**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, *et al.* : R-2018-3001306

 : R-2018-3001307, *et al.*

 v. :

 :

Hidden Valley Utility Services, L.P. :

**PROTECTIVE ORDER**

Upon consideration of the Motion for Protective Order that was filed by Hidden Valley Utility Services, L.P. (“HVUS”) on June 20, 2018, and the record as a whole;

IT IS HEREBY ORDERED:

1. That 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. That 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. 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, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury.
4. That 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. That Proprietary Information shall not be made available to a “Restricted Person.”
6. 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.
7. 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.
8. That 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. That 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. That 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. That 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. That 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. That 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. That 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. That 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. That unresolved challenges arising under Paragraph 13 shall be decided on petition by the presiding offer 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. That 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.

Date: July 23, 2018 /s/

Mark A. Hoyer

Deputy Chief Administrative Law Judge

**R-2018-3001306 - PA PUBLIC UTILITY COMMISSION ET AL V.**

**HIDDEN VALLEY UTILITY SERVICES, L.P. – WATER**

**R-2018-3001307 - PA PUBLIC UTILITY COMMISSION ET AL V.**

**HIDDEN VALLEY UTILITY SERVICES, L.P. – WASTEWATER**

*(Revised 7/23/18)*

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*Foundation, Inc.*

***C-2018-3003528***

***C-2018-3003529***

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***C-2018-3002481***

DAVID BRODLAND

163 BROWNS RUN

HIDDEN VALLEY PA 15502

***C-2018-3002485***

***C-2018-3002487***

DAVID BRODLAND

2014 BLAINMONT DRIVE

PITTSBURGH PA 15241-2203

***C-2018-3002485***

***C-2018-3002487***

ROBERT AND KATHERINE BAIR

5119 SUMMIT DRIVE

HIDDEN VALLEY PA 15502

***C-2018-3002587***

JEROME AND BARBARA CYPHER

5304 SUMMIT DRIVE

HIDDEN VALLEY PA 15502

***C-2018-3002671***

***C-2018-3002683***

JEROME AND BARBARA CYPHER

17 WILMONT AVENUE

WASHINTON PA 15301-3536

***C-2018-3002671***

***C-2018-3002683***

JON AND NINA LEWIS

25 WAVERLY DRIVE

GREENSBURG PA 15601

***C-2018-3002698***

***C-2018-3002701***

CELESTE EMRICK

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HIDDEN VALLEY PA 15502

***C-2018-3003020***

ROBERT KOLLAR

1374 LANGPORT DRIVE

PITTSBURGH PA 15241

***C-2018-3003370***

***C-2018-3003372***

ROBERT KOLLAR

1755 GREENFIELD DRIVE

(1755 FAIRWAYS)

HIDDEN VALLEY PA 15502

***C-2018-3003370***

***C-2018-3003372***

**APPENDIX A**

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| --- | --- | --- |
| Pennsylvania Public Utility Commission, *et al.* v.Hidden Valley Utility Services, L.P.  | :::::: | R-2018-3001306R-2018-3001307, *et al.* |

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