

COMMONWEALTH OF PENNSYLVANIA



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July 14, 2020

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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Re: Tanya J. McCloskey, Acting Consumer Advocate  
v.  
Hidden Valley Utility Services, L.P.  
Water and Wastewater  
Docket Nos. C-2014-2447138 (Water)  
C-2014-2447169 (Wastewater)

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Brief in the above-referenced proceedings.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Tanya J. McCloskey, Acting Consumer Advocate :  
v. : Docket Nos. C-2014-2447138 (W)  
Hidden Valley Utility Services, L.P. : C-2014-2447169 (WW)  
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 Reply Brief, 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 14<sup>th</sup> day of July 2020.

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Tanya J. McCloskey, Acting Consumer Advocate : C-2014-2447138  
: :  
v. : :  
: :  
Hidden Valley Utility Services, L.P. - Water :

Tanya J. McCloskey, Acting Consumer Advocate : C-2014-2447169  
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v. : :  
: :  
Hidden Valley Utility Services, L.P. - Wastewater :

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REPLY BRIEF  
OF THE OFFICE OF CONSUMER ADVOCATE

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## I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits this Reply Brief in response to the Main Brief (M.B.) of Hidden Valley Utility Services, L.P. (HVUS or the Company). The OCA's Main Brief contained a comprehensive discussion of the evidence and its position on all issues; thus, the OCA will respond only to those matters raised by HVUS that were not previously addressed or that require clarification. Nevertheless, the OCA does not waive its position on contested issues because it does not repeat arguments here. Accordingly, the OCA incorporates the arguments and analysis contained in its Main Brief herein by reference.

In 2018, the Commission set a one-year deadline for HVUS to implement corrective measures to solve the problems caused by iron and manganese in its water.<sup>1</sup>

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. Accordingly, we shall modify the Initial Decision to clarify that upon notice of the Company's failure to comply with any applicable deadlines herein 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).

...

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.<sup>2</sup>

More than two years later, HVUS has not begun construction to improve water quality and its customers continue to suffer. Moreover, the customers continue to pay full rates for inadequate

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<sup>1</sup> Opinion and Order at 30-31, 61-62 (Jan. 18, 2018) (January 2018 Order); Opinion and Order at 8, 27 (May 3, 2018) (May 2018 Order).

<sup>2</sup> January 2018 Order at 30-31.

service, rates which the Company increased in 2019.<sup>3</sup> The current proceeding must provide relief by denying the Company's Petition to extend the one-year deadline.

The record in this proceeding shows the one-year deadline was long enough for HVUS to fix, or make substantive progress toward fixing, the iron and manganese problem. Denial of the Petition means the Section 529 investigation will proceed, so that the Commission is in position to transfer the system to a capable provider or direct alternatives to acquisition that will ensure that service is finally made adequate.

Denial of the Petition to Amend also means that the Commission's evidentiary proceeding to address refunds and penalties will proceed. This proceeding and the Section 529 investigation will take some time to complete. As such, the Commission can provide HVUS a concurrent deadline to improve water service by July 31, 2021, based on the record developed in this proceeding. The Company's future compliance or non-compliance can be addressed in the pending Section 529 and refund/penalty cases.

If there is delay in starting the Section 529 investigation, however, customers should be afforded relief through a temporary usage allowance. If HVUS finally fixes the iron and manganese problem, the usage allowance would be eliminated. In addition, to deter future violations of Section 1501 and Commission Orders, the OCA recommends the Commission impose a penalty at this time for the Company's failure to comply with Ordering Paragraph 8 of the May 2018 Order.

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<sup>3</sup> *Pa. P.U.C. v. Hidden Valley Utility Services, L.P.*, Docket Nos. R-2018-3001306, R-2018-3001307, Order (Mar. 29, 2019) (*March 2019 Rate Order*).

## **II. REPLY ARGUMENTS**

### **A. Ordering Paragraph 6 from the January 2018 Order and Ordering Paragraph 8 from the May 2018 Order Are Valid.**

The Company raised no challenge to the lawfulness of Ordering Paragraphs 6 and 8 in its Main Brief. The Ordering Paragraphs are valid and, for the reasons discussed in the OCA's Main Brief and herein, should not be disturbed.

### **B. The Engineer's Report Filed April 18, 2018 Was Not Sufficient.**

As stated in the OCA's Main Brief, on pages 13 to 17, the engineer's report that HVUS filed on April 18, 2018 was not sufficient because:

- The engineer identified four options to eliminate the rust or brown-colored water; the report did not recommend one remedy the Company would pursue.
- The engineer's report did not address removal of iron and manganese from the storage tank and distribution system.
- The proposed time schedule provided with the engineer's report was unreasonably long.

#### **1. "A Remedy" (Singular)**

With regard to the first issue, HVUS argues that nothing in Ordering Paragraph 6 required the engineer's report to make one recommendation, rather, it required the report to make recommendations (plural) addressing several different approaches, including constructing a water treatment plant (WTP) and interconnecting to an alternative source of supply.<sup>4</sup> HVUS compares the Commission's Order to a penal statute and contends that the express language of the Order should be strictly construed and construed in the Company's favor.<sup>5</sup> Accepting this comparison *arguendo*, the express language of Ordering Paragraph 6 requires the report to contain a single

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<sup>4</sup> HVUS M.B. at 15-17 (Section VI.B.3).

<sup>5</sup> The case compared by the Company addresses construction of penal statutes rather than administrative orders. HVUS M.B. at 16 (citing *Commonwealth v. Darush*, 389 A.2d 1156, 1158 (Pa. Super. 1978)).

remedy for eliminating the iron and manganese problem. The Commission specifies that the report shall contain “a remedy to eliminate the rust or brown-colored water” and “with said report” include an evaluation of treatment plant and alternative sources of water supply such as the Quemahoning River. The engineer’s report was insufficient because it did not identify one remedy that HVUS would implement.

The Company argues that it would have been improper for the engineer to direct which remedy to pursue; that it is was the role of utility management to select a project.<sup>6</sup> The OCA disagrees – the whole point was to have the engineer evaluate alternative projects and make one recommendation. In the best case scenario, HVUS would have discussed the recommendation with its engineer before filing the report and, if the Company disagreed with the recommendation, the engineer may (or may not) have changed his recommendation based on the utility’s input.<sup>7</sup>

In any case, HVUS was not bound to implement the engineer’s recommended project. This is made clear by the process set forth in Ordering Paragraphs 19 and 20.<sup>8</sup> First, a final detailed report is required, in which the Company is asked to identify matters where it did not comply with the engineer’s recommendations and provide an explanation.<sup>9</sup> Second, if the engineer’s

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<sup>6</sup> HVUS M.B. at 16-17.

<sup>7</sup> OCA St. 1 at 9-10; Tr. 549-50 (Fought).

<sup>8</sup> May 2018 Order at 31-32.

<sup>9</sup> Ordering Paragraph 19 provides:

19. That on or before January 31, 2019, or as soon as all repairs, modifications and improvements have been made, as ordered herein, Hidden Valley Utility Services, L.P., shall file a **final detailed status report** with the Secretary of the Commission, along with a verification from its engineer outlining the details of what has and has not been completed, and provide copies to the Office of Consumer Advocate and to the Commission’s Bureau of Technical Utility Services, in writing, at the time of filing, **identifying in detail the extent of compliance and any incomplete matters as ordered herein. If any matters ordered herein have not been completed, Hidden Valley Utility Services, L.P., and its engineer shall state in said report, in detail, the reasons for the same.**

recommendations were not carried out, an evidentiary hearing will be held to address the adequacy of the system and quality of water.<sup>10</sup> At such hearing, HVUS would have the burden of showing that its facilities and service were adequate – not whether the Company complied with the engineer’s recommendations. In other words, if HVUS can show that water service is adequate and it has permanently solved the iron and manganese problem, it will meet its burden of proof, whether or not it followed the engineer’s recommendations.

Indeed, the Company appears to be adhering to this process for its wastewater system. Similar to the requirements of Ordering Paragraphs 6 and 8 for the water system, in Ordering Paragraph 9, the Commission required HVUS to obtain a report from an independent engineer which identified deficiencies in its wastewater service and facilities and recommended repairs, maintenance, replacements and/or improvements.<sup>11</sup> The Company filed a report containing its

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<sup>10</sup> May 2018 Order at 31-32 (Ordering Paragraph 20). Ordering Paragraph 20 is the same in the Commission’s January 2018 and May 2018 Orders. *See* January 2018 Order at 66.

<sup>11</sup> Ordering Paragraph 9 provides:

9. 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 wastewater system; and **the report shall contain recommendations** and a cost analysis to identify whether or not the pumping stations are equipped and operating properly, whether an adequate and appropriate type and number of pumps and alarms are being utilized and maintained in operating conditions, and identify any deficiencies, repairs, maintenance, replacements or improvements and recommendations to ensure that reasonable and adequate wastewater services are being provided to its customers. The engineer shall inspect all wastewater facilities, tanks and equipment and prepare a report of its findings. The report shall confirm that the wastewater treatment plant and equipment is installed, properly maintained and operable. If this is not the case, then the engineer shall include a schedule for making all repairs, replacements and/or maintenance and to correct any found deficiencies recommend any maintenance or improvements in the report. The report shall include a survey of the lagoon at Treatment Plant No. 2 to estimate the current capacity and provide a timeframe for removal of sediment. The report shall also confirm the draining, inspection, repair, and repainting of Tank 1 (side 1). The report shall also include an evaluation and **proposed remedy** to ensure that Hidden Valley Utility Services, L.P., is providing adequate and reasonable wastewater services to its customers. Hidden Valley Utility Services, L.P., shall obtain said report within ninety (90) days from the date of entry of this Opinion and Order.

engineer's recommendations in April 2018.<sup>12</sup> Then, in response to Ordering Paragraph 19, HVUS filed a final detailed status report in February 2020, wherein it identified which of the engineer's wastewater recommendations were completed and were not completed, and its reasons for not completing recommendations.<sup>13</sup> Next, as it does for water service, Ordering Paragraph 20, provides for an evidentiary hearing to address the adequacy of the wastewater system.<sup>14</sup>

Thus, reading Ordering Paragraph 6 in context with the other Ordering Paragraphs in the January 2018 and May 2018 Orders, confirms the report was required to include the engineer's recommendation for which (one) remedy to implement, out of the alternatives evaluated.

The Company's failure to have its engineer provide a recommended remedy by April 2018 contributed to the delay in implementing a remedy. As discussed in the OCA's Main Brief, HVUS obtained the engineer's report on the four alternatives in April 2016.<sup>15</sup> According to HVUS witness Kettler, the Company rejected one of the interconnections, to the Seven Springs Municipal Authority (SSMA) system, based on the cost estimate in the April 2016 report.<sup>16</sup> At least two

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May 2018 Order at 27-28 (emphasis added). Ordering Paragraph 9 is identical to Ordering Paragraph 9 contained in the Commission's January 2018 Order.

<sup>12</sup> The April 2018 wastewater report provided, *inter alia*, the engineer's list of recommended deficiency repairs prioritized by their observed conditional rating and their estimated repair costs. HVUS Exh. JFL-2, Hidden Valley Four Seasons Resort Sanitary Sewer System Facilities Study, Apps. 2 through 10 (April 2018 Wastewater Report). Ordering Paragraph 11 required that, by January 31, 2019, the Company comply with all recommendations from the engineer's April 2018 Wastewater Report. January 2018 Order at 63.

<sup>13</sup> For example, in the April 2018 Wastewater Report (App. 4 at 2), the engineer recommended replacing effluent basket strainer (moderate priority). The Company determined not do so; instead, the system operator repaired the existing strainer. Engineer's Final Report and Verification of Repairs to the Wastewater System, Addendum 2 at 8 (filed Feb. 14, 2020) (Final Wastewater Report). The engineer also recommended replacing the cutting cartridge for the Muffin Monster blades (high priority). April 2018 Wastewater Report, App. 2 at 2. The Company determined not do so, based on the opinion of its system operator that the existing blades were not causing any issues. Final Wastewater Report, Addendum 2 at 6.

<sup>14</sup> May 2018 Order at 31-32.

<sup>15</sup> HVUS St. 1 at 3, 5; HVUS St. 3 at 4-6.

<sup>16</sup> HVUS St. 3 at 11.

years passed before the Company considered and eliminated the Jefferson Township Water and Sewer Authority (JTWSA) interconnection. There is some discrepancy regarding when this option was eliminated. Mr. Kettler states that he eliminated that alternative around May 2018, when he inquired about the cost of purchasing water and learned it was too high.<sup>17</sup> Yet, 6 months later, in November 2018, HVUS hired The EADS Group (EADS) to prepare a preliminary study on the JTWSA interconnection and the conventional filtration treatment plant alternative.<sup>18</sup> In March 2019, the Company was still reporting to the Commission that it was evaluating the two alternatives.<sup>19</sup> It was not until June 2019 that HVUS hired EADS to do design and permitting work on the conventional filtration treatment plant project and reported that it was in the process of applying to the Department of Environmental Protection (DEP) for necessary permits.<sup>20</sup> Had the Company obtained an engineer's recommendation for one remedy prior to April 2018 and had the Company's management selected one project more quickly, the project may have been completed by now.<sup>21</sup>

## 2. "Recommendations" (Plural)

As part of its argument that the Commission did not require the 2018 report to include one recommendation from the engineer for a remedy to the iron and manganese problem, HVUS points

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<sup>17</sup> HVUS St. 3 at 25.

<sup>18</sup> HVUS St. 2 at 15, 27; HVUS Exh. BRS-2.

<sup>19</sup> In its September 2018 60-Day Status Report, the Company reported: "HVUS is working with the engineers on **2 options** to address iron and manganese treatment." Status Report on Compliance with Order Entered January 18, 2018 and Reconsidered May 3, 2018 (Status Report) at 3 (Sept. 17, 2018). HVUS continued to report that it was working on two options in its November 2018, January 2019 and March 2019 Status Reports (filed Nov. 16, 2018, Jan. 16, 2019, Mar. 18, 2019). In May 2019, it changed its report to say that it was "continuing to explore possible solutions for addressing the iron and manganese in the water." Status Report at 3 (May 15, 2019).

<sup>20</sup> OCA St. 1 at 10; HVUS St. 2 at 15, 27; Status Report at 3 (July 16, 2019).

<sup>21</sup> OCA St. 1 at 9-10 (discussing the Company's "lack of response"); *see also* Tr. 571-573 (Fought).

to the Commission’s use of the word “recommendations” (plural) in Ordering Paragraph 6.<sup>22</sup> The plural “recommendations” that HVUS refers to is used in regard to the earlier requirement in Ordering Paragraph 6 that the engineer report on the adequacy of the Company’s “water distribution system and water source” and make recommendations (plural) “to correct any found deficiencies.”<sup>23</sup> Thus, the engineer’s report was not limited to remedying the iron and manganese problem – it was also supposed to address recommendations and a cost analysis to correct *any* deficiencies found in the water distribution system and water source to make the water received by customers adequate. “Any” deficiencies in the water distribution system includes existing sediment in the storage tank and the mains in the distribution system, which will continue to cause rusty and brown water, even if the iron and manganese is eliminated from the water source.<sup>24</sup> The engineer’s report was insufficient because it did not address removal of existing sediment or provide a cost analysis or implementation schedule for the removal.

### **3. Timing**

On page 17 of its Main Brief, HVUS argues that the report met the requirement that it include an implementation schedule for the recommendations. As discussed in the OCA’s Main Brief and in Section C.2 below, the schedule was not sufficient because the engineer significantly

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<sup>22</sup> HVUS M.B. at 15-16.

<sup>23</sup> January 2018 Order at 61.

<sup>24</sup> OCA St. 1 at 5; OCA St. 1S at 8; Tr. 574, 580 (Fought); OCA Exh. TLF-11; *see* OCA M.B. at 14-15; HVUS M.B. at 44 (“HVUS agrees that [removing the iron and manganese sediment from the Company’s storage tank and distribution system] will help to eliminate the rust and brown-colored water provided to customers”).

On a related matter, HVUS argues on pages 44 to 45 of its Main Brief that OCA witness Fought recommended that the Company be “required” to follow the recommendation of its consulting engineer and/or its tank inspection contractor on whether to sandblast and repaint the interior of its water storage tank upon completion of the WTP (citing OCA St. 2S at 9). To the contrary, Mr. Fought clarified that HVUS should determine whether or not to repaint the storage tank based on the recommendation of its engineer or contractor. Tr. 569.

overestimated the amount of time necessary to complete the projects because the Company had not taken action to narrow the options identified in 2016 so that necessary design details could be developed.<sup>25</sup> As those design details developed, the engineer shortened the project schedule.<sup>26</sup>

#### **4. Financing Plan**

HVUS argues that Ordering Paragraph 6 did not require a financing plan.<sup>27</sup> The OCA has not argued that the 2018 engineer's report should have included a financing plan.<sup>28</sup> HVUS has not shown, however, that its current plan for financing the WTP project is sufficient. This is discussed below, in Section II.C.3, and on pages 21-25 of the OCA's Main Brief.

#### **5. Conclusion**

The arguments raised in HVUS's Main Brief should be rejected. Based on the express language of the Order and to resolve the inadequate water service expeditiously and efficiently, the Company should have included an engineer's recommendation for one remedy to solve the iron and manganese problem. For this and the additional reasons discussed above, the evidence shows that the report and project schedules filed in April 2018 did not meet the requirements of Ordering Paragraph 6.

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<sup>25</sup> OCA M.B. at 16, 17-19; HVUS St. 2 at 5, 9-10.

<sup>26</sup> HVUS Exh. BRS-2 at 5 and Att. 4 at 3 (January 2019 Report); OCA Exh. TLF-5 (February 2020 Report); OCA St. 1 at 12 (time to complete construction reduced from 21 months to 8-9 months).

<sup>27</sup> HVUS M.B. at 17-18.

<sup>28</sup> *See* OCA M.B. at 21.

**C. The Propriety of the Recommendations, Proposed Time Schedules and Financing Plans for the Recommendations Contained in the April 2018 Engineer's Report**

**1. The Propriety of the Recommendations Contained in the April 2018 Engineer's Report**

The OCA does not challenge the correctness of the engineer's report for the four options identified to remove iron and manganese problem from the source water.<sup>29</sup> As discussed above, the remedy must also include removal of existing iron and manganese sediment from the storage tank and distribution system so that water provided at the tap is suitable for all household purposes.

**2. The Propriety of the Proposed Time Schedules for the Recommendations Contained in the April 2018 Engineer's Report**

The Company argues that the timeframe its engineer projected for the water treatment plant project (or the JTWSA interconnection project) in April 2018 was proper, despite being substantially longer than later estimates by the same engineer.<sup>30</sup> The Company points out that the April 2018 schedule was longer, in part, because it included 780 days for the steps leading up to the Company getting a DEP construction permit (acknowledging that some of those steps turned out to be unnecessary).<sup>31</sup> The Company acknowledges that the April 2018 estimate for the time between getting the DEP permit and completing construction was 13 months longer than the February 2020 estimate and attributes this to the lack of design detail available to the engineer in April 2018.<sup>32</sup> In any case, HVUS argues that both schedules show that HVUS could not complete the design/construction/permitting process for the water treatment plant project in one year.

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<sup>29</sup> OCA M.B. at 17.

<sup>30</sup> HVUS M.B. at 20-22.

<sup>31</sup> *Id.* at 21.

<sup>32</sup> *Id.* at 20-21.

The first and fundamental problem is the Company's premise that because its engineer estimated a project schedule longer than one year, the one-year deadline in the Commission's January 2018 and May 2018 Orders was not valid. The one-year deadline was not established to match the engineer's schedule, it was intended to balance bringing timely relief to customers and affording time for the Company to take action. This is discussed below, in Section II.D.

The second problem is with the information available to the engineer in April 2018. As HVUS admits, "the projects were at the conceptual stage at the time the implementation schedules were prepared. This means very few design details were developed and the schedules needed to account for considerable unpredictability and uncertainty."<sup>33</sup> As discussed above, HVUS had CME's engineering report on the four project alternatives in April 2016.<sup>34</sup> The Company eliminated one of the projects (SSMA interconnection) based on the cost estimate contained in the report.<sup>35</sup> According to the Company's account, it did not take any further action on the report until January 2018, when it hired EADS to provide the project schedule required by the January 2018 Order.<sup>36</sup> This lack of action was unconscionable, given that HVUS was on notice since at least 2010 that sequestration was not working.<sup>37</sup> Recommendations to install a treatment plant or connect to an alternate source of supply had been raised by DEP and the OCA since 2005.<sup>38</sup>

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<sup>33</sup> HVUS M.B. at 20.

<sup>34</sup> HVUS St. 1 at 3-4; HVUS St. 3 at 4-5.

<sup>35</sup> HVUS St. 3 at 11.

<sup>36</sup> *Id.* at 4-5.

<sup>37</sup> OCA St. 1 at 10-11 ("Customers' continuing complaints about the problems caused by iron and manganese were documented in the record of the 2015 proceedings and again in 2018 in the base rate proceeding"). *See also* OCA St. 1 at 9-10 (The Company's "lack of response" to the CME 2016 Report and its 2018 Engineer's Report "seems to indicate that the Company thought it had more time to study which of four different options to implement").

<sup>38</sup> OCA Exh. TLF-11 (DEP letter recommending treatment plant over sequestration); *Application of Hidden Valley Utility Services Co., L.P.*, Docket Nos. A-00210117, A-00230101, R.D. at 5-6, 14-15 (May 16, 2005) (*Application R.D.*).

A third concern is that the engineer's 2018 schedule shows no recognition that the project needed to be done quickly because customers were dealing with brown and rusty water, or that the Commission had given HVUS one year to improve service before initiating other remedies.<sup>39</sup> Given the context, an estimated timeframe of four years for the water treatment plant or interconnection projects was "just not acceptable," as testified by OCA witness Fought.<sup>40</sup>

The Company contends that this is a "bald assertion" that should be given no weight because Mr. Fought did not offer testimony that any particular step was unnecessary or why the estimate for a particular step was unreasonably long. To the contrary, Mr. Fought challenged the overall length of the schedule (4 years) because it reflected no urgency to complete the project.<sup>41</sup> He testified that a viable utility in a hurry to improve service could finish construction within one year ("three months engineering design after the report was completed, three months for the permit from DEP and six months for construction").<sup>42</sup>

Further, Mr. Fought objected to the April 2018 schedule because it did not include removal of existing iron/manganese sediment from the storage tank and distribution system.<sup>43</sup> The water treatment plant will address the raw water but the treated water will be contaminated by existing sediment until that sediment is cleared from the system.<sup>44</sup>

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<sup>39</sup> January 2018 Order at 62.

<sup>40</sup> Tr. 577 (Fought).

<sup>41</sup> HVUS "has had over ten years to solve the problem after it should have known that sequestration does not work." OCA St. 1 at 11; *see also* OCA St. 1 at 9-11; Tr. 552-53, 556 (Fought).

<sup>42</sup> Tr. 555-56 (Fought).

<sup>43</sup> OCA St. 1 at 5, 8, 17; OCA St. 1S at 8.

<sup>44</sup> OCA St. 1 at 5; OCA St. 1S at 8; Tr. 574-75, 580 (Fought). HVUS St. 2R at 5 ("I agree that removing the iron and manganese sediment from the storage tank will help clear iron and manganese from the system"); Tr. 521 (Kettler).

For these reasons, and as discussed further in the OCA's Main Brief on pages 17 to 20, the proposed time schedule filed with the Commission in April 2018 was not proper or prudent.

### **3. The Propriety of the Financing Plans for the Recommendations Contained in the April 2018 Engineer's Report**

HVUS did not provide a financing plan in the April 2018 report for any of the projects, which CME estimated would cost between \$852,000 and \$2.4 million.<sup>45</sup>

In its Main Brief, on pages 17 to 25, the OCA discussed the Company's most recent cost estimates for the WTP project and reviewed the evidence showing that HVUS's financing plan is not sufficient. As discussed therein:

- If the costs are recovered from customers in a future rate case, that will mean a significant rate increase for customers.<sup>46</sup>
- HVUS has considerable debt on its books - \$1.5 million in loans payable to Donald McCree, plus interest accruing at a rate of 7% interest rate per year.<sup>47</sup>
- Continuing errors in reporting loan amounts and accrued interest<sup>48</sup> and failure to obtain an independent financial audit of its records (as directed by the PUC),<sup>49</sup> make the financial information in HVUS's Annual Reports unreliable.

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<sup>45</sup> HVUS Exh. JFL-2 at 6 and Tables 1-4.

<sup>46</sup> In April 2018, CME estimated that a \$1 million conventional iron filtration WTP project would increase customers' rates by roughly \$9.50 per month, or a 15% increase to then-current rates. HVUS Exh. JFL-2 at 6 and Table 1. If the actual cost of the water treatment plant project is closer to the \$1.9 million that EADS estimated in January 2019, the impact will be higher. OCA Exh. NDE-2.

<sup>47</sup> HVUS Post-Hearing Exh. 1 (PUC Annual Report (Water) for 2019); HVUS Post-Hearing Exh. 2 (PUC Annual Report (Wastewater) for 2019); OCA Late-Filed Exh. 1 (Revised Schedule 225 (Water) and Revised Schedule 225 (Wastewater)) (\$619,029 (water) + \$880,971 (wastewater) = \$1,500,000).

October 24, 2014 loan of \$280,500 (water) + \$569,500 (wastewater) = \$880,000 x 7% interest per year = \$59,500 x 5 years = \$297,500.

<sup>48</sup> OCA Late-Filed Exh. 1, HVUS Response to OCA on the Record Data Request 1.b.

<sup>49</sup> *March 2019 Rate Order* at 88-89; *Pa. P.U.C. v. Hidden Valley Utility Services, L.P.*, Docket Nos. R-2018-3001306, R-2018-3001307, Order (Aug. 29, 2019) (*August 2019 Rate Order*).

All of this contributes to concerns regarding HVUS's ability to finance and carry out the projects needed to permanently solve the iron and manganese problem.<sup>50</sup>

**D. The Previously Ordered One-Year Compliance Deadline Was Sufficient.**

The Company's basic argument is that the engineer's 2018 estimated schedule for the water treatment plant project (or the JTWSA interconnection project) was reasonable and longer than one year and, therefore, the one-year deadline should be extended to match the engineer's schedule.<sup>51</sup> As discussed in Section II.C.2 above, the schedule in the April 2018 report was not reasonable.

The length of the engineer's estimated schedule, however, is not dispositive of whether the one-year deadline was sufficient. The Commission did not intend for the Company's engineer to dictate the one-year deadline. That is why the one-year deadline was established *prior to* the deadline for filing the engineer's schedule.<sup>52</sup> The Commission intentionally set a fixed deadline that would not unreasonably delay resolving the water quality problems.<sup>53</sup> In doing so, it recognized the Company's contention that design, construction and pre/post-project permitting could take HVUS longer than one year and rejected the argument that deadline should be tied to the implementation schedule in the engineer's report.<sup>54</sup>

In setting one-year as an "objective guideline for compliance," the Commission struck a reasonable balance between bringing timely relief to customers and affording time for the Company to take action. On the one hand, it recognized that the customers have been suffering

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<sup>50</sup> *March 2019 Rate Order* at 89; *August 2019 Rate Order* at 9-10.

<sup>51</sup> HVUS M.B. at 25-32.

<sup>52</sup> *January 2018 Order* at 61-62; *May 2018 Order* at 26-27.

<sup>53</sup> *January 2018 Order* at 31.

<sup>54</sup> *Id.* at 28-29, 31.

water that is unsuitable for household purposes for at least two decades and resolution is needed in the short-term.<sup>55</sup> On the other hand, the one-year deadline was long enough for HVUS to resolve, or make substantive progress toward resolving, the iron and manganese problem.

Further, the selection of one-year was neither arbitrary nor unrealistic, as HVUS contends. As discussed in the OCA's Main Brief, in 2005, DEP afforded the Company 90 days to submit an engineer's proposal for a treatment plant to remove iron and manganese *and* apply for a PWS Construction Permit.<sup>56</sup> Here, the Commission gave the Company 90 days to submit its engineer's recommendations *and* an additional one year to carry out the recommendations before starting hearing procedures to provide other forms of relief to customers.<sup>57</sup> Moreover, the record before the Commission showed that HVUS had already commissioned the CME engineering report in 2015.<sup>58</sup>

**E. The Commission Should Not Grant the Request of HVUS to Extend the One-Year Compliance Deadline.**

The Company's Petition to Amend the one-year deadline in its May 2018 Order should be denied. The Commission has previously heard, considered and rejected the Company's arguments for extending the one-year deadline. Evidence since the record closed in June 2016, showing

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<sup>55</sup> *Application R.D.* at 5-6, 14-15, 18; OCA Exh. TLF-1 (customer complaints logged by HVUS during 2018 and 2019); OCA St. 1 at 11.

<sup>56</sup> In its November 2005 letter, the DEP recommended iron and manganese removal rather than sequestration but allowed the Company to submit its engineer's proposed approach. OCA Exh. TLF-11.

Sequestration "does not remove iron and manganese but treats the water with chemicals such as phosphate compounds that sequester the iron and manganese particles to prevent oxidation, precipitation and subsequent water quality problems (turbidity, color, staining, etc.)." I.D. at 17 (Aug. 23, 2016) (quoting OCA St. 2 at 4 (July 8, 2015)).

<sup>57</sup> May 2018 Order at 27, 31-32 (Ordering Paragraphs 8 and 20).

<sup>58</sup> Tr. 364-67 (Kettler) (addressing the treatment and interconnection options and cost analyses for removing iron and manganese from the water) (Nov. 17, 2015); HVUS St. 3R at 7-8.

HVUS's continued delay in resolving the iron and manganese problem, is further reason to maintain the original deadline.

**1. HVUS Has Not Satisfied the Legal Standards for Modifying the Commission's Order.**

In its Main Brief, HVUS argues that it has raised new issues and evidence not previously considered by the Commission, which satisfy the *Duick* standard and show good cause to modify the one-year deadline.<sup>59</sup> As discussed herein, and in the OCA's Main Brief on pages 28 to 40, that is not the case.

HVUS argues that the Commission has not considered whether the engineer's schedule submitted in April 2018 demonstrates the one-year compliance period established in the January 2018 Order was insufficient.<sup>60</sup> The OCA has already responded to the Company's underlying arguments about the sufficiency of the one-year deadline in Section II.D above. With regard to whether this is a new issue for *Duick* purposes, it is not.

The engineer's schedule was not part of the record before the Commission when it entered its Order, so the Commission did not know specifically what timeframe the engineer would estimate. The Commission was apprised, however, of the Company's position that the project could take longer than one year and that the deadline should be tied to the implementation schedule in the engineer's report.<sup>61</sup> The Commission rejected this position and determined that there should

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<sup>59</sup> HVUS M.B. at 33-34.

<sup>60</sup> *Id.* at 33-35.

<sup>61</sup> January 2018 Order at 28-29, 31.

be a fixed, short-term deadline for initiating evidentiary procedures.<sup>62</sup> Thus the Commission has already considered this issue in its January 2018 Order.<sup>63</sup>

Further, the April 2018 schedule had been filed by the time the Commission entered its May 2018 Order. The Company did not challenge the sufficiency of the one-year deadline in its Petition for Reconsideration but, in the context of clarifying Ordering Paragraph 20, the Commission reaffirmed the one-year deadline. It stated:

Upon review of the Company's first argument pertaining to the deadline for compliance with the engineer's recommendations, we disagree with the Company's alternate interpretation, which limits application of the one-year deadline to only the treatment plant reassessment. Rather, we agree with the OCA that such an alternate interpretation is inconsistent with our discussion in the January 2018 Order. In our prior determination, we held that "[a]ny 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. Thus, we do not believe that the Petition has offered a new or novel argument or identified considerations which appear to have been overlooked by the Commission.<sup>64</sup>

In its Main Brief, HVUS also raises an argument that the Commission failed to consider in its January 2019 Order whether the Petition to Amend met the requirements of 66 Pa. C.S. § 703(e) and 52 Pa. Code § 1.15(a)(1).<sup>65</sup> This is a red herring. Section 703(e), like 703(g), provides the Commission with the discretionary authority to amend its orders. Under either statute, as well as under Section 1.15(a)(1), there must be good cause for the exercise of discretion. In considering

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<sup>62</sup> January 2018 Order at 31; *see supra* Section II.D.

<sup>63</sup> January 2018 Order at 28-29 ("The Company avers that the Commission should reject an artificial deadline and adopt a timeframe that incorporates the completion of the permitting process pursuant to the experience of the engineer") (citing HVUS Exc. at 4); *see supra*, Section II.D.

<sup>64</sup> May 2018 Order at 22-23.

<sup>65</sup> HVUS M.B. at 35-37.

HVUS's request to extend the one-year deadline, the Commission was guided by *Duick*.<sup>66</sup> The Commission was not persuaded that the Company's arguments – including that the one-year deadline was insufficient based on the engineer's schedule in the April 2018 report – established cause to exercise its discretionary authority to disturb the May 2018 Order.<sup>67</sup> Nor does that cause exist now.

## **2. The Commission Should Not Modify the Deadline of April 18, 2019.**

The Company argues that new evidence, since the record last closed in June of 2016, supports extending the one-year deadline.<sup>68</sup> To the contrary, the evidence regarding HVUS's actions since 2016 show the Company took an unreasonably long time – three years – to choose one project option and hire an engineer to start design and permitting work.<sup>69</sup> As discussed in the OCA's Main Brief and above, had the Company selected its course of action more quickly, construction would likely be completed by now.<sup>70</sup> Instead, as of the evidentiary hearing in May 2020, HVUS was still reviewing construction bids for the project.<sup>71</sup> The Company's actions since 2016 do not demonstrate good faith effort to solve the iron and manganese problem and weigh strongly against the Commission exercising its discretion under Section 703(g) or 703(e).

HVUS recognizes that, in its January 2019 Order, the Commission refused to modify the one-year deadline, in part, because the Company had provided no assurances that subsequent

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<sup>66</sup> January 2019 Order at 7 (citing *City of Pittsburgh v. Pennsylvania Dept. of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980), 66 Pa. C.S. § 703(g) and *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559).

<sup>67</sup> January 2019 Order at 29-30.

<sup>68</sup> HVUS M.B. at 34-35, 37-38.

<sup>69</sup> OCA St. 1 at 9-10; *see also* Tr. 577 (Fought).

<sup>70</sup> Tr. 570-71; OCA St. 1 at 11; OCA St. 1S at 1-2; OCA M.B. at 31-32; *see supra* Section II.B.1.

<sup>71</sup> Tr. 506-09 (Kettler).

compliance deadlines would be met.<sup>72</sup> It argues that the steps it has taken toward completing the WTP project, the amount it has invested (\$75,000 to \$95,000) and the loans it has taken related to the project (more than \$600,000) make this showing.<sup>73</sup> The evidence shows, however, that there is still substantial reason for concern.

- HVUS has missed every deadline set by the Commission related to the WTP project to date.<sup>74</sup>
- HVUS has \$1.5 million in outstanding loans and may require additional rate increases to cover this debt and relative to its current revenue.<sup>75</sup>
- The Company still has not obtained an independent financial audit of its financial records, as directed by the Commission.<sup>76</sup>

These concerns are further reason why the May 2018 Order should not be disturbed, so the hearing procedures set forth in Ordering Paragraphs 20 and 21 go forward.

HVUS suggests that, unless the deadline is changed, the Company will be subject to penalties.<sup>77</sup> More accurately, if the April 2019 deadline stands, there will be an evidentiary proceeding where penalties, as well as refunds and other matters related to water quality, will be considered.<sup>78</sup> In those hearings, despite failing to meet the one-year deadline, HVUS will have the opportunity to argue that no penalties or refunds are appropriate and update the record regarding its progress on the WTP project. Likewise, in the Section 529 investigation, HVUS will

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<sup>72</sup> HVUS M.B. at 37.

<sup>73</sup> HVUS at 38.

<sup>74</sup> See OCA M.B. at 33-34.

<sup>75</sup> OCA M.B. at 22; HVUS Post-Hearing Exh. 1 (PUC Annual Report (Water) for 2019); HVUS Post-Hearing Exh. 2 (PUC Annual Report (Wastewater) for 2019) (\$201,224 water revenue + \$376,612 wastewater revenue = \$577,836 total revenue); OCA Late-Filed Exh. 1 (Revised Schedule 225 (Water) and Revised Schedule 225 (Wastewater)) (\$619,029 (water) + \$880,971 (wastewater) = \$1,500,000).

<sup>76</sup> *Id.* at 89; *August 2019 Rate Order* at 9-10.

<sup>77</sup> HVUS M.B. at 36, n. 12.

<sup>78</sup> May 2018 Order at 31-32.

have the opportunity to argue that acquisition or the alternatives to acquisition provided under Section 529 are not appropriate.

The Commission put those hearing procedures in place as a protection for customers, to provide them with some assurance that there would be certain and near-term relief.<sup>79</sup> As explained by OCA witness Eastman:

The 529 investigation is like a safety net for customers. If, due to the cost of the project, absence of a financing plan, or otherwise, HVUS does not carry through with its plans to install a water treatment plant and remove iron/manganese from the storage tank and distribution system, we will be starting from square one. If the Section 529 proceeding is commenced now, however, we will have begun considering alternatives to acquisition, possible appointment of a receiver, and developing the evidentiary record on whether to order acquisition by a capable utility so that one of those remedies can be more quickly put into place. The point of the Section 529 proceeding is not to punish HVUS. The point is to remedy the inadequate water quality and to do so without avoidable delay.<sup>80</sup>

As discussed in the OCA's Main Brief, because the Section 529 investigation will take some time to complete, the Commission can, at the same time, provide HVUS a deadline to improve water service.

This does not mean, as the Company contends, that the OCA supports extending the one-year deadline.<sup>81</sup> Both OCA witnesses testified that the hearing procedures in Ordering Paragraphs 20 and 21 should commence without delay, which is the result if the Commission upholds the one-year deadline.<sup>82</sup> Mr. Fought testified:

I disagree with Mr. Stinebiser's recommendation to modify the deadline in Paragraph 20 of the Commission's May 2018 Order. Based on the advice of counsel, the effect of Mr. Stinebiser's recommendation is to delay the evidentiary

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<sup>79</sup> January 2018 Order at 30.

<sup>80</sup> OCA St. 2S at 6.

<sup>81</sup> HVUS M.B. at 39-40.

<sup>82</sup> OCA St. 1 at 15-16 (Fought); OCA St. 2 at 3-5 (Eastman).

hearing that would trigger initiation of a Section 529 proceeding under Paragraph 21.

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For the same reason that I do not support delays in the deadline for completing construction/startup of the WTP, I do not support a delay in starting a Section 529 proceeding. The parallel Section 529 proceeding should be in progress to investigate acquisition by a capable provider and alternatives. With the Company's proposed revisions, the Section 529 proceeding would be further delayed until after the Company misses extended, future deadlines.<sup>83</sup>

Further, Mr. Fought explained that while the Company could have constructed the WTP project in one year if it had hurried to do so, that did not occur.<sup>84</sup> Based on where things currently stand, and the revised schedule that HVUS's engineer submitted to DEP in February 2020, Mr. Fought estimates that construction of the WTP project could be completed by December 2020 and that removal of the existing iron and manganese sediment could be completed no later than July 2021 (so that diving to remove sediment from the storage tank and main flushing can be done after the winter months, in non-freezing conditions.)<sup>85</sup>

For the foregoing reasons, the Commission should not modify the April 2019 deadline or the Company's other proposed changes to the Ordering Paragraphs in the May 2020 Order. Rather, the Commission should press forward on all fronts, as set forth in its Orders, to secure near-term relief for the HVUS customers. The hearing procedures set forth in the May 2018 Order should proceed.

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83 OCA St. 1 at 15-16.

84 Tr. 552, 556, 560 (Fought).

85 OCA St. 1 at 17; OCA St. 1S at 11; Tr. 556, 570-71 (Fought); OCA Exh. TLF-4.

### 3. No Ordering Paragraphs in the January and May 2018 Orders Should Be Modified.

As discussed above, the Commission should not extend the April 2019 deadline or otherwise modify the January and May 2018 Orders because HVUS has not met the *Duick* standard and the evidence regarding the Company's actions since 2016 shows continued delay by HVUS to resolve the iron and manganese problem.<sup>86</sup>

The OCA raised and addressed its concerns with the Company's specific proposals for how to modify the one-year deadline on pages 34 to 35 of the OCA's Main Brief. Specifically, the OCA challenged the failure of the Company's primary recommendation to provide a firm deadline to solve the iron and manganese problem and trigger hearing procedures, unless the Company notifies the Commission that it has decided to permanently abandon construction of the WTP.<sup>87</sup> As the OCA explained, the Company could wait an indefinite amount of time to make that decision, if it ever does. In the meantime, it would be under no deadline to construct the WTP or remove existing sediment.<sup>88</sup>

In its Main Brief, HVUS argues against any firm deadline (earlier than its alternative recommendation of April 2022), on the basis that the Commission Order might not be issued until after the deadline has passed.<sup>89</sup> The Company has stated, however, that it plans to continue construct the WTP while this case is pending and possibly complete construction in November

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<sup>86</sup> OCA M.B. at 28 to 40.

<sup>87</sup> HVUS St. 2R at 8-9; Tr. 497-98 (Stinebiser).

<sup>88</sup> OCA St. 1S at 11.

<sup>89</sup> HVUS M.B. at 37, 43.

2020.<sup>90</sup> As such, setting a deadline later than 2020 would not provide incentive for HVUS to comply with the revised schedule provided by its engineer or OCA witness Fought.<sup>91</sup>

In summary, the Commission should deny HVUS's Petition to Amend and maintain the April 2019 deadline, with the result that hearing procedures under Ordering Paragraphs 20 and 21 will proceed. In addition, on the basis of the record in this proceeding, the Commission should set a new deadline for the Company to complete the steps it has taken on the WTP project to date. The Company's compliance or failure to provide adequate water service by that deadline should be addressed in the Section 529 investigation and refund/penalty proceeding.

**F. The Commission Has Authority to Impose Penalties at This Time.**

The OCA recommends the Commission deny HVUS's Petition and maintain the one-year deadline in Ordering Paragraph 8. As HVUS failed to meet that deadline, the hearing procedures outlined in Ordering Paragraphs 20 (evidentiary hearing to consider, *inter alia*, refunds and penalties) and 21 (Section 529 investigation) will go forward and penalties can be addressed there.<sup>92</sup>

If the Commission does not require the Section 529 proceeding to be initiated now, however, the OCA has recommended the Commission provide immediate relief by setting a usage allowance until water quality is adequate.<sup>93</sup> HVUS raises two matters regarding this recommendation, which warrant clarification. First, the Company opposes having a usage allowance during the Section 529 proceeding.<sup>94</sup> To be clear, if the Commission denies HVUS's

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<sup>90</sup> HVUS M.B. at 38 (citing HVUS St. 2 at 22 and OCA Exh. TLF-4).

<sup>91</sup> OCA St. 1S at 4.

<sup>92</sup> May 2018 Order at 31-32.

<sup>93</sup> OCA St. 2 at 6; OCA M.B. at 39-40.

<sup>94</sup> HVUS M.B. at 39.

Petition to Amend, so the Section 529 investigation goes forward, the OCA does not recommend the Commission set a usage allowance. This ties into the second matter, which is HVUS's confusion between the usage allowance and a penalty.<sup>95</sup> The usage allowance is not a penalty to the Company; it is a remedy to the customers for the poor water quality since they continue to incur additional costs (higher water and sewer bills) to get rid of the iron and manganese through flushing.<sup>96</sup> It is a means to make the customer whole by allowing customers to pay for water they use rather than for also paying for the discolored water that they have to flush out.

HVUS argues against a usage allowance because it has a financial impact on the Company. That is accurate, but the Company cannot have it all ways. Its customers are entitled to receive the benefit of the regulatory bargain.<sup>97</sup> A temporary, 1,000 gallon usage allowance affords a small measure of relief until customers are receiving adequate service and that benefit is restored.

In addition to a usage allowance, the OCA recommends that – if a Section 529 investigation is not initiated now – the Commission impose a penalty at this time for the Company's failure to comply with Ordering Paragraph 8 of the May 2018 Order. The Commission afforded the Company time to improve service. HVUS failed to make timely and good faith effort to do so. A

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<sup>95</sup> HVUS M.B. at 50.

<sup>96</sup> OCA St. 2 at 6 (footnote omitted) (citing OCA Statement 1 (Water) at 5, 10, 17-18 (July 8, 2015)); *see* OCA St. 2S at 4-5.

<sup>97</sup> Section 1501 of the Public Utility Code codifies the utility's obligation to provide safe, adequate and reasonable service. 66 Pa. C.S. § 1501.

The making of repairs and improvements to meet the duty to render reasonable and adequate service is not necessarily dependent on the profit which may reasonably expected therefore; in proper cases such repairs and improvements may be ordered though the immediate result thereof would be a financial loss to the utility.

*Colonial Products Co. v. Pa. P.U.C.*, 188 Pa. Super. 163, 172-73; 146 A.2d 657, 663 (1959); *see also National Util. Inc. v. Pa. P.U.C.*, 709 A.2d 972, 977-80 (Pa. Commw. 1998).

penalty to encourage prompt remediation of the water quality and deter future violations of Section 1501 and Commission Orders is appropriate.<sup>98</sup>

**1. The OCA Does Not Recommend the Commission Impose a Penalty on HVUS for failing to Comply with Ordering Paragraph 6 of the January 2018 Order.**

On pages 47 to 50 of its Main Brief, HVUS argues that no penalties are warranted under Ordering Paragraph 6 because the April 2018 Engineer's Report complied with the Commission's requirements. The OCA does not agree that the report complied with Ordering Paragraph 6, however, the OCA does not recommend penalties be imposed for the Company's failure to comply with Ordering Paragraph 6 at this time. Instead, the OCA views the deficiencies in the April 2018 report (failure to recommend one remedy, unreasonably long project schedule, failure to address removal of iron and manganese from the storage tank and distribution system) as additional support for the imposition of penalties under Ordering Paragraph 8.

HVUS argues against this, stating that any "deficiency" in the April 2018 Engineer's Report did not cause the Company to fail to meet the one-year deadline, because that deadline was insufficient.<sup>99</sup> That the one-year deadline was appropriate, adequate and reasonable is discussed throughout the OCA's Main and Reply Briefs. The deficiencies in the 2018 Engineer's Report contributed to, and were largely a product of, the Company's persistent failure to take reasonable and timely action to fix the iron and manganese problem.

Given that, for different reasons, the parties are in agreement with regard to no penalties under Ordering Paragraph 6 at this time, the OCA will respond to the remainder of the arguments that HVUS makes against penalties in the section below with regard to Ordering Paragraph 8.

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<sup>98</sup> See discussion pages 41 to 46 of the OCA's Main Brief and below, Sections II.F.1 and II.F.2.

<sup>99</sup> HVUS M.B. at 48.

**2. The Evidence Supports Imposing Penalties at This Time for Failure to Comply with Ordering Paragraph 8 of the May 2018 Order.**

The Company argues on pages 51 and 52 of its Main Brief that no penalties are warranted under Ordering Paragraph 8 because, if its Petition is granted, it will be as if that deadline never existed. No deadline = no missed deadline = no penalties. It also means the Section 529 proceeding has not been triggered. In that scenario, where the Section 529 investigation is not initiated now, the OCA recommends the Commission impose a penalty for the Company's failure to comply with Ordering Paragraph 8 of the May 2018 Order.

HVUS argues that the Commission has no authority to afford penalties until the Company has the opportunity to present evidence regarding the issues described in Ordering Paragraph 20 – adequacy of the water system, quality of water, etc.<sup>100</sup> That evidence has already been developed in this proceeding, however, and shows unequivocally that HVUS has not implemented any of the project options to remove iron and manganese from the water and, as such, water quality remains inadequate.<sup>101</sup>

HVUS also argues that the Commission should not impose penalties because it could hamper the Company's ability to complete its planned projects to improve water service in a timely manner. It points out that in its January 2018 Order the Commission determined not to impose penalties for that reason and "there is no reason for the Commission to change course at this point."<sup>102</sup> To the contrary, the obvious reason for the Commission to change course is that 2.5 years have passed.

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<sup>100</sup> HVUS M.B. at 51-52.

<sup>101</sup> OCA St. 1S at 9-10 (distribution system projects undertaken since 2015, such as looping dead ends, have not solved the poor water quality related to iron/manganese); HVUS recorded 43 complaints about dirty water in 2018-2019. *See* OCA M.B. at 44-45.

<sup>102</sup> HVUS M.B. at 47, 49 (citing January 2018 Order at 24-25 and *Pa. P.U.C. v. Lake Latonka Water Co.*, 1989 Pa. PUC LEXIS 231 (R.D.) (*Lake Latonka*)).

The balance has shifted. The Company has *still* not made the necessary improvements to its water system and is *still* providing its customers with water that is not suitable for normal household purposes, such as cooking, bathing and laundry. The factors that the Commission determined to support imposing a penalty in 2018 weigh even more heavily for that result in 2020.<sup>103</sup> A penalty is warranted.

Such relief is not unfair nor unreasonable. Customers continue to pay HVUS for inadequate service, in addition to paying the costs for the damage the water causes to appliances, plumbing fixtures and laundry, and the additional water and wastewater usage required to flush lines.<sup>104</sup> Moreover, HVUS increased its customers' rates in March 2019.<sup>105</sup> It is appropriate that there be some financial impact on HVUS. In January 2018, the Commission declined to reduce HVUS's revenue through penalties, at that time, on the basis that "our disposition herein provides concrete steps for ensuring that the Company or possibly another capable utility, if HVUS were unable to act, to undertake the needed corrective measures."<sup>106</sup> HVUS did not act timely or reasonably to improve its service. As such, it is appropriate that the Commission now use a civil penalty to deter future delay. This is consistent with the discussion in the *Lake Latonka* case cited by HVUS, which recognizes that reducing revenue is an appropriate tool to bring about

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<sup>103</sup> January 2018 Order at 54-55 (considering the ten "Rosi Factors" set forth in 52 Pa. Code § 69.1201(c)); OCA M.B. at 44-46.

<sup>104</sup> Tr. 54, 58, 70, 78, 83, 91, 100, 149, 198, 211, 212, 222, 234, 270-72 (stained laundry); Tr. 46, 50, 54, 59, 69, 115, 130, 149, 161, 179, 183, 185, 190, 213, 215, 230, 234, 290 (damage to water heaters); Tr. 50, 149, 199 (damage to washing machines); Tr. 59, 70, 129 (damage to dishwashers); Tr. 59, 149 (damage to garbage disposals); Tr. 50, 149, 190, 291 (damage to faucets); Tr. 50, 70, 149, 183, 215, 234, 291 (damage to toilets); Tr. 45, 58, 70, 79, 207-208, 212 (stained fixtures); OCA St. 1 at 10-16 (addressing costs incurred by customers due to flushing brown water, lost rental income, installing home filtration systems, and replacing stained laundry, appliances and fixtures).

<sup>105</sup> *March 2019 Rate Order*.

<sup>106</sup> January 2018 Order at 25.

improvements in service, where quality of service justifies such action.<sup>107</sup> The Company recognizes that its compliance history and the need to deter future violations weigh in favor of imposing a penalty.<sup>108</sup>

As discussed on page 46 of the OCA's Main Brief, the OCA recommends the penalty be a small but meaningful amount: \$5 per day for each day since April 19, 2019 until the Commission enters its final Order in this proceeding. As of the filing date for Reply Briefs, July 14, 2020, the recommended penalty is \$2,260 (452 days x \$5).

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<sup>107</sup> *Lake Latonka*, at \*44-48 (rejecting part of the utility's requested rate increase because water quality was inadequate).

<sup>108</sup> HVUS M.B. at 49.

### III. CONCLUSION AND REQUEST FOR RELIEF

For the reasons set forth above and in the OCA's Main Brief, the Office of Consumer Advocate respectfully requests that the Commission deny Hidden Valley Utility Services, L.P.'s Petition to Amend the May 3, 2018 Order. The Company has not demonstrated the one-year deadline was unreasonable or insufficient. Nor has HVUS shown that it made good faith effort to meet it.

The original one-year deadline should be maintained. This allows the evidentiary proceedings set forth in Ordering Paragraphs 20, 21 and 27 of the May 3, 2018 Order to go forward as intended so the Commission is in position to provide timely relief to customers, whether or not HVUS carries out its planned water treatment project. The Commission may also set a deadline of July 31, 2020 for HVUS to remediate the water problems, as an additional measure to try to secure safe and adequate service for customers.

If the Section 529 proceeding does not begin now, the OCA requests that the Commission set a temporary usage allowance and impose penalties to deter HVUS from future violations of Commission Orders and Section 1501. The long-standing inadequate service received by Hidden Valley customers needs to be addressed and further delay is not reasonable or in the public interest.

Respectfully Submitted,

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