

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 11-W-0200 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Long Island Water Corporation d/b/a Long Island American Water for Water Service.

RULING ON CONFIDENTIAL MATERIALS

(Issued October 7, 2011)

RAFAEL A. EPSTEIN, Administrative Law Judge:

To facilitate the exchange and use of assertedly confidential documents without a prior disposition of confidentiality claims on the merits, the parties have proposed a form of protective order and an accompanying form to be executed by parties seeking such documents.

The order and execution form (attached) are found reasonable and are adopted.

This arrangement is one result of the parties' efforts, described in a previous ruling,¹ to define generic categories of information that all parties can agree to treat as confidential pending a ruling whether specific pieces of information are entitled to such treatment. The agreed-upon categories, which supersede those mentioned in the company's letter initially transmitting its rate application, are described by the company as follows:

1. Salaries with job titles;
2. System infrastructure;
3. Dates of capital infusions;
4. Union salaries; and
5. Competitively bid contracts.²

¹ Procedural Ruling (issued July 20, 2011), p. 4.

² Letter dated August 8, 2011.

The parties have adopted this list with the understanding that other categories may be added; that all documents for which confidentiality is claimed must nevertheless be identified as such individually as described in 16 NYCRR 6-1.3(b); and that the merits of confidentiality claims ultimately will be decided not for generic categories such as those listed above but only for documents actually offered into the record, and then only after submittal of the "comprehensive brief" prescribed in 16 NYCRR 6-1.4(a)(2) and answers if any.

(SIGNED)

RAFAEL A. EPSTEIN

PROTECTIVE ORDER

Protected Information

1. Protected Information is information that is required to be protected from public disclosure under the Freedom of Information Law (Public Officers Law, §§ 84 et seq.), as implemented by Part 6 of the Rules of the Public Service Commission (16 NYCRR §6-1.1, et seq.). Under those Rules, information becomes Protected Information when it is submitted by a party (Providing Party) together with a claim of protected status that is supported by a comprehensive brief as required by 16 NYCRR §6-1.4(a)(2). The submitted information retains its protected status until, at a minimum, 15 days after the Providing Party's claim has been finally denied (16 NYCRR §6-1.4(a)(3)). The purpose of this Protective Order is to make Protected Information available promptly to the Parties in this case in order to facilitate their participation in the proceeding.

Access to Protected Information

2. A Providing Party will serve Protected Information on the Department of Public Service (DPS), the Division of Consumer Protection of the Department of State (DOS), and all other parties that: (a) have requested the information or would normally be entitled to be served with it under the Commission's Rules; and (b) have acknowledged their agreement to be bound by the terms of this Protective Order by executing a copy of the form attached hereto as Exhibit 1 (an "Exhibit 1"). Employees of DPS and DOS are subject to the provisions of §15 of the Public Service Law and/or §74 of the Public Officers Law which provide for disciplinary action, fine or prosecution for the disclosure of confidential information. Employees of DPS and DOS are not required to execute an Exhibit 1.
3. Exhibit 1 allows a party to indicate that it does not want to receive all Protected Information automatically. The purpose of this provision is to relieve parties with limited interests in the proceedings from the obligation to safeguard unwanted information. In lieu of the Protected Information itself, Providing Parties will send parties that have elected this option a notice of the availability and brief description of the nature of the information. Parties that have received such a notice may request all or some of the described information at any time during this proceeding. The Providing Party has no obligation to make it available until such a request is received.
4. An Exhibit 1 must be executed by counsel or an authorized representative of a party, and copies of the executed Exhibit 1 are to be served on all Parties and the presiding Administrative Law Judges (ALJs). When a party executes an Exhibit 1, it agrees for itself, its officers, principals, employees

and agents to be bound by this Protective Order with respect to Protected Information submitted by any Providing Party at any time during this proceeding.

5. Counsel or the authorized representative of a party who signs an Exhibit 1 will be responsible for ensuring the compliance of the party with the terms of this Protective Order.

Access to Protected Information may be granted by a party to such of its officers, principals, employees and agents as the party deems necessary to facilitate its participation in these proceedings.

6. If a party desires to grant access to Protected Information to a consultant or other expert who is not an employee or agent of the party but is retained to assist the party in its participation in these proceedings, it must: (a) provide the consultant or expert with a copy of this Protective Order, obtain an executed Exhibit 1 and serve copies on the Parties and the ALJs; and (b) obtain the consent of the Providing Party or the ALJs. If the Providing Party does not object to access being granted to the consultant or other expert within five business days following service of the Exhibit 1, consent to such access will be deemed granted. If the Providing Party does object to any or all of its Protected Information being given to the consultant or expert, the ALJs will establish procedures to resolve the objection expeditiously.

Safeguarding Protected Information

7. The protections afforded to Protected Information apply not only to the originally provided document or file in which it was contained, but also to any subsequent documents, notes, recordings, electronic files or other media in which it may be incorporated, including copies generated by automated back-up systems for computer workstation and network data storage devices.
8. All parties in possession of Protected Information will safeguard it from public disclosure. The custodians of Protected Information will take whatever measures are necessary to keep it confidential, by segregating it physically under lock, electronically under password protection or encryption, or otherwise properly securing it, and handling it in accordance with this Protective Order. No party will grant access to Protected Information to any person, or in any manner, other than as expressly permitted by this Protective Order.
9. Information is provided pursuant to this Protective Order exclusively for the purpose of facilitating Parties' effective participation in these proceedings. It is not to be used or disseminated for any purpose

unrelated to that participation. As explained in Section 14 below, all parties retain the right to challenge the status of Protected Information if they believe it should be publicly available for other purposes.

Use of Protected Information in These Proceedings

10. A party who creates a document for use in these proceedings that contains Protected Information will produce two versions, an unredacted version including the Protected Information and a redacted version from which the Protected Information has been omitted or blacked out. The versions will be identical in pagination and formatting, differing only in the presence or absence of the Protected Information. The unredacted version will be clearly marked "CONFIDENTIAL – CONTAINS PROTECTED INFORMATION" on every page. If the document is required to be served on the Parties, the unredacted version will be provided only to those parties entitled to receive Protected Information, while the redacted version will be served on all parties. Both versions are to be submitted to the ALJs. If the document is also required to be filed with the Secretary, only the redacted version is to be filed, accompanied by a cover letter stating that the unredacted version has been provided to the ALJs.
11. At any hearing or conference in these proceedings, no person may remain in attendance when Protected Information is being disclosed unless that person is entitled to access to that information under the terms of this Protective Order. In order to facilitate the management of such disclosures, counsel or the authorized representative of a party will advise the Parties and the ALJs as far in advance as possible, and no less than 24 hours, that particular testimony, questioning, discussions or presentations are expected to include Protected Information.

Unauthorized Release of Protected Information

12. If a party believes that it may have disclosed Protected Information to a person not entitled to receive it under the terms of this Protective Order, it will notify the Providing Party immediately and will give detailed information concerning all steps taken or being taken to reverse or minimize the impacts of the improper release. If the Providing Party agrees to share its Protected Information with persons not previously entitled to receive it, it will inform the ALJs promptly.
13. Persons who use or disclose Protected Information contrary to the terms of this Order will be subject to such sanctions as may be imposed by the ALJs or the Commission, which may include limitation or termination of the responsible party's participation in this proceeding. Such persons and the

parties they represent may also be liable criminally or civilly under relevant federal and State statutes and regulations.

Rights Not Waived by Acceptance of this Protective Order

14. In accepting Protected Information pursuant to this Protective Order, parties do not waive their rights to question, challenge and object to the admissibility of any and all such information, nor do they waive their rights under the Commission's Rules and applicable law to contest the protected status of such information and to appeal any finding that specific information is or is not entitled to such status.

Return or Destruction of Protected Information

15. The obligation of a party in possession of Protected Information to safeguard it from public disclosure does not end with these proceedings. It continues as specified in Rule 6- 1.4(a)(3).
16. Within one year following completion of this proceeding, including the periods for administrative or judicial review thereof, a person in possession of Protected Information will return it to the Providing Party or certify to the Providing Party that it has been destroyed. DPS Staff or DOS may retain Protected Information for a longer period of time. Other parties may retain Protected Information beyond the one-year period only if given express permission to do so by the Providing Party.

EXHIBIT 1

TO THE PROTECTIVE ORDER ADOPTED IN CASE 11-W-0200 BEFORE THE
NEW YORK STATE PUBLIC SERVICE COMMISSION

On behalf of: Party: _____

I acknowledge receipt of a copy of the Protective Order described above, and affirm that I have read and understand its terms and provisions. In return for the opportunity to receive without delay information submitted in this proceeding that the Providing Party claims to be Protected Information as defined in the Protective Order, I certify that the party for whom I am signing this Exhibit 1 will be bound by, and will comply fully with, the terms and conditions of the Protective Order. I assume responsibility for ensuring such compliance. I further certify that I am an attorney representing the party named above, or an authorized representative of such party, and that I have full authority to execute this document.

The party named above elects (check one):

- To receive all Protected Information as soon as it is made available pursuant to the Protective Order.
- To receive notice of the availability of Protected Information.

BY: _____
(SIGNATURE)

NAME: _____

TITLE: _____

JOB RESPONSIBILITY: _____

DATE: _____