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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PLEASE DOCKET

Application of Hidden Valley Utility Services, L.P., :  
for approval to begin to offer, render, furnish or :  
supply water and wastewater service to the public :  
in Hidden Valley, Pennsylvania. :

A-210117 & A-230101

PREHEARING ORDER

DOCUMENT

On February 12, 2004, Hidden Valley Utility Services, L.P. ("HVUS") filed two applications with this Commission seeking the authority stated in the caption. On March 4, 2004, Angela M. and H. David Boyter petitioned to intervene, alleging they reside in the proposed service territory and they have been aggrieved by the excessive rates and substandard services offered by the current provider, Hidden Valley Resort, L.P. ("HVR"). On June 14, 2004, their petition to intervene in this proceeding was granted without objection.

On March 4, 2004, Edwin C. Miller, *et al.*, filed a protest/complaint, reiterating the information that the Boyters provided. Miller concluded that since HVR was operating as a *de facto* public utility without obtaining a certificate of public convenience, Miller requested that HVR refund the monies collected for its services. On June 22, 2004, HVUS answered the protest/complaint with new matter, and moved to dismiss it. After Miller answered the motion, I filed an Initial Decision on July 14, 2004 dismissing the protest/complaint.

The Commission's Office of Trial Staff ("OTS") filed a protest to the applications on March 18, 2004. The Office of Consumer Advocate ("OCA") followed with its intervention in this proceeding on March 19, 2004.

A telephonic prehearing conference was held on August 5, 2004. The Boyters, *pro se*, together with counsel for these parties attended the conference. This Order memorializes the matters decided and agreed upon by the parties during that conference.

## Litigation Schedule

The parties agree upon the following litigation schedule:

<u>Date</u>	<u>Event</u>
September 15, 2004	Submission of Company's Written Direct Testimony Due <u>In-Hand</u>
October 27, 2004	Written Direct Testimony of All Other Parties Due <u>In-Hand</u>
December 17, 2004	Written Rebuttal Testimony of Company Due <u>In-Hand</u>
January 5, 2005	Written Outline of Parties' Surrebuttal Testimony Due <u>In-Hand</u>
January 12-13, 2005	Evidentiary Hearings in Pittsburgh
January 19, 2005	Close of Record

The parties are reminded of the Commission's requirements for the preparation and filing of written testimony. 52 Pa. Code §5.412. Written testimony must be accompanied by all exhibits to which it relates. The above-stated dates are in-hand dates for service on the parties and the Presiding Administrative Law Judge ("ALJ"). The parties and the Presiding ALJ agree to accept email transmission of such material, so long as the subject email is received by 5:00 p.m. on the date due and provided the email is followed the next business day with receipt of a hard copy of the same material. The email address of the Presiding ALJ is: [johncorbett@state.pa.us](mailto:johncorbett@state.pa.us). The Presiding ALJ will not accept facsimile transmissions greater than ten pages in length without prior authorization. If in doubt, please call the office of the Presiding ALJ (412-565-3550).

Hearings scheduled for Pittsburgh will begin promptly at 9:30 a.m. each day. The parties must confer before commencement of the hearings to schedule their witnesses so as to avoid "holes" or "dead time" during the hearings.

### Parties

As of the date of this Order, the entities named above are the only parties involved in this case. A Service List of these parties is appended to this Order. The OCA has indicated that it may move to join HVR as an indispensable party to this proceeding.

### **Public Input Hearing**

At the urging of HVUS and the OCA, a public input hearing will be scheduled in the proposed service territory of the Applicant, as soon as the Scheduling Unit for the Office of Administrative Law Judge can make the arrangements with the cooperation of the parties. The parties are reminded that a minimum of six weeks will be needed to schedule a public input hearing.

### **Issues**

In their respective prehearing memoranda, the parties identified various issues they may wish to pursue. The reader is directed to these documents to review a recitation of these issues. Additional issues may arise as the discovery process unfolds.

### **Discovery**

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa. Code §5.322. If this process fails, the parties have recourse to the Commission's procedures for formal discovery. 52 Pa. Code §§5.321, *et seq.* The parties must not send me discovery material or cover letters, unless attached to a motion to compel. All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel fails to contain such certification, I shall contact the parties and direct them to pursue informal discovery.

### **Settlement and Stipulations**

The parties are reminded it is the Commission's policy to encourage settlements. 52 Pa. Code §5.231(a). The parties are strongly urged to seriously explore this possibility. With this policy in mind, the parties have consented to and requested the intervention of the Mediation Unit of the Office of Administrative Law Judge. A separate order will refer this matter to the

Mediation Unit. But, that referral will not interfere with the litigation schedule herein set forth, unless and until all parties request in writing a suspension of that schedule pending resolution of the mediation process.

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa. Code §§5.232 and 5.234. All stipulations that the parties enter into must be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

### **Conduct of Hearings**

Friendly cross-examination or cumulative cross-examination will not be permitted during the hearings. 52 Pa. Code §§5.76 & 5.243.

These hearings constitute formal legal proceedings and will be conducted in accordance with the Commission's Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings in the Commonwealth of Pennsylvania.

### **Attendance of Witnesses**

If you intend to subpoena witnesses for the hearings, you should review the procedures established in 52 Pa. Code §5.421. You must submit your written application to me sufficiently in advance of the hearings so the other parties will have the required ten (10) days' notice to answer or object and so you will have enough time, should your application be granted, to receive the subpoena and serve it. Also, please review the informal discovery process discussed above, as well as the possible use of stipulations, in lieu of the subpoena process.

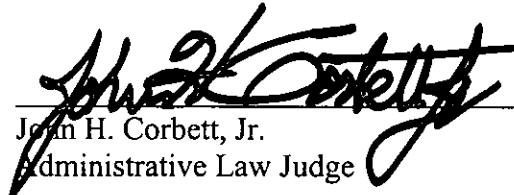
**Briefs**

The parties must comply with 52 Pa. Code §§5.501, *et seq.*, regarding the preparation and filing of briefs. Page limitations on briefs will be discussed on or before the last day of hearing. Where possible, the parties shall submit to me one hard copy of their briefs and one copy by email or on 3½" computer diskette. If a party cannot provide a copy by email or on computer disk, it must submit two hard copies of briefs. The electronic version of a brief must be prepared on an IBM compatible system in Microsoft Word 2002 format or in an earlier version of this software application. If in doubt, please call my office for clarification.

**Modification**

Any provision of this Prehearing Order may be modified upon motion and good cause shown by any party in interest. *See*, 52 Pa. Code §5.223(a).

Date: August 5, 2004

  
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John H. Corbett, Jr.  
Administrative Law Judge

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