**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held August 29, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

Norman J. Kennard

Andrew G. Place

John F. Coleman, Jr.

Pennsylvania Public Utility Commission, et al. R-2018-3001306

v.

Hidden Valley Utility Services, L.P. – Water

Pennsylvania Public Utility Commission, et al. R-2018-3001307

v.

Hidden Valley Utility Services, L.P. – Wastewater

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Motion to Extend the Time Period for Completing an Independent Financial Audit (Motion), filed by Hidden Valley Utility Services, L.P – Water and Hidden Valley Utility Services, L.P – Wastewater (collectively, HVUS or Company) on July 9, 2019. The Motion refers to our Opinion and Order entered on March 29, 2019 (*March 2019 Order*), which, in part, required HVUS to conduct an independent financial audit of its records from 2015 through 2018. In its Motion, HVUS requests a sixty-day extension of time, or until September 27, 2019, to complete the audit. On July 29, 2019, the Office of Consumer Advocate (OCA) and Hidden Valley Foundation, Inc. (Foundation) each filed Answers opposing the Motion. For the reasons set forth herein, we will deny the Motion.

**History of the Proceedings**

On April 27, 2018, HVUS filed Supplement No. 1 to Tariff Water – Pa. P.U.C. No. 1 (Water Supplement No. 1) at Docket No. R-2018-3001306, proposing an increase in rates designed to produce an additional $150,629, or a 107.2% increase, in total annual operating revenues. Approval of Water Supplement No. 1 would result in an increase of the average water bill for a residential customer using 2,100 gallons per quarter within the Company’s service territory from $26.64 to $54.72 per quarter, or an increase of 105.4%. The average water bill for a commercial customer using 16,000 gallons would increase from $123.52 to $238.20 per quarter, or an increase of 92.8%.

Also, on April 27, 2018, HVUS filed Supplement No. 1 to Tariff Wastewater – Pa. P.U.C. No. 1 (Wastewater Supplement No. 1) at Docket No. R‑2018‑3001307, proposing an increase in rates designed to produce an additional $185,432, or an increase of 63.1%, in total annual operating revenues. Approval of Wastewater Supplement No. 1 would result in an increase in the average wastewater bill for a residential customer using 2,100 gallons per quarter within the Company’s service territory from $59.76 to $96.42 per quarter, or an increase of 61.3%. The average wastewater bill for a commercial customer using 16,000 gallons would also increase from $276.60 to $446.70 per quarter, or an increase of 61.5%. Both Water Supplement No. 1 and Wastewater Supplement No. 1, which were based on a 2017 historic test year, were filed to become effective July 1, 2018.

On May 14, 2018, the OCA filed a Formal Complaint (Complaint) against the Company’s proposed Water Supplement No. 1, at Docket No. C-2018-3001841, and the Wastewater Supplement No. 1, at Docket No. C-2018-3001843. Several *pro se* Complainants also filed Complaints against the proposed water and wastewater rate increases.

By Order entered May 17, 2018, pursuant to Section 1308(d) of the Public Utility Code (Code), 66 Pa. C.S. § 1308(d), the Commission suspended the filings for investigation to determine the lawfulness, justness and reasonableness of the rates, until February 19, 2019, unless permitted by Commission Order to become effective at an earlier date. HVUS agreed to enter mediation with the Parties in the two base rate cases. Accordingly, HVUS filed Tariff Supplements at each docket on May 23, 2018, to further suspend these matters until April 1, 2019.

On July 27, 2018, two public input hearings were held, as scheduled. A total of thirty-two HVUS customers testified at the public input hearings.

On November 16, 2018, the ALJs Mark A. Hoyer and Katrina L. Dunderdale (ALJs) convened an evidentiary hearing at which counsel for the Commission’s Bureau of Investigations and Enforcement (I&E), the OCA, HVUS, and the Foundation appeared and presented various documents which were admitted into the record. Also, at the evidentiary hearing, the OCA orally requested to be admitted into evidence the evidentiary record in two prior cases. The two prior cases were *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, LP – Water*, Docket No. C 2014-2447138 and *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, LP – Wastewater*, Docket No. C-2014-2447169 (Order entered January 18, 2018) (*January 2018 McCloskey Order*). The Parties did not object to the OCA’s request. Therefore, the ALJs orally granted the request but directed the OCA to file a written motion to include a recitation of precisely which documents would be included from the two complaint proceedings.

On November 19, 2018, HVUS filed a Joint Petition for Approval of the Non-Unanimous Settlement in both proceedings. The Joint Petitioners requested that the Commission approve the Non-Unanimous Settlement without modification.

By Recommended Decision issued on January 25, 2019, the ALJs recommended the approval of the settlement with modification.

Exceptions were filed by HVUS, I&E, the OCA, and Intervenor, Robert Kollar, on February 4, 2019, and by the Foundation on February 5, 2019. Replies to Exceptions were filed by HVUS, I&E, the OCA, and the Foundation on February 8, 2019.

In our *March 2019 Order*, we denied the Exceptions and adopted the Recommended Decision of the ALJs. We held, *inter alia*, that the Joint Petition for approval of a Non-Unanimous Settlement be approved, with modification and that HVUS conduct an independent financial audit of its records from 2015 through 2018 within one-hundred and twenty days of our Opinion and Order.

On July 9, 2019, HVUS filed the instant Motion. The OCA and the Foundation filed their respective Answers to the Motion on July 29, 2019.

**Discussion**

**Legal Standards**

We are not required to consider expressly or at great length each contention raised by a party to our proceedings. [*Consolidated Rail Corporation v. Pa. PUC*,625 A.2d 741 (Pa. Cmwlth. 1993);](file:///C:\Users\tcapper\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\AppData\Local\Microsoft\Windows\AppData\research\buttonTFLink) *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Any argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

The Motion addresses the *March 2019 Order* which became the final action of the Commission when no Parties filed an appeal of this determination. The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

A petition to modify or rescind a final Commission decision may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980). Additionally, we recognize that while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior decision, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.”

*Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting [*Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=118+Pa.+Super.+380)). Such petitions are likely to succeed only when they raise “new and novel arguments,” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

Additionally, we note that Section 1.15 of our Regulations, [52 Pa. Code § 1.15](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS1.15&originatingDoc=I735dc0d3c10811e39ac8bab74931929c&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), confers upon us the authority and discretion to grant an extension of time. [Section 1.15(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS1.15&originatingDoc=I735dc0d3c10811e39ac8bab74931929c&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) provides, in pertinent part, as follows:

Except as otherwise provided by statute, whenever under this title or by order of the Commission, … an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

**Motion and Answers**

In its Motion filed pursuant to 52 Pa. Code § 1.15, HVUS seeks an extension of time to complete the financial audit directed in the *March 2019 Order*. The Company contends that there is good cause to grant its request to extend the completion date by sixty days, or until September 27, 2019. In support, HVUS avers that it will be unable to complete the audit by July 29, 2019, because the company they hired to conduct the audit, Cooley and Associates, PC (Cooley), had pre-existing work commitments. Additionally, HVUS avers that it has made a good faith effort in completing the other requirements of the *March 2019 Order*, such as finding an independent auditor who has not completed work for it before, correcting the 2015-2018 annual reports, and correcting the errors in Appendix A of the Joint Petition for Non-Unanimous Settlement. Lastly, as further evidence of their compliance with Commission decisions, the Company avers that it has made substantial efforts in complying with the *January 2018 McCloskey Order*. Motion at 4-6.

In its Answer, the OCA argues that HVUS's Motion requesting an additional sixty days is not reasonable because ensuring that it met the 120-day deadline was entirely within the Company’s control. The OCA asserts that the Motion fails to set forth any unforeseen circumstances regarding the audit that might support its request for an additional sixty days. Specifically, the OCA contends that it is not clear if HVUS ensured that the accounting firm it hired had the necessary skills and resources to timely complete the audit of four years of financial data. OCA Answer at 2.

According to the OCA, HVUS merely states that it does not believe the accounting firm will be able to complete the audit in time and makes no averment that it attempted to ensure that the accounting firm would be able to complete the audit within the time available before retaining the firm. Additionally, the OCA submits that it is not known whether HVUS had compiled its books and records to ensure that the accounting firm would be able to begin work when retained. Furthermore, the OCA proffers that, even if the statements in the Motion are accepted as true and correct, HVUS has failed to take the necessary steps to comply with paragraph 11 of the *March 2019 Order*. OCA Answer at 2.

Similarly, the Foundation argues that HVUS has failed to establish good cause for the requested extension. The Foundation asserts that HVUS has presented no information concerning the purported pre-existing work commitments of the financial auditing firm retained by the Company. According to the Foundation, if the auditing firm knew it could not file the audit report by deadline of July 29, 2019, because of pre-existing work commitments, it must have known this before HVUS filed its Motion. Also, the Foundation continues, if there was any doubt about the ability of the firm to complete the audit in time, HVUS should have selected a different firm to conduct the audit. The Foundation further argues that, if the real reason for the delay is the poor accounting records of the Company and the additional time needed to review those records, HVUS has not exhibited good cause for the time extension. Foundation Answer at 4-5.

In its Answer, the Foundation demands a copy of the engagement letter between HVUS and its auditing firm and other written verification from the auditing firm pertaining to its inability to complete the audit by July 29, 2019, because of pre-existing work commitments. *Id.* at 5.

**Disposition**

Upon review, we shall deny the Company’s Motion. The exact language of the ordering paragraph that HVUS wishes to alter is as follows:

That, within one hundred twenty (120) days after the date of entry of this Opinion and Order, Hidden Valley Utility Services, L.P. shall cause to be conducted an independent financial audit of its records from 2015 through 2018 by an outside independent financial accounting firm or office which has not previously provided auditing services to Hidden Valley Utility Services, L.P. Upon completion of the independent financial audit, Hidden Valley Utility Services, L.P. shall file a notice at this docket number and serve a copy of said notice on all Parties to this proceeding stating that the independent financial audit has been completed. Hidden Valley Utility Services, L.P. shall file the independent financial audit with the Commission’s Secretary’s Bureau and the Commission’s Bureau of Technical Utility Services.

*March 2019 Order* at 91-92.

Examining the plain language of Ordering Paragraph No. 11, we stated that HVUS “shall cause to be conducted” an independent financial audit within 120 days of the entry date of the *March 2019 Order*. Although we did not specifically state in this Ordering Paragraph that the financial audit be completed within this timeframe, we did so in the body of the order. Since HVUS had engaged with Cooley within twenty-five days after the *March 2019 Order*, the Company arguably began the process of conducting the independent financial audit within the deadline set forth therein.

However, in our disposition, we plainly stated that “HVUS will have 120 days from the entry date of this Opinion and Order, or until late July 2019, to cause the audit to be conducted *and completed*.” *March 2019 Order* at 88 (emphasis added). Thus, our intent was for the completion of the audit within 120 days. Indeed, HVUS correctly construes Ordering Paragraph No. 11 as requiring the financial audit to be completed within 120 days after the entry of *March 2019 Order*. Motion at 4.

It is concerning that HVUS waited until July 9, 2019, to file its Motion. In doing so, the resulting due date for any Answer to the Motion was twenty-days later (*i.e.*, on or before July 29, 2019). Given that the Parties had the right to file Answers by July 29, 2019, which coincided with the due date for the completion of the independent audit, there was no meaningful time for the Commission to act on the Company’s Motion prior to the expiration of the audit due date. Consequently, there was no opportunity to consider the Motion and the responses of the Parties before July 29, 2019.

In addition to the timing problems, the Motion fails to establish good cause for the extension. HVUS avers that it retained Cooley on April 23, 2019 and began diligently working with the firm to complete the financial audit. At some point, however, the Company discovered that Cooley would not be able to meet the financial audit completion deadline due to other work commitments. HVUS does not state when it learned of Cooley’s inability to meet the audit deadline. Under the circumstances, we do not find the Company’s argument about the work commitments of Cooley to be credible because it should have been apparent at the time HVUS retained the firm whether it could complete the audit as required in the *March 2019 Order*. If there was a doubt as to the firm’s ability to help the Company meet the obligations of the *March 2019 Order*, HVUS should have promptly sought the services of another auditing firm. Accordingly, we shall deny the Motion.

**Conclusion**

Based upon the foregoing discussion, we shall deny the Motion, consistent with this Opinion and Order, **THEREFORE,**

**IT IS ORDERED:**

1. That the Motion to Extend the Time Period for Completing an Independent Financial Audit, filed by Hidden Valley Utility Services, L.P – Water and Hidden Valley Utility Services, L.P – Wastewater on July 9, 2019, is denied.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 29, 2019

ORDER ENTERED: August 29, 2019