

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Office of Consumer Advocate	:	
	:	
v.	:	Docket Nos. C-2014-2447138
	:	C-2014-2447169
Hidden Valley Utility Services, L.P.	:	

**REPLY EXCEPTIONS OF RESPONDENT
HIDDEN VALLEY UTILITY SERVICES, L.P. TO
INITIAL DECISION**

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

Date: October 11, 2016

Counsel for Respondent

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. REPLY EXCEPTIONS.....1

A. Reply Exception No. 1: The ALJ Correctly Decided that a Rate Reduction Is an Inappropriate Remedy Based on the Circumstances of this Case.....1

B. Reply Exception No. 2: The ALJ Correctly Found that Fines and/or Penalties Should Not Be Imposed on Respondent Based on the Facts and the Law in this Case4

C. Reply Exception No. 3: The ALJ Correctly Found that Placing HVUS into Receivership Is Not Justified by the Facts and Circumstances of this Case.....5

III. CONCLUSION7

I. INTRODUCTION

Pursuant to Section 5.535 of the Commission's regulations at 52 Pa. Code §5.535, Respondent Hidden Valley Utility Services, L.P. ("Respondent" or "HVUS") hereby respectfully submits these Reply Exceptions in response to Exceptions of Complainant Office of Consumer Advocate ("OCA") and Intervenors Robert Kollar and Kellie Kuhleman ("Intervenors") filed with the Commission on or about September 29, 2016.

For the reasons set forth in these Reply Exceptions, Respondent urges the Commission to reject the Complainants' exceptions and to clarify and modify provisions in the Initial Decision consistent with the Exceptions and Reply Exceptions of HVUS. In support of its position, Respondent submits the following.

II. REPLY EXCEPTIONS

A. **Reply Exception No. 1: The ALJ Correctly Decided that a Rate Reduction Is an Inappropriate Remedy Based on the Circumstances of this Case**

In Exceptions, the OCA argues that the rejection of its rate reduction proposal in this matter should be reconsidered by the Commission. Apparently, the OCA continues to stubbornly cling to the misguided notion that a reduction of revenues for HVUS is supposed to somehow lead to service improvements for customers. ALJ Watson correctly found that the record evidence in this case does not support the 50% reduction suggested by the OCA and that such a reduction is not justified by the conditions at HVUS. ID at 31. Judge Watson's decision should be affirmed by the Commission.

In support of its untenable position, the OCA argues that a rate reduction or usage allowance is "consistent" with the goal of improving service quality. OCA Exceptions at 3. However, it is difficult to understand how depriving the utility of the funds needed to make

improvements will result in better service to customers. On this point, the Presiding Officer correctly found that HVUS's resources would be best used to continue the improvements contemplated by the 2005 Settlement and to comply with the additional remedies recommended by the Judge in his Initial Decision. ID at 35. Respondent agrees with the Judge that penalizing the utility by reducing rates is inconsistent with the OCA's expressed desire to see improved service for customers.

Furthermore, OCA does not offer legal support for the proposition that a rate reduction or usage allowance is appropriate under the circumstances of this case. As discussed in further detail in Respondent's briefs, the precedent on this issue does not support the position taken by the OCA in this matter. In the decisions cited by HVUS and the OCA as part of their legal argument, the Commission has declined to cut rates even in cases where the purported violations have been significantly worse than anything that HVUS is accused of doing in this case. *See*, HVUS MB at 19-21; HVUS RB at 5-8. Neither the OCA nor Intervenors have offered a single instance where the PUC has ordered a 50% rate reduction or usage allowance in a complaint matter. Even in rate cases, where the utility has been found to have provided inadequate service, the Commission has not punished the utility in this way. Typically, the Commission keeps rates where they are and orders that steps be taken to improve service. The ALJ's decision is consistent with this pattern of action by the Commission and his recommendation should be affirmed. Doing otherwise would result in unfair and unjustified mistreatment of HVUS.

The OCA's argument that the Company should be punished with a rate reduction because customers pay "full rates" for "inadequate service" is inaccurate and should be rejected. First, the ALJ correctly found that HVUS has complied with a significant portion of the 2005 Settlement Agreement (ID at 36) and that the Company has made capital investments and improvements to

maintain and improve its service (ID at 8, *citing* Exh. JMK-5). In addition, Judge Watson found that the rates that were established at the time of the 2005 Settlement Agreement have not been increased since then. ID at 7. The record evidence shows plainly that customers are receiving improved service at 2005 rates. Even if the Commission considers nothing other than inflation for the past 11 years (excluding increased operations costs), customers actually have been seeing rate reductions (in real terms) since 2005. The notion that customers are receiving worse service while paying “full rates” is wholly inaccurate and should not be used to justify a punitive rate reduction.

It is important to note that the OCA’s alternative remedy involving a usage allowance is equally troubling to the Respondent. In essence, it is a rate reduction by another name, and one that is unnecessary considering the circumstances. Presumably, the OCA proposes a usage allowance to account for the flushing that customers do to ameliorate intermittent episodes of discolored water. However, the Company has a flushing program that results in better quality water and reduces the need of customers to flush their service lines for extended periods of time. As the ALJ found, HVUS’s flushing program during holidays, when discolored water is most likely to happen, removes iron and manganese settled in the pipes and reduces the number of complaints for those heavy use periods. ID at 9. Therefore, steps taken by the Company have resulted in improved service and militate against the imposition of an unnecessary usage allowance.

The ALJ’s decision to reject the imposition of a punitive rate reduction is appropriate and fully supported by the facts or the law in this case. As such, OCA’s and Intervenors’ suggestion that rates be reduced should be rejected.

B. Reply Exception No. 2: The ALJ Correctly Found that Fines and/or Penalties Should Not Be Imposed on Respondent Based on the Facts and the Law in this Case

In their Exceptions, Intervenors argue that the Commission must impose mandatory civil fines or penalties against HVUS because the Company failed to comply with the 2005 Settlement. Intervenors' Exceptions at 2-6. However, it is clear from reading the Intervenors' Exceptions that this contention is unsupported by the record and the Commission's precedent. ALJ Watson was correct in declining to impose fines or penalties because the Complainant in this matter did not seek fines or penalties. OCA acknowledges that it did not propose civil penalties or refunds (OCA Exceptions at 11). More importantly, the Presiding Officer was correct in finding that imposition of a penalty is unnecessary and inappropriate in this case. ID at 35.

Although the Commission is authorized to impose penalties, it is important to note that the Commission has significant discretion with regard to the imposition of penalties, and it is not something that the PUC takes lightly. Intervenors' contention that penalties are mandatory reveal a convenient misreading and deliberate omissions of portions of the statute in their Exceptions. The statute says that utilities "shall" pay a penalty "to be recovered by an action of assumpsit instituted in the name of the Commonwealth." 66 Pa. C.S. § 3301(a). This case is not an action in assumpsit instituted in the name of the Commonwealth as set forth in the statute, and therefore, the imposition of a penalty is not mandatory in the circumstances of this proceeding.

The Commission generally imposes penalties at its discretion based on the facts and circumstances of each case and has established guidelines to carefully exercise that discretion. The Commission's regulations set forth a number of criteria that the Commission considers when it is deciding whether to impose a penalty on a public utility. *See*, 52 Pa. Code § 69.1201. These criteria were not mentioned by Intervenors in their Exceptions. Because penalties were not

sought by the only other party in the case (OCA), the issue was not briefed and the criteria were not considered by the Presiding Officer. It would be unfair and prejudicial for the Commission to follow the Intervenor's recommendation to impose a "mandatory" penalty against HVUS at this stage without going through the normal process of adjudicating a request for a penalty. Moreover, it would be unconscionable for the Commission to impose the recommended penalty of \$125,000 as Intervenor's suggest (Intervenor's Exceptions at 4) where the Commission has not had the opportunity to examine the purported justification for such an extreme penalty and where the Company has not been afforded the opportunity to argue why such a punitive fine does not fit the Commission's regulatory criteria.

From a more practical point of view, it would be unwise for the Commission to impose a \$125,000 penalty upon a utility that needs all the resources it can muster to provide improved service to its customers. Further, it is difficult to reconcile Intervenor's conflicting contentions that the Company is insolvent, that it should have its rates reduced, that it needs to do more to improve service, and that it should pay a huge penalty to the Commonwealth. The ALJ was correct and finding that HVUS's resources are better spent on service improvements than in paying an unnecessary and punitive penalty that no party requested. The Commission should affirm this finding.

C. **Reply Exception No. 3: The ALJ Correctly Found that Placing HVUS into Receivership Is Not Justified by the Facts and Circumstances of this Case**

Intervenor's insist that HVUS should be placed into receivership because the Company has been mismanaged and ownership should be replaced. Intervenor's Exceptions at 7. Respondent respectfully submits that Judge Watson's decision to reject the receivership option is justified and well-reasoned, and as such, should be affirmed by the Commission.

Intervenors' suggestion that the Company should be placed into receivership is not supported by the facts and the law that they themselves cite. Intervenors rely on the case of *North Heidelberg Water Company*, Docket No. A-2009-2117241, 2010 Pa. PUC LEXIS 919 (Order issued June 7, 2010) for the proposition that a receivership is an appropriate remedy in this case (Intervenors Exceptions at 20) and argues that the situation between North Heidelberg and HVUS is similar. However, a cursory review of the facts shows that this could not be further from the truth. As the ALJ observed, in the *North Heidelberg* case, the utility was not meeting public health standards, there were mandatory water use restrictions and outages, the company could not borrow money, employees were not paid and the company could not afford equipment and supplies to run the water company. ID at 35. None of these circumstances (or anything approaching these circumstances) exist now or have ever existed at HVUS. For this reason, the Judge was right in denying this extreme relief of receivership. As with any complex operation, sometimes there are issues that need to be addressed at the Company, however nothing that has transpired at Hidden Valley rises to the level of total mismanagement that would justify receivership.

Both the OCA and Intervenors point to a number of issues to argue that HVUS is not being run properly. However, the Company has committed to make a number of improvements to its service and is prepared to comply with the Commission's directives to the best of its ability. It should be recognized by all involved that even the best utility manager imaginable would have some difficulty in running a perfect system if faced with all the challenges facing HVUS. In this case some of these challenges include, but are not limited to, dwindling revenues, lack of growth, source water that contains iron and manganese, increasing compliance costs and rates that have been frozen in place since 2005. These challenges can be overcome, but making

service better will require time and resources. It would be inappropriate for the Commission to expect improved service while placing exceedingly taxing burdens on the Company. The ALJ's recommendations, as modified by Respondents Exceptions, are an appropriate way to achieve the goals of improving service for customers of HVUS. The Commission should craft the most appropriate and fair solution to address the problems faced by HVUS and its customers.

III. CONCLUSION

For the reasons set forth above, Respondent Hidden Valley Utility Services, LP respectfully requests that the Commission grant Respondent's Exceptions and issue a Final Order that rejects the Exceptions of OCA and Intervenors and modifies the Initial Decision consistent with HVUS's Exceptions and Reply Exceptions.

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

Date: October 11, 2016

Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Reply Exceptions upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via electronic and/or regular 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
egannon@paoca.org
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

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

Robert J. Kollar, CPA
1374 Langport Drive
Pittsburgh, PA 15241
bob@kkacpas.com

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



Edward G. Lanza
Counsel for Hidden Valley Utility Services

Dated: October 11, 2016