



August 11, 2020

VIA E-FILE

Jonathan P. Nase

Direct Phone 717-773-4191

Direct Fax 215-372-2340

jnase@cozen.com

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

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

MOTION OF HIDDEN VALLEY UTILITY SERVICES, L.P. FOR THE ADMISSION OF HVUS POST-HEARING EXHIBIT 3

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the **Motion of Hidden Valley Utility Services, L.P. for the Admission of HVUS Post-Hearing Exhibit 3**, in the above-referenced proceeding. Please note that Post-Hearing Exhibit 3 includes an affidavit. An original of this filing, with the original Affidavit, will be mailed to the Commission. Nevertheless, we are e-filing this document to ensure that the Presiding Officer, Administrative Law Judge Katrina L. Dunderdale, receives it before issuing a decision in this matter.

Copies of this Motion are being served on Administrative Law Judge Katrina L. Dunderdale, and on all parties, as indicated on the enclosed Certificate of Service.

Thank you for your attention to this filing. Should you have any questions or concerns, please contact me.

Sincerely,

COZEN O'CONNOR

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

JPN:kmg
Enclosure

cc: Honorable Katrina L. Dunderdale (*including MS Word version*)
Per Certificate of Service
James M. 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 the Admission of HVUS Post-Hearing Exhibit 3**, 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.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
CHoover@paoca.org
EGannon@paoca.org
Counsel for *Office of Consumer Advocate*

Allison Kaster, Esq.
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17120
akaster@pa.gov
Counsel for *Bureau of Investigation and Enforcement*

Sharon Howard-Frieri
P.O. Box 4126
1174 Gristmill Court
Hidden Valley PA 15502
sharonhoward.frieri@yahoo.com

Robert J. Kollar, CPA and
Kellie A. Kuhleman
1374 Langport Dr.
Pittsburgh, PA 15241
bob@kkacpas.com

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

DATED: August 11, 2020



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

VERIFICATION

I, JAMES KETLER, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: August 11, 2020

A handwritten signature in cursive script, appearing to read "James Ketler", written over a horizontal line.

**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, you are hereby notified that you have twenty (20) days from the service of the enclosed Motion of Hidden Valley Utility Services, L.P. for the Admission of HVUS Post-Hearing Exhibit 3 to file an answer to the motion. All pleadings, such as an answer, 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.

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 (PA ID # 44003)
Cozen O'Connor
17 North Second St., Suite 1410
Harrisburg, PA 17101



Dated: August 11, 2020

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ADMINISTRATIVE LAW JUDGE
KATRINA L. DUNDERDALE**

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 :

**MOTION OF HIDDEN VALLEY UTILITY SERVICES, L.P
FOR THE ADMISSION OF HVUS POST-HEARING EXHIBIT 3**

AND NOW COMES Hidden Valley Utility Services, L.P. (“HVUS”), pursuant to 52 Pa. Code § 5.103, to file this Motion (the “Motion”) requesting that the Honorable Administrative Law Judge Katrina L. Dunderdale (the “ALJ”) mark for identification and admit HVUS Post-Hearing Exhibit 3 (attached) into the record in this proceeding. The record has not yet been closed and HVUS Post-Hearing Exhibit 3 contains material information updating the record concerning the status of HVUS’s on-going water treatment plant project.

In support whereof, HVUS avers as follows:

I. PROCEDURAL HISTORY

1. The instant proceeding is an evidentiary hearing pursuant to 66 Pa. C.S. § 703(g) regarding the Petition of HVUS for an Amendment of the Opinion and Order Entered May 3, 2018.
2. A hearing was held in this matter on May 20, 2020.
3. On June 12, 2020, the ALJ issued the First Post-Hearing Order, marking and admitting into the record OCA Late-Filed Exhibit 1 and HVUS Late-Filed Exhibits 1 and 2.
4. HVUS and OCA filed Briefs on June 30, 2020 and Reply Briefs on July 14, 2020.
5. The record has not yet been closed.

II. LEGAL STANDARDS

6. In pertinent part, 52 Pa. Code § 5.103 states:

§ 5.103. Motions.

(a) *Scope and content.* A request may be made by motion for relief desired, except as may be otherwise expressly provided in this chapter and Chapters 1 and 3 (relating to rules of administrative practice and procedure; and special provisions). A motion must set forth the ruling or relief sought, and state the grounds therefor and the statutory or other authority upon which it relies.

(b) *Presentation of motions.* A motion may be made in writing at any time, and a motion made during a hearing may be stated orally upon the record, or the presiding officer may require that an oral motion be reduced to writing and filed separately. Written motions must contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion.

(c) *Response to motions.* A party has 20 days from the date of service within which to answer or object to a motion, unless the period of time is otherwise fixed by the Commission or the presiding officer.

(d) *Rulings on motions.*

(1) The presiding officer is authorized to rule and will rule upon motions:

(i) Not formerly acted upon by the Commission prior to the commencement of the hearing where an

immediate ruling is essential in order to proceed with the hearing.

(ii) Filed or made after the commencement of the hearing and prior to the submission of a decision in the proceeding.

III. HVUS POST-HEARING EXHIBIT 3 SHOULD BE MARKED AND ADMITTED INTO THE RECORD

7. The public interest requires that HVUS Post-Hearing Exhibit 3 be admitted into the record. The Commission's decision in this proceeding should be based on the most recent information available. HVUS Post-Hearing Exhibit 3 is an affidavit of Mr. Kettler providing a material update on the status of its on-going water treatment plant project:

a. At the hearing on May 20, 2020, Mr. Kettler testified that, on May 19, 2020, HVUS applied for a minor land development plan approval from Somerset County, which is necessary before applying for a building permit. Tr. 506.

b. HVUS Post-Hearing Exhibit 3 demonstrates that the minor land development plan approval has been issued by Somerset County and the building permit for the project has been issued to the property owner.

8. In pertinent part, HVUS Witness Stinebiser stated that HVUS plans to continue its efforts to construct a water treatment plant while this case is pending. HVUS St. 2 p. 22.

9. In addition, Mr. Stinebiser explained HVUS's recommendation (that the Pennsylvania Public Utility Commission ("Commission") extend the deadline in Ordering Paragraph 8(1) based on significant milestones in the process of designing/constructing/permitting the water treatment plant and related projects). HVUS St. 2-R pp. 8-9. HVUS Witness Kettler testified that HVUS would seek to introduce evidence into the record if any of those milestones would be reached while this proceeding is pending. HVUS St. 3-R p. 2.

10. If this Motion would be denied, and HVUS Post-Hearing Exhibit 3 would not be admitted into the record, the ALJ and the Commission might draw an adverse inference against HVUS based on the absence of evidence introduced after the hearing concerning progress on the water treatment plant project. See 1 West's Pennsylvania Practice, Evidence § 427 (4th ed. updated December 2014) (the adverse inference rule provides that when a party has relevant evidence within its control which it fails to produce, that failure gives rise to an inference that the evidence is unfavorable to it).

11. One of the milestones in HVUS's recommendation is that, within thirty days after the entry of the Commission Order in this proceeding, HVUS shall award a contract to construct the water treatment plant. HVUS St. 2-R p. 8.

12. In its Main Brief, the Office of Consumer Advocate ("OCA") recommended that HVUS be required to select a contractor for the water treatment plant project during May, 2020. OCA Main Brief p. 20.

13. At the hearing on May 20, 2020, Mr. Kettler testified that HVUS had received one written proposal to construct the water treatment plant and one oral proposal to construct the water treatment plant. He also testified that he asked that the oral proposal be reduced to writing so he could compare the two proposals. Tr. 507-508.

14. HVUS Post-Hearing Exhibit 3 demonstrates that HVUS has decided not to hire a general contractor to construct the water treatment plant. Instead, HVUS will construct the plant itself, using subcontractors as necessary. This approach will allow HVUS to reduce the cost of the project and to proceed with the work more quickly (because HVUS will not need to negotiate an acceptable contract with a general contractor).

15. Based on HVUS Post-Hearing Exhibit 3, HVUS no longer requests that the Commission amend Ordering Paragraph 8(1) to include the following paragraph in its decision in this proceeding:

a. Within thirty days after the entry of the Commission Order in this proceeding, HVUS shall award a contract to construct the water treatment plant. Within ten days after awarding this contract, Hidden Valley Utility Services, L.P., shall notify the Commission, all parties to this proceeding, and the Bureau of Technical Utility Services (“TUS”).

16. In all other respects, HVUS continues to request that the Commission amend Ordering Paragraph 8(1) as shown in HVUS’s Main Brief, Appendix C (Proposed Ordering Paragraphs).

17. Based on HVUS Post-Hearing Exhibit 3, the ALJ should not recommend, and the Commission should not adopt, the OCA’s recommendation that HVUS be required to select a general contractor during May 2020.

18. The instant Motion is timely filed. The ALJ has not yet submitted a decision in this proceeding. In fact, the record has not yet been closed. In addition, the instant Motion was filed within a reasonable period after HVUS received the building permit from the property owner. Finally, there is no statutory deadline for the Commission to issue a decision in this proceeding and the admission of HVUS Post-Hearing Exhibit 3 will not significantly delay the resolution of this proceeding.

IV. CONCLUSION AND REQUEST FOR RELIEF

Wherefore, for all of the foregoing reasons, HVUS respectfully requests that the Honorable Katrina L. Dunderdale mark for identification and admit HVUS Post-Hearing Exhibit 3 into the record in this case.

Respectfully submitted,

COZEN O'CONNOR



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

Dated: August 11, 2020

HVUS Post-Hearing Exhibit 3

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ADMINISTRATIVE LAW JUDGE
KATRINA L. DUNDERDALE**

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 :

**AFFIDAVIT OF
JAMES M. KETTLER**

On this 11th day of August, 2020 before the undersigned Notary Public in and for Frederick County, Maryland, personally appeared James M. Kettler, who, being duly sworn according to law, deposes and says that:

- (1) I am the President of Hidden Valley Utility Services, L.P. (“HVUS”).
- (2) HVUS is in the process of building a water treatment plant on property it leases from Laurel Highland Investments LLC.
- (3) On July 7, 2020, HVUS received a minor land development plan approval from Somerset County for the water treatment plant (see Attachment 1).
- (4) On July 27, 2020 the building permit for the water treatment plant was issued in the name of the property owner (see Attachment 2).

(5) HVUS received a written proposal from a general contractor to complete the water treatment plant building for \$ 420,000. This proposal did not include treatment equipment or underground water lines to the treatment plant building.

(6) HVUS also received a written proposal from a general contractor to complete the water treatment plant building for \$ 310,000. This proposal did not include treatment equipment or underground water lines to the treatment plant building.

(7) HVUS will not hire a general contractor for the water treatment project. Instead, HVUS will complete the project itself, subcontracting as necessary. This approach will allow HVUS to complete the water treatment plant at lower cost than proposed in the two written proposals HVUS received. In addition, HVUS will be able to proceed with the work more quickly because it will not need to negotiate an acceptable contract with a general contractor.

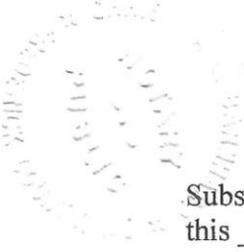
(8) I have a degree in Architecture from Cornell University and I was licensed as an architect in the State of Maryland in 1986. I have been an owner, managed and run a residential and general contracting company since 1988.

(9) HVUS will not contract with any affiliated entities without submitting an appropriate affiliated interest agreement to the Commission for approval.

(10) Before receiving the building permit for the water treatment plant, HVUS ordered equipment for the water treatment plant and has performed work at the site that did not require a building permit. This work included work that was covered by the Public Water Supply Permit issued by the Pennsylvania Department of Environmental Protection on March 8, 2020

Further deponent saith not.


James M. Kettler
President, Hidden Valley Utility
Services, L.P.



Subscribed and sworn to before me
this 11th day of August , 2020


Notary Public

Christina L. Barnhard
NOTARY PUBLIC
FREDERICK COUNTY
MARYLAND
MY COMMISSION EXPIRES April 27, 2024



SOMERSET COUNTY PLANNING COMMISSION

July 7, 2020

Highlands Land Development, LLC
Robert Nutting
777 Waterwheel Drive
Champion, PA 15622

Tax Map #20-005-035-000
Filter Building
Jefferson Township

Dear Mr. Nutting,

The Minor Land Development Sketch submitted for your property in Jefferson Township meets the requirements set forth in the definitions and in Section 1005 of the Somerset County Subdivision and Land Development Regulations. An exemption is hereby granted pursuant to that section of the regulations.

A copy of your plan is enclosed. If you change the submitted plan, you will be required to resubmit the plan for further review. If you have any questions, please call.

Sincerely,

William L. Lehman
Planner

pc : Jefferson Township Supervisors
PA Municipal Code Alliance
SEO - The Eads Group, Bryan DiFebo
The Eads Group, Phil Will
Somerset County Conservation District, Keith Largent
file

Jefferson Township - Somerset County

► Uniform Construction Code Building Permit ◀

Permit Number: 2020-1649C-SOM

Site Address: 121 Craigherd Drive, Hidden Valley, PA 15502

Property Owner: Highland Land Investments LLC 777 Waterwheel Drive, Champion, PA 15622

Permit Holder/Applicant: Highland Land Investments LLC 777 Waterwheel Drive, Champion, PA 15622

Permit Date: 7/24/2020

Permit Expiration Date: 7/24/2021

Construction Type: IIB

Use Group: F1

Applicable Code Year 2015 IBC and all referenced codes as amended by the UCC.

This Permit is obtained for the purpose of:

"Hidden Valley Utilities Services LP"

Construction of a New 32' x 48' Concrete Block Building to be used as a Water Filtration Facility.
ALL APPROVED PROJECT PLANS & DOCUMENTS MUST BE ON JOBSITE AT ALL TIMES.

This Permit is issued specifically for the Purpose and Site Address indicated above. This Building Permit has been granted in accordance with the provisions of The Pennsylvania Uniform Construction Code (35 Pa Code 7210.101 et seq.) and municipal ordinance regulations. This Permit has been granted to the Property Owner or Permit Holder under the condition that all work on this project shall conform to the Pennsylvania Uniform Construction Code, municipal ordinance, the submitted and approved Construction Documents, and any other applicable laws and regulations.

The Property Owner and/or Permit Holder agrees by acceptance of this permit that he/she shall bear responsibility for compliance with the applicable laws, regulations, and codes. Title 34 XIV 403.43 (g) & 403.63 (g) states: "A permit becomes invalid unless the authorized construction work begins within 180 days after the permit's issuance or if the authorized construction work permit is suspended or abandoned for 180 days after the work has commenced."

Furthermore, the Property Owner and/or Permit Holder shall be responsible for insuring that all required inspections are scheduled and performed and that right of entry, for inspection purposes, shall be granted to the appropriate Code Inspection and Enforcement Authorities. Access shall be granted during normal business hours in accordance with the Pennsylvania Uniform Construction Code and municipal ordinance and regulation.

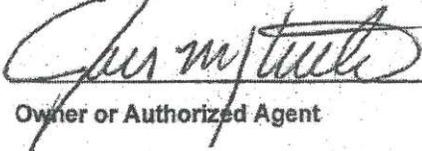
By acceptance of this Permit (including inspection check lists, plan review documents, any notes or addendums on or attached to the permit and/or submitted construction documents) and execution of the work herein permitted; I acknowledge that I understand the obligations, as well as the privileges granted by this permit and agree, that the work shall be performed in accordance with all applicable codes, regulations, and requirements.



7/24/2020

Building Code Official or Authorized Agent

Date



Owner or Authorized Agent

August 6, 2020

Date

PA Municipal Code Alliance

318 Georgian Place Somerset, PA 15501

Phone: 814 444-6112

Pennsylvania Municipal Code Alliance Inc.
Plan Review Comments

Date: 7/20/2020

Permit Number: 2020-1649 C-SOM

Municipality: Jefferson Township

Project Name: Hidden Valley Utility Services (Water Filtration Building)

Location: 121 Craigherd Dr.

The above referenced project is found to be in full Compliance with the Pennsylvania Uniform Construction Code and has been Approved, all comments listed on the plan approval letter must be addressed before occupancy will be granted. Under section 403.122 of the Pennsylvania Uniform Construction Code Act 45 regulations you may seek a variance or appeal any conditions listed on this approval letter.

All materials and methods used must fully comply with all applicable requirements of the IBC-2015, as amended by the UCC and IBC-2018 Chapter 11, even if not clearly depicted on the drawings.

A Copy of This Letter Must Be Available At The Jobsite At All Times For Inspectors Review.

Use Group: F-1 Type of Construction: II-B Occupant Load: 4

Construction of 1536 ft.² building to house water filtration system approved.

All of the following comments must be addressed before occupancy will be granted.

- a. Portable fire extinguishers must be provided as required in section 906 IFC.
- b. Proposed structure must be fully handicap accessible and on an accessible route.
- c. All door hardware must be ADA compliant lever type.
- d. Restroom facilities must be provided within 500' and must be on an accessible route.
- e. Tactile exit signs must be installed at all designated exits.
- f. Energy compliance certificate (COM-CHECK) for building envelope, interior & exterior lighting and HVAC systems must be submitted and approved before occupancy will be granted.
- g. Emergency lights must be provided to illuminate the exterior of all designated exits.

Manufacturer's specifications, bracing requirements and recommended installation instructions for all new roof truss systems must be available at the jobsite. Trusses must be designed to meet a minimum 115 mph ultimate wind speed, 105 mph ultimate wind speed if it is listed as category I structure in table 1604.5 IBC, 120 mph ultimate wind speed if it is listed as a risk category III structure in table 1604.5 IBC.

Permanent individual truss member restraint/bracing shall be installed using standard industry lateral restraint/bracing details in accordance with generally accepted engineering practice. Locations for lateral restraint shall be identified on the truss design drawing.

The trusses shall be designed so that the buckling of any individual truss member is resisted internally by the individual truss through suitable means (i.e., buckling reinforcement by T-reinforcement or L-reinforcement, proprietary reinforcement, etc.). The buckling reinforcement of individual members of the trusses shall be installed as shown on the truss design drawing or on supplemental truss member buckling reinforcement details provided by the truss designer.

1. Building Permit must be posted on the job site at all times.
2. One set of approved drawings must be on site during construction.
3. Any code related items not specified on the plans must be field verified by the inspector. (truss drawings and placement etc.)
4. Notify your local PMCA office for all inspections. Please plan and call ahead.
5. Do Not proceed beyond an indicated inspection without first obtaining the necessary inspection.
6. Occupancy is not permitted without the final occupancy inspection.
7. Universal Accessibility to all services, goods, events and functions offered within the Commonwealth of Pennsylvania is a guaranteed civil right. Please review your construction documents to insure that this right has not been violated. Basic compliance with all provisions of the standard ANSI A117.7 and chapter 11 of the IBC must be met to insure all citizens enjoy access to goods and services offered within Pennsylvania. Full compliance is mandatory for receipt of a Certificate of Occupancy.
8. All applicable provisions of the UCC Pa Act 45 and the 2015 IBC must be fully met even if not depicted on the plans NO EXCEPTIONS.

William Chittester UCC # 000817

Pennsylvania Municipal Code Alliance Inc.

billc@pacodealliance.com

If you have questions on plan review comments please call,

Cell: 814-494-7339

Fax: 814-561-1282