

COMMONWEALTH OF PENNSYLVANIA



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April 19, 2024

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

Enclosed please find the Answer of the Office of Consumer Advocate to the Hidden Valley Utility Services L.P.'s Motion for an Extension of Time, in the above-referenced proceeding. As required under the Commission's regulations, the Office of Consumer Advocate's Answer is accompanied by a verification in accordance with 52 Pa. Code Section 1.36.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Erin L. Gannon".

Erin L. Gannon
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Enclosures:

cc: Office of Special Assistants (email only: ra-OSA@pa.gov)
Administrative Law Judge Katrina L. Dunderdale (email only)
Administrative Law Judge Mark A. Hoyer (email only)

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :
v. : Docket Nos. R-2018-3001306
Hidden Valley Utility Services, L.P. : R-2018-3001307

I hereby certify that I have this day filed electronically on the Commission's electronic filing system and served a true copy of the following document, the Office of Consumer Advocate's Answer to Hidden Valley Utility Services, L.P.'s Motion for an Extension of Time, 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 19th day of April 2024.

SERVICE BY E-MAIL ONLY

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Dated: April 19, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2018-3001306
v.	:		R-2018-3001307
Hidden Valley Utility Services, L.P.	:		

AND

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

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO HIDDEN VALLEY UTILITY SERVICES, L.P.'S
MOTION FOR EXTENSION OF TIME

Pursuant to 52 Pa. Code § 5.61, the Office of Consumer Advocate (OCA) hereby files this Answer to Hidden Valley Utility Services, L.P.'s (HVUS or the Company) Motion for an Extension of Time to complete a financial audit (Motion), that was filed on April 5, 2024. Despite a significant procedural history of non-compliance and dilatory conduct on the part of HVUS, the Motion asks for an additional delay and an indefinite amount of time to meet the requirement from the Orders in the captioned base rate and complaint proceedings that HVUS provide an independent financial audit to the Public Utility Commission by April 19, 2024. The OCA opposes the Motion and submits this Answer setting forth the bases for denial.

This case has a long procedural history, and this is not the Company's first request for an extension of time to have conducted and file with the Commission an independent financial audit. The Commission has properly denied its prior requests and should deny the current request. The original deadline for the audit was July 29, 2019. Four years, eight months ago and

counting. Worse still, HVUS is asking for an extension of unknown duration. Under no circumstance should an extension be granted without a fixed deadline. Further, given the Company's consistent and repeated failure to comply with Commission deadlines and pattern of waiting until the deadline is approaching to ask for an extension, the OCA submits that if any extension is granted, it should be for a date certain and conditioned on HVUS not filing any Section 1308 rate case earlier than 120 days after the audit is filed and HVUS being assessed a penalty for each and every day that it is late in filing its audit after the extended deadline. For the reasons discussed below, the OCA submits this Answer in opposition to the Company's Motion.

A. HVUS has not demonstrated good faith and its request is – once again – untimely.

First, HVUS has been under continuing obligation to have conducted and file a completed independent audit of its financial statements since 2019. At no time has that requirement been lifted. Rather, the Commission has consistently and repeatedly directed the Company to complete the Audit since March 2019.

In the HVUS base rate proceedings at docket nos. R-2018-3001306 and R-2018-3001307, the Commission found that 120 days to conduct and complete the financial audit was reasonable and rejected HVUS's arguments to extend that deadline to 12 months.¹ *Pa. PUC v. Hidden Valley Utility Services, L.P.*, R-2018-3001306, R-2018-3001307 (Order Mar. 29, 2019), at 82-83, 88-89 (*March 2019 Order*). Thus the Audit was due by July 29, 2019.

On July 9, 2019 (twenty days before the deadline), HVUS filed a Motion requesting a 60-day extension of time, or until September 27, 2019, to complete the audit. The Commission rejected the Motion based on: (1) its timing, because "there was no meaningful time for the

¹ Although HVUS sought a longer deadline, the Company "acknowledged the need to cause the audit to be completed in a timely manner and stresses that it is not opposed to the recommendation that the audit be conducted by an outside independent accounting firm that has not previously provided auditing services to the Company." *March 2019 Order* at 83 (citing HVUS Exceptions at 19-20).

Commission to act on the Company’s Motion prior to the expiration of the audit due date” given the parties right to file Answers and (2) the failure of HVUS to establish good cause for the extension. *Pa. PUC v. Hidden Valley Utility Services, L.P.*, R-2018-3001306, R-2018-3001307 (Order Aug. 29, 2019), at 9-10.

The Company never filed the required audit. Thus, in the context of the complaint proceedings against HVUS that spanned 2014 to 2023, before during and after its 2018 rate case, the parties negotiated a settlement agreement that included a term to address the outstanding audit requirement. That settlement was filed almost one year ago on May 25, 2023. The settlement, including the term addressing the audit requirement and imposing a 120-day deadline after entry of a final Commission Order, was adopted by the Commission without modification. *McCloskey v. Hidden Valley Utility Services, L.P.*, C-2014-2447138, C-2014-2447169 and *Pa. PUC v. Hidden Valley Utility Services, L.P.*, R-2018-3001306, R-2018-3001307 (Order Dec. 21, 2023), at 9-10 (consolidating consideration of the Initial Decision on Remand in the complaint proceedings and HVUS’s Petition to amend the March 2019 Order in the rate case proceedings) (*December 2023 Order*).

Thus, HVUS has been on notice since at least March 2019 that it was required to conduct an audit and has been under a continuing obligation since that time. The Company’s Motion requesting sixty days to engage an accounting firm, plus an indeterminate time to have the audit completed, is not reasonable because ensuring that it met the 120-day deadline was entirely within HVUS’s control. The Company’s contention that the years that would be covered by the audit were uncertain (Motion ¶ 28.a) is disingenuous, particularly when it has had a unanimous settlement supporting a three-year audit since May 2023, and an Initial Decision supporting the same three year audit since October 2023 (Motion ¶¶ 20-22). It is not apparent that HVUS made

any effort to engage an accounting firm until February 2024 (Motion ¶ 28.c). Also the total dearth of accounting firms that have not previously performed work for HVUS rings hollow, given that the Company's counsel is in Harrisburg, its owner has a business address in Maryland,² and the utility is located in a third location near the Somerset county seat and within commuting distance from Pittsburgh. Moreover, it is not known what efforts the Company made to engage an accounting firm or take *any* action toward compliance since February 2024, or why it did not seek an extension or make the settlement parties aware that it would not meet the deadline before April 5, 2024. Even if the statements it makes in its Motion are accepted as true and correct, HVUS has failed to take the necessary and good faith steps to comply with paragraph 11 of the Commission's *March 2019 Order* – before and after its amendment in December 2023.

This failure is underscored by the disturbing fact that, once again, HVUS provided the parties to the complaint case and rate case with no advance notice and waited until twenty days before the deadline, to make its request for additional time. This is *exactly* (to the day) what the Company did in 2019 and one of the reasons the Commission rejected its Motion for an extension then, stating:

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.

As set forth in the OCA's Answer to HVUS's 2019 Motion for extension of the audit deadline, this pattern of waiting until the deadline is approaching to ask for an extension has been

² Based on HVUS's most recently filed Annual Report (May 2022). <https://www.puc.pa.gov/pcdocs/1743514.pdf>.

addressed by the Commission in other orders where HVUS has asked for additional time to comply and waited until the deadline was near:

[W]e note that the Company did not file its Second Petition until October 18, 2018 – over five months after the issuance of the *May 2018 Order* and six months after the date of the engineer’s report. It was incumbent upon the Petitioner to timely notify the Commission of any concerns with the one-year compliance deadline particularly in light of its apparent prior position that compliance would not be problematic. The delayed filing of its Second Petition is concerning and weighs against the Commission’s exercising of its discretion to disturb the *May 2018 Order*.

January 2019 Order at 30.

The Commission also has addressed the issues presented by HVUS’s delays in meeting compliance deadlines, as follows:

[D]ue to the extended time-period for compliance with the 2005 Settlement and the lack of resolution of the outstanding service problems, we believe there should be some mechanism for ensuring that further compliance deadlines are met. Any failure to further comply with the deadlines set forth in this Opinion and Order could be indicative of the Company’s lack of competency to operate and of the ability to provide reasonable and adequate service.

It is apparent that the Company’s customers have been suffering from poor water quality and unreasonable service for years. Any subsequent delays in failing to remediate the problems due to the failure to meet compliance deadlines would be unacceptable. The one-year deadline for implementing the corrective measures established in the engineer’s report sets an objective guideline for compliance.

McCloskey v. Hidden Valley Utility Services, C-2014-2447138, C-2014-2447169 (Order Jan. 18, 2018), at 31 (*January 2018 Order*). It is important to note that the *January 2018 Order* followed a 2005 Settlement Agreement that was meant to resolve the quality of service issues. In the *January 2018 Order*, the Commission cited to the ALJ’s findings that ten years after the 2005 Settlement Agreement, HVUS had not complied with requirements to: (1) submit a report to the Commission and all parties reassessing the need, size and cost of treatment plant to permanently solve the problems caused by iron and manganese, (2) replace 2,500 feet of mains serving

troubled areas of the system and (3) the holding of semi-annual customer meetings. *January 2018 Order* at 9-10.

In addressing the Exceptions filed by HVUS in these rate proceedings, the Commission also addressed the import of further delays and stated:

As the Foundation pointed out, in our *January 2019 McCloskey Order*, we reiterated our position that further delays in complying with the deadlines set forth in the *McCloskey* proceedings would be viewed as possibly indicative of the Company's lack of competency to operate. Our same reasoning applies here in rejecting HVUS's request for a longer period of time to file corrected annual reports.

March 2019 Order at 88 (citations omitted). Similarly, in its current Motion, HVUS's request to extend the time to file the audited financial reports evidences its ongoing lack of competency and inability to comply with the Commission's Orders. The Motion should be denied.

B. If any extension is granted, it should be of specific duration and conditional.

Given the Company's historic failure to meet Commission deadlines, the request for an open-ended extension of time to comply with the audit requirement is particularly galling. Specifically, HVUS asks for 60 to 90 days to engage an outside independent Certified Public Accounting firm that has not previously provided any services to HVUS to complete the independent financial audit. It claims that "[b]y the end of that extension period, HVUS will file a status report with the Commission identifying the firm that will complete the audit and the estimated time necessary to complete and file the audit." Motion ¶ 30. The OCA strongly opposes this request. The Company, in its Motion and based on its historic non-compliance, has provided no reasonable justification for converting a fixed April 19, 2024 deadline to an open-ended compliance period based on the Company's status reports. The Commission has repeatedly found 120 days to be a reasonable period for compliance with the audit requirement, thus the OCA recommends that any extension should be fixed at no more than 120 days.

Moreover, the OCA avers that a 120-day extension, if granted, should begin from today when the Company has formal notice regarding the OCA's position on the matter. This starting point is also reasonable, as April 19, 2024 is also the deadline established by the *December 2023 Order*.

Further, while the OCA maintains that no extension should be granted, any extension should be conditioned on the Company not filing for a rate increase under 66 Pa. C.S. § 1308 for at least 120 days *after* an audit that complies with the requirements of Paragraph 11 of the *March 2019 Order*, as amended by the *December 2023 Order*, is filed with the Commission. The Presiding Officers in the last rate case concluded that the audit was necessary, given the length of time that HVUS failed to provide correct financial reports, "the fact that Hidden Valley already submitted corrected reports once, and because there is little confidence in the financial numbers Hidden Valley provided in this proceeding." *Pa. PUC v. Hidden Valley Utility Services, L.P.*, R-2018-3001306, R-2018-3001307 (*RD Jan. 25, 2019*), at 51-52. Requiring a completed audit of the Company's financial statements and obtaining a fair evaluation of HVUS's financial position is a reasonable and necessary prerequisite to the Company filing a base rate case. Noting the ALJs' lack of confidence in the financial numbers HVUS provided in its last rate case, having audited financial statements will help to ensure that accurate information is provided to the Commission for the purpose of reviewing the Company's financial statements and revenue requirement claims in the next rate case.³ *McCloskey v. Hidden Valley Utility Services*, C-2014-2447138, C-2014-2447169 (ID on Remand Oct. 6, 2023), at 25-26 (summarizing the OCA's Statement in Support).

Finally, if any extension is granted, the OCA submits that penalties should be assessed per day for failure by HVUS to comply. The Company's lengthy history of frequent, recurrent

³ In April 2020, HVUS stated its intent to file another base rate case to recover its investment in water treatment plant "as soon as possible." *McCloskey v. Hidden Valley Utility Services*, C-2014-2447138, C-2014-2447169 (ID on Remand Oct. 6, 2023), at 7, 25-26 (citing OCA's reference to HVUS St. 3R at 2-3).

failure to comply with Commission deadlines is a matter of record in the complaint and rate case dockets. 52 Pa. Code §§ 69.1201(a), (c)(6). Penalties are appropriate and necessary to compel HVUS to comply with any extended deadline granted in this case.

For the foregoing reasons, if the Commission determines to allow an extension, such extension should be:

(1) no longer than 120 days from April 19, 2024, or until August 19, 2024;

(2) conditioned on the Company not filing for a rate increase under 66 Pa. C.S. § 1308 for at least 120 days after an audit that complies with the requirements of the *December 2023 Order* and Paragraph 11 of the *March 2019 Order*, as amended, is filed with the Commission; and

(3) conditioned on HVUS being assessed a penalty for each and every day that it is late in filing its audit after the extended deadline.

C. The OCA's Answer to the numbered paragraphs in HVUS's Motion.

The OCA's Answer to the specific paragraphs of HVUS's Motion are set forth below:

1-24. Paragraphs 1 through 24 are admitted (Procedural History).

25-26. Paragraphs 25 and 26 are admitted (Legal Standard).

27. Admitted to the extent that HVUS filed its current Motion twenty days prior to the April 19, 2024 deadline to meet the audit deadline.

28. Denied. By way of further answer, for the reasons discussed in Section A above, HVUS has not demonstrated good cause for extension and also has not requested a brief extension. To the latter point, the Company has requested an indefinite extension based on a future estimation by HVUS of how long a yet-to-be-hired accounting firm will need to complete the necessary audit.

28.a-28.d. The OCA is without sufficient knowledge to admit or deny the statements in paragraph 28.a through 28.d and strict proof is demanded thereof.

29. The OCA is without sufficient knowledge to admit or deny the statements in paragraph 29 and strict proof is demanded thereof.

30. Admitted and denied. Paragraph 30 is admitted to the extent that Paragraph 30 restates HVUS's request for relief in the body of its Motion. The OCA denies that HVUS has demonstrated good cause for the requested relief and, as such, the Motion should be denied.

WHEREFORE, the Office of Consumer Advocate respectfully submits, for the reasons stated above, that Hidden Valley Utility Services, L.P.'s Motion should be denied.

Respectfully Submitted,

Erin L. Gannon

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Dated: April 19, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2018-3001306
v.	:		R-2018-3001307
Hidden Valley Utility Services, L.P.	:		

VERIFICATION

I, Patrick M. Cicero, hereby state that the facts set forth in the Office of Consumer Advocate's Answer to Hidden Valley Utility Services, L.P.'s Motion for an Extension of Time, are true and correct (or 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).

DATED: April 19, 2024

Signature: *Patrick M. Cicero*
Patrick M. Cicero
Consumer Advocate

Consultant Address: Office of Consumer Advocate
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