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File #: 162080

December 17, 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: Petition of UGI Utilities, Inc. - Electric Division for Approval of Phase III of its Energy Efficiency and Conservation Plan - Docket No. M-2018-3004144

Dear Secretary Chiavetta:

Enclosed for filing is the Petition of UGI Utilities, Inc. – Electric Division for a Protective Order, in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/jl
Enclosures

cc: Certificate of Service
Honorable Benjamin J. Myers

CERTIFICATE OF SERVICE

Docket No. M-2018-3004144

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 & FIRST CLASS MAIL

Steven C. Gray, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Joseph L. Vullo, Esquire
1460 Wyoming Avenue
Forty Fort, PA 18704
Commission on Economic Opportunity

Richard A. Kanaskie, Esquire
PA Public Utility Commission
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265

Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140

Christy M. Appleby, Esquire
Darryl A. Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Stacy Sherwood
Exeter Associates, Inc.
10480 Little Patuxent Parkway
Suite 300
Columbia, MD 21044

VIA FIRST CLASS MAIL

Eugene M. Brady
165 Amber Lane
PO Box 1127
Wilkes-Barre, PA 18703-1127
Commission on Economic Opportunity

Date: December 17, 2018


Devin T. Ryan

voluntary Phase III EE&C Plan includes a portfolio of energy efficiency programs and conservation practices, fuel switching measures, and energy education initiatives that are designed to encourage energy efficiency.

3. During the course of this proceeding, it may be necessary for participants to disclose “Confidential” and “Highly Confidential” information in filings with the Commission, through discovery responses or through evidence introduced into the record.

4. “Confidential” and “Highly Confidential” information may include, but not be limited to: (1) customers’ names or customer prospects’ names, addresses, annual volumes of electric usage, or other customer-identifying information; and (2) confidential agreements with conservations service providers (“CSPs”).

5. Under 52 Pa. Code § 5.365, the presiding Administrative Law Judge may issue a Protective Order to limit or prohibit disclosure of confidential and proprietary information where “the potential harm to the party providing the information would be substantial and . . . the harm to the party if the information is disclosed without restriction outweighs the public’s interest in free and open access to the administrative hearing process.”

6. In applying this standard, relevant factors to be considered include: (1) the extent to which disclosure would cause unfair economic or competitive damage; (2) the extent to which the information is known by others and used in similar activities; (3) the worth or value of the information to the party and to the party’s competitors; (4) the difficulty and costs of developing the information; and (5) other statute and regulations dealing specifically with disclosure of the information. 52 Pa. Code § 5.365(a)(1)-(5).

7. The release of non-public information, such as customer-specific information and contractual agreements with CSPs, in the current proceeding could cause unfair economic or

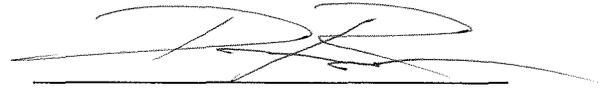
competitive damage to the Company and its customers by giving the competitors of the customers and CSPs an unfair advantage in the marketplace.

8. Conversely, the language proposed in the attached 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 information marked as “Confidential” or “Highly Confidential” by a producing party.

9. The limitation on the disclosure of proprietary information proposed in the attached Protective Order fairly balances the interests of the parties, the public, and the Commission and will not prejudice the rights of the participants to develop a full record or frustrate the prompt and fair resolution of this proceeding.

WHEREFORE, UGI Utilities, Inc. – Electric Division respectfully requests that Administrative Law Judge Benjamin J. Myers issue a Protective Order substantially in the form attached in **Exhibit A** to this Petition.

Respectfully submitted,



Danielle Jouenne (ID # 306839)
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Date: December 17, 2018

Counsel for UGI Utilities, Inc. – Electric
Division

EXHIBIT A
Protective Order

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 parties may designate as “HIGHLY CONFIDENTIAL” those materials that 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. For example, but without limitation, “HIGHLY CONFIDENTIAL” information may include Proprietary Information that constitutes or describes: (a) customer names or customer prospects’ names, addresses, annual volumes of electric usage, or other customer-identifying information; (b) marketing plans; (c) competitive strategies or service alternatives; (d) market share projections; (e) competitive pricing or discounting information; (f) marketing materials that have not yet been used; and (g) contracts with vendors or suppliers. The parties shall endeavor to limit their designation of information as “HIGHLY CONFIDENTIAL.”

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. Information deemed as “CONFIDENTIAL,” shall be made available to a “Reviewing Representative” who is a person that has signed a Non-Disclosure Certificate attached as Appendix A, and who is:

- (a) An attorney who has entered an appearance in this proceeding for a party;

- (b) An attorney, paralegal, and other employee associated for purposes of this case with an attorney described in subparagraph (a);
- (c) 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
- (d) An employee or other representative of a party appearing in this proceeding with significant responsibility for this docket.

With regard to the Bureau of Investigation and Enforcement (“I&E”), information deemed as “CONFIDENTIAL” shall be made available to I&E Prosecutors subject to the terms of this Protective Order. The I&E Prosecutors shall use or disclose the CONFIDENTIAL 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, the I&E Prosecutors may afford access to CONFIDENTIAL information only to I&E’s experts, without the need for the execution of a Non-Disclosure Certificate, who are full-time employees of the Commission and are bound by all the provisions of this Protective Order by virtue of the I&E Prosecutors’ execution of a Non-Disclosure Certificate.

6. Information deemed as “HIGHLY CONFIDENTIAL,” may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate attached as Appendix A and who is:

- (a) An attorney for a statutory advocate pursuant to 52 Pa. Code §1.8 or a counsel who has entered an appearance in this proceeding for a party;
- (b) An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (a);
- (c) An outside expert or an employee of an outside expert retained by a party for the purposes of advising, preparing for or testifying in this proceeding; or
- (d) A person designated as a Reviewing Representative for purposes of “HIGHLY CONFIDENTIAL” material.

With regard to I&E, information deemed as “HIGHLY CONFIDENTIAL” shall be made available to the I&E Prosecutors subject to the terms of this Protective Order. The I&E Prosecutors shall use or disclose the “HIGHLY CONFIDENTIAL” material 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, the I&E Prosecutors may afford access to “HIGHLY CONFIDENTIAL” material only to I&E’s experts, without the need for the execution of a Non-Disclosure Certificate, who are full-time employees of the Commission and are bound by all the provisions of this Protective Order by virtue of the I&E Prosecutors’ execution of a Non-Disclosure Certificate.

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), any party may, by subsequent objection or motion, seek further protection with respect to “HIGHLY CONFIDENTIAL” 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.”

(a) A “Restricted Person” shall mean: (i) 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; (ii) 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; (iii) an officer,

director, stockholder, owner or employee of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; (iv) 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; and (v) an officer, director, stockholder, owner or employee of a competitor of a party's vendor or supplier; 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% interest in a business establishes a significant motive for violation.

(b) 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, said expert must: (i) identify for the parties 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 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 jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

8. In the event that a party wishes to designate as a Reviewing Representative a person not described in Paragraphs 5(a) through 5(d) or 6(a) through 6(c) above, or a person that is a Restricted Person under Paragraph 7, 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.

9. A qualified “Reviewing Representative” for “HIGHLY CONFIDENTIAL” material may review and discuss “HIGHLY CONFIDENTIAL” material with his or her 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” material. Such discussions must be general in nature and not disclose specific “HIGHLY CONFIDENTIAL” material; provided, however, that counsel for 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, so long as these individuals otherwise abide by the terms of the Protective Order.

10. 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. Reviewing Representatives may not use information contained in any Proprietary Information

obtained through this proceeding to give any party or any competitor of any party a commercial advantage.

11. Reviewing Representatives shall execute a Non-Disclosure Certificate:

(a) 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, nor do Commission employees assisting I&E as noted above in Paragraphs 5 and 6. A copy of each Non-Disclosure Certificate shall be provided to counsel for the parties asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

(c) The Office of Small Business Advocate's ("OSBA") consultant, Mr. Robert D. Knecht, will not be considered to be a Restricted Person, and Paragraphs 7(a) and 7(b) will not apply to Mr. Knecht, provided that Mr. Knecht does not share or discuss the Proprietary Information with any person except authorized OSBA representatives.

12. 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.

13. The parties shall designate data or documents as constituting or containing Proprietary Information by marking 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 that constitute or contain Proprietary Information. The Proprietary Information shall be served upon the parties only in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

14. The parties 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), and 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. 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.

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. 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 to this proceeding or pursuant to an order of the Commission.

17. 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.

18. The parties shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; and to refuse to produce Proprietary Information pending the adjudication of the objection.

19. 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 parties, 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 a 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 parties, the party shall certify in writing to the producing party that the Proprietary Information has been destroyed.

Dated: December , 2018

Benjamin J. Myers
Administrative Law Judge

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

Petition of UGI Utilities, Inc. – Electric :
Division for Approval of Phase III of its : Docket No. M-2018-3004144
Energy Efficiency and Conservation Plan :

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of
_____ (the retaining party). The undersigned has
read and understands the Protective Order and the required treatment of Proprietary Information.
The undersigned agrees to be bound by and comply with the terms and conditions of said
Protective Order.

SIGNATURE

NAME (Printed)

ADDRESS

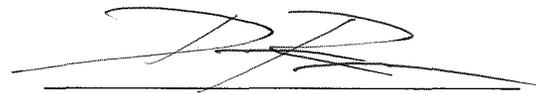
DATE: _____

EMPLOYER

AFFIDAVIT

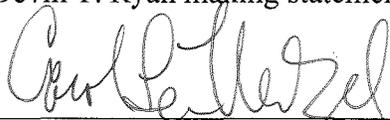
COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF DAUPHIN) ss:

DEVIN T. RYAN, being duly sworn according to law, deposes and states that he is Counsel to UGI Utilities, Inc. and that in this capacity, he is authorized to and does make this affidavit for them, and that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.



Devin T. Ryan, Esquire

Signed and sworn to before me on
December 17, 2018, by
Devin T. Ryan making statement.



Notary Public

My commission expires _____.

