

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

February 10, 2016

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached for electronic filing is the Office of Consumer Advocate's Reply Brief in the above-referenced proceeding.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lauren M. Burge".

Lauren Burge
Assistant Consumer Advocate
PA Attorney I.D. 311570
E-Mail: LBurge@paoca.org

Attachment

cc: Honorable Jeffrey A. Watson
Certificate of Service
217005

CERTIFICATE OF SERVICE

Re: Tanya J. McCloskey, Acting Consumer Advocate
v.
Hidden Valley Utility Services, L.P. - Water
Docket No. C-2014-2447138

Tanya J. McCloskey, Acting Consumer Advocate
v.
Hidden Valley Utility Services, L.P. - Wastewater
Docket No. C-2014-2447169

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Brief, 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 10th day of February 2016.

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Edward G. Lanza, Esquire
P.O. Box 61336
Harrisburg, PA 17106-1336

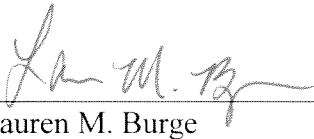
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Paige Macdonald-Matthes
Obermayer Rebmann
Maxwell & Hippel LLP
Suite 400
200 Locust Street
Harrisburg, PA 17101-1508

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

James Kettler, President
Hidden Valley Utility Services, L.P.
811 Russell Avenue, Suite F
Gaithersburg, MD 20879

Robert J. Kollar and Kellie A. Kuhleman
1374 Langport Drive
Pittsburgh, Pa 15241



Lauren M. Burge
Assistant Consumer Advocate
PA Attorney I.D. # 311570
Email: LBurge@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. #50026
Email: CHoover@paoca.org

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. #83487
Email: EGannon@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048

217006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. #83487
E-Mail: EGannon@paoca.org

Lauren M. Burge
Assistant Consumer Advocate
PA Attorney I.D. #311570
E-Mail: LBurge@paoca.org

Counsel for
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Floor Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: February 10, 2016

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits this Reply Brief in response to the Main Brief (M.B.) of Hidden Valley Utility Services (HVUS or the Company). The OCA's Main Brief contained a comprehensive discussion of the evidence and its position on all issues; thus, the OCA will respond only to those matters raised by HVUS that were not previously addressed or that require clarification. Nevertheless, the OCA does not waive its position on contested issues because it does not repeat arguments here. Accordingly, the OCA incorporates the arguments and analysis contained in its Main Brief herein by reference.

The Company's arguments on contested issues in its Main Brief are not persuasive. The OCA has sustained its burden of proving that Hidden Valley Utility Services is failing to provide adequate, efficient, safe and reasonable service and facilities to its customers, as required by Section 1501 of the Public Utility Code. As discussed below and in detail in the OCA's Main Brief, the OCA has demonstrated by a preponderance of the evidence that HVUS is providing water that is unsuitable for basic household purposes: drinking, cooking, bathing, laundering and cleaning. The OCA has shown that this is due to the Company's failure to effectively treat the high levels of iron and manganese in the source water. The OCA has also shown that the water and wastewater facilities require a variety of improvements and maintenance, but HVUS has been unable or unwilling to make necessary improvements. In addition, the OCA has demonstrated that the Company lacks the financial and managerial fitness to operate its water and wastewater utilities in a manner that provides adequate service to customers.

Consistent with the evidence in this proceeding which demonstrates that HVUS provides inadequate water and wastewater service to its customers, the OCA submits that the Formal Complaints should be sustained, and HVUS should be directed to: (1) make improvements to its

water and wastewater systems and management practices pursuant to the timeframes included in the detailed schedules contained the OCA's Main Brief; (2) provide quarterly updates to the OCA in order to monitor compliance; and (3) institute a reduction in rates until adequate service is restored. If the Company is unable or unwilling to make the necessary improvements, the Commission should order the Company to transfer its systems to an entity that is able to provide adequate service.

II. ARGUMENT

A. Water Quality of Service

As explained in detail in the OCA’s Main Brief, the water quality issues in Hidden Valley are due in large part to inadequate treatment for high levels of iron and manganese in the well water used to serve customers. OCA M.B. at 12; OCA St. 2 at 2. In its Main Brief, the Company attempts to downplay the significance of the water quality problems and the improvements necessary to provide adequate water service. The Company’s arguments are not persuasive. The overwhelming evidence in this case clearly establishes that the water provided by HVUS is not suitable for basic household purposes, and thus the Company is not providing “adequate, efficient, safe, and reasonable service” in violation of Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501. Additionally, the Company has had over 10 years since it signed the Joint Petition for Settlement of Separate Water and Wastewater Application Proceedings (2005 Settlement) (ALJ Exh. 2) to improve service, but has failed to do so. The Company’s inability or unwillingness to provide adequate service demonstrates that the remedies recommended by the OCA are necessary in order to ensure that HVUS customers receive adequate service going forward.

1. HVUS’s Water is Not Suitable for Household Purposes.

HVUS states in its Main Brief that “[n]o evidence was presented in this case that the water at Hidden Valley is unsafe to drink.” HVUS M.B. at 13. Whether the water is safe to drink, however, is not the question in this proceeding. The relevant question is whether HVUS is providing “adequate, efficient, safe, and reasonable service and facilities” as required by Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501. The Commission’s standard for determining whether water service is safe and adequate for purposes of 66 Pa. C.S. § 1501 is that

the water must be fit for basic household purposes, which includes drinking, washing, bathing, and cooking. OCA M.B. at 9; see Pa. P.U.C. v. Pennsylvania Gas and Water Co., (“every customer is entitled to water that is fit for the basic, domestic purposes (e.g. cooking, drinking, washing and bathing).”) 61 Pa. PUC 409, 416, 74 PUR4th 238, 245 (1986) (PG&W 1986); see also Pa. P.U.C. v. Pennsylvania-American Water Co., 71 Pa. PUC 210, 218-19 (1989); Pa. P.U.C. v. National Utilities, Inc., 87 Pa. PUC 1, 5 (1997).

As explained in detail in the OCA’s Main Brief, water does not need to be a public health risk in order to be unsuitable for all domestic purposes. OCA M.B. at 9-12; Pa. P.U.C. v. Lake Latonka Water Co., 71 Pa. PUC 507, 522 (1989) (holding that a utility provides inadequate water even when the water “has non-health, aesthetic quality problems”); see Kessler v. Shickshinny Water Co., 64 Pa. PUC 290, 296-97 (1987) (holding that ground debris in pipes resulting in “dirty, smelly water which was unsatisfactory for virtually every purpose except toilet flushing” violated 66 Pa. C.S. §1501). In Ashbaugh v. Fitz Henry Water Co., 51 Pa. PUC 287 (1977), the Commission held that water was inadequate despite being safe to drink. 51 Pa. PUC at 291. The Commission ruled in Fitz Henry that the water was inadequate because of the water’s “unpleasant taste, sediment, and unsuitability for laundry purposes” and held that the utility had violated its statutory obligation. Id. at 291.

Therefore, while the Company’s water may not violate primary drinking water standards such that it is unsafe to drink, the evidence in this case demonstrates that the water is not suitable for basic household purposes, and therefore HVUS is not providing adequate service under Section 1501.

The Company also characterizes the occurrences of discolored water as “sporadic incidents.” HVUS M.B. at 15. This statement is misleading and dismisses the serious nature of

the impact of poor water quality on customers. At the June 25, 2015 Public Input Hearings, thirty-two individuals testified to receiving intermittent brown or rust-colored water. OCA M.B. at 13; OCA St. 2 at 8; OCA St. 2S at 9. These customers represented houses in all areas of the water system, and testified to consistent, unpredictable, ongoing, and long-term water quality problems. See OCA M.B. at 12-25. This is not isolated or sporadic inadequate service; it is a significant and widespread failure by the Company to provide adequate and reasonable service. HVUS customers cannot reasonably rely on the water quality, and thus many do not drink, cook, bathe, do laundry, or conduct other basic household functions with the water. Id.; see PG&W 1986, 61 Pa. PUC 409, 416, 74 PUR4th 238, 245.

Similarly, the Company argues that the situation in Hidden Valley is not as “dire” as in other cases where the Commission has found inadequate service. HVUS M.B. at 21. Again, the evidence shows that the Company is not meeting its duty to provide adequate service under Section 1501 because it provides water that is not suitable for basic domestic purposes. See OCA M.B. at 9-12. The customer and expert testimony on these issues clearly demonstrates that the water is not suitable for household purposes, and thus the Company is not providing adequate service under Section 1501.

2. HVUS Has Failed to Comply With the 2005 Settlement.

In its Main Brief, the Company states that “[s]ince 2005, HVUS has complied with nearly all of its obligations under the [2005] Settlement.” HVUS M.B. at 1. Unfortunately, HVUS has failed to comply with the terms of the 2005 Settlement that are arguably the most significant in terms of assuring that customers receive adequate water service.

Paragraph C.20 of the 2005 Settlement (ALJ Exh. 2) required that:

With its next rate filing, but in no case later than two (2) years from the Effective Date, the Company will submit a report to FUS and all parties reassessing the

need, size and cost of treatment plant to permanently solve the problems caused by the levels of iron and manganese in its water.

More than 10 years have passed, and the Company: (1) has never submitted the required report; and (2) has not taken necessary steps to “permanently solve” the iron and manganese problems. See Tr. 381. OCA witness Fought testified that, “[b]ased on my review of the DEP’s files, the only procedure that the Company used to address iron and manganese problems was sequestration. It is apparent the sequestration that has been used by the Company since 2006 has not permanently solved the problems caused by iron and manganese.” OCA St. 2 at 9.

HVUS witness James Kettler testified that the Company has retained CME Engineering to study alternatives to sequestration and that a study was being conducted as of the time of the November 2015 evidentiary hearing. Tr. 364-67; HVUS M.B. at 14-15. Although the OCA appreciates the Company’s willingness to study alternatives, the fact remains that this study should have been completed years ago, within two years from the Effective Date of the 2005 Settlement as required by Paragraph C.20. HVUS was by no means being proactive by retaining an engineering firm in 2015 to begin conducting a study that should have been completed in 2007. Additionally, Mr. Kettler testified that this study was intended to be completed in 2015. Tr. 367. As of the filing of this Reply Brief, the OCA has not received any indication that this study has been completed.

HVUS has also not yet completed the main replacements required in Paragraph A.16 of the 2005 Settlement, which are important for improving water quality, pressure, and fire protection in the Valley View and the Heights areas of Hidden Valley.¹ OCA St. 2S at 17.

The primary purpose of the 2005 Settlement was to address water quality problems that customers had already endured for many years; more than a decade later, these problems still

¹ Mr. Kettler has indicated that line replacements for these areas are planned beginning in April 2016. HVUS St. 1-R at 28.

have not been addressed. This failure indicates that the OCA's recommendations, discussed below and in detail in the OCA's Main Brief at pages 37-52, are necessary to ensure that customers will begin receiving adequate water service, and will allow the OCA and the Commission to provide valuable oversight to ensure that the required actions are completed.

B. Wastewater Quality of Service

In its Main Brief, the Company claims that customers do not have issues with wastewater service. HVUS M.B. at 15. Wastewater service, however, consists of more than customers being able to flush their toilets. When customers pay their monthly wastewater bill, they are paying for the collection and the discharge of the sewage, cleaning it and disposing of the waste material, as well as the labor and the equipment to maintain and operate the sewer plant. The Commission has stated that:

It is our opinion that in exchange for the utility's provision of safe, adequate, and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return to the utility's investors. Thus, as the OCA contends, a quid pro quo relationship exists between the utility and its ratepayers.

PG&W 1986, 61 Pa. PUC at 415-16. The failure to properly treat sewage constitutes a failure to provide safe, adequate, and reasonable service as required by Section 1501, and for which customers are paying rates. See Sutter v. Clean Treatment Sewage Co., 2009 Pa. PUC LEXIS 7, *24-27. Moreover, inadequate or improper operation and maintenance accelerate deterioration and necessary replacement of plant which unreasonably increases costs to the ratepayers. Until pressured by this litigation, HVUS did not have operational back-up pumps and operating alarms, for example. See OCA M.B. at 28-29; OCA St. 2 at 3 – Wastewater. Thus, the Company's failure to properly maintain its wastewater treatment plant constitutes a failure to provide adequate and reasonable service under Section 1501.

The Company also noted in its Main Brief that Mr. Kettler has agreed with the OCA's recommendation to complete an "engineering report that would address outstanding issues" and that "HVUS is willing to report on the progress of outstanding items to improve wastewater operations." HVUS M.B. at 16. First, HVUS admits here that there are, indeed, outstanding operational and maintenance issues with its wastewater system that remain to be addressed. Additionally, while the OCA appreciates the Company's willingness to take certain steps to bring its system into compliance, the fact remains that customers are paying rates as if they are currently receiving adequate service, which is not the case. Further, even if all wastewater issues are resolved so that wastewater service is adequate in the future, as long as the water service is inadequate and customers must flush precipitated iron and manganese from their homes, wastewater bills should be reduced because excessive water flushing directly increases water *and* wastewater bills. See OCA M.B. at 41-51 (detailing the OCA's rate reduction and system improvement recommendations).

As stated in the OCA's Main Brief, Mr. Kettler has testified that many of the maintenance issues identified by OCA witness Fought had recently been remedied. OCA M.B. at 28-29. Mr. Kettler testified that all pumping stations and alarms would be in working order by the end of September 2015, the blowers in the equalization tanks and the backup blower were operational, and the comminutor was working properly. HVUS St. 1-R at 32-35. Mr. Kettler testified at the evidentiary hearing that half of the tank at Treatment Plant No. 1 (the "left side") had been "drained, reviewed, serviced, painted" as of October 2015. Tr. 368-69. The other half is scheduled to be painted in the spring of 2016. Id. Mr. Kettler also agreed with Mr. Fought's recommendation that a consulting engineer inspect the wastewater facilities and prepare a report

regarding the current status and necessary repairs or replacements to improve the facilities. HVUS St. 1-R at 35; HVUS St. 3-R at 9.

It appears that the OCA and HVUS generally agree that that a consulting engineer should inspect the Company's wastewater plant, prepare a report identifying equipment or facilities that need to be maintained or replaced, and confirm that the reported repairs have in fact been completed. OCA witness Fought recommended a timeline for completion of the report and implementation of its recommendations. OCA St. 2S at 5 – Wastewater. Accordingly, the OCA submits that this schedule, which is included in the OCA's Main Brief on pages 45 through 51, should be adopted and that HVUS should be required to complete the assessment and repairs to its wastewater system within the prescribed timeframes.

C. Financial and Managerial Fitness

1. HVUS Fails to Provide Adequate Customer Service.

a. The Company's Billing Practices Do Not Comply with Commission Regulations.

In its Main Brief, HVUS suggests that OCA witness Everette testified incorrectly that its bills do not include meter reads. HVUS M.B. at 17. This matter has already been clarified in testimony. According to Mr. Kettler, some of the bills the Company provided to the OCA (those that that contained no meter reads) are not the bills that customers actually receive. HVUS St. 1-R at 2. Ms. Everette accepted this explanation. OCA St. 1-S at 2. The OCA's recommendations, therefore, address the absence of other necessary information on the bills. Id. at 2-5, 21.

HVUS admits that "the Company uses a legacy system that does not display all the information required by the regulations." HVUS M.B. at 17. As discussed in the OCA's Main Brief (OCA M.B. at 31-32), the bills do not state that: (1) a rate schedule; (2) an explanation of

how to verify the accuracy of the bill; and (3) an explanation of various charges are available for inspection at the Company's local business office, as required by 52 Pa. Code § 56.15(12). OCA St. 1S at 3. The bill also does not designate the applicable rate schedule, as required by 52 Pa. Code § 56.15(13). OCA St. 1S at 4.

The bills that HVUS provides to customers are also vague, less than informative, and do not provide all information required by Commission regulations. As OCA witness Everette explained, it may be difficult for a customer to understand their water usage and how their bill was calculated based on the information included in the bill. OCA St. 1 at 2-5; OCA St. 1S at 1-3. The bill displays water usage in hundreds of gallons, but the units are not stated on the bill.² OCA St. 1S at 2. Additionally, in calculating the bill, the Company simply drops the last two digits of usage (i.e., usage of 6,624 gallons would be billed as 6,600 gallons). OCA St. 1S at 3. This information is not presented in a way that is clear and useful for a customer trying to understand his or her bill. Thus, the OCA has provided un rebutted evidence that the Company's bills are not compliant with Commission regulations and are another example of inadequate service and poor management.

b. HVUS Fails to Provide Permanent Solutions to Customer Complaints.

HVUS states in its Main Brief that customer testimony indicated that "the Company is very responsive to customer complaints and emergency calls and they have seen improvements in the quality of service." HVUS M.B. at 15. This statement is not an accurate description of the customer testimony. Customers were careful to explain that while individual HVUS employees, such as Mr. Glenn Fodor, are responsive to their complaints, the complaints only result in band-aid solutions and not permanent fixes to ongoing problems. See OCA M.B. at 33-34.

² The bill indicates the amount of water usage during the billing period, but, as discussed above, it does not contain the beginning and ending meter readings as required by 52 Pa. Code § 56.15(2).

At the public input hearing, many customers testified to their frustrations involving contacting the Company to complain about water quality issues. Numerous customers testified that they contact Mr. Fodor directly whenever there is a problem. Tr. 56, 99, 111, 123-124, 184, 190, 196, 219, 225; OCA M.B. at 33-34. However, while their comments indicate that Mr. Fodor is well liked and appreciated for his attempts to alleviate the water quality issues, he does not have the necessary resources to make any lasting improvements to the system. As John Newport, HVUS customer and president of the Hidden Valley Foundation, explained:

[B]e careful not to mistake our homeowners' expressions of gratitude for Glenn's efforts with any notion that Glenn has been able to remediate the many problems with the utility service that we get from HVUS. We all know he tries hard, but there are obstacles that he faces almost endlessly. We also know from homeowners that they often give up on further complaining . . . There are times, unfortunately, that Glenn just doesn't have the ability to provide the services that we expect and have come to expect, but have been disappointed all too often.

Tr. 172; OCA M.B. at 33. Some homeowners testified that they contact the Hidden Valley Foundation instead of HVUS when there is a problem. Tr. 71, 103, 180, 186, 206, 216; OCA M.B. at 34. Others testified that they have simply given up on complaining to the Company about poor water quality. Tr. 61-62, 67, 71, 92, 181; OCA M.B. at 34. One customer who no longer makes an effort to complain about the water service explained that "[w]e just accepted that that was the Hidden Valley way." Tr. 80; OCA M.B. at 34. Thus, although many customers speak highly of certain employees on a personal level, this does not change the fact that the Company has been unable or unwilling to make repairs that will provide lasting relief to customers dealing with poor water quality.

2. HVUS Fails to Submit Accurate Reports and Comply with Deadlines.

The Company filed its 2014 Annual Reports more than six months after the filing deadline. See OCA M.B. at 35; ALJ Exh. 4; ALJ Exh. 5; OCA St. 1S at 9. HVUS explains that

it received an extension of time from the Commission to file its Annual Reports. HVUS M.B. at 17. However, there is no documentation of any such extension, and even if an extension was granted, extensions are usually no more than 30 to 60 days. OCA M.B. at 35, fn. 10; OCA St. 1S at 9. The OCA's primary concern with the failure to timely file an Annual Report was that the parties did not have the benefit of the information contained in the report in this proceeding and were given no indication as to when the report would be filed. Without timely and accurate reports, it is difficult for the Commission and interested parties to monitor the Company, its financial position, and any investments in the system. OCA St. 1 at 7; OCA M.B. at 35. For this reason, with regard to the Annual Report, OCA witness Everette recommended that going-forward HVUS should file extension requests in writing (with a copy to the OCA) so that interested parties are aware of the request and the modified deadline.

The Company indicates that the extension was necessary “to file an accurate 2014 report” in response to concerns raised by the OCA regarding discrepancies in prior reports. HVUS M.B. at 17. HVUS has also stated that it has “retained a consultant to review prior filings, address any discrepancies and file corrected reports.” HVUS M.B. at 17; Tr. 360. However, there is no indication of when this review will be completed or when corrected reports will be filed with the Commission. Accordingly, the OCA also recommends that the Company promptly address numerous discrepancies identified in past reports, particularly pertaining to utility plant in service and depreciation expense. OCA St. 1S at 22; OCA M.B. at 47.

More broadly, the Company's failure to file accurate reports in prior years is an indication of poor management. As OCA witness Everette explained, “[f]ailure to timely submit Annual Reports and the fact that there are discrepancies from year-to-year and even within the

same year's report indicate that the Company lacks the managerial fitness that is necessary for the provision of safe and adequate service." OCA St. 1 at 7; OCA M.B. at 35.

3. HVUS Regularly Fails to Pay Bills On Time.

HVUS claims that the settlement of the OCA's Petition for Issuance of an Emergency Order (Docket No. P-2014-2424858) regarding the Company's unpaid electric bills "resolved all the issues related HVUS's payments for purchased power" and cannot be used against the Company to demonstrate its lack of managerial fitness. HVUS M.B. at 18. This argument is not persuasive. The OCA raised the issues in the Emergency Petition for the limited purpose of ensuring that electric service was not terminated, thus preventing the utility from providing continuous water and wastewater service to its customers. The settlement of that proceeding does not resolve all issues related to HVUS's poor payment history, nor does it address future payments after the required monitoring of payments ends in June 2016. For that reason, the OCA recommends that the Company be required to authorize Penelec to continue providing monthly billing and payment information to the OCA and the Commission's Bureau of Technical Utility Services (TUS) until June 2018. OCA M.B. at 47; OCA St. 1S at 22.

Additionally, the Company argues that "[t]he settlement in the Emergency Petition matter ensures that the Company stay current on payment of all electric bills to Penelec." HVUS M.B. at 18. Despite the settlement agreement, the Company has, in fact, missed additional payments since the settlement was signed. In March 2015, six months after the settlement was filed, HVUS incurred three late payment charges. OCA St. 1 at 9. An additional late payment charge was incurred in September 2015. OCA St. 1S at 10. Mr. Kettler indicated that the late electric payments were due to a change in billing cycles. HVUS St. 3-R at 4. However, the billing records provided by Penelec do not indicate any change or shift in billing cycles. OCA St. 1SR

at 3-4. This is in addition to consistent late payments on the Company's phone bills. OCA M.B. at 27.

HVUS's inability to timely pay its utility bills indicates that the Company is not financially and managerially fit. Payment of electric and phone bills are basic necessities for running a utility. Additionally, when considered with other failures to properly manage and maintain the systems as discussed above, HVUS's behavior "establish[es] a pattern of inattention indicating that the Company lacks managerial fitness to provide adequate service." OCA St. 1 at 10.

4. HVUS's Financial Situation is Due to Management Decisions.

The Company claims that its financial losses have been the result of a lack of growth in residential customers combined with the need to raise rates, and not because of any financial mismanagement. HVUS M.B. at 18. OCA witness Everette discussed this claim in OCA Statement 1S:

Although Mr. Kettler claims that insufficient revenues or increasing costs are the cause of HVUS' financial situation, the information provided in HVUS Statement 2-R indicates that this may not be entirely accurate. Mr. Kettler's Exhibit JMK-3 shows that total capital expenditures in the six years 2009-2014 were \$102,048. HVUS' Free Cash Flow for this same period was \$780,133. Mr. Kettler's testimony states that over this time period, \$630,264 of the Free Cash Flow was distributed as capital distributions to the partners (HVUS Statement No. 2-R, Page 4, Lines 3-4; \$105,044 x 6). Thus, it appears that the decision to not make the required improvements was the Company's decision, not dictated by the cash available to the Company.

OCA St. 1S at 19-20. The HVUS partners include only Mr. Kettler with a 99% stake in the Company, and Kettler Brothers of Hidden Valley with a 1% stake. Tr. 363-64. Mr. Kettler testified that he personally received all of the capital distribution.³ Tr. 359, 363-64. For these reasons, the management of the Company's finances raises significant concerns about the

³ Ninety-nine percent of the \$630,264 distributed in the 2009 to 2014 period is more than \$620,000. OCA St. 1S at 20.

Company's financial and managerial fitness to make the substantial improvements and changes necessary to provide service that complies with statutory and regulatory requirements.

D. Remedy

The Company is opposed to the OCA's recommended rate reduction, and argues in its Main Brief that "the relief sought by the OCA should be rejected as extreme and punitive." HVUS M.B. at 11. The Company goes on to say that "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." HVUS M.B. at 20. However, the OCA is not requesting "greater improvements" – the OCA simply wants HVUS to make the improvements necessary to provide the adequate water and wastewater service that the Company is statutorily obligated to provide under Section 1501. HVUS has had 10 years since the 2005 Settlement to make necessary repairs to provide adequate service. The Company has failed to make these improvements and customers continue to pay full rates for inadequate service. HVUS also chose to make substantial distributions to a single partner during this time, rather than using those funds to make improvements to the system. As such, the OCA's recommendations are appropriate and necessary to ensure that permanent fixes are made to HVUS's system.

Ratepayers should not be required to provide funds to a utility so that the utility may, at some future time, provide adequate service. The Public Utility Code places on the utility the specific obligation to provide adequate service. The Code provides:

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.

66 Pa. C.S. § 1501 (emphasis added). Thus, under the Code it is the utility which has the obligation to make all improvements which may be necessary to provide such service. It is only after these improvements are providing service that the ratepayers have the obligation to pay for those improvements. Until such time, and as long as service remains inadequate, HVUS's customers should not be required to pay the rates which might be appropriate if service were adequate.

Just and reasonable rates are premised upon conformity with Commission regulations and orders. According to Section 1301 of the Public Utility Code:

Every rate made, demanded, or received by a public utility, or by any two or more public utilities jointly, shall be just and reasonable, and *in conformity with regulations or orders of the commission.*

66 Pa. C.S. § 1301 (emphasis added). The Company's existing level of rates is not just and reasonable because service is not currently, and has not been historically, adequate, efficient, safe and reasonable. See PG&W 1986, 61 Pa. PUC at 416. ("Finally, we point out that customers are entitled to adequate and reasonable service at the time they are paying their bills, not some optimistic point in the future."). An in-depth discussion of the legal basis for a rate reduction in this proceeding is contained in the OCA's Main Brief. See OCA M.B. at 9-12, 37-45. The OCA's Main Brief also describes in detail how the water and wastewater rates are to be reduced, improvements that should be made, timelines for those improvements, and how full rates are to be phased back in to reflect service improvements. See OCA M.B. at 45-51.

The OCA's rate reduction recommendation is not punitive, but rather is a tool to ensure that improvements are completed in a timely manner so that customers will finally receive adequate service. Until such time, rates should reflect that service is not adequate, either currently or historically. The Company has failed to uphold its part of the bargain since the 2005

Settlement went into effect; as such, the OCA's recommendations are necessary to ensure that customers do not have to wait another decade to receive adequate service. If the Company is unable or unwilling to make the necessary improvements to the system, the OCA submits that HVUS should be required to transfer ownership to another entity that is able to make the improvements and operate the utility in a manner that provides adequate, efficient, safe and reasonable service to customers. See OCA M.B. at 51-52.

III. CONCLUSION

For the reasons set forth above and in the OCA's Main Brief, the OCA respectfully submits that Commission should find that Hidden Valley Utility Services is failing to provide adequate water and wastewater service in violation of 66 Pa. C.S. § 1501, and grant the relief requested by the OCA. The OCA submits that in order to correct these longstanding issues, the Public Utility Commission should order the Company to: (1) make improvements to its water and wastewater systems and management practices pursuant to the timeframes included in the detailed schedules contained in the OCA's Main Brief; (2) provide quarterly updates to the OCA and interested parties in order to monitor compliance; and (3) institute a reduction in rates until adequate service is restored. If the Company is unable or unwilling to make the necessary improvements, the OCA submits that the Commission should order the Company to transfer its systems to an entity that is able to provide adequate service.

Respectfully Submitted,

/s/ Lauren M. Burge
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. #50026
E-Mail: CHoover@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. #83487
E-Mail: EGannon@paoca.org

Lauren M. Burge
Assistant Consumer Advocate
PA Attorney I.D. #311570
E-Mail: LBurge@paoca.org

Counsel for
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
Telephone: (717) 783-5048

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