

COMMONWEALTH OF PENNSYLVANIA



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October 11, 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 please find the Office of Consumer Advocate's Reply Exceptions in the above-referenced proceeding.

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

Respectfully submitted,

/s/ Erin L. Gannon

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Enclosures

cc: Honorable Jeffrey A. Watson
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Certificate of Service
226460

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 Exceptions, 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 11th day of October 2016.

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226461

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 EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

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DATED: October 11, 2016

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits this Reply to the Exceptions of Hidden Valley Utility Services (HVUS or the Company). The OCA urges the Commission to reject HVUS's Exceptions regarding: (1) setting an end date for the required customer meetings; (2) creating a flexible deadline for the completion of projects; and (3) rejecting the ALJ's finding of inadequate wastewater service. In his Initial Decision, Administrative Law Judge (ALJ) Watson correctly found that HVUS has been providing inadequate service and that it has failed to fulfill many of its earlier duties under the 2005 Settlement. I.D. at 37. As emphasized throughout this case, the Company's problems are ongoing and severe. The current proceeding has been pending for nearly two years. In the interest of the customers as well as judicial efficiency, it is imperative that this case be resolved expeditiously and that each requirement placed on the Company be specific and contain mechanisms for enforcement. It is worth noting that the Company did not contest the ALJ's finding that HVUS is providing inadequate water service, and only disputes the remedies associated with that finding.

The first of the Company's Exceptions requests that the Commission specify an end date for the Company's obligation to host semi-annual customer meetings. HVUS Exc. at 1-3. HVUS contends that the customer meetings should only continue while improvements are being made; after the improvements are completed, the obligation would be dropped. HVUS's primary assumption is that there would be no customer interest in semi-annual meetings after projects are completed. As explained below, HVUS's argument should be rejected because it would deny customers the opportunity to ask questions as well as stay informed about the ongoing improvement of HVUS's service.

Next, HVUS urged the Commission not to impose a specific deadline for completion of water quality projects and, instead, to rely on a timetable that will be created by the Company's

engineer. HVUS Exc. at 3-4. However, the Company was given 10 years to improve its service and failed to meet that deadline. It is in the public interest for the Commission to retain control by setting a concrete deadline for a permanent solution to the water problems.

Regarding wastewater service, the Company disputed the ALJ's finding that it does not operate and maintain its wastewater plant in compliance with the Public Utility Code. HVUS Exc. at 4-5. The record shows that HVUS's pumping stations did not have installed, operational back up pumps and working alarms to prevent sewage overflow. I.D. at 20-21; OCA St. 2 at 3 – Wastewater. The ALJ's finding of inadequate service is consistent with this evidence. If and when the Company has made these and other necessary repairs to the wastewater system, the recommended engineering report will confirm that. Moreover, the Company's President already agreed to the engineering report. HVUS St. 1R at 35; HVUS St. 3R at 9; I.D. at 21.

Most importantly, since this is largely a dispute over remedies rather than facts, the priority should be to reinforce the Company's compliance with its obligations, not release it from them. Therefore, the OCA replies to the Company's Exceptions as follows.

II. REPLIES TO EXCEPTIONS

OCA Reply to HVUS Exception No. 1: The ALJ Correctly Ordered HVUS to Hold Semi-Annual Customer Meetings Beyond the Completion of Service Improvements. I.D. at 39 (Ordering ¶ 3(b.)); OCA M.B. at 33; HVUS Exc. at 1-3.

The ALJ properly excluded an end date in his directive that the Company hold semi-annual customer meetings. I.D. at 39 (Ordering ¶ 3(a.)) The Company was first ordered to hold semi-annual customer meetings in 2005, as a term of the settlement of its application proceedings. ALJ Exh. 2. The settlement required HVUS to make a variety of improvements to its water and wastewater systems that would address long-term problems including brown or rust-colored water, low water pressure, and high levels of unaccounted-for water. Id. The customer meetings were to continue until HVUS replaced 2 and 3-inch lines in the Heights and Valley View neighborhoods. The Company was given 10 years to replace the mains and failed to do so. Nonetheless, HVUS discontinued the customer meetings, in violation of the 2005 settlement. OCA St. 1 at 5 – Water. The ALJ directed HVUS to resume semi-annual customer meetings, as required by the 2005 settlement and recommended by the OCA. I.D. at 14-15, 39.

According to the Company, however, the ALJ should have designated that the customer meetings terminate upon completion of service improvements or, in the alternative, upon completion of work based on the engineering report recommended in the Initial Decision. HVUS Exc. at 2. Both of the Company's proposals would significantly diminish its accountability to customers. Due to the severity of the issues in this proceeding and those during the 2005 Settlement, it is in the public interest to continue the customer meetings even after the Company has met its improvement obligations.

First, although meetings may become unnecessary in the future, setting a premature end date could deprive HVUS customers of the opportunity to remain involved in the improvement

and post-improvement process. The customer meetings provide transparency in light of the Company's ongoing failure to make improvements as well as its continuing provision of inadequate service. I.D. at 37 (concluding HVUS's water and wastewater services are inadequate). Additionally, the meetings should be required to retroactively fulfill the Company's obligation to provide semi-annual customer meetings under the 2005 Settlement—a continuing obligation the Company has ignored. OCA M.B. at 33; OCA St. 1 at 5. Regardless of whether the 2005 Settlement provided an end date for customer meetings, the Commission should not set an end date in this proceeding. The Company's interest in setting an end date stems from a belief that the meetings are only useful during the pre-improvement phase. HVUS Exc. at 3 (“It would make more sense to have the meetings be held during a period when customers would be more interested in the meeting, that is, when the projects are in the process of being completed.”) However, given that the Company has had multiple chances to fix its pervasive service quality issues, customers must have an outlet for questions and complaints regarding improvements, even after those improvements are made.

Second, the meetings are an access point for consumers to get in touch with HVUS representatives who can help answer their questions. The Company maintains that “[o]nce projects are finished, it would be reasonable to expect that customer interest would decline and the meetings would be undesirable and unnecessary.” HVUS Exc. at 2-3. Numerous customers have stated that Glenn Fodor, an HVUS employee, is the primary point of contact for all service quality issues. Mr. Fodor does not have the authority or even the capability, however, to handle all of the customer complaints. OCA M.B. 33-34. This inaccessibility would persist, as long as the Company continues to lack staff to monitor the phone lines. Therefore, hosting semi-annual customer meetings would provide a platform, not only for customers to communicate their

concerns to Company officials, but also for the Company to ensure it is aware of all service issues.

Additionally, the Company suggests that semi-annual customer meetings would be futile because previous meetings have not been well attended. HVUS Exc. at 2 (“[I]n the past, scheduled meetings had to be discontinued because of poor attendance.”); HVUS St. 3R at 3. However, the attendance at meetings may not be a reflection of customer interest, but instead a reflection of poor planning. Specifically, the Company should be required to confer with the Hidden Valley Foundation (homeowners’ association) regarding dates that would yield a higher turnout. OCA M.B. at 33. It is the Company’s responsibility to host customer meetings that customers are able to attend. In addition, HVUS should ensure that its representatives at the meetings have the ability and authority to answer all questions, *i.e.* the Company President. Failure to work with the Foundation and customers in establishing a convenient meeting time for both parties and failure of Mr. Kettler to attend would defeat the purpose of having such customer meetings in the first place.

Lastly, the OCA recognizes that there is no need for the customer meetings to continue in perpetuity. Once the Company has met the requirements from the 2005 Settlement and from this complaint proceeding and service has actually improved, it should be required to petition the Commission for reprieve from its customer meeting obligations. Placing an affirmative obligation on the Company to request relief from its customer meeting obligations would ensure that the obligation does not end before the impact of capital improvements is validated by the Commission. Moreover, by making the customer meetings continue beyond the date when improvement projects are completed, the Commission would be giving the Company ample

opportunity to address its service quality issues and rebuild reasonable communications with the customer base.

OCA Reply to HVUS Exception No. 2: The ALJ’s Fixed, One-Year Deadline for the Completion of Projects Is Reasonable and Consistent with the Need to Provide Timely Relief to Customers. I.D. at 38-39; HVUS Exc. at 3-4.

The ALJ correctly determined that HVUS is not providing adequate water service. I.D. at 19, 21. The Company did not except to that conclusion, nor did it except to the projects required to improve water service.¹ The required actions are:

	Action	ALJ Deadline
1.	Comply with the outstanding requirements of the 2005 settlement by replacing 1,500 feet of 3-inch line to the “Heights” neighborhood and 1,000 feet of 2-inch line to the “Valley View” neighborhood in Hidden Valley.	September 1, 2017
2.	Obtain and file a written report from a Pennsylvania licensed water and wastewater engineer containing recommendations and a cost analysis to permanently correct any found deficiencies, specifically including, a remedy to eliminate the rust or brown-colored water and an implementation schedule for the following: completion of design, repairs or improvements, obtaining permits, obtaining bids, awarding contracts, and completion of construction/start of operation.	90 days from the date of the final PUC Order
3.	Copy the report to the OCA and Commission’s Office of Technical Utility Services.	14 days from the date of the expert report and each amendment or supplement thereto

¹ The customer meeting requirement was addressed in the Reply Exception above.

4.	Comply with the report and implementation schedule.	One year from the date of the expert report.
5.	Modify billing practices to ensure that all customer bills are fully compliant with all Commission rules, regulations and orders.	90 days from the date of the final PUC Order
6.	Provide a copy of the revised bill form to the OCA.	90 days from the date of the final PUC Order
7.	Make all reasonable efforts to timely file correct information in its annual reports to the Commission and amend any prior reports that contain inaccurate or incorrect information.	180 days from the date of the final PUC Order
8.	Copy any requests for extensions, amendments or modifications of said reports to the OCA.	At the time of filing
9.	Timely pay all electric and telephone bills.	Immediately
10.	Comply with the Company's tariff, Commission regulations and Orders, and PUC statutes.	Immediately
11.	Cease and desist from further violations.	Immediately
12.	File detailed status reports with the Commission regarding compliance with the above.	First report due 60 days from the date of the final PUC Order, continuing every 60 days until HVUS files final detailed report (due by September 10, 2017).
13.	File a final, detailed status report detailing the extent of compliance and any incomplete matters and reasons for any incompletions.	September 10, 2017

I.D. at 40-42, Ordering ¶¶ 3-6, 10-17.

The Company's exception is limited to the deadline for completion of the projects identified in the engineering report. HVUS does not object to the report itself, nor any of the other required actions or deadlines listed above. The Company states:

Although HVUS has no issue with the requirement to produce an engineer's report, there may be an issue with the deadlines recommended by ALJ Watson for completion of the projects [in the engineering report].

HVUS Exc. at 3. Specifically, the Company asks the Commission to tie the deadline to complete any projects contemplated by the engineering report to the engineer's implementation schedule. Id. at 3-4.

The OCA submits that HVUS's request should be denied. The HVUS customers have been living with poor water quality for decades. The Commission tried to address the problem in 2005, when it approved a settlement that required the Company to find a permanent solution. The customers initiated the present case more than two years ago. Now, in the last quarter of 2016, it is critical that the resolution of this case provides a remedy within a fixed time period. The Company proposes that the Commission set no fixed deadline. The authority to set deadlines would be surrendered to the engineer – an engineer who is independent, but hired by and paid for by the Company. Moreover, the engineer's implementation schedule will not be available for review for up to 104 days after the Commission's Order is entered.² I.D. at 39. The OCA submits that the Commission should retain control and certainty over the deadline for a permanent solution to the water problems. Accordingly, the OCA recommends that the Company be held to a specific deadline, as the ALJ decided.

² Ordering Paragraph Nos. 4 and 5 direct the Company to obtain a report from its engineer within 90 days of the Commission's Order and 14 additional days to provide the OCA with a copy. I.D. at 38-39.

The ALJ recommended one year from the date the Company obtains the engineering report. Ordering Paragraph No. 6 provides:

That [HVUS] shall comply with all recommendations from the engineer in order to correct any identified deficiencies including a remedy to eliminate the rust or brown-colored water provided to customers in order to ensure that customers shall receive adequate service from the improved water facilities, and to reassess the need, size and cost of treatment plant to permanently solve the problems caused by iron and manganese, within one year from the date of the engineer's report.

I.D. at 40. The Company objects to one year, based on its concern that procurement of all the required permits and approvals to make the improvements may be longer than the 4 to 5 months estimated by the OCA's engineering witness. HVUS Exc. at 3-4. It is premature, however, to give HVUS additional time before it has even been decided which remedy will be pursued and the Company has started complying with interim deadlines. At that time, HVUS will have the opportunity to seek relief from the Commission if a modification to the deadline is needed. 52 Pa. Code § 5.572(d) (petitions for amendment of Commission orders).

The Company did not except to the ALJ's recommendation that the Company file a status report by September 10, 2017. Because the ALJ ties the status report to the same one-year deadline for completion of all improvements, it is important to retain the report deadline.

Ordering Paragraph No. 17 stated:

That on or before September 10, 2017, or as soon as all repairs, modifications and improvements have been made, as ordered herein, Respondent shall file a final detailed status report with the Secretary of the Commission, along with a verification from its engineer outlining the details of what has and has not been completed, and provide copies to the Office of Consumer Advocate and to the Commission's Office of Technical Utility Services, in writing, at the time of filing, identifying in detail the extent of compliance and any incomplete matters as ordered herein. If any matters ordered herein have not been completed, Respondent and its engineer shall state in said report, in detail, the reasons for the same.

I.D. at 42. Under the framework proposed by the ALJ, the September 2017 status report triggers a deadline for the OCA to investigate and report on the quality of water and quality of water and wastewater service and, potentially, for a hearing to be scheduled.³ Id. at 42-43. That hearing is the OCA's earliest opportunity to address any failure by the Company to comply with the engineer's timetable for water quality improvements (design, permitting, bidding, start of construction), as well as the other improvements and deadlines recommended by the ALJ (undersized main replacement, billing practices, annual report corrections, timely payment of electric and telephone bills). See OCA Exc. at 13. As the OCA stated in its Exceptions, that hearing would not be scheduled until sometime after November 2017 in the best case scenario. Id. It would not benefit the customers, who have already waited so many years for a remedy, to further delay relief. Thus, even if the deadline for the completion of the projects identified in the engineering report is modified, the deadline for the triggering status report should remain September 10, 2017.

In summary, the Company's exception should be denied. The deadline for HVUS to complete the improvements identified in the engineering report should be fixed by the Commission. Based on the current facts, the ALJ's recommended one-year deadline for completion is reasonable and should be adopted. If the Commission adopts the ALJ's proposal to schedule a second hearing regarding the adequacy of service, that hearing should be held as soon as possible.

³ The OCA recommended a different framework without a second hearing. OCA St. 1S at 21-24 – Water; OCA St. 1S at 16-19 – Wastewater; OCA St. 2S at 17-18 – Water; and OCA St. 2S at 5 – Wastewater. The OCA proposed immediate rate relief until service is adequate, specific steps and timetable to improve service, 60-day or quarterly status reports and a timely remedy for non-compliance – transfer of the water and wastewater utilities to another capable public utility. OCA Exc. at 13-14.

OCA Reply to HVUS Exception No. 3: The ALJ Correctly Found Violations of the Public Utility Code in HVUS Wastewater Operations. I.D. at 19-21; OCA M.B. at 28-29; OCA R.B. at 7-9; HVUS Exc. at 4-5.

HVUS argues in its Exceptions that the ALJ incorrectly found that the Company is failing to provide adequate wastewater service. The Company states that “[t]he record clearly indicates that, to the extent that issues have been raised about the wastewater system, the same have been addressed and purported violations are no longer a concern.” HVUS Exc. at 5. The OCA submits that the record does, in fact, support the ALJ’s finding of inadequate wastewater service in violation of Section 1501 of the Public Utility Code, and that in requiring the Company to submit an engineering report, the Initial Decision does not require the Company to take any additional actions to which it has not previously agreed.

HVUS defends its wastewater service in part by arguing that customers did not have complaints about the quality of wastewater service. HVUS Exc. at 5. Wastewater service, however, consists of more than customers being able to flush 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.

Pa. P.U.C. v. Pennsylvania Gas & Water Co., 61 Pa. PUC 409, 415-16 (1986) (PG&W 1986).

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 PaPUC 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.

Problems identified with the operation and maintenance of the wastewater system include the failure to have operational back up pumps in pumping stations and lack of working alarms to prevent sewage overflow. See OCA M.B. at 28-29; OCA R.B. at 7; OCA St. 2 at 3 – Wastewater. In the Initial Decision, the ALJ noted that “[a]s of the date of the hearing, the project to install or maintain backup pumps at the pumping stations and working alarms had not been entirely completed. This work is necessary in order to prevent sewage overflow from the system.” I.D. at 21. Thus, the ALJ correctly found that the Company’s failure to properly maintain its wastewater treatment plant constitutes a failure to provide adequate and reasonable service in violation of Section 1501. Id.

As a remedy, the Initial Decision requires the Company to file an engineering report that assesses the status of the wastewater system and sets a schedule for making any necessary repairs. I.D. at 40, Ordering ¶ 7. While HVUS objects to this requirement in its Exceptions, the Company previously agreed to submit the engineering report and to make many of the necessary repairs suggested by OCA witness Fought. See OCA M.B. at 28-29; OCA R.B. at 8-9; HVUS St. 1R at 35; HVUS St. 3R at 9.

Generally, Mr. Fought’s recommendations in surrebuttal testimony have either been implemented or are scheduled to be completed in the near future. The Company has no objection to providing confirmation to the OCA and the Foundation that the tanks at Plant No. 1 have been painted. Similarly, the Company’s engineer can and will perform the recommended survey and establish the proper timeframe for removal of sediment.

HVUS St. 3R at 9.

Q. Do you agree with Mr. Fought's recommendation that an inspection report be prepared by HVUS consulting engineers on necessary repairs and replacement to improve the wastewater facilities?

A. Yes.

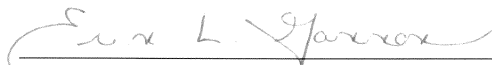
HVUS St. 1R at 35. The ALJ noted likewise, that "Mr. Kettler agreed with Mr. Fought's recommendation for an engineering report that would address outstanding issues." I.D. at 21. HVUS claims that any deficiencies in its wastewater system "have been addressed and purported violations no longer are a concern." HVUS Exc. at 5. If this is true, the engineering report will confirm this and the Company will not be required to take any further action with regard to its wastewater system. The engineering report will also provide parties will have confirmation that all necessary repairs have been made; if the necessary repairs have not been made, then the report will recommend additional repairs and provide a timeline on which those repairs must be made. This remedy is entirely reasonable and does not require the Company to do anything that it has not already agreed to do.

For these reasons, the OCA submits that the ALJ correctly found that the Company is providing inadequate wastewater service in violation of Section 1501, and that the required engineering report is an appropriate remedy that the Company has already agreed to complete.

III. CONCLUSION

For the reasons set forth above and in its Main Brief, Reply Brief, and Exceptions, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of Hidden Valley Utility Services and take all necessary steps to ensure that HVUS complies with the Public Utility Code and Commission regulations, and provides adequate water and wastewater service in the future.

Respectfully Submitted,



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DATED: October 11, 2016

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