



February 24, 2020

VIA E-FILING AND FIRST CLASS MAIL

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor -- Filing Room
Harrisburg, PA 17120

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

Hidden Valley Utility Services, L.P.'S Prehearing Conference Memorandum

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is Hidden Valley Utility Services, L.P.'s Prehearing Conference Memorandum. A copy is being served in accordance with the attached Certificate of Service.

Please contact me if you have any questions regarding this filing.

Sincerely,

COZEN O'CONNOR

By: Jonathan P. Nase

JPN
Enclosure

cc: Administrative Law Judge Katrina L. Dunderdale
Per Certificate of Service
James Kettler

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tanya J. McCloskey, Acting Consumer Advocate	:	
	:	
	:	Docket No. C-2014-2447138
v.	:	
	:	
Hidden Valley Utility Services, L.P. – Water	:	
	:	
and	:	
	:	
Tanya J. McCloskey, Acting Consumer Advocate	:	
	:	
	:	Docket No. C-2014-2447169
v.	:	
	:	
Hidden Valley Utility Services, L.P. – Wastewater	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Prehearing Conference Memorandum of Hidden Valley Utility Services, L.P.**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL:

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Sharon Howard-Frieri
P.O. Box 4126
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Hidden Valley, Pa 15502

DATED: February 24, 2020



Jonathan P. Nase, Esquire
Counsel for *Hidden Valley Utility Services, L.P.*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ADMINISTRATIVE LAW JUDGE
KATRINA L. DUNDERDALE**

Tanya J. McCloskey, Acting Consumer Advocate :
v. : Docket No. C-2014-2447138
Hidden Valley Utility Services, L.P. – Water :

and

Tanya J. McCloskey, Acting Consumer Advocate :
v. : Docket No. C-2014-2447169
Hidden Valley Utility Services, L.P. – Wastewater :

**PREHEARING CONFERENCE MEMORANDUM OF
HIDDEN VALLEY UTILITY SERVICES, L.P.**

AND NOW COMES Hidden Valley Utility Services, L.P – Water and Hidden Valley Utility Services, L.P. – Wastewater (together “HVUS”), pursuant to 52 Pa. Code § 5.222(d) and in compliance with the Prehearing Conference Order of the Honorable Administrative Law Judge Katrina L. Dunderdale (the “Administrative Law Judge”), dated February 7, 2020, to file this Prehearing Conference Memorandum in the above-captioned matter. In support thereof, HVUS states as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

On October 9, 2014, the Office of Consumer Advocate (“OCA”) filed the instant complaint proceedings against HVUS, alleging that HVUS failed to provide reasonable and adequate water and wastewater service. In addition to the OCA and HVUS, the Hidden Valley Foundation, Inc. (the “Foundation”), Robert J. Kollar and Kellie A. Kuhleman were parties to the proceeding. A hearing was held on November 17, 2015. On September 9, 2016, an initial decision was issued by Administrative Law Judge Jeffrey A. Watson, sustaining the OCA’s Complaint with regard to both the water system and the wastewater system.

Exceptions were filed and the Commission ultimately issued an Opinion and Order on January 18, 2018 (the “January 2018 Order”), directing HVUS to complete an extensive list of tasks within specified deadlines. HVUS filed a Petition for Clarification, Reconsideration and Amendment, which the Commission granted in part and denied in part by an Opinion and Order issued on May 3, 2018 (the “May 2018 Order”).

In pertinent part, the Ordering Paragraphs from the May 2018 Order read:

6. That Hidden Valley Utility Services, L.P., shall obtain and file with the Commission a written report from an independent or third-party Pennsylvania licensed water and wastewater engineer concerning the adequacy of its water distribution system and water source; and said report shall contain recommendations and a cost analysis to correct any found 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 with said report, to include an evaluation and proposed remedy to reassess the need, size and cost of the treatment plant to permanently solve the problems caused by iron and manganese, as well as alternative sources of water supply such as the Quemahoning River, within ninety (90) days from the date of entry of this Opinion and Order in this proceeding. In addition to estimating costs, the study will include an implementation schedule for completion of the design, repairs or improvements, obtaining permits, obtaining bids, awarding contracts, and completion of construction/start of operation. Additionally, the engineering report will include a schedule to replace and/or test customer meters in accordance with Section 65.8(b) that results in compliance by April 30, 2019. Hidden Valley Utility Services, L.P., will implement the replacement and testing schedule.

...

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.

Before the Commission issued its May 2018 Order, HVUS filed an engineer's report on its water system (the "Engineer's Report"). That report outlined four options for addressing the iron and manganese in HVUS's water. Those options are summarized below:

	Alternative	Total Estimated Cost	Approximate Monthly User Fee Increase
1	Conventional Iron Filter	\$1,081,000	\$9.50
2	WesTech Aeralater Iron Filter	\$1,157,000	\$9.00
3	Connection to Jefferson Township Municipal Authority System	\$ 852,000	\$8.00
4	Connection to Seven Springs Municipal Authority System	\$2,389,000	\$20.00

Engineer's Report at 6. Additionally, the Engineer's Report concluded that at least four years would be necessary for HVUS to install a water treatment system or connect to an alternative source of supply,

On October 18, 2018, HVUS filed a Petition for Amendment, requesting a modification of the one-year deadline in Ordering Paragraph 8. HVUS proposed a series of deadlines for significant milestones in the construction process. In the alternative, HVUS requested that the Commission replace the one-year deadline in Ordering Paragraph 8 with a four-year deadline.

The OCA, Mr. Kollar and Ms. Kuhleman opposed HVUS's Petition for Amendment. In an Opinion and Order entered on January 17, 2019 (the "January 2019 Order"), the Commission denied HVUS's Petition for Amendment.

HVUS subsequently filed a Petition for Review with the Commonwealth Court of Pennsylvania, but this appeal was quashed by an Opinion entered May 15, 2019. *Hidden Valley Utility Services, L.P. v. Pa. Pub. Util. Comm'n*, 187 C.D. 2019. The Commonwealth Court found that the January 2019 Order was not a final order, subject to appeal:

The order in question irrefutably directs an evidentiary hearing relating to the propriety of the April 18, 2019 engineer's report and the estimated schedules provided therein. January 2019 Order at 31. At that evidentiary hearing, Hidden Valley will have the opportunity to raise the issue of extension of the compliance deadlines set forth in prior Commission orders. In sum, the January 2019 Order, denied Hidden Valley's request for extension prior to the Commission's review of the engineer's report, and directed an evidentiary hearing to review the same.

Id., slip op. at 9.

On January 28, 2019, Ms. Sharon Howard-Frieri filed a complaint at Docket No. C-2019-3008093 against HVUS alleging poor water quality and requesting to be joined as a party to the instant proceedings. On June 4, 2019, HVUS filed a Motion to Hold in Abeyance and to Consolidate, arguing that Ms. Howard-Frieri's complaint should be stayed until such time as it could properly be consolidated with these proceedings. The ALJ granted this motion in her Second Interim Order. The ALJ's Corrected Third Interim Order required the parties to file a status report by December 31, 2019. HVUS's status report argued that Ms. Howard-Frieri's complaint should continue to be stayed until such time as it could be consolidated with the instant proceedings. The OCA concurred in this request.

On February 7, 2020, the parties were notified of the prehearing conference in this matter and the ALJ issued her Prehearing Conference Order.

On February 14, 2020, HVUS's engineer filed a verified status report indicating that HVUS had completed all of the repairs and improvements required by the April 2018 engineer's report relating to HVUS's wastewater system. Additionally, HVUS has been filing status reports with the Commission every sixty days, as required by the May 2018 Order. Those status reports indicate

that HVUS has purchased a water treatment plant to address the iron and manganese in its water, and, on November 27, 2019, submitted an application to the Department of Environmental Protection (“DEP”) for a permit authorizing the construction of the plant. On January 16, 2020, DEP sent HVUS a technical deficiency letter listing additional items that need to be submitted for DEP to complete its review of the application. HVUS submitted those items to DEP on February 21, 2020.

II. COUNSEL

Counsel for HVUS is:

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III. SERVICE OF DOCUMENTS

HVUS’s attorney is authorized to accept service on behalf of HVUS in this proceeding. HVUS requests that hard copies of documents be served on Attorney Nase at the address listed above. HVUS agrees to receive service of documents electronically in this proceeding.

IV. ISSUES AND EVIDENCE

A. The propriety of the recommendations, proposed time schedules and financing plans for the recommendations contained in the engineer’s report of HVUS from April 18, 2019.

HVUS will introduce testimony and other evidence supporting the estimated time frames and estimated costs for each of the “Proposed System Solutions” in the Engineer’s Report.

B. The sufficiency of the report of the engineer of HVUS from April 18, 2018.

The sufficiency of the Engineer's Report was not challenged by any party to this proceeding until October 29, 2018, when the OCA filed its Answer to HVUS's Petition to Amend. Considering that Ordering Paragraph 8 requires HVUS to implement the recommendations from the engineer's report within one year, HVUS will argue that the OCA's delay in raising this issue means the issue has been waived or is barred by the doctrines of laches and/or estoppel.

HVUS will also argue that the engineer's report complied with Ordering Paragraph 6. Even if it was deficient, the remedy should not be to deny HVUS an extension of time to comply with Ordering Paragraph 8. For the reasons discussed below, the one-year deadline in Ordering Paragraph 8 should be modified.

C. The sufficiency of the previously ordered one-year compliance deadline.

HVUS will argue that the one-year deadline in Ordering Paragraph 8, subpart (1), is unsupported by substantial evidence in the record. Moreover, HVUS will introduce evidence demonstrating that the one-year deadline is insufficient.

HVUS will also introduce evidence that it has reassessed the need, size and cost of treatment plant to permanently solve the problems caused by iron and manganese, as required by Ordering Paragraph 8, subpart (2). HVUS has purchased a water treatment plant and applied for a DEP permit to construct it. After DEP approves the application, HVUS will promptly apply for all remaining permits and then award contracts to construct the plant. Granting the requested extension (with appropriate enforcement mechanisms) would be in the public interest because it would provide for better water to consumers. The alternative – litigation pursuant to Ordering Paragraphs 20 and 21 of the May 2018 Order – would not produce that result.

D. Whether the Commission should grant the request of HVUS to extend the compliance deadlines proposed in the engineer's report from April 18, 2019.

HVUS will argue that it has satisfied the standards in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) for amending a Commission order; HVUS will introduce new evidence that was not before the Commission when it entered the May 2018 Order.

Additionally, HVUS will argue that it has satisfied the standards for an extension of time in 52 Pa. Code § 1.15(a)(1). That regulation permits the Commission to extend the time period for performing an act for good cause when a motion is filed requesting the change prior to the expiration of the applicable time period. HVUS requested an extension via a written petition filed about six months before the expiration of the applicable deadline, and demonstrated good cause for the extension: the existing one-year deadline is unsupported by substantial evidence and new evidence demonstrates that the one-year deadline is insufficient.

HVUS will also introduce evidence supporting the requested new compliance deadline. HVUS continues to argue that the Commission should establish deadlines for significant milestones in the construction process (similar to what the OCA suggested in its Main Brief, p. 49). In the alternative, HVUS will argue that the Commission should extend the deadline to be four years, rather than one year.

E. Whether the formal complaint proceeding of Sharon Howard-Frieri v. HVUS, docketed at Docket No. C-2019-3008093, should be consolidated into these proceedings.

HVUS has no objection to the consolidation of Ms. Howard-Frieri's complaint with this proceeding.

V. WITNESSES

HVUS intends to introduce testimony from the following witnesses:

1. James M. Kettler

Mr. Kettler is the President of HVUS. His business address is 811 Russell Avenue, Suite 302, Gaithersburg, MD 20879. Mr. Kettler will provide background information about HVUS and its water system. He will testify regarding the previous proceedings in this matter and HVUS's recent rate cases at Docket Nos. R-2018-3001306 and R-2018-3001307. He will also testify regarding HVUS's efforts to comply with Ordering Paragraphs 6 and 8 of the May 2018 Order.

2. Bradley R. Stinebiser, P.E.

Mr. Stinebiser is a professional engineer with The EADS Group, Inc. His business address is 450 Aberdeen Drive, Somerset, PA 15501 and his business telephone number is (814) 445-6551. Mr. Stinebiser will testify concerning the preparation of the Engineer's Report, as well as HVUS's efforts to comply with Ordering Paragraphs 6 and 8.

HVUS reserves the right to submit testimony from additional witnesses, as additional issues are identified during this proceeding.

VI. DISCOVERY

At this time, HVUS does not believe it is necessary to modify the Commission's regulations regarding discovery procedures.

VII. PROCEDURAL SCHEDULE

HVUS bears the burden of proof regarding its request to modify the one-year compliance deadline in Ordering Paragraph 8. OCA, however, bears the burden of proof regarding its allegation that the Engineer's Report is insufficient (this was an issue raised by the OCA in its Answer to HVUS's Petition to Amend), as well as the remedy for that alleged insufficiency.

Consequently, HVUS believes all parties should be required to submit direct testimony on the same date, all parties should be required to submit rebuttal testimony on the same date, and so forth.

HVUS has shared its proposed procedural schedule with the other parties to this proceeding. Ms. Howard-Frieri agreed with the proposal, but no other party has advised HVUS whether they agree or disagree.

<u>Event</u>	<u>Suggested date</u>
Direct Testimony	April 30, 2020
Rebuttal Testimony	May 29, 2020
Surrebuttal Testimony	June 26, 2020
Hearings	June 30-July 1, 2020
Main Brief due	July 31, 2020
Reply Briefs due	August 21, 2020

HVUS reserves the right to request an opportunity to submit supplemental direct testimony in the event of a significant development regarding its on-going effort to construct a water treatment plant (for example, if contracts for construction of the plant are awarded after direct testimony has been filed).

Additionally, on October 30, 2019, counsel for HVUS (the “Requester”) filed a Right to Know Law request with the Commission, seeking information that would be relevant evidence in this proceeding. The Commission granted the request in part and denied it in part. On December 30, 2019, counsel for HVUS filed an appeal of the Commission’s action with the Pennsylvania Office of Open Records (“OOR”). The Requester and the Commission filed their position statements with the OOR on January 10 and January 15, 2020, respectively. By e-mail of February 20, 2020, the OOR notified the Parties that it was requiring the Commission to submit a privilege log. The log is due March 20, 2020 and the OOR’s Final Determination is due April 17, 2020. HVUS reserves the right to request a modification of the procedural schedule in this matter if it is unable to obtain timely access to relevant evidence through the OOR proceeding.

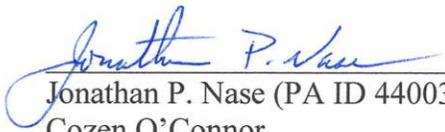
VIII. UPDATE OF SERVICE LIST

Ms. Howard-Frieri sent an e-mail to HVUS's counsel regarding the proposed procedural schedule. That e-mail stated that Ms. Howard-Frieri has a new address: P.O. Box 4126, 1174 Gristmill Court, Hidden Valley, Pa 15502.

IX. SETTLEMENT

HVUS is willing to enter into a reasonable settlement of this proceeding.

Respectfully submitted,


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Counsel for *Hidden Valley Utility Services, L.P.*

Date: February 24, 2020