



June 15, 2018

VIA E-FILING

Jonathan P. Nase

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor – Filing Room
Harrisburg, PA 17120

Re: PENNSYLVANIA PUBLIC UTILITY COMMISSION V. HIDDEN VALLEY UTILITY SERVICES, L.P. (WASTEWATER); DOCKET NO. R-2018-3001307

MOTION OF HIDDEN VALLEY UTILITY SERVICES, L.P. (WASTEWATER) FOR PROTECTIVE ORDER

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the Motion of Hidden Valley Utility Services, L.P. (Wastewater) for Protective Order. A copy of this document has been served in accordance with the attached Certificate of Service.

Please contact me if you have any questions regarding this filing. Thank you.

Sincerely,

COZEN O'CONNOR

By: Jonathan P. Nase
Counsel for *Hidden Valley Utility Services, L.P.*
(Wastewater)

JPN:kmg
Enclosures

cc: Deputy Chief Administrative Law Judge Mark A. Hoyer
Per Certificate of Service
James Kettler

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

Hidden Valley Utility Services, L.P. (Wastewater)

:
:
Docket No. R-2018-3001307
:
:
:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Motion of Hidden Valley Utility Services, L.P. (Wastewater) for Protective Order, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).


VIA E-MAIL AND FIRST CLASS MAIL:

Allison Kaster, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265
E-mail: akaster@pa.gov
Counsel for the *Bureau of Investigation and Enforcement*

Office of Small Business Advocate
Commerce Building, Suite 202
300 North Second Street
Harrisburg, PA 17101-1303

Christine Maloni Hoover
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
E-mail: CHoover@paoca.org

DATED: June 15, 2018



Jonathan P. Nase, Esquire
Counsel for *Hidden Valley Utility Services, L.P.*
(Wastewater)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	Docket Nos. R-2018-3001307
v.	:	
	:	
Hidden Valley Utility Services, L.P.	:	
(Wastewater)	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103(c), you are hereby notified that, if you wish to contest the motion, an answer or other responsive pleading to the enclosed Motion for Protective Order must be filed within **twenty (20) days** from service of the above-referenced motion. Any such reply must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served on counsel for Hidden Valley Utility Services, L.P. (Wastewater) and, where applicable, the Administrative Law Judge presiding over the case.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Jonathan P. Nase, Esquire (PA ID #44003)
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101

Dated: June 15, 2018



Jonathan P. Nase, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
 : Docket Nos. R-2018-3001307
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 (Wastewater) :

**MOTION OF HIDDEN VALLEY UTILITY SERVICES, L.P.
FOR PROTECTIVE ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MARK A. HOYER:

Hidden Valley Utility Service, L.P. (“HVUS” or the “Company”), by and through its attorneys, Cozen O’Connor, hereby requests that the attached Protective Order be entered in the above-captioned proceedings pursuant to the provisions of 52 Pa. Code § 5.365(a). In support thereof, HVUS represents as follows:

1. On April 28, 2018, HVUS filed proposed Supplement No. 1 to Tariff Wastewater – Pa. P.U.C. No. 1 (“Wastewater Tariff”) to become effective July 1, 2018, proposing an increase in wastewater rates designed to produce an increase in base rate revenues of approximately \$185,432 per year. In addition, HVUS filed supporting materials in compliance with the minimum filing requirements established at 52 Pa. Code § 53.52.

2. On May 14, 2018, the Office of Consumer Advocate filed a Formal Complaint and Notice of Appearance. On May 30, 2018, counsel for the Pennsylvania Public Utility Commission’s (“Commission’s”) Bureau of Investigation and Enforcement (“I&E”) entered her appearance.

3. By Order entered May 17, 2018, the Commission suspended the Wastewater Tariff by operation of law until January 29, 2019, unless permitted by Commission Order to become effective at an earlier date.

4. The Parties have agreed to engage in mediation in order to seek a resolution of this matter. Consequently, on May 23, 2018, HVUS filed Supplement No. 2 to Tariff Wastewater – Pa. P.U.C. No. 1, to be effective April 1, 2019.

5. The proceeding has been assigned to Deputy Chief Administrative Law Judge Mark A. Hoyer for hearings and the issuance of a Recommended Decision, in the event that mediation is unsuccessful.

6. A prehearing conference is scheduled to be held on June 19, 2018. An initial mediation session is also scheduled to be held on June 19, 2018.

7. The parties to this proceeding have engaged in substantial formal and informal discovery. The parties will continue to engage in discovery during mediation and, if necessary, litigation.

8. Proprietary Information within the definition of 52 Pa. Code § 5.365 may be presented or requested during the course of this proceeding, which justifies the issuance of a Protective Order. For example, parties may seek information that is customarily treated as sensitive, proprietary, or highly confidential. Therefore, 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.

9. 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 such information to the party and the party's competitors. 52 Pa. Code §§ 5.365(a)(1) – (3).

10. Paragraph 3 of the attached proposed Protective Order defines "Proprietary Information" 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." Clearly, protecting this type of information from disclosure is appropriate.

11. Paragraph 13 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 "Proprietary Information."

12. Limitation of the disclosure of "Proprietary Information" 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.

13. The attached proposed Protective Order will protect the confidential information while allowing the parties to use such information for purposes of the instant litigation.

14. HVUS has provided advance copies of this Motion and the proposed Protective Order to all active Parties participating in this proceeding, specifically the Office of Consumer

Advocate and the Commission's Bureau of Investigation & Enforcement. These active Parties have indicated that they do not oppose the instant Motion.

WHEREFORE, for all the foregoing reasons, Hidden Valley Utility Services, L.P. (Wastewater) respectfully requests that Deputy Chief Administrative Law Judge Mark A. Hoyer grant this Motion and issue the attached Protective Order.

Respectfully submitted,

Dated: June 15, 2018



Jonathan P. Nase, Esquire (PA ID No. 44003)

Cozen O'Connor
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Phone: 717-703-5892
Fax: 215-989-4216
E-mail: jnase@cozen.com

Counsel for *Hidden Valley Utility Services L.P.*
(*Wastewater*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	Docket Nos. R-2018-3001307
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	:	
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(Wastewater)	:	

PROTECTIVE ORDER

Upon consideration of the Motion for Protective Order that was filed by Hidden Valley Utility Services, L.P. (Wastewater) (“HVUS”) on June 19, 2018, and the record as a whole;

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which have been or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated therewith. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. The materials or information subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies, and other materials furnished in this proceeding, which are believed by a party to be of a proprietary or confidential nature and which are so designated by being stamped or otherwise marked “CONFIDENTIAL.” Such materials will be 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 appropriately designated as such for the record.

3. 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, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury.

4. Proprietary Information produced in this proceeding 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 or argument in this proceeding. To the extent required for participation in this proceeding, counsel for a party may afford access to Proprietary Information only to a party’s expert(s), subject to the conditions set forth in this Protective Order. However, said expert(s) may not be a “Restricted Person.”

5. Proprietary Information shall not be made available to a “Restricted Person.”

(a) For the purpose of this Protective Order, “Restricted Person” shall mean: (a) an officer, director, stockholder, partner, owner, or employee of any competitor of HVUS, (b) an officer, director, stockholder, partner, owner or employee of any affiliate of a competitor of HVUS (including any association of competitors of HVUS); (c) an officer, director, stockholder, owner, or employee of a competitor of a customer of HVUS if the Proprietary Information concerns a specific, identifiable customer of HVUS; and (d) an officer, director, stockholder, owner, or employee of an affiliate of a competitor of a customer of HVUS if the Proprietary Information concerns a specific, identifiable customer of HVUS; 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 (excluding mutual funds) or constituting more than a 1% interest in a business establishes a significant motive for violation.

(b) If an expert for the 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: (1) identify each Restricted Person and each expert or consultant; (2) 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 (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 jeopardize the interests of HVUS or its customers. HVUS shall have the right to challenge the adequacy of the written assurances that HVUS or its customers' interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

6. Prior to making Proprietary Information available to any person as provided in Paragraph 4 of this Protective Order, 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." A party's expert(s) shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless and until an executed Non-Disclosure Certificate has been provided to the producing party. Attorneys and outside experts are responsible for ensuring that persons under their supervision or control comply with this Protective Order. The producing party shall be notified promptly of the identity of all persons

provided access to Proprietary Information pursuant to this paragraph and shall be provided with a copy of each acknowledgment signed by each expert.

7. Counsel for the Office of Consumer Advocate (“OCA”) and the Bureau of Investigation and Enforcement (“I&E”), may share Proprietary Information with the Consumer Advocate and I&E Director, respectively, without obtaining a Non-Disclosure certificate for these individuals, provided however, that these individuals otherwise abide by the terms of this Protective Order. Likewise, counsel and experts for OCA and I&E may discuss Proprietary Information with each other if the experts have executed the Non-Disclosure acknowledgment set forth in “Appendix A.”

8. A producing party shall designate data or documents as constituting or containing Proprietary Information by stamping or otherwise marking the documents “CONFIDENTIAL.” Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the producing 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. The Proprietary Information shall be served upon the nonproducing party hereto only in an envelope or other sealed package separate from the nonproprietary materials, and the envelope shall be conspicuously marked “CONFIDENTIAL.”

9. 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 Proprietary Information shall be permitted only in accordance with this Protective Order.

10. The parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Law as set forth at 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 nonproducing party shall promptly notify the producing party in order to provide the producing party an opportunity to oppose or limit such disclosure.

11. Any public reference to Proprietary 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 Information to fully understand 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.

12. 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 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 order of the Administrative Law Judge, the Commission or appellate court.

13. 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 Information; to question or challenge the admissibility of Proprietary Information; to refuse or object to the production of Proprietary Information on any proper ground, including but not limited to

relevance, materiality, or undue burden; to seek an order permitting disclosure of Proprietary Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary Information, the party claiming that the information is Proprietary Information retains the burden of demonstrating that the designation is necessary and appropriate.

14. Unresolved challenges arising under Paragraph 13 shall be decided on petition by the presiding officer 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.

15. Within thirty (30) days from completion of this proceeding, including any administrative or judicial review, upon request of the producing party, all copies of all documents and other materials, including notes, which contain any Proprietary Information shall be either immediately returned to the party furnishing such Proprietary Information or destroyed. Further, all electronic communications containing information marked as "CONFIDENTIAL" shall immediately be deleted by all recipients. Parties shall provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information have been returned or destroyed and that all electronic communications containing Proprietary Information have been deleted.

Dated: _____

Deputy Chief Administrative Law Judge
Mark A. Hoyer

APPENDIX A

Pennsylvania Public Utility Commission	:	
	:	Docket Nos. R-2018-3001307
v.	:	
	:	
Hidden Valley Utility Services, L.P.	:	
(Wastewater)	:	

TO WHOM IT MAY CONCERN:

The undersigned is an independent expert of _____, a party to this proceeding (“Party”), and is not, or has no knowledge or basis for believing that he/she is a “ Restricted Person” as that term is defined in the Protective Order with regard to the above-referenced proceeding. The undersigned has read and understands the Protective Order in the above-referenced proceeding, which Protective Order 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.

Signature

Print Name

Address

Employer