

**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

Tanya J. McCloskey, Acting Consumer  
Advocate

Docket Nos. C-2014-2447138  
C-2014-2447169

v.

Hidden Valley Utility Services, L.P.

**MAIN BRIEF OF RESPONDENT**

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Date: January 20, 2016

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## **I. INTRODUCTION**

Pursuant to 52 Pa. Code § 5.501 and in accordance with the Interim Order dated December 15, 2015, the Complainants in the above-captioned matter respectfully submit this Main Brief.

### **A. FACTUAL BACKGROUND**

Hidden Valley Utility Services, L.P. (“HVUS” or “Company”) provides water and wastewater services to approximately 1,168 customers in Hidden Valley, Pennsylvania. In 2004, HVUS applied to the Commission for a Certificate of Public Convenience, which was approved in 2005 after the submission of a Settlement that addressed issues raised by the parties in the application matter. The 2005 Settlement contained a number of provisions that required HVUS to implement changes and improvements to provide adequate, safe and reasonable service. Since 2005, HVUS has complied with nearly all of its obligations under the Settlement. See, Exhibit JMK-6. Since the time that rates were set for HVUS in 2005, the Company has not sought or received an increase for its water or wastewater rates.

The HVUS system is located in an area of Somerset County where ground water tends to contain high concentrations of iron and manganese, which oxidize with exposure to air over time and create discoloration in the water. A large number of Hidden Valley customers are part time residents who use their homes sporadically, and the water tends to collect in the service lines where it may discolor if not flushed or otherwise used. The area has not experienced any growth in residential customers and some of the former commercial customers of the Company have reduced their activities or ceased operations altogether. Occasionally, customers will experience

discolored water during the holidays, periods of high usage, or in connection with repairs and replacements that the Company conducts on a regular basis.

## **B. PROCEDURAL HISTORY**

On October 9, 2014, Tanya J. McCloskey, Acting Consumer Advocate (OCA or Complainant) filed a formal complaint (complaint) against HVUS, regarding water services, at Docket No. C-2014-2447138. OCA also filed a formal complaint against HVUS regarding wastewater services, at Docket No. C-2014-2447169 on October 9, 2014. Essentially, OCA avers that the Company has failed to provide adequate, safe and reasonable service, regarding water system issues, alleging continuing incidents of dirty, brown and rusty water; lack of proper equipment; the failure to properly maintain water tank(s); low water pressure which is alleged to be inadequate for basic household uses; lack of system maintenance, unaccounted for water; concern that the unaccounted for water is not being accurately calculated and reported; and water leaks, particularly at pipe junctions, where fittings containing both copper and bronze are corroding. OCA further averred the existence of financial and managerial issues including allegations of the lack of daily working capital and regular net losses and reporting discrepancies; insufficient funding to make necessary improvements; lack of equipment to perform system maintenance and necessary repairs; telephone system temporarily disconnected from time to time and lack of staff to answer calls/complaints; inadequate system to track customer complaints; failure to pay electricity bills, resulting in receipt of shut off notices; failure to timely pay rent; employee cell phones are occasionally disconnected; no truck currently available to perform maintenance, etc., so employees use their personal vehicles; and the failure to replace mains, which may contribute to the service problems.

With regard to wastewater services, OCA avers that the Company has failed to provide adequate, safe and reasonable service, alleging that a duplicate blower for the equalization basin at treatment plant #1 is missing, resulting in customer complaints regarding odors; that treatment plant #2 is missing a comminutor and the failure to calibrate flow meters; that the horns and alarms that provide an overflow warning for the grinder pumps are not working and three grinder pump stations do not have backup pumps; that well #2 runs continuously and does not have on/off controls, resulting in the pump station overflowing onto the building floor, and no proper discharge permit; that steel tankage at treatment plant #1 appears rusty and needs repainted; and that the lagoon associated with plant #2 was constructed in 1990 and has never been cleaned out. OCA further averred the existence of financial and managerial issues similar to those raised regarding the water system.

On October 29, 2014, the Company filed answers to both formal complaints filed by OCA. In the answers, the Company admits that it provides water and wastewater services to customers in Hidden Valley, Pennsylvania, and denies the substantive claims and allegations related to service issues.

On March 26, 2015 a notice was issued which scheduled an initial prehearing conference on Monday, May 4, 2015 at 10:00 a.m. A prehearing conference order was issued on April 7, 2015, requiring each of the parties to file a prehearing conference memorandum not later than April 30, 2015 at 3:00 p.m. The prehearing conference order provided that the prehearing conference memoranda set forth the history of the proceeding, the issues that each party intends to present, a proposed plan and schedule of discovery, a listing of proposed witnesses and the subject of their testimony, and a proposed litigation schedule. The prehearing conference order further provided that all parties must be prepared to participate in the scheduled prehearing

conference, and that parties and counsel are expected to attend the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto.

On April 9, 2015, Paige Macdonald-Matthes, Esquire, filed a notice of entry of appearance on behalf of Hidden Valley Foundation, Inc., a non-party in this proceeding.

On April 30, 2015, OCA and the Company each filed a prehearing memorandum.

A prehearing conference was held on Monday, May 4, 2015. Erin L. Gannon, Esquire and Lauren M. Burge, Esquire, counsel for OCA, attended the conference. Counsel for the Company, Edward G. Lanza, Esquire, also attended the conference. In addition, Paige Macdonald-Matthes, Esquire, and Alice Johnson, Esquire, counsel for Hidden Valley Foundation, Inc., attended the prehearing conference in order to monitor the proceeding.

On June 19, 2015, a Prehearing Order was issued, setting forth various procedural matters, confirming the agreement of the parties with regard to matters resolved at the prehearing conference setting the litigation schedule and consolidating the formal complaints filed by OCA at Docket Nos. C-2014-2447138, C-2014-2447169, and R-2014- 2447138.

On June 25, 2015, public input hearings were held at 12:30 p.m. and 7:00 p.m. at the Hidden Valley Resort in Hidden Valley, Pennsylvania.

On July 13, 2015, the presiding officer received two letters from Robert J. Kollar and Kellie A. Kuhleman, dated July 9, 2015. The first letter was a cover letter attached to a second letter which requested "permission to intervene as parties".

A hearing Notice was issued on July 30, 2015, scheduling the evidentiary hearing in this matter on September 30, 2015 through October 2, 2015 in Pittsburgh, Pennsylvania.

On July 31, 2015, an Interim Order on Various Procedural Matters was entered.

On August 4, 2015, the presiding officer received an email from counsel from OCA which indicated that OCA and the Company were requesting modifications to the litigation schedule. OCA and the Company proposed various revisions to the litigation schedule, which were approved by an interim order entered on August 5, 2015. In addition, it was ordered that the letter from Robert J. Kollar and Kellie A. Kuhleman, dated July 9, 2015, which requested "permission to intervene as parties", would be considered as a petition to intervene by Robert J. Kollar and Kellie A. Kuhleman. It was further ordered that any party objecting to the petition to intervene by Robert J. Kollar and Kellie A. Kuhleman must file its objection with the Commission's Secretary and serve all parties, the presiding officer, Robert J. Kollar and Kellie A. Kuhleman within ten (10) days of the date of the August 5, 2015 interim order. Finally, the litigation schedule previously established in this proceeding was amended, as proposed by the parties.

On August 17, 2015, the presiding officer received an email from counsel from OCA which indicated that OCA and the Company were requesting additional modifications to the litigation schedule.

The litigation schedule previously established in this proceeding was amended as

- a. Service of Rebuttal Testimony shall be made on or before September 2, 2015.
- b. Service of Surrebuttal Testimony shall be made on or before September 25, 2015.
- c. Oral Rejoinder/Surrejoinder Testimony shall be taken at the hearing in this proceeding.

On August 17, 2015, Respondent filed an answer to the petition to intervene of Robert J. Kollar and Kellie A. Kuhleman. The petition to intervene was granted by interim order entered

on September 8, 2015. In addition, the interim order entered on September 8, 2015 permitted Respondent to file an appropriate request to amend the litigation schedule, to include the proposed modifications and basis for the proposal, on or before September 14, 2015. Any response to the request was required to be filed on or before September 17, 2015.

On September 14, 2015, Respondent submitted a letter to the presiding officer requesting that the litigation schedule be modified to provide Respondent with an opportunity to file rebuttal testimony in response to the written testimony submitted by Mr. Kollar. Respondent points out that Mr. Kollar's petition to intervene was not timely filed, failed to meet the Commission's requirements and his testimony contains numerous detailed accounting and financial averments and exhibits that may require Respondent to retain an expert to examine and respond.

By letter dated September 15, 2015, Complainant opposed Respondent's request to modify the litigation schedule. Complainant requested that the evidentiary hearings in this matter be rescheduled no sooner than three weeks after Respondent's rebuttal testimony is due, in the event that Respondent's request would be granted.

On September 17, 2015, an interim order was entered granting the request of Respondent Hidden Valley, to modify the litigation schedule and the parties were directed to confer and use their best efforts to reach an agreement regarding a proposed revised litigation schedule and provide said proposal to the presiding officer not later than September 24, 2015.

The parties subsequently provided the presiding officer with an email setting forth their agreement to modify the litigation schedule, which was revised by the presiding officer. By interim order entered on October 13, 2015, it was ordered that:

1. The Company's rebuttal testimony to the testimony of Mr. Kollar shall be served upon the parties on or before Tuesday, October 20, 2015.

2. The OCA's surrebuttal testimony shall be served upon the parties on or before Tuesday, November 3, 2015.
3. The Company's written rejoinder testimony shall be served upon the parties on or before Tuesday, November 10, 2015.
4. The evidentiary hearing shall be scheduled for Tuesday, November 17, 2015 through Thursday, November 19, 2015, in Pittsburgh.
5. The filing and service of main briefs with common issues shall be made on or before January 20, 2016.
6. The filing and service of reply briefs with common issues or submission of a joint settlement petition executed by authorized representatives of all parties together with all parties' statements in support of settlement shall be made on or before February 10, 2016.
7. The parties shall comply in all other respects with the terms of the Prehearing Order dated June 19, 2015 and the Interim Orders dated July 31, 2015, August 5, 2015, September 8, 2015 and September 17, 2015.

On September 3, 2015, Complainant filed its Motion of the Office of Consumer Advocate to Admit Evidence of Certain Documents Pursuant to 52 Pa. Code Section 5.407. OCA requested that the public input hearing transcript, pages 62 through 138, and the Joint Petition for Settlement of Separate Water and Wastewater Application Proceedings filed at Docket Nos. A-210117 and A-230101 be admitted into evidence in the above-captioned proceeding. No objection to the motion was filed by any party. On November 9, 2015, an interim order was entered granting the Motion of the Office of Consumer Advocate to Admit Evidence of Certain Documents Pursuant to 52 Pa. Code §5.407, without objection.

On November 13, 2015, OCA filed a Motion to Admit into Evidence Certain Public Documents, seeking the admission of the 2014 Annual Report (Water) and the 2014 Annual Report (Wastewater) filed by Respondent.

The evidentiary hearing convened as scheduled on November 17, 2015. Christine Maloni Hoover, Esquire and Lauren M. Burge, Esquire, appeared on behalf of OCA. Edward G. Lanza, Esquire, appeared on behalf of Respondent. Robert J. Kollar, an intervenor in this matter appeared and indicated that he was not represented by legal counsel. The remaining intervenor,

Kellie A. Kuhleman did not attend the evidentiary hearing. The evidentiary hearing was concluded on November 17, 2015. Prior to taking testimony, OCA argued its Motion to Admit into Evidence Certain Public Documents, which was granted at the hearing, without objection.

In addition, at the evidentiary hearing, Respondent agreed to provide the parties with an electronic version of Exhibit JMK-3, a paper copy of which was attached to the written testimony of James Kettler, which was admitted into the record at the evidentiary hearing.

In addition, at the evidentiary hearing, at the request of the intervenor, Robert J. Kollar, Respondent agreed to file a late-filed exhibit consisting of an existing written response to a discover request propounded to Respondent in a 2007 Commission proceeding regarding Respondent's response to its compliance with the terms of the 2005 settlement agreement in a prior proceeding referenced in the formal complaint filed by OCA.

On November 20, 2015, an interim order was entered. Respondent was ordered to provide the parties with an electronic version of Exhibit JMK-3 within (10) ten days, as agreed by the parties. In addition, Respondent was ordered to file a late-filed exhibit consisting of an existing written response to a discovery request propounded to Respondent in a 2007 Commission proceeding regarding Respondent's response to its compliance with the terms of the 2005 settlement agreement in a prior proceeding referenced in the formal complaint filed by OCA, within ten (10) days. It was further ordered that OCA and Robert J. Kollar were permitted to file and serve upon all parties and the presiding officer, objections to the late-filed exhibits within ten (10) days of the date listed on Respondent's certificate of service attached to the filing of the late-filed exhibit.

On November 10, 2015, Respondent provided the parties and the presiding officer with HVUS Statement 3-R (Exhibit 1), an exhibit which Respondent intended to attach to the rejoinder testimony of James Kettler. On November 18, 2015, Respondent provided to the parties and to the presiding officer an Excel version of Exhibit JMK-3. On November 24, 2015, Respondent provided the parties and the presiding officer with Respondent Exhibit JMK-6, the discovery responses in the 2007 case.

Respondent filed a late-filed exhibit consisting of an existing written response to a discovery request propounded to Respondent in a 2007 Commission proceeding regarding Respondent's response to its compliance with the terms of the 2005 settlement agreement in a prior proceeding referenced in the formal complaint filed by OCA, and served said late-filed exhibit upon all parties. No objection was filed by OCA or Robert J. Kollar. Accordingly, the Exhibits provided by Respondent, as identified above, are hereby admitted into evidence.

In addition, the November 20, 2015 interim order provided that the parties would confer and agree upon common or uniform issues, as well as the headings for each issue and the number of issues to be briefed by the parties in the briefs submitted by all parties and intervenors to be filed in this proceeding. All briefs are to be submitted to the presiding officer in written and electronic form by the deadline set forth in the interim order entered on October 13, 2015. The electronic form of the briefs is to be submitted to the presiding officer in WORD format. In addition, all briefs shall include said common or uniform issues, proposed findings of fact with specific references to the line and page number of the transcript to support each such proposed finding, proposed conclusions of law with the legal citation of the authority to support each such proposal, and proposed ordering paragraphs. Any argument or discussion shall include the specific legal authority and citations thereto to support such argument or discussion.

### **C. BURDEN OF PROOF**

The Public Utility Code provides that, as the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy this burden, Complainant must establish that Respondent was responsible for the problems alleged in the Complaint through a violation of the Public Utility Code, such as 66 Pa. C.S. § 1501, or a regulation or Order of the Commission. This must be shown by a preponderance of the evidence. 66 Pa. C.S. § 701; *Patterson v. Bell Telephone Company of Pennsylvania*, 72 PA PUC 196, 1990 Pa. PUC LEXIS 19 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602, *alloc. den.*, 602 A.2d 863 (1992). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway v. Pa. P.U.C.*, 413 A.2d 1037 (Pa. 1980).

### **II. SUMMARY OF THE ARGUMENT**

The OCA has failed to meet its burden to prove that HVUS is providing inadequate, unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code. As set forth in more detail below, the OCA has succeeded in highlighting a number of issues that require improvement, and HVUS has agreed to take the steps necessary to address the issues raised by the OCA. However, it is a stretch to say that the types of challenges faced by HVUS and its customers justify the types of extraordinary relief the OCA is seeking in this case. Therefore, the Complaint should be dismissed and the sought relief should be denied.

Moreover, the relief sought by the OCA should be rejected as extreme and punitive because it is not justified by the circumstances of this case. The 50% percent rate reduction advocated by the OCA is excessive and not supported by the facts or the law in this matter. The Company has agreed with many of the recommendations of the OCA for improvement of service in Hidden Valley and is undertaking a number of projects that will lead to better service for customers. HVUS has provided adequate, safe and reliable service to its customers despite having had no rate increases in ten (10) years. In addition, any review or adjustment of rates should be done in the context of a rate proceeding, where all the relevant factors in establishing a just and reasonable rate are examined. The relief requested by the OCA should be denied.

### **III. LEGAL ARGUMENT**

#### **A. Quality of Service Legal Background**

Quality of service is an important component of every utility's obligations to its customers. Under Pennsylvania law, utilities such as HVUS have an obligation to provide adequate, safe and reasonable service. Section 1501 of the Public Utility Code provides, in pertinent part:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa. C.S. § 1501.

HVUS takes very seriously its obligation to comply with Section 1501 and provide adequate, safe and reasonable service to its customers. In spite of the fact that HVUS has not received a

rate increase since 2005, the Company has made numerous improvements and made sizeable capital investments to maintain and improve adequate, safe and reasonable service. Mr. Kettler provided a list of capital projects undertaken by HVUS from 2009 to 2014. *See*, Exhibit JMK-5. The list of projects includes the installation or replacement of pumps, valves, motors and water lines. Ex. JMK-5. Also, Mr. Kettler provided the costs associated with the projects in Exhibits JMK-3 and JMK-4. The costs associated with the capital projects listed in JMK-5 exceed \$100,000, which is significant for a small system like Hidden Valley. The Company has invested in capital improvements and has sought to improve service to meet all its obligations under Section 1501.

In rare circumstances, the Commission has denied a rate increase request by a utility if the quality of service offered by the utility is so poor, that a rate increase is not justified. Under Sections 523 and 526 of Public Utility Code, 66 Pa. C.S. §§ 523, 526, the Commission is authorized to consider quality of service in determining just and reasonable rates as part of the review of a utility's rate case. First, it should be noted that HVUS is not seeking an increase in rates. In fact, HVUS has not received an increase in rates since its current tariff was approved by the Commission in 2005. In addition, the alleged violations of Section 1501 claimed by the OCA do not reach the level of poor quality service that justifies the extreme remedy of a 50% rate reduction advocated by the OCA. As set forth in more detail below, the issues raised by the Complaint in this matter are either not major problems or they are being addressed by the Company in ways that are consistent with the OCA's recommendations.

## **B. Water**

No evidence was presented in this case that the water at Hidden Valley is unsafe to drink. In fact, while many customers prefer to use bottled water for drinking and cooking, there are customers who use the water for normal household purposes. Mr. Douglas Brown testified that he drinks the water and that Hidden Valley has good water. TR. 263. Some customers filter the water before drinking it and cooking with it. TR. 222. The issues that customers seem to have with the water are aesthetic in nature. On occasion, customers experience intermittent episodes of discolored water that stain toilets and bathtubs and make customers reluctant to use the water for laundry, cooking or drinking. Some of the episodes of brown water are related to line breaks and repairs by the Company. TR. 258-259; HVUS St. 1R at 22.

The issues that customers experience with the water stem from iron and manganese in the water. Iron and manganese are minerals that occur naturally in many ground water aquifers. OCA St. 2 at 2. This appears to be a common problem in Somerset County, where Hidden Valley is located, where the water is clean, but becomes discolored over time. TR. 251. When the iron and manganese are exposed to air, they oxidize and discolor the water. OCA St. 2 at 3. HVUS is not required to remove iron and manganese from the water at Hidden Valley, but it is allowed to use sequestration to deal with the problem as long as the total iron and manganese concentrations do not exceed 1.0 mg/L (milligrams per liter). OCA St. 2 at 4. Monthly tests performed by HVUS demonstrate that the concentration of iron and manganese are well below the 1.0 mg/L approved by PA DEP. St. 3R at 6. More specifically, tests results from August 2015 show that the combined iron and manganese levels were at 0.56 mg/L at the well and 0.58 mg/L leaving the company's storage tank. HVUS St. 1R at 21. The Company is in compliance with DEP permitting standards.

The problems that customers complain of are more closely related to the way the system is being used, rather than the presence of iron and manganese. The sequestration process used by HVUS is effective in placing the minerals in suspension. However, because many homes in Hidden Valley are used infrequently, the water sits in the pipes for several days at a time and the iron and manganese oxidize causing discoloration. HVUS St 1R at 22. As Mr. Kettler explained in testimony, “[f]lows are 50% less than engineered and at times, water is sitting in the distribution system too long per the design of the sequestration process.” HVUS St. 1R at 23. The low flows and aggressive leak detection and repairs by HVUS have combined to increase the time that water sits in the system, and this leads to the oxidation of iron and manganese and occasional discolored water. HVUS St. 1R at 24. The design parameters of the system did not take into consideration the part-time usage of the community and the reduction of metered flows in the commercial meters over an extended period of time. *Id.*

HVUS has taken significant steps to address the water quality issues during times of higher usage at Hidden Valley. For instance, during Christmas week, when there is heavy demand over the holiday period, flows spike from 65,000 gpd (gallons per day) to 250,000 gpd, which causes a scrubbing action and impacts turbidity in some parts of the system. HVUS St. 1R at 24-25. To combat this issue, the Company has scheduled a major flushing of the system prior to the holiday to remove iron and manganese that may have settled in the pipes. HVUS St. 1R at 24. This has reduced the number of complaints over that period. *Id.*

As part of a longer-term strategy, HVUS has retained the service of a consulting engineer to identify viable alternatives to sequestration to deal with the discolored water issue. HVUS St. 3R at 7-8. The engineering study commissioned by the Company “will present different options and alternatives to the current sequestration solution, such as water treatment or purchase of

treated water from other sources.” HVUS St. 3R at 8. The study will look at on-site treatment and off-site water sources, including cost estimates for each. TR 366. This study is consistent with the recommendations of the OCA.

Based on the above, it should be clear that issues with the water quality at Hidden Valley are the result of the mineral composition of the source water in the area and the designed flows of a system in a resort area. These issues are being addressed through a number of steps that include sequestration, frequent flushing and other system and process improvements that deal with all pressing water quality concerns. To the extent that sporadic incidents of discolored water occur, HVUS deals with those concerns quickly and is taking measures to study alternatives to sequestration that will improve water quality and minimize customer impacts. In addition, the Company is adopting many of the recommendations that have been offered by the OCA’s engineer to deal with the issues raised by customers in this case. As customers testified, the Company is very responsive to customer complaints and emergency calls and they have seen improvements in the quality of service. TR 57, 177, 190, 192, 203,

### **C. Wastewater**

In their testimony at the June 25, 2015 public input hearing, customers did not seem to have any issues with their wastewater service. TR 59, 66, 71, 76, 80, 88, 96, 123, 128, 145, 151. The one issue that seem to concern customers was the fact that they were being asked to flush their water lines to clear up discolored water and they felt that this practice increase the rates they pay for water and wastewater. TR 187. One customer complained that she detected a smell coming from the sewer behind her house, but it is only noticeable when there is a lot of usage in the community. TR 112, 116.

Mr. Fought, the OCA's engineer, submitted testimony that pointed to a number of relatively minor issues that HVUS should address. In his statement he recommended that the Company's engineer report on improvements to back-up pumps for the sewage pumping stations. HVUS St. 2 at 9. He also recommended a review of tank maintenance practices and improvements in the Company's sludge disposal process. HVUS St. 2 at 10.

In his testimony, Mr. Kettler pointed out that the pumping stations are in working order and that as of September 2015, all alarms would be in proper working order. HVUS St. 1R at 32-33. Mr. Kettler also testified that new grinders were installed to address an issue at Westridge Pump #1 to rectify an issue that was discovered during a DEP inspection in November of 2013. HVUS St. 1R at 33. Blowers, equalization tanks and the communitor are all working properly. HVUS St. 1R 33-34. Tank painting and cleaning suggested by Mr. Fought have been scheduled or completed. HVUS 1R at 34. All Notice of Violations (NOVs) issued by DEP have been addressed satisfactorily. *Id.* Mr. Kettler agreed with Mr. Fought's recommendation for an engineering report that would address outstanding issues. HVUS St. 1R at 35; St. 3R at 9.

Based on the efforts by HVUS to address the issues raised by the OCA with regard to wastewater service and the Company's agreement with the OCA's recommendations, HVUS respectfully submits that the wastewater issues raised in the Complaint are either moot or are in the process of being resolved. HVUS is willing to report on the progress of outstanding items to improve wastewater operations.

#### **D. Financial and Managerial Fitness**

In support of its claim that HVUS is not properly managed, the OCA first argues that the bills customers receive are not compliant with Commission's regulations. OCA St. 1 at 4-5. However, although the Company uses a legacy system that does not display all the information required by the regulations, information that the OCA claims does not appear on the bill actually appears on the invoices receive on a quarterly basis. For example, Ms. Everette testified that meter readings and a working contact number do not appear on the bill. OCA St. 1 at 4-5. In fact, a number that customer can, and do, use to contact HVUS personnel appears on the bill and is used regularly by customers to contact the Company. HVUS St. 1R at 3-4. Similarly, the meter readings appear on the bill, contrary to Ms. Everette's assertions. *Id.* To the extent that the bill format needs improvements, the Company has expressed a desire to work with the OCA to issue bills that are more customer friendly and fully compliant with all Commission regulations. HVUS St. 3R at 2.

The OCA and Mr. Kollar point to the late filing of the 2014 Annual Report to the PUC as an indication of the Company's managerial fitness. OCA St. 1 at 9; Kollar at 1. In prior years, the Company filed all its reports on time. HVUS obtained an extension from PUC staff to file its 2014 report after reviewing the concerns expressed by the OCA regarding discrepancies in prior reports. The Company intended to file an accurate 2014 report, even if it meant that the report would not be filed on the normal deadline. HVUS St. 1R at 5. HVUS has retained a consultant to review prior filings, address any discrepancies and file corrected reports. TR at 360. Other annual reports required by the PUC, DEP and other agencies have been filed in a timely manner since 2005. HVUS St. 1R at 6.

The OCA and Mr. Kollar point to operating losses as a negative sign of the Company's financial condition and poor management. OCA St. 1 at 7; Kollar at 3. However, any losses experienced in the past have been the result, not of financial mismanagement, but the reality that "[t]here has been no growth in residential customers in the Hidden Valley area and a number of commercial operations have closed since 2005." HVUS St. 1R at 6. The evidence of financial difficulties presented by the parties in this matter are not proof of financial mismanagement, but rather, the need for the Company to raise rates in order to increase revenues and reverse losses. HVUS St. 1R at 6-7. For these reasons, the OCA's proposal to cut HVUS's rates by half are counterproductive and harmful to the Company and its customers.

The OCA claims that past late payment of electric bills should be used against the Company to show management issues. This point is moot and irrelevant. The OCA filed a Petition for Issuance of an Emergency Order against HVUS at Docket No. P-2014-2424858, which was later resolved through a settlement. OCA St. 1 at 8. The settlement in the Emergency Petition matter ensures that the Company stay current on payment of all electric bills to Penelec. In addition, the settlement provides for monitoring of payments to ensure that payments are made in the future. The settlement in the Emergency Petition matter resolved all the issues related to HVUS's payments for purchased power, and the provisions of the settlement is sufficient to address any concerns that the advocates or the Commission should have about a prior payment history. It is unfair to raise these questions in this matter where the Company believed in good faith that these issues had been resolved in a prior proceeding before the Commission.

## E. Remedy

In its Complaint, the OCA seeks to reduce the rates approved by the Commission for HVUS because, the OCA claims, the quality of service to customers is allegedly not adequate. A rate reduction as proposed by the OCA is a punitive measure that would severely hamper HVUS's ability to undertake and continue a number of system improvements currently under way and in the planning stages. HVUS St. 1R at 19-20. As Mr. Kettler testified:

If a rate reduction is imposed, it would mean financial ruin for HVUS and a severe deterioration of service for the Company's customers. Lower revenues would severely compromise the ability of the Company to raise the capital needed to invest in the utility's infrastructure and customer service functions. It is difficult for the Company to square the OCA's expressed desire to see improvements in service with its insistence on taking away the revenues that are absolutely necessary to pay for those improvements.

HVUS St. 1R at 20.

There are legal and practical implications to the OCA's proposal to reduce HVUS rates by 50% or impose some sort of usage allowance that would reduce the Company's revenues. A public utility has the constitutional and statutory right to a reasonable rate of return. *FPC v. Texaco, Inc.*, 417 U.S. 380, 94 S. Ct. 2315, 41 L. Ed. 2d 141 (1974); *Public Advocate v. Philadelphia Gas Commission*, 544 Pa. 129, 674 A.2d 1056 (1996). In Pennsylvania, Section 1301 of the Code, 66 Pa. C.S. § 1301, requires that rates for a public utility must be just and reasonable. Whether a rate is reasonable is determined by the PUC and is based on whether the utility receives a fair rate of return. *Action Alliance of Senior Citizens of Greater Philadelphia, Inc. v. Philadelphia Gas Commission*, 45 Pa. Commw. 234, 406 A.2d 1155 (Pa. Cmwlth. 1979). "Rates which are not sufficient to yield a reasonable rate on the value of the property used ... are ... confiscatory, and their enforcement deprives the public utility company of its property in violation of the 14th Amendment." *Keystone Water Company v. Pennsylvania Public Utility*

*Commission*, 477 Pa. 594, 607, 385 A.2d 946, 953 (1978). *National Utils. v. Pennsylvania PUC*, 709 A.2d 972, 976, 1998 Pa. Commw. LEXIS 160, \*13 (Pa. Commw. Ct. 1998).

The OCA's recommendation that the Commission impose a 50% reduction in the Company's rates is at odds with the OCA's expressed desire to see service improvements at Hidden Valley. In essence, the OCA wants to have its cake and eat it, too; it wants greater service improvements that will cost significant amounts of money while depriving the Company of a significant amount of revenue. In the course of cross-examination, Mr. Fought testified that his proposed solutions to the service problems he identified assume that the Company has the resources to implement each one of the recommended solutions, while acknowledging that he has "no idea" how much each idea costs. TR. 333-334. In her testimony at the hearing in this matter, Ms. Everette acknowledged that "decreased revenues could make it more difficult for a company to finance an improvement." TR. 344. It is fanciful and hypocritical for the OCA to, on one hand, recommend improvements to service, while on the other hand, seeking to deprive the company of the resources needed to make improvements. The OCA's rate reduction proposal should be rejected.

The record evidence in this matter does not support the extremely punitive 50% rate reduction suggested by the OCA. In a number of rate cases where an increase has been denied, the service quality conditions were so poor that the Commission was compelled to find that the utility should not be allowed to charge higher rates. For instance, in *PA PUC v. Clean Treatment Sewage*, R-2009-2121928, 2010 Pa. PUC LEXIS 671 (Order entered April 22, 2010), the Commission rejected a 70% rate increase request by the Company because of persistent sewage overflows that led to terrible odors throughout the community and the suspension of additional sewer line connections by DEP. In comparison, HVUS is not currently seeking a rate increase,

and problems such as those experienced by Clean Treatment Sewage are not being alleged in this case. The issues that have been raised by the OCA, such as sludge removal, tank painting or alarm replacements have been addressed or are being addressed by HVUS. A punitive 50% slashing of rates is not justified by the conditions at HVUS.

In another case where the Commission rejected a rate increase because of water quality problems, the situation was dire. In *National Utils. v. Pennsylvania PUC*, 709 A.2d 972, 1998 Pa. Commw. LEXIS 160 (Pa. Commw. Ct. 1998), the Commonwealth Court found that the Commission's rejection of a rate increase request was justified because, among other things, customers persistently experienced frequent water outages lasting from several hours to several weeks, water with excessive lead levels, frequent periods of very low water pressure, water with the odor of rotten eggs, water with high chlorine content which causes skin irritations, frequent boil advisories lasting for months, the failure to install meters or read meters, failure to report water test results, delays of months before repairing water main leaks reported by customers and slow response to customer complaints. *NUI v. PUC*, 709 A.2d 974-976. In other words, the conditions that led to the PUC denying NUI's rate increase request were much more severe than anything that has been alleged or proven in this case. As discussed above, HVUS has taken significant steps to address the aesthetic issues with the water at Hidden Valley and is looking into alternatives to the sequestration solution to alleviate outstanding concerns. The allegations set forth in the Complaint do not rise to the level where a drastic rate reduction, absent even a request for an increase, is justified.

#### **IV. CONCLUSION**

Based on the foregoing, Respondent respectfully requests that the Commission dismiss the Complaint in this matter and issue an Order rejecting the relief requested.

Respectfully requested,

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January 20, 2016

Counsel for Respondent

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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