

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oca

 /pennoca

FAX (717) 783-7152
consumer@paoca.org

February 24, 2020

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 Prehearing Memorandum in the above-referenced proceedings.

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

Enclosure:

cc: The Honorable Katrina L. Dunderdale, OALJ
Patricia T. Wiedt, Esquire Law Bureau
Richard A. Kanaskie, Esquire Bureau of Investigation and Enforcement
Certificate of Service

*284003

CERTIFICATE OF SERVICE

Tanya J. McCloskey, Acting Consumer Advocate :
:
v. : Docket Nos. C-2014-2447138
:
Hidden Valley Utility Services, L.P. – :
Water and Wastewater : 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 Prehearing Memorandum, 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 24th day of February 2020.

SERVICE BY E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

Jonathan P. Nase, Esquire
David P. Zambito, Esquire
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101

Sharon Howards-Fieri
1174 Grist Mill Court
P.O. Box 4126
Hidden Valley, PA 15502

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

Robert J. Kollar
Kellie A. Kuhleman
1374 Langport Drive
Pittsburgh, PA 15241



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

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Counsel for Office of Consumer Advocate

Dated: February 24, 2020
*284004

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	:	

PREHEARING CONFERENCE MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and the February 7, 2020 Prehearing Conference Order issued by Administrative Law Judge (ALJ) Dunderdale, the Office of Consumer Advocate (OCA) provides the following:

I. BACKGROUND

The most recent Public Utility Commission (Commission) Order in this proceeding was entered on January 17, 2019 (January 2019 Order).¹ In the January 2019 Order, the Commission denied the Petition for Amendment (Second Petition) filed by Hidden Valley Utility Services (HVUS or Hidden Valley). In the Second Petition, HVUS sought an amendment to deadlines contained in the Commission’s May 3, 2018 Order (May 2018 Order) on reconsideration.² HVUS

¹The OCA incorporates by reference the extensive discussion of the background of this proceeding as set forth in the Commission’s Order of January 17, 2019.

² The Commission entered an Order on January 18, 2018 (January 2018 Order) sustaining in part the OCA’s complaints against HVUS. HVUS filed a Petition for Clarification, Reconsideration, and Amendment (First Petition). The Commission addressed that Petition in its May 2018 Order.

filed a Petition for Review of the January 2019 Order with the Commonwealth Court. The Commission filed a Motion to Quash the Petition for Review. The Motion was granted in an unreported Memorandum Opinion of the Commonwealth Court. Hidden Valley Utility Services, L.P. v. Pa. P.U.C., 187 C.D. 2019 (May 15, 2019).

On February 7, 2020, a Prehearing Conference Order was issued establishing a Prehearing Conference on February 25, 2020 and directing that Prehearing Memorandums be filed by the parties on or before February 24, 2020. The OCA now files this Prehearing Memorandum to set forth the procedure and issues that the OCA believes are relevant to this proceeding.

II. SERVICE ON THE OCA

The OCA will be represented in this matter by Senior Assistant Consumer Advocates Christine Maloni Hoover and Erin L. Gannon. Two copies of all documents should be served on the OCA as follows:

Christine Maloni Hoover
Erin L. Gannon
Senior Assistant Consumer Advocates
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, Pa. 17101-1923

Telephone: (717) 783-5048
Fax: (717) 783-7152

E-mail: choover@paoca.org
egannon@paoca.org
lmyers@paoca.org

III. DISCOVERY

The OCA does not propose any modifications to the Commission's discovery regulations.

IV. WITNESSES

The OCA intends to present the direct, rebuttal and surrebuttal testimony, as may be necessary, of the following witness in this proceeding. The witness will present testimony in written or oral form and will also provide various exhibits, documents and explanatory information that will assist in the presentation of the OCA's case. The OCA's witness is:

Quality of Service/Operations

Terry L. Fought
780 Cardinal Drive
Harrisburg, PA 17111
tlfengr@aol.com

The OCA specifically reserves the right to call additional witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that an additional witness is necessary for any portion of its case, it will notify the Administrative Law Judge and all parties of record immediately.

V. ISSUES AND EVIDENCE

The issues to be addressed were listed by the ALJ in the Prehearing Order. The OCA submits that issue (a) is consistent with the January 2019 Order and the Commonwealth Court's Memorandum Opinion. The OCA reserves the right to identify other concerns within issue (a) but, preliminarily, identifies that the engineer's report, as has been noted in prior pleadings, did not include a recommendation for water treatment/interconnection. OCA Answer to Second Petition at 7. The OCA raises the same concern with regard to issue (b). Issues (c), and (d) appear to allow another opportunity for HVUS to seek review of the one-year deadline provided for in the January 2018, May 2018, and January 2019 Orders. The OCA submits that the one-year deadline for the resolution of the water issues has already passed, and at the time of HVUS's filing of the Second Petition in October 2018, it acknowledged that it would not meet the deadline. Moreover,

in its January 2019 Order, the Commission noted that adhering to the hearing process outlined in its prior Orders was preferred in order to avoid more delays. January 2019 Order at 31. Regarding issue (e), the OCA does not oppose the consolidation of Ms. Howard-Frieri's complaint with these proceedings.

Regarding issue (f), the OCA submits that: (1) Hidden Valley's compliance with other deadlines should be addressed in these proceedings; (2) the Commission has mandated "that any subsequent hearing address the requirements of Section 529 of the Code, 66 Pa. C.S. § 529."³ January 2018 Order at 42; May 2018 Order at 10-11; and (3) in its January 2018 Order, the Commission required the Company to carry the burden of proof in any subsequent hearings that were held due to its failure to comply with the deadlines in the January 2018 Order. January 2018 Order at 42; *see also* May 2018 Order at 11. The OCA submits that HVUS should bear the burden of proof in these proceedings regarding its compliance with prior Orders.⁴

VI. SCHEDULE

The OCA will work with the parties and the ALJ to develop a schedule in this proceeding.

³ The OCA recommended in Exceptions that, "In the interest of efficiency and reducing further delay, any secondary hearing should address the evidence required by Section 529 of the Code, so that the Commission can order acquisition of the Company by a viable utility if necessary." The Commission adopted the OCA's recommendation, noting that HVUS did not file Exceptions thereto. January 2018 Order at 42. Its Ordering Paragraph No. 21 provided:

That in the event an evidentiary hearing is required under Ordering Paragraph No. 20, the Commission shall initiate a separate proceeding pursuant to 66 Pa. C.S. § 529 (relating to directing a competent utility to operate or acquire a small sewer utility that has jeopardized public safety by failing to provide reasonable and adequate service). To the extent possible, the separate proceeding pursuant to 66 Pa. C.S. § 529 shall be a bifurcated proceeding with the hearing required under Ordering Paragraph No. 20.

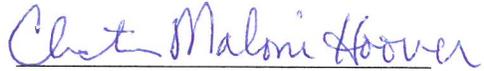
Id. at 66.

⁴ The Commission specified with regard to the burden of proof that "[a]s to the issue of whether the service continues to be inadequate, the Company shall bear the burden of proof. However, as to the Section 529 proceeding, the burden of proof shall be applied as required under 66 Pa. C.S. § 529(i).

VII. SETTLEMENT

The OCA is willing to participate in settlement discussions in this matter.

Respectfully Submitted,



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

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

DATE: February 24, 2020

284100