

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Application of
Hidden Valley
Utility Services, L.P.

Public Meeting September 10 , 2004
SEPT-2004-ALJ-0400
Docket No. A-210117; A-230101

MOTION OF COMMISSIONER WENDELL F. HOLLAND

Before us for consideration is the Initial Decision of Administrative Law Judge (ALJ) John H. Corbett, Jr. regarding the protest/complaint filed by Edwin C. Miller, *et al.* In that protest/complaint, it was alleged that, since Hidden Valley Resort, L.P. (Resort) was operating as a *de facto* public utility, monies it collected for its services were illegally collected and therefore, should be refunded. The ALJ found that the Resort is not a party to this proceeding and that the protest/complaint is deficient in establishing any entitlement to relief from Applicant, Hidden Valley Utility Services, L.P. (Utility Services), in this proceeding. The ALJ then granted Utility Services' Motion to dismiss Miller's protest/complaint. I disagree.

Subsequent to the July 14, 2004 issuance of this Initial Decision, the ALJ, in response to a new filing, has since joined the Resort and the Hidden Valley Foundation (Foundation) as indispensable parties to the application proceeding of Utility Services. On September 1, 2004, ALJ Corbett issued a Third Interim Order which granted the Motion of the Office of Consumer Advocate (along with interveners Angela and H. David Boyter's answer in support of the Motion) to join the entities as indispensable parties. In my view, the Third Interim Order is appropriate because it speaks to the issue of which entity[ies] provided utility service in the past and which entity[ies] currently provides service. Nonetheless, the Third Interim Order does not address the status of Miller's (and the five other complainants') protest/complaint.

By way of background, Miller alleges that the Resort has provided water and wastewater service to about 1000 residents of the Hidden Valley community using the Foundation as a billing agent. In his protest/complaint, Miller states that a Resort employee reads the meters, sends the billing information to the Foundation which, in turn, issues the bills. Miller references the instant docket numbers under which, Miller contends, the Resort recently entered into an agreement¹ with the Commission to apply for a Certificate of Public Convenience. Miller asserts that 'HVR [Resort] and HVUS [Utility Services] are one and the

¹ Docket No. C-20028823

same for purposes of this complaint.² Miller also alleges that the operators of the Resort "merely changed the company name to HVUS [Utility Services] when applying for the Certificates of Public Convenience."³

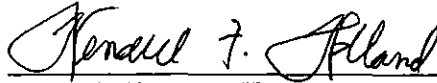
I note that in his Initial Decision, the ALJ suggests that if Miller and the five other complainants wish to pursue their refund claim, they may do so by filing a separate complaint at a different docket number. Now that the ALJ has issued the Third Interim Order and the entities are joined as indispensable parties, requiring Miller and the five others to file a separate complaint to pursue their refund claim would be inappropriate. Thus, Miller (and the five other complainants) should be allowed to participate in this proceeding.

THEREFORE I MOVE:

1. That the Initial Decision of Administrative Law Judge John H. Corbett, Jr. be reversed.
2. That the Protest/Complaint of Edwin C. Miller, *et al.*, is properly part of the Application of Hidden Valley Utility Services, Docketed at Numbers A-210117 and A-230101.
3. That the Office of Special Assistants shall prepare the appropriate Opinion and Order consistent with this Motion.

9.10.04

Date



Wendell F. Holland, Commissioner

² Initial Decision, page 2

³ *Ibid.*

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> September 1, 2004	2. <u>BUREAU AGENDA NO.</u> SEPT-2004-ALJ-0400*
3. <u>BUREAU:</u> Office of Administrative Law Judge	
4. <u>SECTION(S):</u>	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u> Chief ALJ Veronica A. Smith	September 10, 2004
7. <u>PERSONS IN CHARGE:</u> ALJ John H. Corbett, Jr.	9. <u>EFFECTIVE DATE OF FILING</u> N/A
8. <u>DOCKET NO.:</u> A-210117; A-230101	

**DOCUMENT
FOLDER**

9. (a) **CAPTION** (abbreviate if more than 4 lines)
 (b) **Short summary of history & facts, documents & briefs**
 (c) **Recommendation**
- (a) Application of Hidden Valley Utility Services, L.P. (HVUS)
- (b) On February 12, 2004, HVUS filed two applications for approval to begin to offer, render, furnish or supply water and wastewater service to the public in Hidden Valley, PA. Protests and complaints were filed. On June 22, 2004, HVUS answered the protest/complaint with new matter.
- (c) ALJ Corbett issued an Initial Decision dismissing the protest/complaint.

Initial Decision served: July 28, 2004

Commission Review requested by Commissioners' Pizzigrilli and Holland.

Calendar Sheet Doc. No. 494119

Order Doc. No. 494120

10. **MOTION BY:** Commissioner Holland Commissioner Chm. Fitzpatrick - Recusing
 Commissioner Thomas - Yes
SECONDED: Commissioner Bloom Commissioner Pizzigrilli - Yes

CONTENT OF MOTION:

1. That the Initial Decision of Administrative Law Judge John H. Corbett, Jr. be reversed.

DOCKETED
SEP 23 2004

CONTINUED

CONTENT OF MOTION:

2. That the Protest/Complaint of Edwin C. Miller, et al., is properly part of the Application of Hidden Valley Utility Services, Docketed at Numbers A-210117 and A-230101.

3. That the Office of Special Assistants shall prepare the appropriate Opinion and Order consistent with this Motion.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

October 6, 2004

A-210117
A-230101

HIDDEN VALLEY UTILITY SERVICES LP
1 CRAIGHEAD DRIVE
SUITE 300
HIDDEN VALLEY PA 15502

DOCKETED
NOV 08 2004

Application of Hidden Valley Utility Services, L.P.,

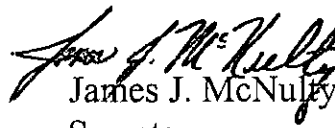
**DOCUMENT
FOLDER**

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on September 10, 2004 has adopted an Opinion and Order in the above-entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,


James J. McNulty
Secretary

Enclosure
Certified Mail
LJM

See attached listing for additional parties of record

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held September 10, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman, Recusing
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli
Wendell F. Holland

DOCKETED
NOV 08 2004

Application of Hidden Valley Utility Services, L.P.

A-210117
A-230101

OPINION AND ORDER

BY THE COMMISSION:

**DOCUMENT
FOLDER**

Before the Commission for consideration, pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. §332(h), is the Initial Decision of Administrative Law Judge (ALJ) John H. Corbett, Jr., issued July 28, 2004, in the above captioned proceeding.

History of the Proceeding

On February 12, 2004, Hidden Valley Utility Services, L.P. (HVUS) filed two applications with this Commission seeking approval to begin to offer, render, furnish or supply water and wastewater service to the public for compensation in Hidden Valley, Pennsylvania. On March 4, 2004, Angela M. and H. David Boyter, homeowners in HVUS' proposed service territory, petitioned to intervene in the proceeding. The Boyters alleged that the Applications were filed as the direct result of an agreement to settle the complaint that they brought against Hidden Valley Resort, L.P. (HVR) at Docket No.

C-20028823. Further, the Boyters averred HVR has provided water and wastewater service to about 1,000 residents of the Hidden Valley community using the Hidden Valley Foundation as a billing agent since approximately 1985. The Boyters maintained that they have been aggrieved by the excessive rates and substandard services provided by HVR, and that the Applications fail to redress any of these shortcomings. No response was filed to the Boyters' Petition to Intervene.

On March 4, 2004, Edwin C. Miller, *et al.* (Miller), filed a Protest which, stated that since HVR was operating as a *de facto* public utility without having obtained a certificate of public convenience, the monies collected for its services should be refunded. The Commission's Office of Trial Staff (OTS) filed a Protest to the Applications on March 18, 2004. The Office of Consumer Advocate (OCA) followed with its intervention on March 19, 2004.

On June 22, 2004, HVUS filed an Answer and New Matter to the Miller Protest. HVUS also moved to dismiss the Protest, arguing that it alleged wrongdoing on the part of HVR, which was not a party to the proceeding. HVUS stated that HVUS was the Applicant and that HVR was an entirely separate entity. Therefore, according to HVUS, any conduct allegedly performed by HVR, a non-party to the proceeding, raised issues outside the scope of the case. HVUS argued that the Protest failed to state any claim for which the Commission could grant relief. On or about July 1, 2004, Miller filed his Answer opposing the Motion to Dismiss. By Initial Decision issued July 28, 2004, ALJ Corbett granted the Motion to Dismiss Miller's Protest.

Discussion

Section 501(b) of the Public Utility Code (Code) vests the Commission with primary and comprehensive jurisdiction "to supervise and regulate all public utilities

doing business within this Commonwealth.” 66 Pa. C.S. § 501(b). Section 701 of the Code grants any person “having an interest in the subject matter” the right to file a complaint setting forth any act done or omitted to be done by a public utility in violation of any law, regulation or order, which the Commission has jurisdiction to administer or regulate. 66 Pa. C.S. §701.

A review of the record indicates the following pertinent circumstances. Subsequent to the July 14, 2004 Initial Decision, ALJ Corbett, on September 1, 2004, issued a Third Interim Order which granted the Motion of the OCA (along with the Boyters’ Answer in support of that Motion) to join HVR and the Hidden Valley Foundation (Foundation) as indispensable parties. The Third Interim Order discussed which entity/entities provided utility service in the past and which currently provides service. However, the Third Interim Order failed to address the status of Miller’s Protest.

In his Protest, Miller, alleged that HVR has provided water and wastewater service to approximately 1,000 residents of the Hidden Valley community, using the Foundation as a billing agent. Miller stated that a HVR employee reads the meters and remits the billing information to the Foundation, which in turn, issues the bills. Miller referenced Docket No. C-20028823 under which HVR recently entered into an agreement with the Commission to apply for a certificate of public convenience. Miller averred that HVR and HVUS “are one and the same for the purpose of this complaint.” (I.D. at 2). Miller further averred that the operators of HVR merely changed the company name to HVUS when applying for the certificates of public convenience. (Id.). Miller stated that he and the five other named Complainants are customers of the existing water company. (Id.).

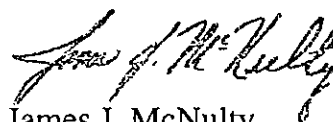
ALJ Corbett, in his July 28, 2004 Initial Decision recommended that if the Miller Protestants wished to pursue their refund claim, they could do so by filing a

separate complaint at a different docket number. Now that the ALJ has issued the Third Interim Order joining HVR and the Foundation as indispensable parties, requiring Miller *et al.*, to file a separate complaint to pursue their refund claim against those entities would be inappropriate. Given these circumstances, the Miller Protest is properly filed at the instant docket numbers, and will be considered. Accordingly, the Miller Protest should be remanded to the Office of Administrative Law Judge for disposition as part of the instant proceeding; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge John H. Corbett issued on July 28, 2004, is reversed.
2. That the Protest of Edwin C. Miller, *et al.*, is properly part of the Application of Hidden Valley Utility Services proceeding docketed at A-210117 and A-230101.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: September 10, 2004

ORDER ENTERED: OCT 06 2004

HIDDEN VALLEY UTILITY SERVICES LP
1 CRAIGHEAD DRIVE SUITE 300
HIDDEN VALLEY PA 15502

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HARRISBURG PA 17105-3265

COMMONWEALTH OF PENNSYLVANIA

DATE: October 6, 2004
SUBJECT: A-210117, A-230101
TO: Director, Bureau/Office of Administrative Law Judge
FROM: Janey Gast, Chief
Document Control and Record Maintenance

Application of Hidden Valley Utility Services, L.P.

The Commission at Public Meeting held September 10, 2004 adopted an order in the above-entitled proceeding.

Please direct your attention to the "Ordering Paragraph(s)" for your Bureau's/Office's ongoing responsibility as identified therein.

Kindly acknowledge receipt of this memo by signing below and return this memo to:

Secretary's Office
Attn: Docketing Section
2nd Floor Keystone Building

Thank you for your cooperation in this matter!

Receipt acknowledged:

(signature)

Terrence Smith

(date)

10/7/04

DOCKETED

NOV 10 2004

**DOCUMENT
FOLDER**

PA PUC

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OFFICE OF C.A.L.J.