

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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February 8, 2019

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Exceptions in the above-referenced proceedings.

Copies have been served per the attached Certificate of Service.

Very truly yours,

A handwritten signature in cursive script that reads "Christine Maloni Hoover".

Christine Maloni Hoover  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50026  
E-Mail: [CHoover@paoca.org](mailto:CHoover@paoca.org)

Enclosures:

cc: Honorable Mark A. Hoyer

Honorable Katrina L. Dunderdale

Office of Special Assistants (e-mail only: [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))

Certificate of Service

\*266227

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, the Office of Consumer Advocate's Reply Exceptions, 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 8<sup>th</sup> day of February 2019.

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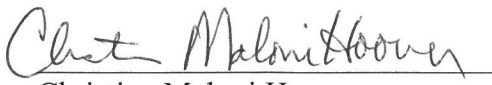
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Dated: February 8, 2019  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, et al.	:	Docket Nos. R-2018-3001306
	:	R-2018-3001307
v.	:	C-2018-3001841
	:	C-2018-3001843
HIDDEN VALLEY UTILITY	:	
SERVICES – WATER	:	
	:	
HIDDEN VALLEY UTILITY	:	
SERVICES – WASTEWATER	:	

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REPLY EXCEPTIONS OF THE OFFICE  
OF CONSUMER ADVOCATE

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**Table of Contents**

I. INTRODUCTION ..... 1

II. REPLY TO EXCEPTIONS..... 3

    Reply to HVUS Exception No. 1 and I&E Exception No. 1: The ALJs Did Not Err In  
    Recommending Rejection of The Second Step of the Wastewater Increase..... 3

III. CONCLUSION ..... 12

**TABLE OF AUTHORITIES**

**Page(s)**

**Administrative**

McCloskey v. Hidden Valley Utility Services,  
Docket Nos. C-2014-2447138 and C-2014-2447169 Order (January 18, 2018)..... *passim*

McCloskey v. Hidden Valley Utility Services,  
Docket Nos. C-2014-2447138 and C-2014-2447169 Order (May 3, 2018)..... *passim*

McCloskey v. Hidden Valley Utility Services,  
Docket Nos. C-2014-2447138 and C-2014-2447169 Initial Decision  
(September 9, 2016).....5

**Statutes**

66 Pa. C.S. § 529.....5, 10

66 Pa. C.S. § 1501.....5

## I. INTRODUCTION

On January 25, 2019, the Office of Administrative Law Judge issued the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Katrina L. Dunderdale (ALJs) addressing proposed rate increase requests of Hidden Valley Utility Services, L.P. (HVUS or the Company) regarding its water and wastewater services. The ALJs concluded that HVUS is providing inadequate water and wastewater service to its customers. The ALJs, however, recommended that HVUS receive an increase of \$65,557 (46.6%) in water revenues and an increase of \$82,227 (28%) in wastewater revenues because HVUS needs additional sums in order to comply with the Public Utility Commission's (Commission) order in McCloskey v. Hidden Valley Utility Services, Docket Nos. C-2014-2447138 and C-2014-2447169 Order (January 18, 2018) and McCloskey v. Hidden Valley Utility Services, Docket Nos. C-2014-2447138 and C-2014-2447169 Order on Reconsideration (May 3, 2018) (McCloskey or 2018 Complaint Cases)

The ALJs correctly recognized that HVUS is providing inadequate water and wastewater service. The ALJs also correctly recognized that the inadequate service needed to be addressed. As set forth in the OCA's Exceptions, however, the ALJs based their recommendation to approve the Non-Unanimous Settlement to increase rates (with one modification) on information that is not supported by the record or the facts. The ALJs erred in requiring ratepayers to pay any increase in rates in light of the inadequate service being provided by HVUS. The Company's continuing inadequate service and failure to comply with the 2005 Settlement and the 2018 Complaint Case Orders require a denial of the proposed increases. Exceptions were filed by HVUS, the Commission's Bureau of Investigation (I&E), Hidden Valley Foundation (HVF) and Robert Kollar. The OCA provides the following replies to the Exceptions of HVUS

and I&E wherein HVUS and I&E argue that the ALJs erred in modifying the Non-Unanimous Settlement. As set forth below, the OCA submits that the Exceptions of HVUS and I&E should be denied.

## II. REPLY TO EXCEPTIONS

Reply to HVUS Exception No. 1 and I&E Exception No. 1: The ALJs Did Not Err In Recommending Rejection of The Second Step of the Wastewater Increase. HVUS Exc. at 8-17; I&E Exc. at 4-11; R.D. at 30-34, 46-53; OCA M.B. at 40-43; OCA R.B. at 12-17.

The ALJs recommended that the second step of the wastewater rate increase agreed to by HVUS and I&E in the Non-Unanimous Settlement not be adopted, leaving the wastewater increase at \$82,227, or 27%, rather than a total increase of \$145,824, or 49.7%. R.D. at 46. As explained in the OCA's Exceptions, the Commission should not adopt the ALJs recommended wastewater increase at any level. HVUS argues in its Exceptions that the ALJs erred in rejecting the second step of the wastewater increase because the ALJs based their recommendation on the water quality, that there was not substantial evidence to support the decision, the completion of the requirements of McCloskey will equate to safe and adequate service, and that paragraph 20 of the McCloskey Order should be used to determine whether the second step of the wastewater rate increase should go into effect. HVUS Exc. at 8-17. As discussed below and in the OCA's Main and Reply Briefs, the ALJs properly reviewed the evidence regarding wastewater service. There is substantial evidence to deny not only the second step of the wastewater rate increase but also the entire wastewater rate increase proposed by HVUS and I&E. As discussed below, completion of the requirements of McCloskey does not automatically equate to a determination that service is safe, adequate, and reliable. McCloskey January 2018 Order at 31-32. HVUS's Exception should be denied. I&E filed an Exception also arguing that the ALJs erred by rejecting the second step of the wastewater increase that it agreed to with HVUS in the Non-Unanimous Settlement. For reasons discussed below, both HVUS and I&E's Exceptions should be denied.



HVUS argues that the ALJs denied the second step of the wastewater increase due to finding inadequate water service. HVUS Exc. at 10-11. HVUS bases its argument on a statement by the ALJs regarding both water and wastewater service. The OCA submits that the ALJs based their decision on the evidence regarding wastewater service developed in this case and in McCloskey, where the Commission found inadequate wastewater service. The wastewater system is also in need of repair and the Company's failure to maintain and make necessary improvements to its collection and treatment facilities is a violation of Section 1501. The sentence relied on by HVUS does not support its conclusion. As discussed in more detail below, the evidence supports a conclusion that wastewater service is inadequate and the entire wastewater increase should be denied.

In the 2018 Complaint Cases, regarding the Company's wastewater system and quality of service, the OCA evidence included: adequacy of maintenance and replacement, sewage odors and sewage overflows. 2018 Complaint Cases OCA St. 2 and 2S. The OCA also presented evidence regarding financial and managerial issues that affected the utility's ability to provide adequate, efficient, safe, and reasonable service and facilities to its customers, including: adequacy of financial resources, management of utility revenue, reporting and billing, and customer service and complaint handling. 2018 Complaint Cases OCA St. 1 and 1S.

The Commission's finding of inadequate wastewater service in McCloskey was based on a number of problems including problems regarding the wastewater treatment. The Commission adopted the ALJ's finding in that Complaint Case that HVUS failed to properly maintain its wastewater treatment plant. January 2018 Order at 50. The ALJ specifically said that "[a]s of the date of the hearing, the project to install or maintain backup pumps at the pumping stations and working alarms had not been entirely completed. This work is necessary in order to prevent

sewage overflow from the system.” McCloskey v. Hidden Valley Utility Services, Docket Nos. C-2014-2447138 and C-2014-2447169 Initial Decision at 21 (September 9, 2016). Consequently, the Company failed to provide safe, adequate, and reasonable wastewater service, in violation of Section 1501.<sup>1</sup> OCA M.B. at 46; 66 Pa. C.S. § 1501.

The Commission’s Order in McCloskey required an engineer’s report for the wastewater system within 90 days. January 2018 Order at 62-63. The report was required to cover not only the back up pumps and alarms, but also the following requirements:

[I]inspect all wastewater facilities, tanks and equipment and prepare a report of its findings. The report shall confirm that the wastewater treatment plant and equipment is installed, properly maintained and operable. If this is not the case, then the engineer shall include a schedule for making all repairs, replacements and/or maintenance and to correct any found deficiencies recommend any maintenance or improvements in the report. The report shall include a survey of the lagoon at Treatment Plant No. 2 to estimate the current capacity and provide a timeframe for removal of sediment. The report shall also confirm the draining, inspection, repair, and repainting of Tank 1 (side 1). The report shall also include an evaluation and proposed remedy to ensure that Hidden Valley Utility Services, L.P., is providing adequate and reasonable wastewater services to its customers.

McCloskey January 2018 Order at 62-63.

The Commission also required, *inter alia*, modifications to the billing system to comply with Commission rules, corrected information in its annual reports, and a status report every sixty days. January 2018 Order at 63-65. In the event that an evidentiary hearing is required as a result of failure to accomplish recommended repairs and maintenance procedures, or the water and wastewater service is not adequate, the Commission also stated that it will initiate an investigation under Section 529 of the Public Utility Code. January 2018 Order at 66; 66 Pa. C.S.

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<sup>1</sup>In its January 2018 Order, the Commission indicated that it would initiate a proceeding under 66 Pa. C.S. § 529 upon notice of the Company’s failure to meet any of the deadlines within its order.

§ 529. It is clear that the Commission envisioned that HVUS may not meet the deadline to comply with the engineer's recommendations and that even if it did meet the deadline, it may not result in safe and adequate wastewater service.

OCA witness Fought provided a description of the Company's wastewater system and facilities:

The Company provides service to the Hidden Valley Development in Jefferson Township, Somerset County, Pennsylvania. Construction of the Company's sewage collection system was started in the early 1970s and was extended as Hidden Valley has developed over the years. In the late 1980s replacements and repairs were made to the collection system to eliminate excess infiltration/inflow (I/I). The collection system includes approximately 1.8 miles of sewer pipe, 460 manholes, and 1,170 service connections. The conveyance system includes six pumping stations and approximately 1.75 miles of force main.

The Company has two wastewater treatment plants.

Treatment Plant No. 1 is an extended aeration activated sludge plant with a rated capacity of 100,000 gallons per day (gpd) serving approximately 864 Equivalent Dwelling Units (EDUs).

Treatment Plant No. 2 is an aerated facultative treatment lagoon plant with a 30,000 gpd capacity serving approximately 305 EDUs.

The effluent from both Treatment Plants discharges to a 3 million gallon (mg) storage lagoon and is then pumped to a spray irrigation field or diluted and used for snow making.

OCA St. 3 (WW) at 1-2 (footnote omitted).

The Company has six submersible grinder pumping stations, which are equipped with two submersible pumps that are turned on and off by three float switches. OCA St. 3 (WW) at 2. When sewage reaches a certain height, a float switch will activate a primary pump. If the sewage continues to rise, the next float switch will activate the backup pump. A fourth switch activates an alarm when the sewage exceeds the capacity of both pumps. OCA St. 3 (WW) at 2, 3. Mr. Fought then discussed the problems he had identified in McCloskey:

**Q. HAVE YOU NOTICED ANY PROBLEMS WITH THE COMPANY'S PUMPING STATIONS?**

A. During my inspection on May 1, 2014, I requested to inspect a typical pump station. That station did not have a backup pump installed. The operator advised me that he removed a pump from a similar pump station so that he could quickly install that pump if needed due to a pump failure in any of the pump stations. That means that at least two pumping stations did not have a backup pump installed. We then checked the alarm float switch and it did not work.

During my inspection on June 25, 2015, I was advised by the operator that two of the pumping stations did not have backup pumps installed; but they were stored at Treatment Plant No. 1. We inspected three of the pump stations and tested the alarm at one of those stations. It did not work.

All of the pumping stations should have primary and backup pumps installed and in operating condition, together with an alarm that properly activates.

OCA witness Fought explained why the failure of HVUS to address the most basic requirements (back up pumps and alarms on pump stations) impacts the service it provides:

**Q. CAN SEWAGE FLOW OUT OF A PUMPING STATION AND CONTAMINATE THE GROUND AND GROUNDWATER?**

A. Yes. If the sewage inflow to a pumping station exceeds the capacity of the operating pumps and the storage volume available in the wet well, it is possible that sewage can flow out of the top of the pumping station. This is more likely to occur if the backup pump is not installed.

**Q. CAN CUSTOMERS SUFFER DAMAGES FROM SEWAGE RISING IN A PUMPING STATION WET WELL HIGHER THAN THE ALARM SETTING?**

A. Yes. Depending on the relative elevations of the top of the wet well and the customers' lateral connections to the collection system, it is possible that sewage could back up into customer buildings (for example, through basement floor drains) and cause damage.

**Q. HOW DOES THE COMPANY'S OPERATOR BECOME AWARE THAT A PUMPING STATION ALARM HAS BEEN ACTIVATED?**

A. Either by the operator noticing it or being advised of the alarm by a resident.

**Q. ARE YOU AWARE OF ANY PUMPING STATION OVERFLOW?**

A. No, but DEP personnel noticed that sewage almost overflowed a pumping station on November 12, 2013. During their November 12, 2013 inspection, DEP personnel inspected six pumping stations and noted that the wet well at the Westridge No. 1 Pumping Station was at capacity and the alarm was inoperable. The DEP inspection report for November 12, 2013 did not indicate if they observed two pumps in each station nor did it indicate if alarms were tested at any other pumping station. I reviewed DEP's files for the period of January 2004 through November 2013. During that period, November 12, 2013 was the only time DEP inspected the Company's pump stations.

**Q. HOW WOULD DEP BECOME AWARE THAT A PUMPING STATION HAS OVERFLOWED AND SPILLED SEWAGE ON THE GROUND?**

A. Unless DEP personnel were on site and noticed it, only by the Company or a resident notifying them.

**Q. HOW OFTEN WERE DEP PERSONNEL ON SITE?**

A. According to the DEP files that I reviewed, their personnel were on site approximately eleven times between January 2004 and November 2013 but only inspected the pumping stations once.

OCA St. 3 (WW) at 3-4.

The Company continues to improperly operate and equip its wastewater treatment and pumping facilities. Proper operation of these facilities is important in order to prevent contamination of streams and groundwater. OCA St. 3 (WW) at 2. As a result, of the Company's improper maintenance of its pumping stations, it is also possible for sewage to back up into customer homes and buildings. OCA St. 3 (WW) at 4.

In this case, the evidence shows that there has not been any substantial change in wastewater service in the last year since the McCloskey Order. The Engineer's Report, required by the McCloskey January 2018 Order, identified deficiencies, made recommendations, estimated costs, and prioritized recommended repairs and replacements to the Company's wastewater pumping and treatment facilities. OCA St. 3 (WW) at 5-6; Exh. TLF-1. The Engineer's Report identified seventy-five projects that need to be completed by HVUS. OCA St. 3S (WW) at 3; Exh. TLF-1. As of July 27, 2018, there were eight projects that were completed, three that were started and sixty-four that are not started. OCA St. 3S (WW) at 3. Mr. Fought found that the total number of deficiencies identified in the Engineer's Report indicates that the wastewater treatment plant and pumping stations have not been properly maintained for many years. The deadline for completion of the recommendations was January 31, 2019.

HVUS relies on the lack of incidents where raw sewage has caused contamination to establish that its service is adequate. Mr. Fought explained "that does not mean that the Company acted appropriately. It had not equipped all stations with backup pumps and operating alarms. All of the pumping stations should have primary backup pumps installed and in operating condition, together with an alarm that properly activates." OCA St. 3S (WW) at 2.

HVUS provided its January 31, 2019 Status Report in McCloskey as Attachment A to its Exceptions. A review of the Attachment shows that HVUS has not completed all of the recommendations in the 2018 EADS Group report. The failure of HVUS to complete the recommendations of its engineer fully supports the OCA's position that HVUS continues to provide inadequate wastewater service.<sup>2</sup>

HVUS argues that the ALJs' decision is not supported by substantial evidence and that the second step of the increase, as set forth in the Non-Unanimous Settlement, should be

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<sup>2</sup> The issue of whether HVUS has complied with the McCloskey Order will be addressed in that proceeding.

approved. HVUS Exc. at 11-14. HVUS argues that the ALJs failed to consider the evidence that HVUS provided. HVUS Exc. at 12, footnote 3 citing R.D. at 50. This argument is without merit. The ALJs found that the evidence submitted by HVUS was not credible (R.D. at 50) which is not the same as failing to consider evidence. It is important to note that Mr. Kettler was not testifying as an engineering expert in this proceeding (or in McCloskey). Tr. 246; McCloskey OCA St. 2S WW at 1.

HVUS also argues that the record is stale. HVUS Exc. at 13. This argument is not supported because the record shows that the same issues in McCloskey remain in this case. Moreover, given that HVUS has not yet complied with its engineer's recommendations for its wastewater system, it is clear that the issues and the inadequate service remain.

HVUS also argues that the ALJs erred by distinguishing the completion of the engineer's recommendations from the provision of safe, adequate and reliable service. HVUS Exc. at 14-15. The OCA agrees with the ALJs that meeting the recommendations will not, on its own, equate to safe, adequate, and reliable service.<sup>3</sup> It is clear that the Commission did not assume that wastewater service would meet the requirements of Section 1501 solely because HVUS completes the recommendations in its engineer's report because the Commission provided for a process, including an inspection and possibly a hearing, after HVUS meets the recommendations.<sup>4</sup>

Finally, HVUS argues that if the Non-Unanimous Settlement is going to be modified, then the event that triggers the second step should be modified to be tied to the result of the Bureau of Technical Utility Services report, rather than the date that HVUS completes the

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<sup>3</sup> The OCA does not agree that the first step of the wastewater rate increase should be granted given the inadequate service.

<sup>4</sup> The Commission's Order also provides for a process, a Section 529 investigation, if HVUS does not meet all of the recommendations. McCloskey May 2018 Order on Reconsideration at 33.

recommendations in the engineer's report. HVUS Exc. at 16-17. As discussed above, the Commission's McCloskey January 2018 Order provides for the possibility of a hearing after the issuance of the TUS report. See McCloskey January 2018 Order at ¶ 20. It would not be logical to increase rates, as proposed by HVUS, while proceeding to a hearing as set forth in paragraph 20 of the Order.<sup>5</sup>

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<sup>5</sup> As set forth in the OCA's Exceptions and briefs, it is the OCA's position that there should not be any increase while service remains inadequate.



III. CONCLUSION

For the reasons set forth above and in its Main Brief, Reply Brief, and Exceptions, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of Hidden Valley Utility Services and I&E and deny the water and wastewater revenue increases due to the inadequate service provided by HVUS.

Respectfully Submitted,



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