



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 11, 2018

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v.
Hidden Valley Utility Services, L.P. – Water and Wastewater Division
Docket Nos. R-2018-3001306 and R-2018-001307

Dear Secretary Chiavetta:

Enclosed for filing please find the Bureau of Investigation and Enforcement's (I&E) **Main Brief** for the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions, please contact me at 717-783-7998.

Sincerely,

Allison C. Kaster
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No.93176

ACK/jfm
Enclosure

cc: Hon. Mark A. Hoyer (*OALJ, Pittsburgh*)
Hon. Katrina L. Dunderdale (*OALJ, Pittsburgh*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2018-3001306
	:	
Hidden Valley Utility Services, L.P.- Water	:	
	:	
Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2018-3001307
	:	
Hidden Valley Utility Services, L.P.- Wastewater	:	
	:	

**MAIN BRIEF
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: December 11, 2018

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I. INTRODUCTION

The Bureau of Investigation and Enforcement (“I&E”) hereby submits this Main Brief in support of a Joint Petition of Non-Unanimous Settlement (“Joint Petition” or “Settlement”).

On April 28, 2018, Hidden Valley Utility Services, L.P. – Water and Hidden Valley Utility Services, L.P. – Wastewater (collectively, “Company” or “HVUS”) requested an increase to total annual operating revenues of \$150,629 and \$185,432, respectively. Although at first glance these are routine base rate cases, HVUS has ongoing service issues which impacts the determination of just and reasonable rates in this proceeding. The Office of Consumer Advocate initiated Complaint proceedings against the Company in 2014 due to these service concerns and the Commission issued an Order in January 2018 finding that the Company is not providing adequate and reasonable service to its water and wastewater customers in violation of Section 1501 of the Public Utility Code (“Code”).¹ The McCloskey Order contained extensive ordering paragraphs requiring the Company to remedy these service issues so that HVUS customers receive safe, adequate and reasonable utility service as required by the Code. Bringing HVUS service into compliance with Section 1501 is addressed in the McCloskey Order; therefore, the issue in this proceeding is what level of rates are just and reasonable under Section 1301 given these ongoing service issues.

¹ *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, L.P.-Water*, Docket No. C-2014-2447138, p. 23 (Order entered January 18, 2018); *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, L.P.-Wastewater*, Docket No. C-2014-2447169, p. 23 (Order entered January 18, 2018)(collectively, “McCloskey Order”)

I&E addressed these service concerns by recommending that the Company not be permitted to recover a return on equity due to its failure to meet its obligation to provide adequate and reasonable service to its water and wastewater customers. I&E's rate of return witness summarized the position as follows:

As stated above, the Bureau of Investigation and Enforcement is charged with protecting the public interest in proceedings before the Commission. HVUS' inadequate and unreasonable service has brought harm to its ratepayers as stated above and as explained in I&E Statement No. 3. Passing along any additional cost of equity to the ratepayers of HVUS is not in the public interest. Until the service issues are corrected at HVUS, I recommend a 0.00% return on equity for the Company.²

After extensive discovery and multiple rounds of testimony, I&E and the Company entered into a Joint Petition of Non-Unanimous Settlement ("Joint Petition" or "Settlement") that recommends a revenue requirement that closely aligns with I&E's recommendations made in testimony. Although it is a black box Settlement, I&E asserts that the terms are in the public interest as it allows the Company recovery of prudent expenses and moderates the amount paid by HVUS customers due to the ongoing service issues.

² I&E Statement No. 2 (Water), p. 25; I&E Statement No. 2 (Wastewater), p. 25.

II. BACKGROUND AND PROCEDURAL HISTORY

On April 28, 2018, Hidden Valley Utility Services, L.P. – Water and Hidden Valley Utility Services, L.P. – Wastewater requested an increase to total annual operating revenues of \$150,629 and \$185,432, respectively. By order entered May 17, 2018, the Commission instituted an investigation to determine the lawfulness, justness and reasonableness of the Company's existing and proposed rates, rules and regulations. Pursuant to 66 Pa. C.S. §1308(d), the filing was suspended by operation of law until February 1, 2019, unless permitted by Commission Order to become effective at an earlier date. Due to the parties' agreement to engage in mediation, the Company voluntarily suspended Tariff Supplement No. 1 until April 1, 2019.

OCA filed its Formal Complaint on May 14, 2018. I&E filed its Notice of Appearance on May 30, 2018. Opposition to the rate increase has been filed by various HVUS customers.

A telephonic Prehearing Conference was held on June 19, 2018, with Deputy Chief Administrative Law Judge Mark A. Hoyer presiding. The first mediation session immediately followed the Prehearing Conference. A second mediation session was held on July 19, 2018. The parties were unable to fully or partially resolve issues in this proceeding; therefore, a Further Prehearing Conference was held on July 26, 2018. At this prehearing conference, a litigation schedule was developed that included dates for service of written testimony, evidentiary hearings and briefs.

Public Input Hearings were held in the Company's service territory on July 27, 2018 at 2:00 and 6:00 p.m. Approximately 32 HVUS customers testified at those hearings.

In accordance with the litigation schedule in this rate case, I&E served its direct and surrebuttal testimony and accompanying exhibits in this case on September 18, 2018, and November 9, 2018, as listed below.

Direct Testimony

- I&E Statement No. 1: Direct Testimony of John Zalesky
- I&E Exhibit No. 1: Exhibit to accompany the Direct Testimony of John Zalesky
- I&E Statement No. 2: Direct Testimony of Christopher Henkel
- I&E Exhibit No. 2: Exhibit to accompany the Direct Testimony of Christopher Henkel
- I&E Statement No. 3: Direct Testimony of Joseph Kubas
- I&E Exhibit No. 3: Exhibit to accompany the Direct Testimony of Joseph Kubas

Surrebuttal Testimony

- I&E Statement No. 1-SR: Surrebuttal Testimony of John Zalesky
- I&E Exhibit No. 1-SR: Exhibit to accompany the Surrebuttal Testimony of John Zalesky
- I&E Statement No. 2-SR: Surrebuttal Testimony of Christopher Henkel
- I&E Statement No. 3-SR: Surrebuttal Testimony of Joseph Kubas

Evidentiary hearings were held on November 16, 2018 with ALJs Hoyer and Dunderdale presiding. At those hearings I&E witnesses John Zalesky and Joseph Kubas were cross-examined by counsel and the I&E testimony and exhibits identified above were admitted into the evidentiary record.

Prior to the start of evidentiary hearings, the Company and I&E were able to reach a settlement of all issues. The Joint Petition of Non-Unanimous Settlement was served on the ALJs, the parties and complainants on November 19, 2018.

In accordance with the procedural schedule established at the Prehearing Conference and pursuant to the requirements of Commission regulations, the Bureau of Investigation and Enforcement hereby submits this Main Brief in support of the Settlement in this proceeding.

III. LEGAL STANDARD

The most fundamental ratemaking principle in Commission rate proceedings is that rates must be just and reasonable.³ In any proceeding upon the Commission's motion involving a public utility's proposed rate or in any proceeding upon complaint involving a proposed rate increase, the burden to show that the proposed rates charged to jurisdictional customers are just and reasonable falls squarely upon the utility.⁴ The Commission has continued to affirm the utilities' burden of proof in base rate proceedings.⁵ In the *Breezewood* case, the Commission made the following ruling with

³ 66 Pa. C.S. § 1301.

⁴ 66 Pa. C.S. § 315(a).

⁵ See, e.g., *Pa. PUC v. Aqua Pennsylvania, Inc.*, 236 P.U.R. 4th 218 (2004); *Pa. PUC v. Pennsylvania-American Water Company*, 2002 Pa. PUC LEXIS 1 (January 25, 2002).

respect to Breezewood Telephone Company's ("BTC") burden of proof:

Thus, where a party has raised a question concerning an element at issue, the affirmative burden of proving justness and reasonableness of its claim is upon BTC.⁶

The burden of proof does not shift to parties challenging a requested rate increase.

Instead, the utility's burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one and that burden remains with the public utility throughout the course of the rate proceeding:

There is no presumption of reasonableness which attached to a utility's claim, at least none which survives the raising of credible issues regarding a utility's claim. A utility's burden is to affirmatively establish the reasonableness of its claim. It is not the burden of another party to disprove the reasonableness of a utility's claims.⁷

Additionally, as stated by the Pennsylvania Supreme Court in *Berner v. Pennsylvania*

Public Utility Commission:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations⁸

Moreover, it is well established that the evidence adduced by a utility to meet this burden must be substantial.⁹ Substantial evidence has been defined as “. . . that quantum of evidence which a reasonable mind might accept as adequate to support a conclusion.”¹⁰

⁶ *Pa. PUC v. Breezewood Telephone Company*, 74 PA PUC 431, 442 (1991).

⁷ *Pa. PUC v. Equitable Gas Company*, 57 Pa. PUC 423, 444 (fn. 37)(1983).

⁸ *Berner v. Pa. PUC*, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955).

⁹ *See Brockaway Glass v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Lower Frederick Township v. Pa. PUC*, 409 A.2d 505 (Pa. Cmwlth. 1980).

¹⁰ *Dutchland Tours, Inc. v. Pa. PUC*, 337 A.2d 922, 925 (Pa. Cmwlth. 1975).

I&E serves as the Commission's prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters and enforcing compliance with the Pennsylvania Public Utility Code.¹¹ I&E and the Company entered into a Settlement that resolves all issues raised by I&E in this proceeding. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest.¹² For the reasons discussed below, I&E maintains that the rates, terms and conditions set forth in the Settlement are just, reasonable and in the public interest.

IV. SUMMARY OF ARGUMENT

The Company has an ongoing history of water and wastewater service issues. Specifically, the water system has a history of high levels of iron and manganese, which causes customers to receive brown or rust-colored water. The OCA filed Formal Complaints in 2014 due to these service concerns and, by Order entered January 18, 2018, the Commission concluded that the Company has failed to provide adequate and reasonable water and wastewater service to its customers in violation of Section 1501 of the Public Utility Code. The McCloskey Order contained extensive ordering paragraphs requiring the Company to implement improvements to improve service quality with deadlines that the HVUS must adhere to.

¹¹ 66 Pa. C.S. §§ 101 et seq., 52 Pa. Code §§ 1.1 et seq. See Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011).

¹² *Pennsylvania Public Utility Commission v. CS Water & Sewer Assoc.*, 74 Pa. PUC 767 (1991); *Pennsylvania Public Utility Commission v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985).

In its direct and surrebuttal testimonies, I&E strenuously argued that the Company not be permitted to earn a return on equity until the McCloskey Order has been complied with and HVUS customers receive adequate and reasonable water and sewer service. This 0.00% equity recommendation resulted in I&E's primary revenue requirement recommendation of \$65,544¹³ for water (and \$82,236¹⁴ for wastewater. I&E argued that this recommendation serves the public interest because it allows the Company to recover prudent operating expenses and used and useful plant but does not allow the Company to earn a profit, which is appropriate given that the Commission recently determined that HVUS is not providing adequate and reasonable water and sewer service in violation of Section 1501 the Code.

I&E and the Company engaged in extensive settlement negotiations during the pendency of this proceeding and reached a revenue requirement that closely aligns with the revenue requirements recommended in I&E's testimony. Specifically, the Settlement contains an agreed upon water increase of \$65,557 and a two-step wastewater increase of \$82,227 initially and \$145,842 in additional annual operating revenue over present rates when all repairs, modifications and improvements to the wastewater system have been completed as required by the McCloskey Order. Although it is a black box Settlement, the agreed upon revenue requirements are supported by I&E's testimony. As such, the Settlement is in the public interest because it provides the Company a reasonable increase

¹³ I&E St. No. 1-SR (Water), p. 3.

¹⁴ I&E St. No. 1-SR (Wastewater), p. 3

to recover operating expenses and plant in rates while moderating the amount paid by HVUS customers due to the ongoing service issues.

V. QUALITY OF SERVICE

I&E is not addressing this issue as its Main Brief supports the Joint Petition.

VI. INDEPENDENT AUDIT

I&E is not addressing this issue as its Main Brief supports the Joint Petition.

VII. NON-UNANIMOUS SETTLEMENT PETITION AND JOINT STIPULATION

From the outset it is important to note that it is the policy of the Commission to encourage settlements.¹⁵ The Commission issued the following policy statement that articulates general settlement guidelines and procedures for major rate cases:

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402—69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases.¹⁶

This policy statement highlights the importance of settlement in Commission proceedings. The instant rate cases were filed on April 29, 2018, and over the past seven months, the parties engaged in extensive formal and informal discovery, two mediation

¹⁵ 52 Pa. Code § 5.231.

¹⁶ 52 Pa. Code § 69.401.

sessions, preparation of multiple rounds of testimony, two Public Input Hearings and lengthy settlement discussions. The signatories to the Settlement actively participated in and vigorously represented their respective positions during the course of the settlement process. As such, the issues raised by I&E have been satisfactorily resolved and are incorporated in the Joint Petition. I&E represents that the Settlement satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. Accordingly, for the reasons articulated below, I&E maintains that the proposed Settlement is in the public interest and requests that the following terms be approved by the ALJs and the Commission without modification.

A. Revenue Requirement

The Settlement provides that the Company is permitted to increase its annual operating revenue by \$65,557 over present rates in lieu of the \$150,629 requested in its rate filing. With respect to wastewater rates, the Company is permitted \$82,227 in additional annual operating revenue over present rates in lieu of the \$185,432 requested in its rate filing. However, the Settlement further provides that the Company can increase its wastewater rates to \$145,842 in additional annual operating revenue over present rates when it submits a report and verification from its engineer that all repairs, modifications and improvements to the wastewater system have been completed as required by the McCloskey Order.

In its direct and surrebuttal testimonies, I&E's primary revenue requirement recommendation was based on a revenue increase that did not allow the Company a return on equity due to the ongoing service issues in its service territory. I&E's primary recommended water revenue requirement was \$65,544¹⁷ and its primary wastewater revenue requirement was \$82,236.¹⁸ In the event that the Commission did not accept I&E's primary recommendation of 0.00% equity, I&E conducted a traditional rate of return analysis which resulted in a recommended \$111,199¹⁹ revenue increase for water service and \$145,807²⁰ increase for wastewater service. Although this is a black box Settlement, the agreed upon revenue requirements for water (\$65,557) and wastewater (\$82,227 initially and \$145,824 when improvements are made) service are supported by the primary and secondary litigation positions contained in I&E's testimony.

I&E provided extensive testimony detailing the Company's ongoing service issues, which was the reason for its recommended 0.00% equity recommendation.²¹ As noted in I&E's rate of return testimony, the landmark *Bluefield*²² and *Hope*²³ cases establish the principles that are generally accepted as the appropriate criteria for measuring a fair rate of return; however, this proceeding involved "extraordinary circumstances" due to the Company's failure to satisfy its obligation to provide adequate and reasonable service to its water and wastewater customers.²⁴ If service is inadequate,

¹⁷ I&E St. No. 1-SR (Water), p. 3.

¹⁸ I&E St. No. 1-SR (Wastewater), p. 3.

¹⁹ I&E St. No. 1-SR (Water), p. 4.

²⁰ I&E St. No. 1-SR (Wastewater), p. 4.

²¹ I&E St. No. 2 (Water), p. 21-25; I&E St. No. 2 (Wastewater), pp. 21-25.

²² *Bluefield Water Works & Improvements Co. v. Public Service Comm. of West Virginia*, 262 U.S. 679 (1973).

²³ *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

²⁴ I&E St No. 2 (Water), p. 22; I&E St. No. 2 (Wastewater), p. 22.

the Commission has the authority to disallow a rate increase under Section 526 of the Code:

The commission may reject, in whole or in part, a public utility's request to increase its rates where the commission concludes, after hearing, that the service rendered by the public utility is inadequate in that it fails to meet quantity or quality for the type of service provided.²⁵

I&E's testimony detailed customer testimony from the Public Input Hearings, where HVUS customers expressed their dissatisfaction with the Company's utility service.²⁶

Those customers experienced, among other things, brown or rusty water that customers will not drink, damaged clothing, and permanent stains on bathroom and kitchen fixtures as a result of the poor water quality HVUS provides. HVUS ratepayers also testified that they have excessive costs resulting from, among other things, replacing damaged appliances before the end of their useful life expectancy, running water from for long periods of time to alleviate water discoloration, and installing supplemental filtration systems. Absent these service issues, I&E would have recommended a 9.13%²⁷ cost of common equity; however, due to the Company's failure to meet its obligation to provide adequate and reasonable service, I&E recommended a 0.00% cost of equity.²⁸

I&E maintains that the proposed revenue requirement in the Settlement, which closely aligns with I&E's litigation position, satisfies the statutory requirement that rates must be just and reasonable. I&E's litigation recommendation in this proceeding allowed

²⁵ 66 Pa. C.S. § 526.

²⁶ I&E St. No. 3 (Water), pp. 13-17; I&E St. No. 3 (Wastewater), pp. 13-18.

²⁷ I&E St. No. 2 (Water), p. 5; I&E St. No. 2 (Wastewater), p. 5.

²⁸ I&E St. No. 2 (Water), pp. 21-25; I&E St. No. 2 (Wastewater), pp. 21-25.

the Company to recover prudent operating expenses and plant claimed in the base rate filing but did not allow the Company to earn a profit. Although this is a black box Settlement, the agreed upon revenue requirements are close to I&E's litigation recommendation. From I&E's perspective, the revenue requirements contained in the Settlement provides the Company the ability to recover prudent expenses and plant while recognizing that the quality of service is an ongoing concern.

If customers had been receiving adequate and reasonable service, I&E's recommended revenue requirement for water service would have been \$111,199,²⁹ which is significantly more than the agreed upon \$65,557 revenue requirement in the Settlement. Similarly, the initial Settlement increase for wastewater service is \$82,227 and, absent the service issues, I&E would have recommended a wastewater increase of \$145,807.³⁰ Additionally, under the Joint Petition, the Company is permitted to implement a second phase of wastewater rates and increase to \$145,824 in additional annual operating revenue over present rates once it makes infrastructure improvements as required by the McCloskey Order. Specifically, the McCloskey Order required HVUS to obtain a written report from an independent wastewater engineer and extensively evaluate the wastewater system:

...the [wastewater engineer's] 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,

²⁹ I&E St. No. 1-SR (Water), p. 4.

³⁰ I&E St. No. 1-SR (Wastewater), p. 4.

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.³¹

The McCloskey Order required the Company to obtain the wastewater engineer's report by April 19, 2018, which the Company complied with in a timely manner, and the Company was further directed to comply with recommendations contained in the engineer's report on or before January 31, 2019.³² The wastewater engineer's report was included in I&E Exhibit 3, Schedule 3 and was summarized in I&E's direct testimony as follows:

The Wastewater Engineer's Report evaluated the Company's wastewater facilities and provided estimated costs to correct identified deficiencies (I&E Exhibit No. 3, Sch. 2). The Wastewater Engineer's Report found the two sewage treatment plants to be in fair condition and the condition of the six pump stations ranged from good to poor (I&E Exhibit No. 3, Sch. 2, pp. 4-6). The Wastewater Engineer's Report estimated the

³¹ *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, L.P.-Wastewater*, Docket No. C-2014-2447169, Ordering Paragraph 9 (Order entered May 3, 2018).

³² *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, L.P.-Wastewater*, Docket No. C-2014-2447169, Ordering Paragraphs 9, 11 (Order entered May 3, 2018).

maintenance and repair costs as follows (I&E Exhibit No. 3, Sch. 2, pp. 4-8):

- Sewage Treatment Plant No. 1- \$104,250
- Sewage Treatment Plant No. 2- \$51,900
- Sprayfield, Snowmaking and Storage Lagoon- \$13,000
- Pump Stations- \$58,750

The Wastewater Engineer's Report estimated two years to complete the recommended repairs (I&E Exhibit No. 3, Sch. 2, p. 53).³³

Pursuant to the Settlement, the second phase of the wastewater increase will not be implemented until all of these recommendations contained in the wastewater engineer's report have been completed. I&E's proposed wastewater revenue requirement if there were no service issues was \$145,807;³⁴ therefore, the stepped in increase to \$145,824 proposed in the Settlement is appropriate given that it is conditioned upon complying with all of the wastewater engineer's recommendations.

For the reasons stated above, I&E maintains that the revenue requirement contained in the Settlement is in the public interest because it moderates the increase to HVUS customers given the service concerns, while still allowing the Company recovery of prudent expenses and plant.

³³ I&E St. No. 3 (Wastewater), p. 11.

³⁴ I&E St. No. 1-SR (Wastewater), p. 4.

B. Rate Structure

HVUS and I&E agreed to a proportional scaleback as shown on Appendix A. I&E did not contest the Company's proposed rate structure and rate design in this proceeding; therefore, the proposed proportional scaleback based on settlement rates is appropriate. As shown on Appendix A, the residential water customer charge will increase from \$12.00 per quarter to \$19.00 per quarter in lieu of the Company's original request of \$27.00. In lieu of the Company's original requested wastewater residential customer charge of \$43.50, the Settlement provides that the wastewater customer charge will increase from \$27.00 per quarter to \$34.00 per quarter in Phase I and to \$40.00 per quarter in Phase II. Under these settlement rates, the average residential water customer using 2,100 gallons will experience a bill increase from \$26.64 per quarter to \$38.70 per quarter.³⁵ The average residential wastewater bill for a customer using 2,100 gallons will increase from \$59.76 to \$75.58 per quarter in Phase I and to \$88.41 per quarter in Phase II.³⁶

C. Annual Reports

Under the Joint Petition HVUS will correct its 2015-2018 annual reports within six months after entry of a final Commission Order in this proceeding and the corrected reports will be prepared or reviewed by a rate consultant prior to submission to the Commission. Additionally, for the 2019-2023 period, or until its next rate case,

³⁵ Joint Petition for Non-Unanimous Settlement, Appendix A.

³⁶ Joint Petition for Non-Unanimous Settlement, Appendix A.

whichever is earlier, HVUS will have its annual reports prepared or reviewed by a rate consultant.

I&E questioned the accuracy of the Company's annual reports in I&E Statement Nos. 1 and 1-SR and recommended that an independent financial audit and management efficiency audit be conducted to bring transparency and accuracy to the Company's accounting statements.³⁷ Concerns regarding the accuracy of the Company's annual reports were raised in the McCloskey proceeding and the McCloskey Order directed the Company to file correct information in its annual reports and to amend any prior inaccurate reports within 180 days of entry of Commission Order.³⁸ The Company complied with this directive and submitted its revised annual reports for the 2010-2016 period on July 18, 2018. However, during this base rate proceeding, I&E witness John Zalesky reviewed the revised annual reports and found several errors that are presented in I&E Exhibit No. 1-SR, Schedule 4.

HVUS President, Mr. Kettler, testified that he prepared the original and revised annual reports.³⁹ Given the potential inaccuracies that continue to exist in HVUS annual reports filed with the Commission, this Settlement term appropriately requires annual reports from 2015 going forward to be prepared or reviewed by a rate consultant. This

³⁷ I&E St. No. 1 (Water), pp. 13-15; I&E St. No. 1-SR (Water), pp. 17-22; I&E St. No. 1 (Wastewater), pp. 11-13; I&E St. No. 1-SR (Wastewater), pp. 15-20.

³⁸ *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, L.P.-Water*, Docket No. C-2014-2447138, Ordering Paragraph 14 (Order entered January 18, 2018); *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, L.P.-Wastewater*, Docket No. C-2014-2447169, Ordering Paragraph 14 (Order entered January 18, 2018).

³⁹ Transcript, pp. 276-280.

term is in the public interest as it will help the Company comply with the McCloskey Order and ensure that accurate information is provided to the Commission.

VII. CONCLUSION

The Commission's Bureau of Investigation and Enforcement represents that it supports the Joint Petition of Non-Unanimous Settlement as being in the public interest and respectfully requests that Administrative Law Judges Mark A. Hoyer and Katrina L. Dunderdale recommend, and the Commission approve, the terms and conditions contained in the Joint Petition of Non-Unanimous Settlement without modification.

Respectfully submitted,



Allison C. Kaster
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PA Attorney ID No. 93176

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Dated: December 11, 2018

Appendix A

Proposed Findings of Facts

1. On April 28, 2018, Hidden Valley Utility Services, L.P. – Water and Hidden Valley Utility Services, L.P. – Wastewater requested an increase to total annual operating revenues of \$150,629 and \$185,432, respectively.
2. The Company has an ongoing history of water and wastewater service issues. I&E St. No. 3 (Water); I&E St. No. 3 (Wastewater); I&E St. No. 3-SR (Water); I&E St. No. 3-SR (Wastewater).
3. In direct and surrebuttal testimony, I&E argued that the Company not be permitted to earn a return on equity, which resulted in its primary revenue requirement recommendation of \$65,544 for water and \$82,236 for wastewater. I&E St. No. 1-SR (Water), p. 3; I&E St. No. 1-SR (Wastewater), p. 3; I&E St. No. 2 (Water), pp. ; I&E St. No. 2 (Water), p. 21-25; I&E St. No. 2 (Wastewater), pp. 21-25.
4. Absent service issues in the Company's service territory, I&E would have recommended a 9.13% cost of common equity. I&E St. No. 2 (Water), p. 5; I&E St. No. 2 (Wastewater), p. 5.
5. If customers had been receiving adequate and reasonable service, I&E's recommended revenue requirement for water service would have been \$111,199 and wastewater service would have been \$145,807. I&E St. No. 1-SR (Water), p. 4; I&E St. No. 1-SR (Wastewater), p. 4.
6. On November 19, 2018, a Joint Petition for Non-Unanimous Settlement was filed on behalf of HVUS and I&E.
7. The Joint Petition for Approval of Non-Unanimous Settlement resolves all issues in this proceeding raised by I&E.
8. The Settlement contains an agreed upon water increase of \$65,557 and a two-step wastewater increase of \$82,227 initially and \$145,842 in additional annual operating revenue over present rates when all repairs, modifications and improvements to the wastewater system have been completed as required by the McCloskey Order.
9. The settlement terms set forth in the Joint Petition are in the public interest.

Appendix B

Proposed Conclusions of Law

1. Rates charged by public utilities must be just and reasonable. 66 Pa. C.S. § 1301.
2. A public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of the rate increase request. 66 Pa. C.S. § 315(a).
3. Courts have held that the burden of proof is satisfied by demonstrating by a preponderance of the evidence that the proposed transaction complies with Pennsylvania law. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
4. It is the policy of the Commission to encourage settlements. 52 Pa. Code § 5.231.
5. The results achieved from a negotiated settlement in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.
6. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pennsylvania Public Utility Commission v. CS Water & Sewer Assoc.*, 74 Pa. PUC 767 (1991); *Pennsylvania Public Utility Commission v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985).
7. The rates, terms and conditions contained in the Joint Petition for Non-Unanimous Settlement are just, reasonable and in the public interest.

Appendix C

Proposed Ordering Paragraphs

It is ordered that:

1. The Joint Petition for Approval of Non-Unanimous Settlement entered into between Hidden Valley Utility Services, L.P. and the Bureau of Investigation and Enforcement in the above-captioned cases is hereby approved without modification.
2. That upon entry of the Commission's Order approving the Joint Petition of Non-Unanimous Settlement, Hidden Valley Utility Services, L.P. shall be permitted to file a tariff supplement incorporating the terms and changes to rates, rules and regulations as set forth in settlement.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
v. :
Hidden Valley Utility Services, L.P. - :
Water and Wastewater Divisions :
Docket Nos. R-2018-3001306
R-2018-3001307

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Main Brief** dated December 11, 2018, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via First Class and Electronic Mail

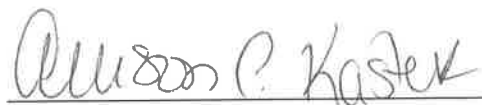
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