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July 29, 2019

RE: Hidden Valley Foundation, Inc.  
-Pa. Public Utility Commission  
v. Hidden Valley Utility Services, L.P.  
(Docket Nos. R-2018-3001306 and  
R-2018-3001307)  
Our File 5996

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Dear Secretary Chiavetta:

Enclosed for filing is Hidden Valley Foundation, Inc.'s Answer in Opposition to Motion to Extend the Time Period for Completing an Independent Financial Audit in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Sincerely yours,

VUONO & GRAY, LLC

  
William H. Stewart III

Enclosures

cc: Hidden Valley Foundation, Inc.  
Honorable Mark A. Hoyer  
Honorable Katrina L. Dunderdale  
Per Certificate of Service

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :  
v. : Docket Nos. R-2018-3001306  
Hidden Valley Utility Services, L.P. : R-2018-3001307  
Water and Wastewater :

I hereby certify that I have this day served a true copy of the following document, Hidden Valley Foundation, Inc.'s Answer in Opposition to Motion to Extend the Time Period for Completing an Independent Financial Audit, upon parties of record in this proceeding in accordance with the requirements of 52. Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 29<sup>th</sup> day of July 2019.

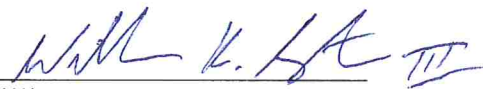
SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION	:	
	:	DOCKET NO. R-2018-3001306
v.	:	
	:	
HIDDEN VALLEY UTILITY	:	
SERVICES, L.P. – WATER	:	
	:	
PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION	:	
	:	DOCKET NO. R-2018-3001307
v.	:	
	:	
HIDDEN VALLEY UTILITY	:	
SERVICES, L.P. – WASTEWATER	:	

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**ANSWER IN OPPOSITION TO MOTION TO EXTEND THE TIME PERIOD FOR  
COMPLETING AN INDEPENDENT FINANCIAL AUDIT**

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PA I.D. 209490

Pursuant to 52 Pa. Code § 5.103 and 52 Pa. Code § 5.61, Hidden Valley Foundation, Inc. (the “Foundation”) files this Answer in Opposition to the Motion to Extend the Time Period for Completing an Independent Financial Audit filed by Hidden Valley Utility Services, L.P. (“HVUS”) in the above-captioned proceeding.

**I. BACKGROUND.**

1. The Pennsylvania Public Utility Commission (“Commission”) entered an Opinion and Order in this proceeding on March 29, 2019 (the “March 2019 Order”) that included Ordering Paragraph 11 with respect to the obligation of HVUS to complete an independent financial audit within 120 days of the Order.

2. Ordering Paragraph 11 of the March 2019 Order states as follows:

11. That, within one hundred twenty (120) days after the date of entry of this Opinion and Order, Hidden Valley Utility Services, L.P. shall cause to be conducted an independent financial audit of its records from 2015 through 2018 by an outside independent financial accounting firm or office which has not previously provided auditing services to Hidden Valley Utility Services, L.P. Upon completion of the independent financial audit, Hidden Valley Utility Services, L.P. shall file a notice at this docket number and serve a copy of said notice on all Parties to this proceeding stating that the independent financial audit has been completed. Hidden Valley Utility Services, L.P. shall file the independent financial audit with the Commission’s Secretary’s Bureau and the Commission’s Bureau of Technical Utility Services.

3. In imposing the 120-day deadline for filing the financial audit, the Commission adopted the Recommended Decision of the Administrative Law Judges in this proceeding. March 2019 Order p. 89.

4. HVUS has previously filed an exception to the recommendation of the ALJs concerning the 120-day deadline for filing the financial audit, requesting instead a 12-month deadline for filing the financial audit. March 2019 Order P. 83.

5. HVUS' exception with respect to the deadline was denied. March 2019 Order p. 88.

6. The Commission stated as follows with respect to its denial of HVUS' exception and adopting of the ALJ's recommended 120-day deadline:

As the ALJs and all Parties to this proceeding agreed, given the Company's ongoing issues with filing inaccurate financial information, it would be in the public interest for HVUS to file corrected annual reports and to obtain an independent financial audit. However, **we are not persuaded by the assertion of HVUS that the deadline set forth by the ALJs for the Company to complete the independent financial audit is unreasonable.** Although the Company contends that many accounting firms are presently busy preparing tax returns, the entry date of this Opinion and Order will be in late March 2019. Therefore, HVUS will have 120 days from the entry of this Opinion and Order, or until late July 2019, to cause the audit to be conducted and completed. The end point of this time period will be several months after the end of the tax season in mid-April.

March 2019 Order p. 88 (Emphasis added.)

7. HVUS has filed a Motion to Extend the Time Period for Completing an Independent Financial Audit twenty (20) days before the deadline for filing the audit, requesting an additional sixty (60) days to complete the audit, arguing that its "good cause" for requiring an extension is the fact that the auditing firm that HVUS selected, Cooley & Associates, P.C. ("Cooley"), has "pre-existing work commitments" preventing the firm from filing the audit on time by July 29, 2019.

8. HVUS has presented no information concerning the purported "pre-existing work commitments" of Cooley other than HVUS' self-serving statement that such commitments exist.

## II. LEGAL STANDARD.

9. 52 Pa. Code § 1.15(a)(1) states as follows with respect to extensions of time:

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by statute, whenever under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, **for good cause** be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

(Emphasis added.)

10. The Foundation agrees that HVUS' request for an extension of the deadline established in Ordering Paragraph 11 of the March 2019 Order is governed by 52 Pa. Code § 1.15(a)(1).

11. "The PUC may grant an extension "for good cause" upon motion made before the expiration of the period originally prescribed. 52 Pa. Code § 1.15(a)(1)." *Costanza v. Pennsylvania Pub. Util. Comm'n*, No. 585 C.D. 2008, 2008 WL 9405262, at \*1 (Pa. Commw. Ct. Nov. 12, 2008).

12. A petition to amend a final Commission Order may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980).

### **III. HVUS HAS NOT ESTABLISHED GOOD CAUSE FOR THE REQUESTED EXTENSION.**

13. HVUS claims that it has been diligently working with its auditing firm, Cooley, and that the reason that the audit will not be completed by the July 29 deadline is because of "pre-existing work commitments of the auditors." This is simply a ridiculous

excuse on its face, even for a company that specializes in novel reasons for missing deadlines, and HVUS has offered no evidence in support of this statement.

14. If Cooley knew that it could not file the audit by the July 29 deadline because of “pre-existing work commitments,” it must have known this before July 9, the date that HVUS filed its motion.

15. If there was any doubt that Cooley could complete the audit on time, HVUS could have and should have chosen a different firm to complete the audit. Moreover, if the real reason that Cooley cannot complete the audit on time is because the condition of the accounting records of HVUS is so bad that neither Cooley nor any auditor could not complete the audit by the Commission-imposed deadline, HVUS has no good cause for the requested extension and its motion must be denied.

16. To that end, the Foundation demands to see a copy of Cooley’s engagement letter sent to HVUS when it was retained to complete the audit. Further, the Foundation demands that HVUS obtain and submit to the Commission a letter from Cooley stating that it could not complete the audit by July 29 because of its “pre-existing work commitments,” including information about the dates upon which Cooley was retained to complete such pre-existing work commitments.

17. Given HVUS’ track record, the Commission simply cannot give the company any benefit of the doubt at this point. If HVUS is allowed to wantonly ignore another deadline, and suffer no adverse consequences for such conduct, all because the company was unable to hire an independent auditor able to complete the audit by the Commission’s deadline, then HVUS has no good cause for its requested extension and no reason to ever change its dilatory behavior. Furthermore, if HVUS has missed this deadline because it

misrepresented to the auditor the state of its records, the company has once again proven that it remains incompetent and unable to serve its customers.

18. HVUS represents that Cooley is a “satisfactory independent accounting firm.” Why should the Commission or the Foundation believe that the firm is satisfactory if it cannot meet the required deadline for the independent financial audit? There is simply no reason to believe that it is anything other than the continued chronic mismanagement of HVUS that has caused the company to miss yet another deadline.

19. HVUS can say it has made a “good faith effort” to meet the deadline as much as it wants but HVUS ran out of good faith years ago. Missing another deadline simply is not good enough. The Commission must not let HVUS yet again get away with flouting one of its Orders by moving the goalposts for compliance.

20. The Commission has previously made it clear to HVUS that any more delays would have consequences. In the March 2019 Order in this proceeding, the Commission stated that “any further delays in complying with the deadlines of [the *McCloskey*] proceeding would be viewed as **possibly** indicative of the Company’s lack of competency to operate and of its inability to provide reasonable and adequate service.” March 2019 Order p. 24. (Emphasis added.) Missing this deadline is no different in terms of the implications concerning the inability of HVUS to competently operate and provide reasonable and adequate service.

21. Just as the continued missing of deadlines in the *McCloskey* proceeding was evidence of HVUS’ continued incompetency to operate and inability to provide reasonable and adequate service to its customers, the continued request for extensions of deadlines in



this proceeding is indicative that nothing has changed. HVUS is not *possibly* incompetent to operate; it is *absolutely and categorically* incompetent to operate.

22. In *McCloskey*, the Commission correctly denied HVUS' Second Petition that asked for more time to meet engineering deadlines "because the requested modifications would result in further delays without any assurances that subsequent compliance deadlines could be met or that proposed improvements could be adequately funded." March 2019 Order p. 26. The Commission should take a similar stand in this proceeding and send a message to HVUS that deadlines mean something and that it does not take violation of its Orders lightly.

23. The Motion must be denied and HVUS must suffer the consequences of failing to comply with the Commission's Order.

The Foundation's answers to the specific paragraphs of HVUS' Motion are set forth below:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. The averments in paragraph 6 are conclusions of law to which no response is required. By way of further response, it is admitted that the March 2019 Order required the audit to be completed by July 29, 2019.

7. The Foundation is without sufficient knowledge or information to admit or deny the averments of paragraph 7 and subparagraphs 7a. through 7c. and strict proof is demanded thereof at the time of any hearing on HVUS' motion.

8. The Foundation is without sufficient knowledge or information to admit or deny the averments of paragraph 8 and strict proof is demanded thereof at the time of any hearing on HVUS' motion. By way of further response, the Foundation reiterates its demand to see a copy of Cooley's engagement letter sent to HVUS when it was retained to complete the audit.

9. The Foundation is without sufficient knowledge or information to admit or deny the averments of paragraph 8 and strict proof is demanded thereof at the time of any hearing on HVUS' motion. By way of further response, the Foundation reiterates its demand that HVUS obtain and submit to the Commission a letter from Cooley stating that it could not complete the audit by July 29 because of its "pre-existing work commitments," including information about the dates upon which Cooley was retained to complete such pre-existing work commitments.

10. The Foundation is without sufficient knowledge or information to admit or deny the averments of paragraph 8 and strict proof is demanded thereof at the time of any hearing on HVUS' motion.

11. The averments in paragraph 11 are conclusions of law to which no response is required.

12. The averments in paragraph 12 are conclusions of law to which no response is required.

13. The averments in paragraph 13 are conclusions of law to which no response is required.

14. The averments in paragraph 14 are conclusions of law to which no response is required.

15. The averments in paragraph 15 are conclusions of law to which no response is required.

16. The averments in paragraph 16 are conclusions of law to which no response is required.

17. The averments in paragraph 17 are conclusions of law to which no response is required.

18. The Foundation is without sufficient knowledge or information to admit or deny the averments of paragraph 18 and strict proof is demanded thereof at the time of any hearing on HVUS' motion.

19. The Foundation is without sufficient knowledge or information to admit or deny the averments of paragraph 8 and strict proof is demanded thereof at the time of any hearing on HVUS' motion. By way of further response, the Foundation reiterates its demand that HVUS obtain and submit to the Commission a letter from Cooley stating that it could not complete the audit by July 29 because of its "pre-existing work commitments," including information about the dates upon which Cooley was retained to complete such pre-existing work commitments.

20. The Foundation is without sufficient knowledge or information to admit or deny the averments of paragraph 20 and strict proof is demanded thereof at the time of any hearing on HVUS' motion.

21. The Foundation is without sufficient knowledge or information to admit or deny the averments of paragraph 21 and strict proof is demanded thereof at the time of any hearing on HVUS' motion.

22. Admitted.

23. The Foundation is without sufficient knowledge or information to admit or deny the averments of paragraph 23 and strict proof is demanded thereof at the time of any hearing on HVUS' motion.

24. Denied. It is specifically denied that the requested for a 60-day extension is "brief" when the entire time period for compliance was twice such amount of time. The 12-month time period that HVUS requested and was denied is irrelevant.

25. Denied. It is specifically denied that HVUS has not intentionally disregarded the Commission's Order. Had HVUS intended to comply with the Order, it would have done so. Had HVUS intended to comply with the Order, it would not have waited until 20 days before the audit was due to request an extension. HVUS knew that it would not comply with the Order and admits that its only reason for requesting that the Commission modify the Order is "so that Hidden Valley will not violate it by filing the audit after the deadline." HVUS motion at paragraph 25.

26. Denied. It is specifically denied that extending the deadline for compliance will not adversely impact that quality of water or wastewater service received by the customers of HUVS. To the contrary, every missed deadline and each successive day that HVUS' continuing failure to provide adequate water and wastewater service is allowed to persist, adversely impacts that quality of service that its customers receive. While the Foundation does not doubt that the quality of HVUS' water and wastewater service will

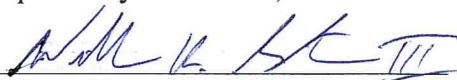
remain woefully inadequate 60 days from today, extending the deadline only sends the message to HVUS that it can continue to get away with providing such horrible service. That is unacceptable to the Foundation and the customers of HVUS.

27. The averments in paragraph 27 are conclusions of law to which no response is required. By way of further response, it is denied that enforcing compliance with deadlines constitutes “punishment” for non-compliance. Rather, the only way to encourage HVUS to comply with the law is to enforce compliance; the failure to enforce compliance only encourages non-compliance, as the history of this matter illustrates.

#### **IV. CONCLUSION.**

WHEREFORE, the Foundation respectfully requests that the Motion to Extend the Time Period for Completing an Independent Audit be denied for the reasons set forth above, and that Ordering Paragraph 11 of the March 2019 Order not be amended and remain as written by the Commission.

Respectfully submitted,



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Inc.*