

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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February 12, 2018

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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 Answer to Petition for Clarification in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Christ Maloni Hoover".

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

Enclosures:

cc: Honorable Jeffrey A. Watson  
Certificate of Service  
\*244207

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer to Petition for Clarification, 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 12<sup>th</sup> day of February 2018.

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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                         | : |                            |

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ANSWER OF THE  
OFFICE OF CONSUMER ADVOCATE  
TO PETITION FOR CLARIFICATION, RECONSIDERATION AND AMENDMENT  
OF HIDDEN VALLEY UTILITY SERVICES, L.P.

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I. INTRODUCTION

On February 2, 2018, Hidden Valley Utility Services, L.P. (HVUS or the Company) filed a Petition for Clarification, Reconsideration and Amendment (Petition) of the Opinion and Order of the Pennsylvania Public Utility Commission (Commission) entered on January 18, 2018 in the above-captioned proceeding. In the Order, the Commission found that HVUS has failed to provide safe, adequate and reasonable service in violation of Section 1501 of the Public Utility Code and required HVUS to undertake a number of measures to address water, wastewater and customer service issues. The Commission established specific deadlines for compliance and reporting and, in the case of failure to comply, directed that a hearing will be held where HVUS has the burden of proving that the water and wastewater system are adequate, water quality is adequate and whether penalties and ratepayer refunds are appropriate. The hearing will also address whether a viable utility should be ordered to acquire HVUS to carry out the required measures. Order at 30-31, 41-42, 66.

In its Petition, HVUS asks the Commission to clarify, modify and/or rescind portions of its January 18, 2017 Order. The Office of Consumer Advocate (OCA) agrees in part and objects in part to the Company's requests, for the reasons provided herein. The OCA hereby submits this Answer to the Petition pursuant to Sections 5.61 and 5.572(e) of the Commission's regulations. 52 Pa. Code §§ 5.61, 5.572(e).

## II. BACKGROUND

In 2005, HVUS executed a settlement with the OCA and customer complainants, which required HVUS to implement changes and improvements to provide adequate, safe and reasonable service and to address long-term problems including brown or rust-colored water, low water pressure, and high levels of unaccounted-for water. Order at 5 (citing Docket Nos. A-00210117 and A-00230101). The settlement in the Application proceedings established deadlines, which HVUS failed to meet.<sup>1</sup> In the current complaint proceedings, the Commission agreed with the ALJ that the long-term water problems identified in 2005 persist, such that water service remains inadequate and unreasonable for purposes of Section 1501. *Id.* at 12, 23; 66 Pa. C.S. § 1501. The Commission and ALJ also found that wastewater service does not meet the requirements of Section 1501. *Id.* at 12-13, 23. The Commission recognized that remedial action should be expedient and provide permanent resolutions to the service problems. Order at 30-31. It stated:

It is apparent that the Company's customers have been suffering from poor water quality and unreasonable service for years. Any subsequent delays in failing to remediate the problems due to the failure to meet compliance deadlines would be unacceptable.

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<sup>1</sup> The Commission approved the settlement and underlying Applications by Order entered July 15, 2005. Ten years later, HVUS had not complied with requirements to: (1) submit a report to the Commission and all parties reassessing the need, size and cost of treatment plant to permanently solve the problems caused by iron and manganese, (2) replace 2,500 feet of mains serving troubled areas of the system and (3) the holding of semi-annual customer meetings. Order at 9-10.

Id. at 31.

### III. LEGAL STANDARD

Pursuant to Section 703 of the Public Utility Code, “[a]fter an order has been made by the [C]ommission, any party to the proceedings may, within 15 days after the service of the order, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing.” 66 Pa. C.S. § 703(f); 52 Pa. Code § 5.572(c) (“Petitions for reconsideration . . . shall be filed within 15 days after the Commission order involved is entered or otherwise it becomes final”). Section 703 also provides that the Commission may “rescind or amend any order made by it.” 66 Pa. C.S. § 703(g).

The Commission set forth the standard applied to petitions for reconsideration in Duick v. Pennsylvania Gas and Water Co., 1982 Pa. PUC LEXIS 4, \*12-13, where it stated:

A petition for reconsideration, under the provisions of 66 Pa. C.S. 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or part. In this regard we agree . . . that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

In further delineating the standard for petitions for reconsideration, in Pa. PUC v. PECO Energy Co., 1999 Pa. PUC LEXIS 24, \*10-11, the Commission provided:

[B]ecause a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under the appropriate circumstances.

...

We have held that such petitions must make new or novel arguments not previously considered or raise matters which are designed to convince us to exercise our discretion to rescind or amend the Order under consideration.

As such, a justifiable petition for reconsideration must present new or novel arguments.

#### IV. ANSWER

##### A. Deadline for Compliance with Engineer's Recommendations, Ordering Para. No. 8

The OCA has no objection to the Company's first request, that the Commission clarify the deadline for the Company's compliance with the engineer's recommendations to address inadequate water service. Petition at 2-3. This deadline is addressed in Ordering Paragraph No. 8, which states:

8. That Hidden Valley Utility Services, L.P., 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 (1) year from the date of the engineer's report.

Order at 62. The OCA agrees with HVUS's interpretation of this paragraph, which is that HVUS will implement the recommendations contained in the engineer's report within one year of the date of the report. In addition, HVUS will reassess the need, size and cost of a treatment plant within one year from the date of the engineer's report. Petition at 3.

In HVUS's view, there is an alternative reading of this paragraph, which limits application of the one-year deadline to the treatment plant reassessment (only). Petition at 3. The OCA submits that this alternate interpretation is not consistent with the discussion provided on pages 28 to 31 of the Commission's order. Therein, the Commission specifically rejected HVUS's exception to the one-year deadline for the completion of projects to improve the Company's system. It stated:

Any subsequent delays in failing to remediate the problems due to the failure to meet compliance deadlines would be unacceptable. The one-year deadline for implementing the corrective measures established in the engineer's report sets an objective guideline for compliance.

Order at 31. Given this, the OCA submits that if the Commission clarifies Ordering Paragraph No. 8, that clarification should be limited and consistent with its January 18, 2018 Order. The OCA suggests the following modifications to Ordering Paragraph No. 8 to clarify that HVUS will implement the recommendations contained in the engineer's report within one year from the date of the report:

8. That, **within one (1) year from the date of the engineer's report**, Hidden Valley Utility Services, L.P. shall comply with all recommendations from the engineer in order **(1)** 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 **(2)** to reassess the need, size and cost of treatment plant to permanently solve the problems caused by iron and manganese, ~~**within one (1) year from the date of the engineer's report.**~~

The OCA notes that HVUS claims in its Petition that it has "already taken many of the steps" that it anticipates will be contained in the engineering report and that, with regard to those measures, the one-year deadline will be moot. Petition at 3. HVUS does not provide any citation to the evidentiary record, or otherwise provide documentation or verification supporting its claims. That being said, to the extent the Company has already taken steps to remediate its water system, it can reasonably be assumed that the engineer's report will reflect the Company's actions. Further, to the extent that the Company completes the engineer's recommendations before the one-year deadline for compliance, the Commission's Order provides for HVUS to file its final status report and engineer's verification early. See Ordering Paragraph No. 19. The sooner remediation occurs and the treatment plant is reassessed, the sooner quality of service will improve and a permanent resolution to the problems caused by iron and manganese will be achieved.

B. Continued Monitoring of Bills and Payments to Penelec, Ordering Para. No. 15

The OCA objects to HVUS's request that the Commission eliminate the requirement to release monthly billing and payment records from Pennsylvania Electric Co. (Penelec) to the OCA. Petition at 4-5. This requirement is provided in Ordering Paragraph No. 15, where the Commission states in relevant part:

15. That Hidden Valley Utility Services, L.P., shall pay all electric and telephone bills in a timely manner to ensure adequate and reasonable service to its customers. Additionally, Hidden Valley Utility Services, L.P., shall execute appropriate authorization forms permitting its electric provider, Pennsylvania Electric Company, to continue providing monthly billing and payment information for all Hidden Valley Utility Services, L.P., accounts to the Office of Consumer Advocate until the requirements under Ordering Paragraph No. 27 are satisfied.

Order at 64. The referenced Ordering Paragraph No. 27 states:

27. That upon completion of the terms set forth in this decision and order, and the filing of a status report by Hidden Valley Utility Services, L.P., and its engineer, and a report from Office of Consumer Advocate or the Commission's Bureau of Technical Utility Services, evidencing that all the requirements set forth herein have been completed, the proceeding docketed at C-2014-2447138 and C-2014-2447169 shall be marked closed.

Id. at 68. HVUS argues that the matter of releasing billing and payment information from Penelec to the OCA is a moot issue that was resolved in another proceeding. Petition at 4. It argues, further, that imposing a continuing obligation on HVUS to submit billing information over an extended period of time is unreasonable. Id. With regard to the Company's first argument, it has misrepresented the resolution reached in the companion proceeding at Docket No. P-2014-2424858 (Emergency Petition). There, the OCA requested that HVUS release billing and payment information from Penelec so that it could timely respond to late payments before they escalate to termination notices and put the utility's ability to provide continuous water and wastewater service

in jeopardy.<sup>2</sup> Order at 44; OCA Exc. at 28. In the context of a settlement, HVUS agreed to provide this information for 12 months, which allowed the OCA to monitor the Company's payments through June 2016.<sup>3</sup> Subsequently, the ALJ directed HVUS to extend the release of billing and payment information until the Commission entered an Order in the instant proceeding, where the OCA had also sought the relief of monthly reporting.<sup>4</sup> Order at 44-45. The purpose of the extension was to prevent a gap in reporting so that HVUS' compliance with its obligation to timely pay its electric bills could be monitored continuously. With that measure in place, the OCA agreed to withdraw its Emergency Petition.<sup>5</sup> The resolution of the Emergency Petition in no way resolved the underlying concerns that were the basis for filing that Petition in 2014 and one of the grounds for the complaints initiating the instant proceeding: that that the Company is not timely paying its electric bills for accounts used in the provision of water and wastewater service and that water and wastewater service, including fire protection, could be interrupted due to the termination of electric service for nonpayment. OCA St. 1 at 8-9; OCA St. 1S at 9-11. That concern continues and, as such, the remedy of requiring HVUS to authorize Penelec to release monthly billing and payment information going forward was not resolved in the Emergency Petition proceeding or otherwise mooted. The Company's claims to the contrary should be dismissed.

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<sup>2</sup> In its Exceptions, the OCA also explained that its requested relief imposes a minor burden on HVUS, requiring the Company to simply execute written authorization for Penelec to release its account information to the OCA. OCA Exc. at 28. Moreover, the OCA noted, the submission of account information for monitoring provides a reciprocal benefit to Penelec by encouraging timely payment by the Company. *Id.* at 28.

<sup>3</sup> Petition of the OCA for the Issuance of an Emergency Order, Docket No. P-2014-2424858, 3rd Interim Order at 4 (May 5, 2015) (attached hereto as Appendix A).

<sup>4</sup> Petition of the OCA for the Issuance of an Emergency Order, Docket No. P-2014-2424858, 5th Interim Order at 2-3 (Aug. 24, 2016) (5<sup>th</sup> Interim Order) (attached hereto as Appendix B).

<sup>5</sup> The OCA and HVUS asked the ALJ to keep the record open in the Emergency Petition proceeding until an Order was entered in the Complaint proceedings but the ALJ declined this request and directed the OCA to withdraw its Petition, submit a second settlement agreement or proceed to hearings. 5<sup>th</sup> Interim Order at 3-4. The OCA's Petition for Withdrawal was filed on February 2, 2017 and the ALJ's Recommended Decision granting that withdrawal was approved by the Commission without further action on May 10, 2017.

The Company's second argument – that imposing a continuing obligation on HVUS to release billing information is unfair and unreasonable – should also be rejected. In response to the Company's demonstrated failure to timely pay its electric and telephone bills, the ALJ directed HVUS to "pay all electric and telephone bills in a timely manner to ensure adequate and reasonable service to its customers." I.D. at 41, Ordering Para. No. 13. The ALJ did not address the OCA's recommendation that the Company be directed to execute appropriate authorization forms permitting Penelec to continue providing monthly billing and payment information. Accordingly, the OCA filed an Exception asking the Commission to adopt this requirement. OCA Exc. at 27-28. HVUS did not file a Reply to the OCA's Exception.<sup>6</sup> Order at 45. As a matter of procedure, therefore, the Company waived its objection. Consistent with the discussion above, the resolution of the Emergency Petition in 2017 did not impact the concerns underlying the OCA's requested relief in this proceeding, *i.e.* the Company's documented failure to timely pay its electric bills. HVUS raises no new or novel arguments not previously considered. As stated in Duick: "[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . ." Duick at \*12-13. Accordingly, the Company's request that the Commission rescind its directive that HVUS execute a release for Penelec to continue providing monthly and billing payment information until this proceeding is closed should be denied.

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<sup>6</sup> The Commission concluded:

[T]he OCA's proposed mechanism for monitoring payment of the electric and telephone bills involves a minimal burden on the Respondent and appears to be an appropriate modification to the Initial Decision. There being no apparent objection to this modification and finding it otherwise reasonable and supported by the evidentiary record, we shall grant OCA Exception No. 6.

Order at 45.

C. Requirement that the OCA Investigate HVUS's Service, Ordering Para. No. 15

The OCA objects to HVUS's request that the Commission eliminate any investigation of the quality of water or water/wastewater service following HVUS's final status report. Petition at 5-6. For the reasons discussed below, the Company's request is procedurally and substantively deficient.

The Ordering Paragraph at issue states, in part:

20. That on or before March 31, 2019, or within sixty (60) days after receipt of a written report of all completed rehabilitative measures from Hidden Valley Utility Services, L.P. and its engineer, the Office of Consumer Advocate shall investigate the quality of the water as well as of the water and wastewater services being received by Hidden Valley Utility Services, L.P.'s customers or request that this matter be referred to the Bureau of Technical Utility Services.

Order at 66. The Initial Decision proposed the same substantive requirement, the only difference was an earlier deadline:

18. That on or before November 1, 2017 or within sixty days after receipt of a written report of all completed rehabilitative measures from the Company and its engineer, Office of Consumer Advocate shall investigate the quality of the water as well as of the water and wastewater services being received by Respondent's customers or request that this matter be referred to the Bureau of Technical Utility Services. The Commission shall retain jurisdiction for that purpose.

I.D. at 42, Ordering Para. No. 18. The Company filed no Exception to this provision of the Initial Decision. Moreover, it did not file any Reply Exceptions in response to exceptions filed by the OCA and Intervenors that addressed other portions of the ALJ's Ordering Paragraph No. 18. To the extent HVUS's objections have not been heard and considered by the Commission, that is due to the Company's failure to raise them at the Exception stage of the proceeding. Its request that the provision be eliminated now, in the context of a Petition for Reconsideration, is untimely and improper.

As a substantive matter, in its Petition, HVUS provides no support for its request that the Commission eliminate the investigation requirement altogether and its request should be denied on that basis. Petition at 5-6. The Company requests, in the alternative, that the Commission task the Bureau of Technical Utility Services (TUS) with the investigation rather than the OCA. *Id.* at 6. In this regard, HVUS argues that one party in a litigated proceeding should not be given the authority to investigate an opposing party in that proceeding because, it alleges, the investigation will not be independent and fair. With regard to the Company's ad hominem attacks regarding the motives of the OCA in this proceeding, the OCA points to the extensive evidentiary record establishing that HVUS has failed to remediate quality and service issues that existed at the time its Application was granted in 2005. Order at 4-7, 9; I.D. at 6-12, Findings of Fact Nos. 1-53.

The OCA has a different reading of the Ordering Paragraph at issue. The OCA is not an enforcement arm of the Commission and does not interpret Ordering Paragraph No. 20 to assign that role to the OCA. Rather, the OCA interprets the directive to "investigate" the quality of water and water/wastewater service as the opportunity to conduct the same type of investigation the OCA conducted in the proceeding below – discovery and site inspections. The OCA has no objection, however, to the Commission clarifying the OCA's role and requiring TUS to investigate the quality of water and water/wastewater services following the issuance of HVUS's final report. To that end, if the Commission chooses to modify to its Order with regard to TUS, the OCA requests that the Commission also make clear that the change is without prejudice to the OCA's rights to undertake discovery and obtain an evidentiary hearing if quality and service problems persist. The OCA suggests the following modifications to Ordering Paragraph No. 20<sup>7</sup>:

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<sup>7</sup> If the Commission makes other changes to Ordering Paragraph No. 20, then for clarity and consistency with the discussion in the Order, the OCA suggests clarifying that HVUS's quality of water and its water/wastewater service are subject to review following submission of the Company's final status report. Order at 30-31. The OCA's proposed modifications include additional language to this effect.

20. That on or before March 31, 2019, or within sixty (60) days after receipt of a written report of all completed rehabilitative measures from Hidden Valley Utility Services, L.P. and its engineer, the ~~Bureau of Technical Utility Services~~**Office of Consumer Advocate** shall investigate the quality of the water ~~and as well as of the~~ water and wastewater services being received by Hidden Valley Utility Services, L.P.'s customers ~~or request that this matter be referred to the Bureau of Technical Utility Services.~~ **Notwithstanding the investigation by the Bureau of Technical Utility Services, the Office of Consumer Advocate may conduct discovery and site visits.** If the recommended repairs, modifications, rehabilitative and maintenance procedures have not been accomplished within the time frame structured herein, or if the water quality or water and wastewater service as reported by the Office of Consumer Advocate or the Bureau of Technical Utility Services is not adequate and reasonable, an evidentiary hearing shall forthwith be scheduled by the Office of Administrative Law Judge for purposes of addressing one or more of the following issues: the adequacy of the water system, the adequacy of the wastewater system, the quality of the water, the appropriateness of penalties to be imposed against Hidden Valley Utility Services, L.P., the appropriateness of ratepayer refunds, and any other issue relative to these ordering paragraphs. The burden of proof in the evidentiary hearing as to these issues shall be upon Hidden Valley Utility Services, L.P. The Commission shall retain jurisdiction for that purpose.

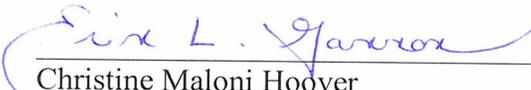
In its Order, the Commission adopted measures intended to “reduce any further delays in the event a subsequent evidentiary hearing becomes necessary.” Order at 41-42. With that goal, the OCA emphasizes that if the Commission modifies Ordering Paragraph No. 20, the Commission should retain the OCA’s ability to obtain and fully participate in an evidentiary hearing, within this docket and where the Company has the burden of proof, if TUS or the OCA report that water or wastewater service is not adequate and reasonable as required by Section 1501. 66 Pa. C.S. § 1501.

In summary, if the OCA’s rights to conduct discovery and obtain and fully participate in an evidentiary hearing are preserved, the OCA does not object to the Company’s alternative request that the Ordering Paragraph be modified to state more clearly that TUS, rather than the OCA, is required to investigate compliance with the Commission’s Order.

V. CONCLUSION

As set forth above, the OCA respectfully requests that the Commission grant in part and deny in part the request of Hidden Valley Utility Services, L.P. for Clarification, Reconsideration and Amendment of the Commission's January 18, 2018 Order.

Respectfully Submitted,



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DATED: February 12, 2018  
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