



March 23, 2020

VIA E-FILING

Jonathan P. Nase

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

Re: Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, L.P. – Water, and Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, L.P. -- Wastewater; Docket Nos. C-2014-2447138 and C-2014-2447169

Motion of Hidden Valley Utility Services, L.P. for Protective Order

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (“Commission”) please find the Motion of Hidden Valley Utility Services, L.P. for Protective Order. Copies are being served in accordance with the attached Certificate of Service.

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

Sincerely,

COZEN O'CONNOR

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

JPN
Enclosure

cc: Administrative Law Judge Katrina L. Dunderdale
Per Certificate of Service
James Kettler

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tanya J. McCloskey, Acting Consumer Advocate	:	
	:	
v.	:	Docket No. C-2014-2447138
	:	
Hidden Valley Utility Services, L.P. – Water	:	
	:	
and	:	
	:	
Tanya J. McCloskey, Acting Consumer Advocate	:	
	:	
v.	:	Docket No. C-2014-2447169
	:	
Hidden Valley Utility Services, L.P. – Wastewater	:	

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. 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).

DUE TO THE COVID-19 EMERGENCY, SERVICE IS BEING MADE VIA E-MAIL ONLY:

Christine Maloni Hoover, Esq.
Erin L. Gannon, Esq.
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Forum Place, 5th Floor
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CHoover@paoca.org
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Counsel for *Office of Consumer Advocate*

Allison Kaster, Esq.
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Bureau of Investigation and Enforcement
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Harrisburg, PA 17120
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Counsel for *Bureau of Investigation and Enforcement*

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Kellie A. Kuhleman
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Terry L. Fought
780 Cardinal Drive
Harrisburg, PA 17111
tlfengr@aol.com
Consultant for *Office of Consumer Advocate*



DATED: March 23, 2020

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tanya J. McCloskey, Acting Consumer Advocate :
v. : Docket No. C-2014-2447138
Hidden Valley Utility Services, L.P. – Water :

and

Tanya J. McCloskey, Acting Consumer Advocate :
v. : Docket No. C-2014-2447169
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. 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
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101



Dated: March 23, 2020

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

3. A prehearing conference was held on February 25, 2020 and Administrative Law Judge Katrina L. Dunderdale (the “ALJ”) issued her Prehearing Order on March 11, 2020.

4. The parties have been engaging in discovery and expect to continue to do so.

5. 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 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.

6. Additionally, some of the information exchanged in discovery, if filed with the Pennsylvania Public Utility Commission (“Commission”), would constitute “confidential security information” as defined in Section 2 of the Public Utility Confidential Security Information Disclosure Protection Act, Act 156 of 2006.

7. Under 52 Pa. Code §§ 5.362(a)(7), 5.365 and 102.4(h), the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of public utility security information and 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).

8. Paragraph 2 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.

9. Paragraph 3 of the attached proposed Protective Order defines “Confidential Public Utility Security Information” as “information the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, public property or public utility facilities.”

10. Paragraph 14 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 or the Confidential Public Utility Security Information.

11. Limitation of the disclosure of Proprietary Information or Confidential Public Utility Security 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.

12. The attached proposed Protective Order will protect the Proprietary Information and the Confidential Public Utility Security Information while allowing the parties to use such information for purposes of the instant litigation.

13. HVUS has provided advance copies of this Motion and the proposed Protective Order to counsel for the OCA and I&E. Those Parties have indicated that they do not oppose the instant Motion.

WHEREFORE, for all the foregoing reasons, Hidden Valley Utility Services, L.P. respectfully requests that Administrative Law Judge Katrina L. Dunderdale grant this Motion and issue the attached Protective Order.

Respectfully submitted,



Dated: March 23, 2020

Jonathan P. Nase, Esquire (PA ID No. 44003)
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Harrisburg, PA 17101
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E-mail: jnase@cozen.com

Counsel for *Hidden Valley Utility Services L.P.*

nature and which are so designated by being stamped or otherwise marked "CONFIDENTIAL." 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 feely, would subject that party or its clients to risk of competitive disadvantage or other business injury. 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. In addition, the materials subject to this Protective Order include all correspondence, documents, data, information, studies, methodologies, and other materials furnished in this proceeding, which are believed by a party to be information the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, public property or public utility facilities and which are so designated by being stamped or otherwise marked "CONFIDENTIAL." Such materials shall be referred to below as "Confidential Public Utility Security Information." When a statement or exhibit is identified for the record, the portions thereof that constitute Confidential Public Utility Security Information shall be appropriately designated as such for the record.

4. The parties may designate as "CONFIDENTIAL" those materials that are believed by that party to be Proprietary Information or Confidential Public Utility Security Information, as defined in paragraphs 2 and 3 above.

5. Proprietary Information or Confidential Public Utility Security 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 or the Confidential Public Utility Security 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 or Confidential Public Utility Security 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."

6. Proprietary Information or Confidential Public Utility Security 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 or Confidential Public Utility Security 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 or Confidential Public Utility Security 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 or Confidential Public Utility Security 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 or Confidential Public Utility Security Information except as authorized by order of the Commission.

7. Prior to making Proprietary Information or Confidential Public Utility Security Information available to any person as provided in Paragraph 5 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 or Confidential Public Utility Security 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 or Confidential Public Utility Security Information

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

8. Counsel for the Office of Consumer Advocate (“OCA”) and the Bureau of Investigation and Enforcement (“I&E”), may share Proprietary Information or Confidential Public Utility Security 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 or Confidential Public Utility Security Information with each other if the experts have executed the Non-Disclosure Certificate set forth in “Appendix A.”

9. A producing party shall designate data or documents as constituting or containing Proprietary Information or Confidential Public Utility Security Information by stamping or otherwise marking the documents “CONFIDENTIAL.” Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information or Confidential Public Utility Security 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 or Confidential Public Utility Security Information. The Proprietary Information or Confidential Public Utility Security 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.”

10. For purposes of filing, to the extent that Proprietary Information or Confidential Public Utility Security 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 or Confidential Public Utility Security 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 or Confidential Public Utility Security Information shall be permitted only in accordance with this Protective Order and, in the case of Confidential Public Utility Security Information, the Public Utility Confidential Security Information Disclosure Protection Act, Act 156 of 2006, and 52 Pa. Code Chapter 102.

11. The parties will consider and treat the Proprietary Information or the Confidential Public Utility Security 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 or non-confidential public utility security information. In the event that any person or entity seeks to compel the disclosure of Proprietary Information or Confidential Public Utility Security 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.

12. Any public reference to Proprietary Information or Confidential Public Utility Security 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 confidential information to fully understand the reference and not more. The Proprietary Information or Confidential Public Utility Security Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

13. Part of any record of this proceeding containing Proprietary Information or Confidential Public Utility Security 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 or Confidential Public Utility Security 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.

14. 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 or Confidential Public Utility Security Information; to question or challenge the admissibility of Proprietary Information or Confidential Public Utility Security Information; to refuse or object to the production of Proprietary Information or Confidential Public Utility Security Information on any proper ground, including but not limited to relevance, materiality, or undue burden; to seek an order permitting disclosure of Proprietary Information or Confidential Public Utility Security Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary Information or Confidential Public Utility Security Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary Information or Confidential Public Utility Security Information, the party claiming that the information is Proprietary Information or Confidential Public Utility Security Information retains the burden of demonstrating that the designation is necessary and appropriate.

15. Unresolved challenges arising under Paragraph 14 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.

16. 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 or Confidential Public Utility Security Information shall be either immediately returned to the party furnishing such 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 or Confidential Public Utility Security Information have been returned or destroyed and that all electronic communications containing Proprietary Information or Confidential Public Utility Security Information have been deleted.

Dated: _____

Administrative Law Judge
Katrina L. Dunderdale

APPENDIX A

Tanya J. McCloskey, Acting Consumer Advocate :
v. : Docket No. C-2014-2447138
Hidden Valley Utility Services, L.P. – Water :

and

Tanya J. McCloskey, Acting Consumer Advocate :
v. : Docket No. C-2014-2447169
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 or Confidential Public Utility Security Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Protective Order.

Signature

Print Name

Address

Employer