

COMMONWEALTH OF PENNSYLVANIA



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October 29, 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 the Petition for Amendment in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christine Maloni Hoover
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Enclosures:

cc: Honorable Jeffrey A. Watson
Certificate of Service
*261796

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 the Petition for Amendment, 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 29th day of October 2018.

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 Dated: October 29, 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	:	

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

I. INTRODUCTION

On October 18, 2018, Hidden Valley Utility Services, L.P. (HVUS or the Company) filed a Petition for Amendment (Petition) of the Opinion and Order of the Pennsylvania Public Utility Commission (Commission) entered on May 3, 2018 (May 2018 Order) in the above-captioned proceeding. In the May 2018 Order, the Commission granted in part and denied in part a Petition for Clarification and Amendment filed by HVUS regarding the Commission’s January 18, 2018 Order (January 2018 Order). In the January 2018 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. January 2018 Order at 30-31, 41-42, 66. Specifically, the Commission modified paragraph 20 of its January 2018 Order to avoid any possible confusion. May 2018 Order at 23 quoting the January 2018 Order at 31. The Commission denied HVUS's request to eliminate the monitoring of the payments of its electric bills. May 2018 Order at 23. Finally, the Commission modified Ordering paragraph 20 to indicate that the investigation following HVUS's final status report would be conducted by the Commission's Bureau of Technical Utility Services (TUS) rather than by OCA. *Id.* at 24.

In its current Petition, HVUS asks the Commission to amend Ordering paragraph 8 of the May 2018 Order. That ordering paragraph requires HVUS to "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. HVUS's Petition asks that the one year deadline be replaced with a series of milestone deadlines related to the option HVUS chooses or in the alternative, change the one-year deadline to a four-year deadline. Petition at 8-9.

The OCA submits that the Petition for Amendment of the May 3, 2018 Order should be denied, 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.¹ In these complaint proceedings, the Commission, in its January 2018 Order, 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.

Id. at 31.

HVUS filed a Petition for Clarification, Reconsideration, and Amendment in February 2018. The OCA filed an Answer. HVUS filed two reports of its engineer in April 2018. See Petition for Amendment at 4. In May 2018, the Commission entered an Order granting in part and denying in part HVUS's Petition for Reconsideration.

¹ 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.

III. LEGAL STANDARD

Section 703 of the Public Utility Code provides that the Commission may “rescind or amend any order made by it.” 66 Pa. C.S. § 703(g); 52 Pa. Code § 5.572(d) (“Petitions for rescission or amendment ... may be filed at any time....”).

The Commission set forth the standard applied to petitions for reconsideration or amendment 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 amendment should present new or novel arguments. In its Petition, HVUS argues that it has met the Duick standard. As discussed below, the OCA submits that the issues raised by HVUS have been raised before by HVUS in this proceeding and have

already been considered by the Commission, and as such, the Petition for Amendment should be denied.

IV. ANSWER

A. Deadline for Compliance with Engineer's Recommendations, Ordering Para. 8

HVUS requests a change in the manner that compliance would be determined or in the alternative additional time to comply with the options identified in the engineer's report. Petition at 8-9. The one-year deadline from the date of the engineer's report is addressed in Ordering Paragraph No. 8, which states:

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.

May 2018 Order at 27. The May 2018 Order revised Ordering paragraph No. 8 to clarify that the one-year deadline applied to both the remedy to eliminate rust or brown-colored water and the reassessment of the need, size and cost of the treatment plant. May 2018 Order at 22-23.

HVUS has repeatedly raised the issue of and sought relief from the one-year deadline. HVUS excepted to the recommendation by the ALJ that it have one year to implement the engineer's recommendation. In its January 2018 Order, 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. In its May 2018 Order, the Commission again stated that it disagreed with the Company's alternate interpretation of ordering paragraph 8, and agreed with OCA's position that the alternate interpretation offered by HVUS was inconsistent with the discussion in the January 2018 Order. May 2018 Order at 22-23. The Commission stated that it did not believe that HVUS had offered any new or novel argument or identified considerations which appear to have been overlooked by the Commission. May 2018 Order at 23.

The Commission specifically addressed the one-year deadline in its January 2018 Order. It noted that the ALJ found that HVUS had not complied with the provision of the 2005 Order that required HVUS to submit a report, to the Commission and the parties, reassessing the need, size and cost of a treatment plant to permanently solve the problems caused by iron and manganese levels in the water. January 2018 Order at 9. HVUS then filed an exception arguing that the one-year deadline was artificial. January 2018 Order at 29. In the January 2018 Order the Commission stated that the one-year deadline was important because:

[D]ue to the extended time-period for compliance with the 2005 Settlement and the lack of resolution of the outstanding service problems, we believe there should be some mechanism for ensuring that further compliance deadlines are met. Any failure to further comply with the deadlines set forth in this Opinion and Order could be indicative of the Company's lack of competency to operate and of the inability to provide reasonable and adequate service.

January 2018 Order at 30. The Commission also stated that it was concerned about the delays in resolving the outstanding service problems. Id. at 31. In rejecting HVUS's Exception to the one-year deadline, the Commission 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. The one-year deadline for implementing the corrective measures established in the engineer's report sets an objective guideline for compliance.

January 2018 Order at 31.

In the February 2, 2018 Petition, HVUS claimed that, **at that time**, it had “already taken many of the steps” that it anticipated will be contained in the engineering report and that, with regard to those measures, the one-year deadline will be moot. February 2, 2018 Petition at 3. HVUS did not provide any citation to the evidentiary record, or otherwise provide documentation or verification supporting its claims; however, to the extent the Company had already taken steps to remediate its water system as of February 2, 2018, it can reasonably be assumed that the April 2018 engineer’s report reflected the Company’s actions up until that time.

Now, six months after the engineer’s report, the Company has made the same request, for more time to comply, that it has made throughout the litigation of the complaint proceedings. The OCA submits that more delays regarding the remediation and the treatment plant are not reasonable especially in light of the long period of inadequate service that the customers have experienced and continue to experience, even after the 2005 Settlement designed to remediate these issues. 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. The April 2018 engineer’s report contained a discussion of four proposed solutions and cost estimate to replace the sequestering treatment currently being used by HVUS. See Petition for Amendment, Appendix A. It should be noted that the April 2018 engineer’s report did not contain a recommendation as to which option should be pursued by HVUS. The failure of the report to provide a recommendation is something that was within the control of HVUS as it hired the engineer and it should not operate to further delay compliance with the one-year deadline as ordered by the Commission.

Finally, it should be noted that HVUS waited six months to file its Petition for Amendment despite having the engineer’s time estimate for the treatment option and the interconnection

option.² The additional delay in filing for relief exacerbates HVUS's long-term failure to address the inadequate service it provides to its customers.

At page 7 of the Petition for Amendment, HVUS states that its current rate cases will enable it to fund the "extensive improvement required by the Orders." Petition, ¶ 21. The OCA submits that this statement is not correct. The rate cases use a 2017 historic test year. There are no claims in the 2017 historic test year that include any expenditures related to the options shown in the April 2018 engineer's report.

At pages 7-8 of the Petition for Amendment, HVUS states that it filed the rate cases to assist in financing the project. Petition, ¶ 23. However, as stated above, the rate case filings do not contain any claims, including pro forma cost of capital, related to the options shown in the April 2018 engineer's report. The Company also states that it is having difficulty obtaining financing attributing that difficulty to the outcome of the pending rate proceedings (Petition at 8), although it has offered no evidence that it would be able to secure financing for options ranging from \$1,150,000 to \$2,400,000 million,³ even if HVUS received its rate increase requests. Moreover, given that HVUS continues to provide inadequate service, there is no assurance that it will receive its requested rate increase.⁴

At pages 8-9 of the Petition for Amendment, the Company sets forth its proposal regarding the process it proposes should replace the one-year deadline. Petition, ¶ 24(a). The Company's proposal would require it to file its plans for either the treatment plant or the interconnection and the parties to the proceeding would have an opportunity to file comments. Petition at 8. Technical

² In its Petition for Amendment, HVUS claims that it has spent the last six months working with its engineers to obtain additional information. Petition for Amendment at 4.

³ See Petition for Amendment at 7-8.

⁴ Where service is inadequate, the Commission may reject all or part of the utility's requested rate increase. 66 Pa. C.S. § 526(a).

Utility Services could change the plans and give the Company a deadline to complete the project “based on the plans as approved.” *Id.* HVUS argues that this approach is preferable because it “ensures that the Commission approves the Company’s plans *before* the Company undertakes the project....” *Id.* (emphasis in original). The OCA submits that this approach is not consistent with policies and procedures for fixed utilities in Pennsylvania and it should be rejected. The Commission does not pre-approve capital expenditures. The utility determines what capital expenditures are needed, secures financing, builds the project, and then seeks to have the costs reflected in rates. At that time, the Commission and the parties to the rate proceeding will review, *inter alia*, whether the project is used and useful, whether the expenditures were prudently incurred, and whether the service provided by the utility meets the requirements of Section 1501.

As an alternative to its proposed change to the process and the timing, HVUS proposes that the one-year deadline be extended to a four-year deadline. Petition, ¶ 24(b). The Commission specifically addressed the timing of the deadline in the January 2018 Order, finding that the extended time-period for compliance with the 2005 Settlement and the lack of resolution, required some mechanism for ensuring that further compliance deadlines are met. January 2018 Order at 30. For the reasons stated above, and for the reasons set forth in the complaint proceeding and the May 2018 Order, the OCA submits that it is not reasonable to approve even more delays in resolving the long-standing inadequate service. The Commission’s approach as set forth in the January 2018 Order will provide a path to finding a reasonable solution for the customers of HVUS.

HVUS also argues that the approach it proposes in paragraph 24(a) is preferable because it will “ensure that the Company remains ‘on track’ with the required improvements by requiring the Company to meet important milestones in a timely manner.” Petition at 9. The OCA submits that

this approach could be applied even under the one-year deadline.⁵ The use of interim milestones does not justify the process proposed under paragraph 24(a) or the proposed four-year deadline under paragraph 24(b).

HVUS has acknowledged that it is unable to meet the April 2019 deadline. The OCA submits that relief requested by HVUS in its Petition for Amendment should be denied. It is reasonable and appropriate to use the process set forth in the Commission's January 2018 Order and May 2018 Order. Rather than removing the deadline for completing one of the options and replacing it with interim deadlines or extending the deadline for four years, it would be more reasonable to proceed to the hearing and Section 529 proceeding set forth in paragraphs 20 and 21 of the Commission's May 2018 Order. It is not in the best interest of the customers of HVUS to have to wait until April 2019 (when HVUS will miss the deadline) because HVUS has already acknowledged that it will not meet the deadline. The long-standing inadequate service received by HVUS's customers needs to be addressed and further delay is not reasonable or in the public interest.

⁵ The OCA proposed a series of interim deadlines to ensure that the process was on track but the Commission did not adopt the OCA's recommendation. See January 18, 2018 Order at 26-31.

V. CONCLUSION

WHEREFORE, for the reasons set forth above, the OCA respectfully requests that the Commission deny the request of Hidden Valley Utility Services, L.P. for Amendment of the Commission's May 3, 2018 Order.

Respectfully Submitted,



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DATED: October 29, 2018
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