

**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.

REPLY BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. REPLY ARGUMENT 1

 A. HVUS Has Provided Safe and Reasonable Service to its Customers 1

 B. HVUS Is Committed to Make Improvements to Better Serve Customers 3

 C. There Is No Factual or Legal Support for the Extreme and Punitive Relief
 the Parties Seek 5

III. CONCLUSION 10

TABLE OF AUTHORITIES

Cases

Application of North Heidelberg Water Co., Docket No. A-2009-2117241, 2010 Pa. PUC LEXIS 919 (Order issued June 07, 2010)..... 9

Ashbaugh v. Fitz Henry Water Company, 1977 Pa. PUC LEXIS 61, 51 Pa. PUC 287 (1977)..... 7

City of Elizabeth v. Board of Public Utility Commissioners, P.U.R. 1924C 524, 527, 123 A. 358 (1924) 7

Kessler v. Shickshinny Water Co., 1987 Pa. PUC LEXIS 237, 64 Pa. PUC 290 (1987)..... 8

O'Brien v. Public Utility Comm'rs, 92 N. J. L. 44, P.U.R. 1919B, 865, 105 Atl. 132. 7

Pa. P.U.C. v. Lake Latonka Water Co., 1989 Pa. PUC LEXIS 231, 71 Pa. PUC 507 (1989) 6

Pa. P.U.C. v. Pennsylvania Gas & Water Co., 1986 Pa. PUC LEXIS 113, 61 Pa. PUC 409, 74 P.U.R.4th 238 (Order issued April 25, 1986) 5

Statutes

66 Pa. C.S. § 1501..... 1

Regulations

52 Pa. Code §§ 56.265(2), (12), (13) 3

I. INTRODUCTION

Respondent Hidden Valley Utility Services, LP (“HVUS”) respectfully submits this Reply Brief in response to briefs filed by the Office of Consumer Advocate (“OCA”) and Robert Kollar on January 20, 2016.

Respondent respectfully submits that the evidence in this case does not support a finding that HVUS has provided poor service in violation of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501. The Company is committed to continuing its efforts to improve service for the customers of Hidden Valley and is in agreement with a number of the recommended improvements the parties have put forth. Lastly, HVUS respectfully submits that neither the facts nor the applicable legal precedent support the extreme and punitive rate reduction that the OCA seeks in this case or the receivership proposal advanced by Mr. Kollar. A 50% rate reduction or usage allowance would deprive HVUS of revenues needed to make improvements and would cripple the utility in a way that would result in a possible diminution of service for customers. HVUS requests that the Commission establish a plan for improvements at Hidden Valley that is reasonable and feasible under the circumstances, and that it reject the OCA’s excessively punitive rate cut proposal.

II. REPLY ARGUMENT

A. HVUS Has Provided Safe and Reasonable Service to its Customers

In its Brief, the OCA claims that the Company is providing poor quality of service and has failed to make necessary improvements to its system despite receiving “full rates” during the 10 years since the 2005 Settlement. OCA Brief at 44. This statement by the OCA is riddled with inaccuracies and cannot be the basis for a finding against HVUS. First, the Company

acknowledges and understands that customers have experienced a number of issues with their service, including sporadic episodes of discolored water. However, HVUS has worked mightily to address every issue it is aware of to the extent possible and continues to find ways to provide good service to its customers. As the OCA has admitted, the Company has retained engineers to study the problems at Hidden Valley (OCA Brief at 25), remedied a number of maintenance items identified by Mr. Fought (OCA Brief at 28), completed a number of capital projects (Exh. JMK-5) and substantially complied with the provisions of the 2005 settlement (Exh. JMK-6). In addition, the Company is in the process of completing additional projects, such as tank inspections and painting and line replacements (OCA Brief at 28-29). As further explained below, the Company is prepared to make additional improvements in accordance with the OCA's recommendations. This is consistent with the Company's pattern of striving to continually improve service at Hidden Valley.

The issue of discolored water stems from the use of sequestration that is not always effective in neutralizing the iron and manganese present in the ground water in Hidden Valley. Both the OCA and HVUS agree that sequestration can be effective (OCA Brief at 19), but the design of the system and the customers' usage patterns render sequestration ineffectual under certain limited circumstances. As Mr. Fought testified, "the effectiveness of sequestration diminishes over time" (OCA St. 2 at 10), and many of the residents of Hidden Valley are part-time residents. The water at Hidden Valley is tested routinely and it meets all EPA and DEP safety standards. HVUS St. 1-R at 11. Customers, especially full-time residents, use the water for drinking, cooking, bathing and laundry. TR at 263-264. When they experience discoloration, the problem can be cleared up by running the water for a few minutes. *Id.* This is

not evidence of incompetence on the part of the Company or a disregard for the needs of the customers. Rather, it is an indication that more needs to be done to address a complicated issue.

With regard to the financial and management issues raised by the parties, HVUS is prepared to continue to implement measures aimed at addressing the concerns of the parties. The Company has acknowledged that billing and reporting standards need to be adhered to in a manner that satisfies the Commission's regulatory requirements. *See generally*, HVUS St. 1-R. As set forth in more detail below, HVUS plans to improve its billing system and is proposing to improve its reporting and bill payment processes. Some of the financial issues that the Company has experienced are not amenable to resolution absent the filing of new tariffs and an increase in rates. For this reason, HVUS respectfully submits that a reduction in rates, as proposed by OCA, is not only unadvisable, but is counterproductive and destructive. The Company should be allowed to proceed with its proposed plan for improvements with the rates established in 2005 remaining unchanged for the time being.

B. HVUS Is Committed to Make Improvements to Better Serve Customers

HVUS is willing to address the issues raised by the parties in this matter in order to improve service to Hidden Valley customers. The improvement plan set forth below is intended to make the necessary adjustments in HVUS operations that will result in tangible improvements in customer service in an expeditious fashion. It should be noted that many of the steps below and already in process, while other await further direction from the Commission with regard to timelines for implementation.

OCA Recommendations	HVUS Action
Regarding bills, comply with 52 Pa. Code §§ 56.265(2), (12), (13)	HVUS commits to making the recommended changes (meter reads, explanation of charges, rate schedule designation) to be implemented in accordance with a timeline established by the Commission.
Hold semi-annual meetings with customers	HVUS commits to hold a customer meeting on the same weekend as the annual meeting of the Homeowners Association. Second meeting would take place approximately six (6) months later to discuss status of service improvement projects.
Company to file annual reports in a timely manner and address discrepancies	HVUS commits to file corrected annual reports and deal with discrepancies. Any request for an extension will be submitted in writing to the Commission no later than April 30th.
Timely payment of electric bills	The Company commits to comply with its obligations to stay current on its electric bills as agreed under the settlement at Docket No. P-2014-2424858.
Timely payment of telephone bills	HVUS commits to continue to make timely payments of telephone bills for all company accounts.
OCA Recommendations (water)	HVUS Action
Engineering cost analysis of treatment plant or alternative source of supply	HVUS has retained CME Engineering to do a cost analysis of a treatment plan and an alternative source of supply. The engineering analysis will be provided in accordance with a timeline established by the Commission.
Storage tank – bottom cleaned and outside painted (report on completion)	Divers were retained to clean out the Company’s storage tank over the summer of 2015; The Company plans to complete outside painting project as weather permits. A report on the status of the project will be provided in accordance with a timeline established by the Commission.
Replace 1,500 ft. of 3-in line to the Heights	The replacement of the line to the Heights is currently scheduled for summer of 2016.
Replace 1,000 ft. of 2-in line to Valley View	The replacement of the line to Valley View depends on pending engineering study; HVUS plans to schedule the project for summer of 2016.

OCA Recommendations (wastewater)	HVUS Action
Engineer's inspection report verifying backup pumps and alarm system function	Inspection report is acceptable. The project will be completed in accordance with a timeline established by the Commission.
Make repair and replacements pursuant to engineer's inspection report	HVUS will address any outstanding items identified in the report which are not completed.
Engineer's inspection report regarding tankage and equipment	CME Engineering has been retained to prepare an inspection report. A copy of the report will be provided in accordance with a timeline established by the Commission.
Make necessary repairs and replacements to treatment plant pursuant to report	The Company plans to address issues raised by engineer's inspection report.
Follow best practices regarding sludge removal	CME Engineering has been retained to conduct a survey of Treatment Plants 1 and 2. Company will make any adjustment necessary to implement proper sludge removal policies.

Any additional commitments required of HVUS should be carefully designed to address specific issues raised by the parties and should be feasible in light of engineering constraints and the Company's financial position. Any rate reduction or receivership proposal should be rejected as unreasonable for the reasons more fully explained below.

C. There Is No Factual or Legal Support for the Extreme and Punitive Relief the Parties Seek

The cases cited by the OCA to support findings of unreasonable service and the punitive relief sought are distinguishable from this case in a number of ways. First, some of the cases referenced in OCA's Brief are rate increase requests that were denied or modified by the Commission because the companies' rate hikes were not justified due to severe issues with water quality in the respective service territories. For instance, in *Pa. P.U.C. v. Pennsylvania Gas & Water Co.*, 1986 Pa. PUC LEXIS 113, 61 Pa. PUC 409, 74 P.U.R.4th 238 (Order issued April 25, 1986) (PG&W 1986), the Company filed tariff supplements seeking an \$11 million rate increase, and many customers objected to paying higher rates for poor quality water service. In

PG&W 1986, “customers described water which was black, brown, blue, green, sediment-laden, and worm-infested. Those customers also complained of water that had serious odor and taste problems and water that was unfit to drink.” *Id.* at 16. In its Order, the Commission references issues that persisted throughout the 70’s and 80’s and which culminated in an outbreak of giardiasis, an intestinal infection marked by abdominal cramps, bloating, nausea and bouts of watery diarrhea, and which is caused by a microscopic parasite found in surface water. *Id.* at 8-9. PG&W’s giardiasis outbreak sickened more than 440 of the Company’s customers in 1983-84 and forced over 350,000 customers to boil their water. *Id.* at 28-29. Even after finding that PG&W failed to provide reasonable service for the reasons set forth above, the Commission decided that rates would remain at then-current levels. In other words, the severe conditions found at PG&W did not justify *any* rate reduction, much less a 50% rate reduction as is advocated by the OCA in this case.

In another rate case cited by the OCA, the Commission approved a settlement that granted the water company a rate increase, even though it was acknowledged that serious water quality issues existed. *Pa. P.U.C. v. Lake Latonka Water Co.*, 1989 Pa. PUC LEXIS 231, 71 Pa. PUC 507 (1989). In the *Lake Latonka* case, customers complained of brown, gray or black water with a foul taste and smell. *Id.* at 41-44. In spite of these issues, the Commission allowed an increase to the utility’s revenues in excess of \$47,000, which is more than half of the original rate increase request of \$85,000. The Recommended Decision in the case expressed an important concern that should be instructive to the Commission in this matter. The Presiding Officer called it a “Catch-22” situation and explained it thus:

...the Company is not entitled to a rate increase until it improves the quality of its water, but the Company can't improve the quality of its water unless it has a rate increase. I can deny the proposed rate increase as requested by [the Property

Owner Association], in which case there would be very little if any hope of water improvement, or I can grant at least some rate relief with conditions that the proceeds be used by the Company to clean up its system.

Id. at 17. The *Lake Latonka* decision goes on to explain that it is inappropriate for a regulator to expect improvements in service while, at the same time, depriving the utility of the resources to make improvements:

The policy of the law is and should be to aid utilities to properly function and to render adequate service to the public by permitting rates to be charged for the service rendered, which will yield an adequate return upon the capital invested, maintain the property, and attract capital. The policy should never be one of destruction. *O'Brien v. Public Utility Comm'rs*, 92 N. J. L. 44, P.U.R. 1919B, 865, 105 Atl. 132. A starved utility is in no better position to render proper service than (sic) a starved horse or a motor car without fuel.

Id. at 46, citing, *City of Elizabeth v. Board of Public Utility Commissioners*, P.U.R. 1924C 524, 527, 123 A. 358 (1924).

In one complaint case cited by the OCA, the allegations and evidence of poor service quality were more severe and troubling than anything that has been alleged or proved in this case. In *Ashbaugh v. Fitz Henry Water Company*, 1977 Pa. PUC LEXIS 61, 51 Pa. PUC 287 (1977), customers complained of “service interruptions that left them without water a week or two at a time, while at other times the pressure was so weak that two spigots could not be run at the same time, or water would not reach the second floor.” *Id.* at 288. In the *Fitz Henry* case, the Commission found, among other things, that the water was acidic, failed U.S. standards for drinking water and had a bitter taste. *Id.* at 289-290. Also, many of the meters in the system were leaking or inoperative, which resulted in inaccurate billing for service. *Id.* The Commission acknowledged that some of the issues with water quality were outside of the company’s control (pipes in an old system freezing and breaking during a harsh winter), and as a result of these findings, the Commission ordered engineering studies and plans for

improvements. *Id.* at 293-294. Most notably, even though the problems at Fitz Henry were more serious than anything alleged here, the Commission did not order a punitive remedy like the 50% rate reduction recommended by the OCA in the instant case.

In another complaint case, the Commission found violations of Section 1501, but declined to impose penalties or refunds prior to giving the utility an opportunity to improve service. In *Kessler v. Shickshinny Water Co.*, 1987 Pa. PUC LEXIS 237, 64 Pa. PUC 290 (1987), the Commission found that the Company had provided unreasonable service because of repeated and persistent issues with turbidity, low water pressure and leaks. The water company was ordered to implement solutions to the issues raised in the course of the proceeding, but the Commission specifically declined to penalize the utility. *Id.* at 20. Instead, the Commission ordered that a separate hearing be held to consider whether customers were entitled to refunds, but only if the proscribed repairs were not completed in a timely manner. *Id.* at 22-23. A massive rate reduction or other punitive steps were not considered by the Commission in this type of case.

In all the cases cited by the OCA there is not a single instance of the Commission ordering a 50% rate reduction as punishment for inadequate service. Even in a case where hundreds of customers were sickened by giardiasis, the Commission opted to leave rates as they were. *See*, PG&W 1986. Imposing a punitive 50% reduction in rates in a case where there are no violations of drinking water standards and where the issues are readily capable of resolution would be unreasonable, arbitrary and capricious. There is not support in the factual record or applicable precedent for such an extreme measure.

Similarly, the suggestion by Mr. Kollar that the Company should be placed into receivership is wholly unjustified and improper. Kollar Brief at 5. As factual support for his

position, Mr. Kollar recites the same contentions of poor service and mismanagement as the OCA. Kollar Brief at 1-5. In addition, Mr. Kollar claims that the water services provided by HVUS has led to a risk of reduction in property values (Kollar Brief at 2), a claim that is wholly unsupported by the record evidence in this case. None of these contentions rises to the level of mismanagement that would justify the imposition of a receivership and a replacement of the current ownership. Furthermore, Mr. Kollar fails to offer any legal support for his extreme remedy.

It should be noted that the Commission has only approved of a receivership in cases where the situation is beyond anything that has been alleged or proved in this matter. For example, in *Application of North Heidelberg Water Co.*, Docket No. A-2009-2117241, 2010 Pa. PUC LEXIS 919 (Order issued June 07, 2010), the Commission approved of the imposition of a receivership where it was demonstrated that the Company could no longer properly operate a water system. In the *North Heidelberg* case, the utility was found “not fit” to operate a water system, had a poor record of meeting public health standards, subjected customers to mandatory water use restrictions, and on more than one occasion, customer were without water altogether. *Id.* at 23. North Heidelberg was unable to borrow needed capital, its employees were unpaid and the company could not afford a new chlorine system and monitor. *Id.* at 24. In other words, a receivership was necessary and a transfer of the company to another operator was proper because the old owner was unable to operate the water company in any sort of normal way. There is nothing in the record in this case that indicates that level of dysfunction. As such, there is no factual or legal justification for the remedies that Mr. Kollar proposes.

III. 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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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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