

**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.

**SUPPLEMENTAL BRIEF OF RESPONDENT**

**I. Introduction**

Pursuant to the Interim Order issued by Administrative Law Judge Jeffrey A. Watson on April 5, 2016, Respondent Hidden Valley Utility Services, L.P. (“Respondent” or “HVUS”) respectfully submits this Supplemental Brief. As required by the April 5, 2016 Interim Order, this Supplemental Brief contains proposed findings of fact, proposed conclusions of law and proposed ordering paragraphs. A thorough legal analysis of the issues raised in the case was provided in the Respondent’s Main and Reply Briefs and is incorporated herein by reference.

**II. Proposed Findings of Fact**

1. 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. Exhibit JMK-5.

2. HVUS has substantially complied with conditions of the 2005 settlement that established its current rates. Exhibit JMK-6.

3. Respondent has undertaken a number of capital projects from 2009 to 2014 in order to improve service. Exhibit JMK-5.

4. HVUS improvement projects include the installation or replacement of pumps, valves, motors and water lines. Exhibit JMK-5.

5. The costs associated with the capital projects undertaken by HVUS (JMK-5) exceed \$100,000, which is significant for a small system like Hidden Valley. Exhibits JMK-3 and JMK-4.
6. The Company has invested in capital improvements and has sought to improve service to meet all its obligations to provide adequate, safe and reasonable service. Exhibits JMK-3, JMK-4 and JMK-5.
7. Complainants presented no evidence that the water at Hidden Valley is unsafe to drink.
8. HVUS customers use the water for normal household purposes. TR. 222, 263.
9. Customers drink the water and think HVUS has good water. TR. 263.
10. Customers, especially full-time residents, use the water for drinking, cooking, bathing and laundry. TR. 263-264.
11. 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.
12. Problems with water discoloration can be cleared up by running the water for a few minutes. TR. 263-264.
13. The issues that HVUS customers experience with the water stem from iron and manganese in the water, which are minerals that occur naturally in many ground water aquifers. OCA St. 2 at 2.
14. Iron and manganese are common in Somerset County, where the water is clean, but may become discolored over time. TR. 251.

15. When the iron and manganese are exposed to air, they oxidize and discolor the water. OCA St. 2 at 3.

16. 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.

17. Monthly tests performed by HVUS demonstrate that the concentration of iron and manganese is well below the 1.0 mg/L approved by PA DEP. HVUS St. 3R at 6.

18. 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.

19. 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.

20. Water flows at HVUS 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.

21. 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.

22. 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. HVUS St 1R at 24.

23. During Christmas week, when there is heavy demand over the holiday period, water flows at Hidden Valley 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.

24. The Company has scheduled a major flushing of the system prior to the Christmas holiday to remove iron and manganese that may have settled in the pipes. HVUS St. 1R at 24.

25. Flushing of the system prior to the Christmas holiday has reduced the number of complaints over that period. HVUS St. 1R at 24.

26. 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.

27. 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.

28. The engineering study commissioned by HVUS will look at on-site treatment and off-site water sources, including cost estimates for each. TR 366.

29. The Company is very responsive to customer complaints and emergency calls and the customers have seen improvements in the quality of service. TR 57, 177, 190, 192, 203.

30. Customers do not seem to have any issues with their wastewater service. TR 59, 66, 71, 76, 80, 88, 96, 123, 128, 145, 151.

31. The wastewater pumping stations at HVUS are in working order and, as of September 2015, all alarms were in proper working order. HVUS St. 1R at 32-33.

32. New grinders were installed to address an issue at Westridge Pump #1 that was discovered during a DEP inspection in November of 2013. HVUS St. 1R at 33.
33. Blowers, equalization tanks and the communitor are all working properly. HVUS St. 1R 33-34.
34. Tank painting and cleaning suggested by the OCA have been scheduled or completed. HVUS 1R at 34.
35. All Notice of Violations (NOVs) issued by DEP have been addressed satisfactorily. HVUS St. 1R at 34.
36. HVUS agreed with OCA's recommendation for an engineering report that would address outstanding issues. HVUS St. 1R at 35; St. 3R at 9.
37. A telephone 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.
38. Meter readings appear on HVUS's bill. HVUS St. 1R at 3-4.
39. Prior to 2014, HVUS filed all its reports on time. HVUS St. 1R at 5.
40. HVUS obtained an extension to file its 2014 annual report to address concerns expressed by OCA regarding the accuracy of prior reports. HVUS St. 1R at 5.
41. 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.
42. Any losses experienced by HVUS in the past have been the result, not of financial mismanagement, but the reality that there 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.

43. HVUS needs to raise rates in order to increase revenues and reverse losses. HVUS St. 1R at 6-7.

44. 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.

45. If a rate reduction is imposed, it would mean financial ruin for HVUS and a severe deterioration of service for the Company's customers. HVUS St. 1R at 20.

46. 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. HVUS St. 1R at 20.

47. OCA's proposed solutions to the alleged service problems assume that the Company has the resources to implement each one of the recommended solutions, while acknowledging that OCA has "no idea" how much each proposed solution costs. TR. 333-334.

48. Decreased revenues could make it more difficult for HVUS to finance improvements. TR. 344.

49. The record evidence in this case does not support a rate reduction as recommended by OCA.

### **III. Proposed Conclusions of Law**

1. 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).

2. To satisfy the burden of proof, Complainant must establish that Respondent was responsible for the problems alleged in the Complaint through a violation of the Public Utility

Code or a regulation or Order of the Commission. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 PA PUC 196, 1990 Pa. PUC LEXIS 19 (1990).

3. An alleged violation must be shown by a preponderance of the evidence. 66 Pa. C.S. § 701; *Patterson, supra*.

4. 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).

5. 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).

6. Under Pennsylvania law, utilities such as HVUS have an obligation to provide adequate, safe and reasonable service. 66 Pa. C.S. § 1501.

7. 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. 66 Pa. C.S. §§ 523, 526.

8. 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).

9. 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. Cmwlt. 1979).

10. 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).

11. 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.

12. A starved utility is in no better position to render proper service than a starved horse or a motor car without fuel. *Pa. P.U.C. v. Lake Latonka Water Co.*, 1989 Pa. PUC LEXIS 231, 71 Pa. PUC 507 (1989).

13. Even where the Commission has found violations of Section 1501, it has declined to impose penalties or refunds prior to giving the utility an opportunity to improve service. *Kessler v. Shickshinny Water Co.*, 1987 Pa. PUC LEXIS 237, 64 Pa. PUC 290 (1987).

14. In a case where hundreds of customers were sickened by giardiasis, the Commission did not order a rate reduction. *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).

15. The Commission will only approve a receivership where the utility is wholly unfit to properly operate the water system. *Application of North Heidelberg Water Co.*, Docket No. A-2009-2117241, 2010 Pa. PUC LEXIS 919 (Order issued June 07, 2010).

16. The Complainant has failed to meet its burden to prove that Respondent is providing inadequate, unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.

17. The record evidence in this case does not support the rate reduction proposed by the Complainant.

#### **IV. Legal Analysis**

A thorough legal analysis of the issues in this case was presented by HVUS in its Main and Reply Briefs, which are incorporated herein by reference.

#### **V. Proposed Ordering Paragraphs**

IT IS ORDERED:

1. That the Complaint filed by the Office of Consumer Advocate against Hidden Valley Utility Services, L.P. at Docket Nos. C-2014-2447138 and C-2014-2447169, are hereby dismissed for failure to carry the burden of proof.

2. That the Secretary mark this docket closed.

#### **VI. 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 submitted,



Edward G. Lanza, Esq.  
THE LANZA FIRM, LLC  
P.O. Box 61336  
Harrisburg, PA 17106-1336  
Phone: (717) 576-2696  
Fax: (717) 798-9897  
Email: [ed@lanzafirm.com](mailto:ed@lanzafirm.com)

April 15, 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).

### Via regular and/or electronic mail:

Christine Maloni Hoover  
Erin Gannon  
Lauren M. Burge  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
[choover@paoca.org](mailto:choover@paoca.org)  
[egannon@paoca.org](mailto:egannon@paoca.org)  
[lburge@paoca.org](mailto:lburge@paoca.org)

Hon. Jeffrey A. Watson, ALJ  
PA Public Utility Commission  
Piatt Place, Suite 220  
301 5th Avenue  
Pittsburgh, PA 15222  
[jeffwatson@pa.gov](mailto:jeffwatson@pa.gov)

Paige Macdonald-Matthes, Esq.  
Obermayer Rebmann Maxwell & Hippel  
200 Locust Street, Suite 400  
Harrisburg, PA 17101-1508  
[PMM@Obermayer.com](mailto:PMM@Obermayer.com)

Robert J. Kollar, CPA  
1374 Langport Drive  
Pittsburgh, PA 15241  
[bob@kkacpas.com](mailto:bob@kkacpas.com)

James Kettler, President  
Hidden Valley Utility Services, L.P.  
811 Russell Avenue, Suite F  
Gaithersburg, MD 20879  
[kettlerjmk@aol.com](mailto:kettlerjmk@aol.com)



Edward G. Lanza, Esq.

Date: April 15, 2016