqua shall retain the right to object to the production of Proprietary Information on any proper ground, including but not limited to relevance, materiality or undue burden, 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 including, but not limited to, further restrictions on the person(s) who may be provided access to HIGHLY CONFIDENTIAL protected material.

19. 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 Parties, upon request, shall either destroy or return to Aqua all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In its request, Aqua may specify whether such materials should be destroyed or returned. In the event that the materials are destroyed instead of returned, the destroying Party shall certify in writing to Aqua that the Proprietary Information has been destroyed. In the event that the materials are returned instead of destroyed, the returning Party shall certify in writing to Aqua that no copies of materials containing the Proprietary Information have been retained.

Dated: _____

The Hon. Administrative Law Judge Angela T. Jones

The Hon. Administrative Law Judge F. Joseph Brady

APPENDIX "A"

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	
v.	:	DOCKET NOS. R-2018-3003558
	:	R-2018-3003561
AQUA PENNSYLVANIA, INC.	:	
AND AQUA PENNSYLVANIA	:	
WASTEWATER, INC.	:	

NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN;

The undersigned is the expert, counsel, employee, member or officer of _____.

The undersigned has read and understands Protective Order entered in the above-captioned proceeding 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. The undersigned agrees that any Proprietary Information shall be used or disclosed only for purposes of preparation for, and conduct of the above-captioned proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for purposes of business or competition.

Signature

Print Name

Address

Date: _____

Employer