



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE  
REFER TO OUR FILE

PUC RTK 2019-0069

December 6, 2019

Jonathan Nase, Esquire  
Cozen O'Connor  
17 North Second Street Suite 1410  
Harrisburg, PA 17101

Final response sent via Email only:  
[jnase@cozen.com](mailto:jnase@cozen.com)

Dear Attorney Nase:

By this letter, the Pennsylvania Public Utility Commission (Commission) responds to your Right to Know request filed pursuant to the provisions of Pennsylvania's Right to Know Law (RTKL), 65 P.S. § 67.101, *et seq.*, *as amended*. In your request received via email on Wednesday, October 30, 2019, you requested:

- “1. Any e-mails or other documents to or from a Commissioner, or any member of a Commissioner's staff, mentioning Hidden Valley Utility Services, L.P. during the period 2013-present.
2. Any e-mails or other documents between any employee of the Bureau of Investigation and Enforcement and an employee of any other Commission bureau, department or office, mentioning Hidden Valley Utility Services, L.P., during the period 2013-present.
3. Any e-mails or other documents to or from any employee in the Bureau of Technical Utility Services mentioning Hidden Valley Utility Services, L.P., during the period 2013-present.
4. Any e-mails or other documents to or from any Commission employee and the Department of Environmental Protection mentioning Hidden Valley Utility Services, L.P., during the period 2013-present.
5. The power point presentation of Commissioner Norman J. Kennard at the National Association of Water Companies annual meeting held at the Keystone Building in 2019.”

In response to Paragraph 1 of your request, the Commission is providing emails meeting the criteria in your request that do not fall under an exemption in the RTKL. All other emails within the criteria of your request fall under exemptions and privileges prescribed in the RTKL, including the attorney-client privilege, attorney work product doctrine, deliberative process privilege, 65 P.S. §§ 67.102, 67.305(a)(2), and pre-decisional deliberation exemption, 65 P.S. § 67.708(b)(10). Therefore, your request is granted in part and denied in part.

In response to Paragraph 2 of your request, the only exchanges meeting the criteria in your request are those between employees of the Bureau of Investigation and Enforcement (BIE) and the presiding Administrative Law Judges when BIE acted as a party of record in proceedings before the Commission.<sup>1</sup> The Commission is providing these emails. Therefore, your request is granted.

In response to Paragraph 3 of your request, the Commission is providing emails meeting the criteria in your request that do not fall under an exemption in the RTKL. Personal identification information has been redacted from these records in accordance with the RTKL. 65 P.S. §§ 67.706, 67.708(b)(6). All other emails within the criteria of your request fall under exemptions and privileges prescribed in the RTKL, including the attorney-client privilege, deliberative process privilege, 65 P.S. §§ 67.102, 67.305(a)(2), pre-decisional deliberation exemption, and notes and working papers exemption. 65 P.S. §§ 67.708(b)(10), 67.708(b)(12). Therefore, your request is granted in part and denied in part.

In response to Paragraph 4 of your request, the Commission limited its search to the Commissioners, members of Commissioners' staff, BIE and the Bureau of Technical Utility Services (TUS) and the only group that possessed emails meeting the criteria in your request is TUS. The Commission is providing these emails. Therefore, your request is granted.

In response to Paragraph 5 of your request, the Commission is providing the power point presentation presented by former Commissioner Norman J. Kennard at the National Association of Water Companies Pennsylvania Chapter annual meeting held on May 7, 2019. Therefore, your request is granted.

All records being released by the Commission, other than those available on the Commission's website, are being provided to you in digital format on a USB thumb drive as per our normal format in the course of business. The thumb drive is being provided to you at no expense. Instructions on how to access the information on the thumb drive are included.

Additionally, pursuant to the RTKL, an agency may make its records available through any publicly accessible electronic means and respond to a request by notifying the requestor that the records are available through publicly accessible electronic means. 65 P.S. §§ 67.704(a), 67.704(b)(1). You may access documents associated with the docketed proceedings involving Hidden Valley at Docket Nos. P-2014-2424858, R-2018-3001307, C-2014-2447169, and C-2014-2447138 on the Commission's website using the "Public Document Search" at [http://www.puc.pa.gov/about\\_puc/search\\_results.aspx](http://www.puc.pa.gov/about_puc/search_results.aspx). To search by docket number, enter a docket number as shown above in the "Docket Number" field and select "Search for Documents." Additional tips on searching for public documents on the Commission's website can be found at: [http://www.puc.pa.gov/general/pdf/Searching\\_Public\\_Documents.pdf](http://www.puc.pa.gov/general/pdf/Searching_Public_Documents.pdf).

Finally, the proceedings at Docket Nos. C-2014-2447169 and C-2014-2447138 have been remanded to the Commission from the Commonwealth Court of Pennsylvania and these matters are pending before the Commission. *Hidden Valley v. Pa. Public Utility Commission*, No. 187 C.D. 2019 (Pa. Cwmlth. May 15, 2019). Since all RTKL requests and responses along

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<sup>1</sup> Due to the proceedings at Docket Nos. P-2014-2424858, R-2018-3001307, C-2014-2447169, and C-2014-2447138, any exchanges between BIE and advisory personnel within the Commission are prohibited by Section 334(c) of the Public Utility Code, 66 Pa. C.S. § 334(c), and the bifurcation of advisory and prosecutorial roles required by *Lyness v. State Board of Medicine*, 605 A.2d 1204 (Pa. Cmwlth. 1992) and, therefore, do not exist.

with the records released with the agency's response are public, and to the extent your request could be deemed an *ex parte* communication, a copy of your RTKL request, the Commission's response, and the records accompanying the response will be provided to the Office of Consumer Advocate in these pending dockets. Likewise, a copy of your request and the Commission's response are being provided to the Parties, and to the Office of Administrative Law Judge, regarding these pending dockets.

This is the final response of the Commission in accordance with the Pennsylvania RTKL.

### **NOTICE OF RIGHT TO APPEAL**

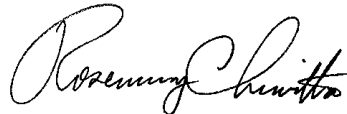
If you believe the Commission has wrongfully denied any part of your request, you may appeal within 15 business days from the date of this letter to:

Office of Open Records  
16<sup>th</sup> Floor  
333 Market Street  
Harrisburg, PA 17126-0333

If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency's response. 65 P.S. § 67.1101. Please note that a copy of your original Right-to-Know request and this denial letter must be included when filing an appeal. The law also requires that you state the reasons why the record is a public record and address the reasons the Agency denied your request. Visit the Office of Open Records website at <http://openrecords.pa.gov> for further information on filing an appeal.

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Sincerely,



Rosemary Chiavetta, Secretary  
Right to Know Officer  
Pa Public Utility Commission

cc: Scott Thomas, PUC Assistant Counsel  
Hayley Dunn, PUC Assistant Counsel  
PUC RTK Official File 2019-0069

Copies of request, response, and records to:

Tanya McCloskey, Office of Consumer Advocate

Copies of request and response to:

Chief ALJ Charles Rainey, Office of Administrative Law Judge

Allison Kaster, Bureau of Investigation and Enforcement

All Parties of Record to Docket Nos. C-2014-2447169 and C-2014-2447138