

COMMONWEALTH OF PENNSYLVANIA



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December 11, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

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

Copies have been served per the attached Certificate of Service.

Very truly yours,

A handwritten signature in cursive script that reads "Christine Maloni Hoover".

Christine Maloni Hoover
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Attachment:

cc: Honorable Mark A. Hoyer, ALJ
Honorable Katrina L. Dunderdale, ALJ
Certificate of Service

*263247

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :
v. : Docket Nos. R-2018-3001306
Hidden Valley Utility Services, L.P. : R-2018-3001307
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 Main 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 11th day of December 2018.

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Dated: December 11, 2018
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION	:	Docket Nos. R-2018-3001306
	:	R-2018-3001307
v.	:	C-2018-3001841
	:	C-2018-3001843
HIDDEN VALLEY UTILITY	:	
SERVICES – WATER	:	
	:	
HIDDEN VALLEY UTILITY	:	
SERVICES – WASTEWATER	:	

MAIN BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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Table of Contents

I. INTRODUCTION	5
II. BACKGROUND AND PROCEDURAL HISTORY	5
A. Background.....	5
B. Procedural History of Rate Proceedings	11
III. LEGAL STANDARD	14
IV. SUMMARY OF ARGUMENT	16
V. QUALITY OF SERVICE	18
A. Introduction.....	18
B. Legal Background.....	18
C. Ongoing Inadequate Service to Water & Wastewater Customers.....	25
1. HVUS’s Water is Not Suitable for Household Purposes Today.....	25
2. Other Service Issues.....	35
3. Wastewater.....	40
D. The Commission’s Finding of Inadequate Service In the McCloskey Case	43
1. Introduction.....	43
2. In McCloskey, the Commission Found That HVUS’s Water is Not Suitable for Household Purposes.....	43
3. HVUS’s Water Quality Issues Are Longstanding.....	44
4. Wastewater.....	46
VI. INDEPENDENT AUDIT	47
VII. NON-UNANIMOUS SETTLEMENT PETITION	48
VIII. CONCLUSION	51

APPENDICES

Appendix A Proposed Findings of Fact

Appendix B Proposed Conclusions of Law

Appendix C Proposed Ordering Paragraphs

Appendix D List of OCA Sponsored Testimony and Exhibits

TABLE OF AUTHORITIES

Cases	Page(s)
<u>Berner v. Pa. P.U.C.</u> , 382 Pa. 622, 116 A.2d 738 (1955).....	19
<u>Brockway Glass v. Pa. P.U.C.</u> , 63 Pa. Commw. 238, 437 A.2d 1067 (1981).....	18
<u>Burleson v. Pa. P.U.C.</u> , 461 A.2d 1234 (Pa. 1983).....	18
<u>Colonial Products Co. v. Pa. P.U.C.</u> , 188 Pa. Super. 163, 146 A.2d 657 (1959).....	26, 27
<u>Lower Frederick Twp. v. Pa. P.U.C.</u> , 48 Pa. Commw. 222, 409 A.2d 505 (1980).....	18
<u>Market Street Railway Co. v. Railroad Commission of California</u> , 324 U.S. 548 (1945).....	25
<u>McCloskey v. Hidden Valley Utility Services</u> , Docket Nos. C-2014-2447138 and C-2014-2447169 Order (January 18, 2018).....	<i>passim</i>
<u>McCloskey v. Hidden Valley Utility Services</u> , Docket Nos. C-2014-2447138 and C-2014-2447169 Order on Reconsideration (May 3, 2018).....	<i>passim</i>
<u>National Utilities, Inc. v. Pa. P.U.C.</u> , 709 A.2d 972 (Pa. Commw. 1998).....	26, 27
<u>University of Pa. v. Pa. P.U.C.</u> , 86 Pa. Commw. 410, 485 A.2d 1217 (1984).....	19

Administrative Decisions

<u>Ashbaugh v. Fitz Henry Water Co.</u> , 51 Pa. PUC 287 (1977)	23, 36
<u>Boyster and Pa. Office of Trial Staff v. Hidden Valley Resort, L.P.</u> , Docket Nos. C-20028823 and C-20039320, Order (Nov. 14, 2003)	9, 49
<u>Kessler v. Shickshinny Water Co.</u> , 64 Pa. PUC 290 (1987)	23, 36
<u>Pa. P.U.C. v. Aqua Pennsylvania, Inc.</u> , 236 PUR4th 218 (Pa. PUC 2004)	43
<u>Pa. P.U.C. v. Clean Treatment Sewage Co.</u> , R-2009-2121928, 2010 Pa. PUC LEXIS 671 (April 22, 2010)	27
<u>Pa. P.U.C. v. Equitable Gas Co.</u> , 57 Pa. P.U.C. 423 (1983)	19
<u>Pa. P.U.C. v. Lake Latonka Water Co.</u> , 71 Pa. PUC 507 (1989)	23, 36
<u>Pa. P.U.C. v. National Utilities</u> , 1997 Pa. PUC LEXIS 100 (1997)	26, 43
<u>Pa. P.U.C. v. National Utilities, Inc.</u> , 87 Pa. PUC 1 (1997)	23
<u>Pa. P.U.C. v. PPL Elec. Util. Corp.</u> , 237 P.U.R. 4th 419 (2004)	19
<u>Pa. P.U.C. v. Pa. Gas & Water Co.</u> , 61 Pa. PUC 409, 74 PUR 4th 238 (1986)	22, 24, 28, 43
<u>Pa. P.U.C. v. Pa. Gas & Water Co.</u> , 68 Pa. PUC 191, 1988 Pa. PUC LEXIS 457 (Sept. 30, 1988)	24, 43
<u>Pa. P.U.C. v. Pennsylvania-American Water Co.</u> , 71 Pa. PUC 210 (1989)	23, 24
<u>Sutter v. Clean Treatment Sewage Co.</u> , 2009 Pa. PUC LEXIS 7	24

Statutes

66 Pa. C.S. § 315(a)18

66 Pa. C.S. § 501.....28

66 Pa. C.S. § 523.....8, 24, 25

66 Pa. C.S. § 526.....8, 21, 25

66 Pa. C.S. § 526(a)25, 26

66 Pa. C.S. § 529.....9, 14, 27, 50

66 Pa. C.S. § 529(a)9, 14

66 Pa. C.S. § 1501..... *passim*

Other Authorities

U.S. Constitution Fifth and Fourteenth Amendments26

52 Pa. Code § 65.8(b)38

52 Pa. Code § 69.711(b)(1).....43

I. INTRODUCTION

The Office of Consumer Advocate (OCA) hereby submits this Main Brief regarding the water and wastewater rate increases proposed by Hidden Valley Utility Service (Hidden Valley, HVUS, or Company).

As set forth below, the OCA submits that the Commission should deny Hidden Valley's requested rate increases due to its ongoing failure to provide adequate service pursuant to Sections 1501, 523, and 526 of the Public Utility Code. 66 Pa. C.S. §§ 523, 526, 1501. The evidence in this case shows that HVUS has not resolved the service issues that resulted in the Commission's 2018 Order in McCloskey v. Hidden Valley Utility Services, Docket Nos. C-2014-2447138 (water) and C-2014-2447169 (wastewater) (McCloskey or 2018 Complaint Cases). The water provided by HVUS is not suitable for household purposes and thus violates Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501. The wastewater system is also in need of repair and the Company's failure to maintain and make necessary improvements to its collection and treatment facilities is a violation of Section 1501. HVUS is not providing safe, adequate, and reliable service to its customers, and pursuant to Sections 523 and 526 of the Public Utility Code, the rate increase requests should be denied due to inadequate service. 66 Pa. C.S. §§ 523, 526.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Background

Hidden Valley serves approximately 1,156 water customers and 1,154 wastewater customers in a portion of Jefferson Township, Somerset County, Pennsylvania. HVUS St. 1 (W) at 2; HVUS St. 1 (WW) at 2. On May 3, 2018, the Commission entered an Order on Reconsideration in the Complaint Cases. In that Order, the Commission granted in part the

OCA's formal complaints against HVUS. The Commission found that HVUS was not providing safe, adequate, and reliable service as required by Section 1501 of the Public Utility Code. Order at 7; 66 Pa. C.S. § 1501. The Commission ordered HVUS to comply with the unresolved issues from the 2005 Settlement Agreement and to obtain a report from a water and wastewater engineer regarding the adequacy of its water distribution system. Order at 26. The Commission also ordered HVUS to comply with all recommendations from the engineer within one year of the date of the Engineer's Report, to bring its billing practices into compliance with all Commission rules, and to file detailed status reports every sixty days regarding its compliance with the order. Order at 27-30. In the event that an evidentiary hearing is/was required as a result of failure to accomplish recommended repairs and maintenance procedures or the water and wastewater service is not adequate, the Commission also stated that it will initiate an investigation under Section 529 of the Public Utility Code. Order at 32; 66 Pa. C.S. § 529. Section 529 provides authority to the Commission to order the takeover of a small troubled system by a larger capable public utility. 66 Pa. C.S. § 529(a).

HVUS operated the water and wastewater systems without Certificates of Public Convenience as a *de facto* utility until a customer complaint was filed in 2002.¹ In February 2004, HVUS submitted applications to the Commission seeking approval to begin to offer, render, furnish or supply water and wastewater service to the public in Hidden Valley, Pennsylvania.² The OCA and a number of other parties (collectively, Joint Petitioners) filed Protests in those proceedings, due in part to quality of service issues. After lengthy negotiations,

¹ See Boyter and Pa. Office of Trial Staff v. Hidden Valley Resort, L.P., Docket Nos. C-20028823 and C-20039320, Order (Nov. 14, 2003).

² In the Matter of: Application of Hidden Valley Utility Services, LP – Water; Application of Hidden Valley Utility Services, LP – Wastewater, for Approval to Offer, Render, Furnish, or Supply Water and Wastewater Services to the Public in Hidden Valley, PA (Docket Nos. A-210117 and A-230101) (2004 Application).

a Settlement Agreement (2005 Settlement) (McCloskey Case ALJ Exh. 2) was reached which required HVUS to make a variety of improvements to its water and wastewater systems that would address long-term problems including brown or rust-colored water, low water pressure, and high levels of unaccounted-for water, all of which existed at the time that the Company's applications were filed. The Commission approved the 2005 Settlement. In the Matter of: Application of Hidden Valley Utility Services, LP – Water; Application of Hidden Valley Utility Services, LP – Wastewater, for Approval to Offer, Render, Furnish, or Supply Water and Wastewater Services to the Public in Hidden Valley, PA, Docket Nos. A-210117 and A-230101 (Order entered July 15, 2005)(2004 Application).

On March 15, 2007, the Commission sent a set of information requests to HVUS relating to the Company's compliance with items included in the 2005 Settlement. The Company's responses indicated that some requirements had been met while others remained. January 2018 Order at 9-11.

In April 2008, HVUS filed an application to transfer the water and wastewater systems to an affiliate of the Buncher Company, as part of Buncher's acquisition of the Hidden Valley Resort.³ In an Order entered on June 4, 2010, the Commission granted a request to withdraw the application to transfer after the agreement to sell the water and wastewater systems was not finalized.⁴ The Commission noted in its Order that some requirements of the 2005 Settlement

³ Joint Application of Hidden Valley Public Utility Services, LLC and Hidden Valley Utility Services, L.P., Docket Nos. A-2008-2039498, A-2008-2039504, A-2008-2039518 and A-2008-2039521, Order (Sept. 11, 2008) (2008 Order). Ownership of the Hidden Valley Resort was transferred to the Buncher Company in 2007. In 2013, the Hidden Valley Resort was purchased from Buncher by neighboring Seven Springs Resort. McCloskey Case Tr. 266.

⁴ March 22, 2010 letter requesting withdrawal of the joint applications of Hidden Valley Public Utility Services, LLC and Hidden Valley Utility Services, LP, docketed at A-2008-2039498, A-2008-2039504, A-2008-2039518 and A-2008-2039521, regarding the sale/purchase of the water and wastewater utility assets and the provision of utility service in Hidden Valley, Jefferson Township, Somerset County, PA, Order (June 4, 2010) (2010 Order).

had not yet been fulfilled, and expressed particular concern as to the level of unaccounted-for water reported by HVUS.⁵

On May 28, 2014, HVUS received shut-off notices for two of its accounts with Pennsylvania Electric Company (Penelec). On June 3, 2014 the OCA filed a Petition for the Issuance of an Emergency Order Against Hidden Valley Utility Services (Emergency Petition), docketed at P-2014-2424858. In the Emergency Petition, the OCA asked the Commission to issue an emergency order requiring HVUS to pay all current and overdue electric bills, remain current on its electric bills, and allow the OCA to access its current and historical billing and payment information. The parties filed a proposed Settlement Agreement on September 26, 2014, which was approved by Order entered on May 5, 2015.

In addition to the Emergency Petition, the OCA filed Formal Complaints against HVUS on October 9, 2014. Based on information provided by customers and the OCA's preliminary investigations, which were detailed in the affidavits attached to the Complaints, the OCA averred in its Complaints that HVUS was failing to provide "adequate, efficient, safe, and reasonable service and facilities" pursuant to 66 Pa. C.S. § 1501, specifically relating to water quality, water pressure, fire protection, maintenance and condition of the system, compliance with prior Commission Orders, financial viability, and customers service. McCloskey v. Hidden Valley Utility Services, Docket Nos. C-2014-2447138 and C-2014-2447169. HVUS filed Answers to the OCA's Complaints on October 29, 2014.

Public input hearings were held on June 25, 2015 at Hidden Valley Resort. In total, over 110 people attended these hearings and 32 individuals testified, including 29 residential customers, two individuals from Seven Springs Resort, and one individual testifying on behalf of a parent who is a customer. McCloskey Case Tr. 35-36, 162, 165-166, 236.

⁵ Id. at 3-4.

On July 8, 2015, the OCA filed the Direct Testimony of Ashley E. Everette⁶ (OCA St. 1 – Water and Wastewater) and Terry L. Fought⁷ (OCA St. 2 – Water and Wastewater). The OCA presented evidence regarding the water and service quality provided by HVUS, including: discolored water and use of water for household purposes, customers’ replacement of appliances and fixtures, treatment of iron and manganese, unaccounted-for-water and leaks, and main replacement. Regarding the Company’s wastewater system and quality of service, OCA evidence included: adequacy of maintenance and replacement, sewage odors and sewage overflows. The OCA also presented evidence regarding financial and managerial issues that affected the utility’s ability to provide adequate, efficient, safe, and reasonable service and facilities to its customers, including: adequacy of financial resources, management of utility revenue, reporting and billing, and customer service and complaint handling. Two customers, Robert J. Kollar and Kellie A. Kuhleman, also submitted testimony regarding the Company’s financial state.

The Company filed the Rebuttal Testimony of James Kettler, President of HVUS as well. On November 3, 2015, the OCA filed the Surrebuttal Testimony of Ashley E. Everette (OCA St. 1S – Water and Wastewater) and Terry L. Fought (OCA St. 2S – Water and Wastewater). Mr. Kollar also filed Surrebuttal Testimony on November 3, 2015. HVUS filed written rejoinder on November 10, 2015 (HVUS St. 3-R). The OCA filed the Surrejoinder Testimony of Ashley E.

⁶ Ms. Everette is a Regulatory Analyst employed by the OCA since 2012. She received a Master’s degree in Business Administration and a Bachelor’s degree in Economics both from the University of Illinois. She has testified in numerous proceedings before the Commission with a primary specialty in accounting and finance issues. Ms. Everette’s qualifications were attached as Appendix A to OCA Statement 1 in the Complaint proceeding.

⁷ Mr. Fought has been a licensed engineer in Pennsylvania since 1975, is licensed in New Jersey and Virginia (inactive) and has been a consulting engineer since 1983. He received his Bachelor of Civil Engineering from Cleveland State University. He has been involved in the design, construction and operation of water and wastewater facilities for over 40 years. He has also served as a consultant to the OCA for water and wastewater rate cases, complaint proceedings, investigations, and applications since 1984. Mr. Fought’s background and qualifications are attached as Appendix A to OCA Statement 2 in the Complaint proceeding.

Everette (OCA St. 1SR – Water and Wastewater) and Terry L. Fought (OCA St. 2SR – Water) on November 16, 2015. Hearings were held in Pittsburgh on November 17, 2015, where two additional customers and a representative of the Resort presented oral testimony and all witnesses were subject to cross-examination. Briefs were filed and an Initial Decision was issued on August 23, 2016. Exceptions and Reply Exceptions were filed by the parties.

On January 18, 2018, the Commission entered an Order finding that HVUS was not providing adequate water and wastewater service as required by Section 1501 of the Public Utility Code. The Commission sustained the OCA's Complaints in part, ordering HVUS to comply with the unresolved issues of the 2005 Settlement Agreement, to file an engineer's report on the water (including recommendations to correct any found deficiencies including the rust or brown-colored water) and wastewater systems within 90 days from the entry date of the order. The Order also directed HVUS to comply with all recommendations from the engineer to correct any deficiencies and to eliminate the rust or brown-colored water within one year of the date of the engineer's report. January 2018 Order at 62. The Order also required an engineer's report for the wastewater system in the same time frame. January 2018 Order at 62-63. The Commission also required, *inter alia*, modifications to the billing system to comply with Commission rules, corrected information in its annual reports, and a status report every sixty days. January 2018 Order at 63-65. In the event that an evidentiary hearing is required as a result of failure to accomplish recommended repairs and maintenance procedures, or the water and wastewater service is not adequate, the Commission also will initiate an investigation under Section 529 of the Public Utility Code. January 2018 Order at 66; 66 Pa. C.S. § 529. Section 529 provides authority to the Commission to order the takeover of a small troubled system by a larger capable public utility. 66 Pa. C.S. § 529(a). On February 2, 2018, HVUS filed a Petition for

Reconsideration, Clarification and Amendment. The OCA filed an answer. On May 3, 2018, the Commission entered an Order in the Complaint proceeding, granting in part HVUS's Petition for Reconsideration. In the May 2018 Order, the Commission

On October 18, 2018, HVUS filed a Petition for Amendment of the Commission's May 2018 Order. In its Petition, HVUS has asked the Commission to amend paragraph 8 which requires HVUS to "comply with all recommendations from the engineer, in order to correct any identified deficiencies including a remedy to eliminate the rust or brown-colored water provided to customers in order to ensure that customers shall receive adequate service from the improved water facilities, and to reassess the need, size and cost of treatment plant to permanently solve the problems caused by iron and manganese..." within one year from the date of the engineer's report. HVUS's Petition asks that the one year deadline (April 30, 2019) be replaced with a series of milestone deadlines related to the option HVUS chooses or in the alternative, change the one-year deadline to a four-year deadline. Petition at 8-9. The OCA filed an answer opposing the Petition. McCloskey Complaint case Intervenor Mr. Kollar and Ms. Kuhleman filed a Reply in Opposition to the Petition. The Petition is currently pending before the Commission.

B. Procedural History of Rate Proceedings

On April 27, 2018, HVUS filed Supplement No. 1 to Tariff Water – Pa. P.U.C. No. 1 and Supplement No. 1 to Tariff Wastewater – Pa. P.U.C. No. 1, respectively, to become effective July 1, 2018. The Company, by filing these tariff supplements, seeks Commission approval to make rate changes that would increase the level of rates that it charges for providing water and wastewater service to its customers.

The proposed water tariff contained changes in rates calculated to recover an estimated

annual increase in base rate revenues of \$150,629. This represents an approximate 107.2% increase in the Company's annual water revenues. Under the Company's proposal, the proposed water base rates for an average water customer using 9,000 gallons per quarter would increase from \$74.73 to \$145.80, or by 95.1%. The proposed wastewater tariff contained changes in rates calculated to recover an estimated annual increase in base rate revenues of \$185,432. This represents an approximate 63.1% increase in the Company's annual wastewater revenues. Under the Company's proposal, the proposed wastewater base rates for an average wastewater customer using 9,000 gallons of water per quarter would increase from \$167.40 to \$270.30, or by 61.5%.

On May 14, 2018, the OCA filed Formal Complaints and Public Statements against the proposed increases in water rates (C-2018-3001841) and wastewater rates (C-2018-3001843) and a Notice of Appearance. The Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance on May 30, 2018. In addition to OCA's complaints, twenty-two formal complaints were filed by customers against the proposed rate increases.⁸ On May 17, 2018, the Commission entered an Order initiating an investigation into the lawfulness, justness and reasonableness of the proposed rates in Supplement No. 1 to Tariff Water – Pa. P.U.C. No. 1 and Supplement No. 1 to Tariff Wastewater – Pa. P.U.C. No. 1 and suspended the effective date until February 1, 2019 by operation of law.

The Commission assigned the case to Administrative Law Judge (ALJ) Hoyer. ALJ

⁸ Gerry and Melissa Pindroh, Docket No. C-2018-3001787; Debra J. Simpson, Docket No. C-2018-3002179; Tom and Shelley Conroy, Docket No. C-2018-3002198, C-2018-3002200; John Cupps, Docket No. C-2018-3002468, C-2018-3002459; David Oster, Docket No. C-2018-3002470, C-2018-3002475, Toni Gorenc, Docket No. C-2018-3002480, C-2018-3002481; David Brodland, Docket No. C-2018-3002485, C-2018-3002487; Robert and Katherine Bair, Docket No. C-2018-3002587; Jerome and Barbara Cypher, Docket No. C-2018-3002671, C-2018-3002683; Jon and Nina Lewis, Docket No. C-2018-3002701, C-2018-3002698, Celeste Emrick, Docket No. C-2018-3003020; Robert Kollar, Docket No. C-2018-3003370, C-2018-3003372; Hidden Valley Foundation, Inc., Docket No. C-2018-3003528, C-2018-3003529.

Dunderdale was assigned to the proceedings at a later date. The Company agreed to participate in the Commission's mediation process and extended the end of the suspension period to April 1, 2019. The cases were not resolved in mediation and the parties proceeded to litigation.

Thirty-two customers testified during two public input hearings held on July 27, 2018 at 2 p.m. and 6 p.m. at Hidden Valley Resort in Hidden Valley, PA. Of the customers that testified, three filed formal water and wastewater complaints.

On September 18, 2018, the OCA filed the direct testimony of Stacy L. Sherwood,⁹ OCA St. 1 (W) and OCA St. 1 (WW), Aaron Rothschild,¹⁰ OCA St. 2, and Terry Fought, OCA St. 3 (W) and OC St. 3 (WW). I&E also filed direct testimony on September 18, 2018. Rebuttal testimony was filed by HVUS on October 18, 2018 and surrebuttal testimony was filed by OCA and I&E on November 9, 2018. Included in Appendix D is a list of testimony, schedules and exhibits submitted in this proceeding by the OCA and admitted into the record. An evidentiary hearing was held on November 16, 2018. At that time, HVUS and I&E provided a non-unanimous settlement that addressed an agreed upon revenue requirement, rate structure and other provisions. In addition, HVUS, I&E, OCA, and Hidden Valley Foundation executed a Joint Stipulation that listed the issues preserved for litigation and other matters, as described more fully in Section VII, *infra*.

⁹ Ms. Sherwood is an Economist with Exeter Associates, Inc. At Exeter, Ms. Sherwood develops utility service assessments, provides bill and rate analysis, and assesses and evaluates the effectiveness of energy conservation and efficiency programs. Prior to joining Exeter, Ms. Sherwood served as a Regulatory Economist with the Maryland Public Service Commission (PSC). At the PSC, she performed analysis on the EmPOWER Maryland energy efficiency and demand response programs, the Exelon Customer Investment Fund, and served as lead analyst for the EmPOWER Maryland limited income programs.

¹⁰ Mr. Rothschild is a financial consultant specializing in cost of capital issues in utility regulation. He has 22 years of experience providing utility financial analysis. Mr. Rothschild has applied his expertise and testified in numerous proceedings before the Pennsylvania Public Utility Commission, over twenty other state public service commissions, and the Federal Energy Regulatory Commission.

III. LEGAL STANDARD

Hidden Valley bears the burden of proof to establish the justness and reasonableness of every element of its requested rate increase. As set forth in Section 315(a) of the Public Utility Code:

Reasonableness of rates – In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon the complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa. C.S. § 315(a). The Commonwealth interprets this principle as follows:

Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.

Lower Frederick Twp. v. Pa. P.U.C., 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980)

(citations omitted). See also, Brockway Glass v. Pa. P.U.C., 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a prima facie case, the party with the burden must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” Burleson v. Pa. P.U.C., 461 A.2d 1234, 1236 (Pa. 1983) (Burleson). Thus, a utility has an affirmative burden to establish the justness and reasonableness of every component of its rate request.

The OCA points out that Pennsylvania law is clear that there is no similar burden for a party proposing an adjustment to a utility base rate filing. See, e.g., Berner v. Pa. P.U.C., 382 Pa. 622, 116 A.2d 738 (1955). In Berner, the Pennsylvania Supreme Court stated:

[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 installations and that is the burden which the utility patently failed to carry.

Berner, 382 Pa. at 631, 116 A.2d at 744. The Commission recognizes this standard in its rate determinations. Pa. P.U.C. v. Equitable Gas Co., 57 Pa. P.U.C. 423, 471 (1983). See also University of Pa. v. Pa. P.U.C., 86 Pa. Commw. 410, 485 A.2d 1217 (1984); Pa. P.U.C. v. PPL Elec. Util. Corp., 237 P.U.R. 4th 419 (2004). Thus, it is unnecessary for the OCA (or any challenger) to prove that Hidden Valley's proposed rates are unjust, unreasonable, or not in the public interest. To prevail in its challenge, Pennsylvania law requires only that the OCA show how Hidden Valley failed to meet its burden of proof. While subtle, this critical distinction shows that parties opposing a utility in a rate proceeding need only to shift the burden of going forward to prevail.

In conclusion, Hidden Valley must affirmatively demonstrate the reasonableness of every element of its claims and demonstrate that its proposed rates are just, reasonable, and in the public interest. The OCA will show that Hidden Valley has failed to satisfy its statutory burden in the manner set forth below.

IV. SUMMARY OF ARGUMENT

Hidden Valley does not currently provide safe, adequate and reliable service to its customers. The water provided is not suitable for all household purposes including continuing instances of brown, discolored water and intermittent low water pressure. The wastewater service requires a large number of improvements and reflects the failure of Hidden Valley to maintain and invest in the wastewater system. Nothing has changed regarding the quality of service since the Commission last looked at the quality of service provided by Hidden Valley in the McCloskey complaint cases.

Hidden Valley already charges \$74.73 for water customers using 9,000 gallons per quarter and \$167.40 for wastewater customers using 9,000 gallons per quarter for service. Now, Hidden Valley is asking the Commission to allow it to increase rates for these customers to \$145.80 for water customers using 9,000 gallons per quarter and \$270.30 for wastewater customers using 9,000 per quarter so that it can continue to collect revenue for service that it has been inadequate since at least 2004. It is important to understand that Hidden Valley's claims in these rate cases do not include any plant additions or expenses related to improving the quality of service that it provides.

The Commission recently found, in the McCloskey January 2018 Order, as modified by the May 2018 Order on Reconsideration, that Hidden Valley does not provide adequate water and wastewater and required Hidden Valley to take a large number of steps to correct the inadequate service within a specific time frame (by April 30, 2019). Hidden Valley has not completed the steps required by the Commission's Orders in the McCloskey case.

It is important to note that the chronic quality of service issues, present in the record in these rate proceedings, date back to at least 2004 when Hidden Valley filed applications to

become a certificated water and wastewater utility. Hidden Valley had not complied with all of the requirements of the 2005 Application Settlement in 2018.

Where the Commission has found after hearings that the quantity and quality of service rendered by a utility is inadequate, the Commission may reject a public utility's request to increase rates, in whole or in part. 66 Pa. C.S. § 526. The OCA recommends that Hidden Valley's proposed water and wastewater revenue increases be denied.

V. QUALITY OF SERVICE

A. Introduction

As discussed below, Hidden Valley has provided inadequate water and wastewater service since at least 2004. As this is the first rate case that it has filed, this is the first time that a proposed rate increase has to be reviewed in the context of the ongoing inadequate service. The Commission should exercise its authority and deny the rate increases until such time as the customers of Hidden Valley are receiving safe, adequate and reliable service.

B. Legal Background

The Public Utility Commission is authorized to determine whether a public utility is meeting the requirements set forth in the Public Utility Code. One such requirement is that:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa. C.S. § 1501. The Code, therefore, places upon every public utility the obligation to remedy any deficiencies in its system to ensure that its customers receive “adequate, efficient, safe, and reasonable service.” Id.

The Commission’s standard for determining that water service is safe and adequate for purposes of 66 Pa. C.S. § 1501 was set forth in Pa. P.U.C. v. Pennsylvania Gas and Water Co., which states that “every customer is entitled to water that is fit for the basic, domestic purposes (e.g. cooking, drinking, washing and bathing).” 61 Pa. PUC 409, 416, 74 PUR4th 238, 245

(1986) (PG&W 1986); see also Pa. P.U.C. v. Pennsylvania-American Water Co., 71 Pa. PUC 210, 218-19 (1989); Pa. P.U.C. v. National Utilities, Inc., 87 Pa. PUC 1, 5 (1997).

Water does not need to be a public health risk in order to be unsuitable for all domestic purposes. Pa. P.U.C. v. Lake Latonka Water Co., 71 Pa. PUC 507, 522 (1989) (holding that a utility provides inadequate water even when the water “has non-health, aesthetic quality problems”); see Kessler v. Shickshinny Water Co., 64 Pa. PUC 290, 296-97 (1987) (holding that ground debris in pipes resulting in “dirty, smelly water which was unsatisfactory for virtually every purpose except toilet flushing” violated 66 Pa. C.S. §1501). In Ashbaugh v. Fitz Henry Water Co., 51 Pa. PUC 287 (1977), the Commission held that water was inadequate despite being safe to drink. 51 Pa. PUC at 291. Customers of Fitz Henry testified to the discoloration of their water and produced filters with sediment. Id. at 288. Testing by the Pennsylvania Department of Environmental Resources determined that, although the water was somewhat acidic, it was mostly within the recommended public health limits for drinking water that were in place at the time. Id. at 289. However, the Commission ruled that the water was inadequate because of the water’s “unpleasant taste, sediment, and unsuitability for laundry purposes” and held that the utility had violated its statutory obligation. Id. at 291.

In PG&W 1986, the Commission stated in more detail what is necessary to support claims of inadequate and unreasonable water service:

In reaching a determination as to whether a utility has provided adequate and reasonable service, we note that *every* customer is entitled to water that is fit for the basic, domestic purposes (e.g., cooking, drinking, washing and bathing). Although a few isolated or sporadic instances or complaints of water received by customers . . . that is unfit for the aforementioned basic, domestic purposes would not warrant a finding that a utility has failed in its provision of adequate and reasonable service, we believe that probative evidence in a particular case showing a *significant* failure on the part of a utility to provide adequate and reasonable service would provide a basis for a conclusion that a utility has provided inadequate service. Finally, we point out that customers are entitled to

adequate and reasonable service at the time they are paying their bills, not some optimistic point in the future.

61 Pa. PUC at 416.

Regarding the quality of wastewater service, when customers pay their monthly wastewater bill, they are paying for the collection and the discharge of the sewage, cleaning it and disposing of the waste material, as well as the labor and the equipment to maintain and operate the sewer plant. The Commission has stated that:

It is our opinion that in exchange for the utility's provision of safe, adequate, and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return to the utility's investors. Thus, as the OCA contends, a quid pro quo relationship exists between the utility and its ratepayers.

PG&W 1986, 61 Pa. PUC at 415-16. The failure to properly treat sewage constitutes a failure to provide safe, adequate, and reasonable service, for which customers are paying rates. See Sutter v. Clean Treatment Sewage Co., 2009 Pa. PUC LEXIS 7, *24-27. Moreover, inadequate or improper operation and maintenance accelerate deterioration and necessary replacement of plant which unreasonably increases costs to the ratepayers. Thus, failing to properly maintain a wastewater treatment plant and system itself constitutes a failure to provide adequate and reasonable service.

Section 523 of the Public Utility Code, 66 Pa. C.S. § 523, requires the Commission to “consider . . . the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates. . .” In exchange for customers paying rates for service, which include the cost of utility plant in service and a rate of return, a public utility is obligated to provide safe, adequate and reasonable service. PG&W 1986, 61 Pa. PUC at 415-16, 74 PUR4th at 244-45, 1986 Pa. PUC LEXIS 113 at *14; Pa. P.U.C. v. Pa. Gas & Water Co., 68 Pa.

PUC 191, 1988 Pa. PUC LEXIS 457 (Sept. 30, 1988) (PG&W 1988); Pa. P.U.C. v. PAWC, 71 Pa. PUC 210, 219, 1989 Pa. PUC LEXIS 170, *253, 254 (Oct. 27, 1989)(inadequacy of service is judged by the service results achieved rather than the service efforts made by a public utility); 66 Pa. C.S. § 1501. Accordingly, the General Assembly has given the Commission authority to deny a proposed rate increase, in whole or in part, if the Commission finds “that the service rendered by the public utility is inadequate.” 66 Pa. C.S. § 526(a).

The review of quality of service in a rate case and the discretion to deny a rate increase in whole or in part were exercised by the Commission both before and after the enactment of Sections 523 and 526 of the Public Utility Code with regard to proposed rate increases filed by Pennsylvania Gas and Water Company in 1985 and 1987. PG&W 1986; CTSC 2010; PG&W 1988. In PG&W 1988, the Commission cited to judicial precedent that “a utility is not *guaranteed* rate increases necessary for a return on its property; it is only entitled to rates sufficient to earn a fair return if it provides adequate service” and found that this regulatory bargain has been codified in Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501. 68 Pa. PUC at 197. That Section requires:

every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary and proper for the accommodation, convenience and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay.

The linkage between the setting of just and reasonable rates and the quality of service is well-established in case law. In Market Street Railway Co. v. Railroad Commission of California, 324 U.S. 548 (1945), the Court affirmed a Railroad Commission order that reduced the fare to be charged by the railway company. Legal standards which protect utility investors

from the confiscation of their property do not take precedence over the utility's obligation to provide safe, adequate and reasonable service.

Moreover, a series of Pennsylvania cases have held that until the quality of service improved, it would be permissible for the effective rates to provide a return that might be considered confiscatory:

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 be expected therefrom; 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).

The Commission addressed a similar issue in the context of a general rate increase filing in Pa. P.U.C. v. National Utilities, 1997 Pa. PUC LEXIS 100, *19 (1997). In that case, the Commission agreed with the ALJ that the record evidence showed inadequate service “due to the magnitude, pervasiveness, and persistence of the water service problems experienced by NUI’s customers” and denied the rate increase in its entirety. Id. NUI appealed the Commission’s order to the Commonwealth Court. National Utilities, Inc. v. Pa. P.U.C., 709 A.2d 972 (Pa. Commw. 1998) (NUI 1998). In NUI 1998, the Commonwealth Court affirmed a Commission Order that denied a rate increase request in its entirety due to inadequate service. The Commission found that there was sufficient evidence that there was a significant failure by NUI to provide adequate and reasonable service and denied the rate increase pursuant to Section 526(a) of the Public Utility Code. 709 A.2d at 975. The Commonwealth Court recognized that a public utility is not entitled to a rate increase when its service is inadequate.¹¹ 709 A.2d at 979. In reviewing the arguments by NUI in its appeal of the Commission Order, the Commonwealth

¹¹ The Commonwealth Court rejected NUI’s alternative argument that it needed the rate increase to pay its loans. The Commonwealth Court noted the ALJ’s finding that it had sufficient funds available to pay its loans but chose to pay other expenses, some of which were excessive and unnecessary. 709 A.2d at 979, footnote 13.

Court held that the Fifth and Fourteenth Amendments to the U.S. Constitution are not violated when a public utility is denied an increase in rates when it fails to provide adequate service to the public, even if the result is a rate of return less than it would otherwise be entitled to receive. 709 A.2d at 979.

In Pa. P.U.C. v. Clean Treatment Sewage Co., R-2009-2121928, 2010 Pa. PUC LEXIS 671, at *33 (April 22, 2010) (CTSC 2010) the Commission denied a rate increase in its entirety. The rate increase request was filed approximately six weeks after the Commission sustained complaints that CTSC failed to provide reasonably continuous and uninterrupted service to its availability customers. 2010 Pa. PUC LEXIS at *4-5. In its Order sustaining the complaints, the Commission also instituted a Section 529 proceeding because it had serious concerns regarding the financial, technical and managerial ability of CTSC to make the necessary improvements. Id. In the subsequent rate filing in which it denied the rate increase request, the Commission cited to NUI 1998 and Colonial Products in addressing whether a denial of the rate increase was appropriate. 2010 Pa. PUC LEXIS at *31-32. The Commission also stated, “We fully realize that improvements to the Company’s service and facilities will require a rate increase, but we have seen nothing in this filing that indicates that any improvements will be forthcoming.” 2010 Pa. PUC LEXIS at *33.

In PG&W 1986 and PG&W 1988, the Commission specifically addressed the issue of what the utility must do to show that it has addressed a prior finding of inadequate service. Specifically, PG&W’s 1985 rate increase request was denied in its entirety. PG&W 1986, 61 Pa. PUC at 426-27. The Commission explicitly stated what PG&W was required to demonstrate in order to qualify it for rate relief:

PG&W must show actual results of service improvements as opposed to optimistic plans for the future. On this point, we again state that every customer is entitled to water that is fit for the basic, domestic purposes.

PG&W 1986 Order on Reconsideration, 61 Pa. PUC at 502 (emphasis in original). In reviewing the record in the next base rate case filed in 1987, the ALJs found and the Commission agreed, that the evidence “did not demonstrate actual results of service improvements to the substandard quality of service, existing at the time that the Commission acted upon the Company’s last rate request.¹²” 68 Pa. PUC at 502(emphasis in original). The Commission found that the Company failed to demonstrate that its ratepayers were currently receiving adequate service and denied the 1987 rate increase request in its entirety. PG&W 1988, 68 Pa. PUC at 421.

For the reasons discussed below, the OCA has demonstrated that there has been a significant failure by HVUS to provide adequate and reasonable service to its water and wastewater customers. The water provided by HVUS is unsuitable for basic household purposes, and as such, the water service provided by HVUS is not safe and adequate under Section 1501. Additionally, HVUS has failed to properly maintain its wastewater system, and the system currently requires significant improvements. The Commission has plenary authority under Section 501 of the Public Utility Code to carry out and enforce the Public Utility Code and any rules, regulations, orders, or other requirements. 66 Pa. C.S. § 501. Part of the rates HVUS customers pay is for maintenance of the system, and HVUS’s failure to maintain the system and make necessary improvements constitutes a failure to provide adequate wastewater service. For these reasons, the Company is failing to comply with Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501. The applicable constitutional and legal standards establish this Commission’s

¹² In the 1987 rate case, PG&W had constructed a new water filtration plant, and initiated a number of other programs related to flushing, corrosion control and argued that they had made substantial progress since the 1985 rate filing. See 68 Pa. PUC at 414-15.

authority and obligation to set rates which reflect service inadequacies, including denying the rate increases proposed by HVUS.

The OCA submits, therefore, that because this Commission found the quality of Hidden Valley's service to be inadequate in January 2018, because there has been more than thirteen years of inadequate service, and because the evidence in this case shows that the customers continue to receive inadequate water and wastewater service, the applicable constitutional and legal standards establish this Commission's authority and obligation to deny the proposed water and wastewater rate increases.

C. Ongoing Inadequate Service to Water & Wastewater Customers

The current quality of service being rendered by Hidden Valley has not changed since the Commission found it inadequate in its January 2018 McCloskey Order. As discussed below, the customers continue to be unable to use the water for basic household purposes including drinking, cooking, washing, and bathing. Regarding wastewater service, although Hidden Valley has finally complied with the requirements of the 2005 settlement, it has not yet complied with its engineer's report as discussed below.

1. HVUS's Water is Not Suitable for Household Purposes Today

The Company's customers have experienced iron and manganese issues since at least 2004 as will be discussed below. In the current rate case, the customers' testimony and OCA's engineer's testimony is essentially the same as it was in the McCloskey case. The water provided by HVUS is not suitable for all household purposes.

a. Description of Water System

Mr. Fought, who was the OCA's engineering witness in the Hidden Valley Application proceedings and the complaint proceedings (see OCA St. 3 (W) at 3), provided a description of

the HVUS water system. “The Company’s water supply system consists of two wells, chemical treatment facilities, high lift pumps, a 250,000 gallon (gal) storage tank, and a distribution system containing about 18 miles of water mains, fire hydrants, service lines and miscellaneous valves.” OCA St. 3 at 1-2. Iron and manganese are minerals that are naturally occurring in many ground water aquifers such as the wells used by HVUS. Id. at 2.

Mr. Fought provided an explanation of how the levels of iron and manganese in the wells and in the distribution system cause the problems that the Company’s customers have experienced since 2004 or earlier:

Q. PLEASE DISCUSS IRON AND MANGANESE AND THE PROBLEMS THEY CAUSE FOR DRINKING WATER.

A. When the iron and manganese are dissolved, the water is clear. But when the water is exposed to air, iron and manganese are oxidized and change from the colorless, dissolved forms to colored, solid forms.

Iron precipitates as red-brown particles: the larger particles settle out of the water, but smaller particles may remain suspended and give the water a red tint. Manganese forms a black precipitate or causes a black tint to the water.

Iron will cause reddish-brown staining of laundry, porcelain, dishes, utensils and even glassware. Manganese acts in a similar way but causes a brownish-black stain. Soaps and detergents do not remove these stains, and the use of chlorine bleach and alkaline builders (such as sodium and carbonate) may intensify the stains.

Iron and manganese can affect the flavor and color of food and water. They may react with tannins in coffee, tea, and some alcoholic beverages to produce a black sludge, which negatively affects both taste and appearance. Iron precipitates can cause problems if they build up in mains and service lines, pressure tanks, water heaters or water softeners. These deposits will shorten the useful lives of washing machines, dishwashers, hot water heaters, etc. Also, more energy is required to heat water in hot water heaters that have their heating rods coated with the mineral deposits. In some cases, iron and/or manganese bacteria can exist in the water and form slime in toilet tanks, etc.

Q. DOES THE PENNSYLVANIA SAFE DRINKING WATER ACT REGULATE THE CONCENTRATIONS OF IRON AND MANGANESE THAT CAN BE IN DRINKING WATER?

A. Yes. The Pennsylvania Safe Drinking Water Act (Safe Drinking Water Act) sets a Maximum Contaminate Level (MCL) of 0.3 milligrams per liter (mg/l) for iron and 0.05 mg/l for manganese.

Q. DOES THE COMPANY'S WATER EXCEED THE SAFE DRINKING WATER ACT'S MCL FOR IRON AND MANGANESE?

A. Yes.

OCA St. 3 at 2-3.

Mr. Fought provided an overview of the iron and manganese problems and the Company's response since 2004:

Q. PLEASE PROVIDE A BRIEF DISCUSSION REGARDING THE IRON AND MANGANESE PROBLEM AND THE COMPANY'S RESPONSE?

A. DEP "Water Supply Inspection" Report dated 3/16/05, indicated that the iron and manganese concentration of Well No. 1 was around 2.4 mg/l on July 1, 2004. In order to reduce the iron/manganese concentration in the water, the Company replaced the drop pipe at Well No. 1 and made adjustments to its chemical feed injection points and controls. The Company completed a one-year trial sequestration period and on July 24, 2008 was granted a permit from DEP for sequestration. The Company has never been successful in preventing iron and manganese problems by sequestration after the one-year trial sequestration period. The Company's other responses to solving the iron/manganese problem include flushing the mains in response to complaints, installing automatic operating blow-off valves, and removing iron/manganese deposits from the 250,000 gallon reservoir.

Q. UNDER WHAT CONDITIONS DOES DEP ALLOW SEQUESTRATION TO BE USED?

A. According to DEP's Public Water Supply Manual, Part II - Community System Design Standards (DEP Public Water Supply Manual) sequestration can be used when the total of the of iron and manganese concentrations does not exceed 1.0 mg/l.

OCA St. 3 at 3-4.

Finally, Mr. Fought explained why sequestration has not solved the Company's iron and manganese problems:

In my opinion, sequestration has not solved the Company's iron and manganese problems because the effectiveness of sequestration diminishes with time. In as little as four days, iron and manganese can settle out of the water. Many customers live in Hidden Valley part-time, primarily on weekends and holidays. The 250,000 gallon storage tank allows iron and manganese to settle out of the water during week days when there is low water demand. Also, during week days, the customer withdrawals from water mains that are not on a direct route to the Storage Tank will be reduced, allowing the effectiveness of the sequestration to diminish as water sits in the distribution system. This explains why many of the part-time residents have to run their water for 30 minutes or so to get clear water when they return after an absence. They have do this to remove the water affected by the iron and manganese that has oxidized in the nearby mains.

Q. DOES THE DEP PUBLIC WATER MANUAL INDICATE THAT SEQUESTRATION WILL BE EFFECTIVE IN ALL CASES IF THE TOTAL IRON AND MANGANESE CONCENTRATION IS LESS THAN 1.0 MG/L?

A. No.

Q. DOES THE DEP PUBLIC WATER MANUAL INDICATE THAT ONLY SEQUESTRATION SHOULD BE USED TO SOLVE IRON AND MANGANESE PROBLEMS WHEN THEIR CONCENTRATION IS LESS THAN 1.0 MG/L?

A. No. The Public Water Supply Manual states that various treatment methods should be considered as follows: "Iron and manganese control, as used herein, refers solely to treatment processes designed specifically for this purpose. The treatment process used will depend upon the character of the raw water. The selection of one or more treatment processes must meet specific local conditions as determined by engineering investigations, including chemical analysis of representative samples of water to be treated. It may be necessary to conduct a pilot plant study in order to gather all information to be used as the basis of design. Consideration should be given to adjusting pH of the raw water to optimize the chemical reaction."

OCA St. 3 at 4-5. In summary, the water quality issues in Hidden Valley are primarily due to a lack of adequate treatment for the iron and manganese, which occur at high levels in the well water used to serve customers. Sequestration, used by HVUS, has not been an effective treatment method for this system and problems with iron and manganese remain.

The testimony of numerous HVUS customers confirms that sequestration is not effectively treating the water, and demonstrates that the water that the Company provides is not suitable for household purposes.

As a result of Hidden Valley's failure to make the necessary improvements to its water service, customers' complaints regarding discolored and brown water and inconsistent water pressure that have been present in the Application proceeding and in the McCloskey case continue in this proceeding. Two public input hearings were held in this proceeding, at which 32 customers testified. Tr. 36-206.

The testimony covered a wide range of problems that the customers experience in their water service. As described below, it is evident that the water is not suitable for all household purposes. The testimony can be broken down as follows:

- Dirty or brown water. Tr., 65 (Umble); 70 (Guadino); 78 (Witalis); 82, 84 (Sinclair); 86, 87 (Sarra); 98, 99 (Jewison); 104, 105 (Jones); 108, 111 (Pfab); 112 (King); 116 (Starzl); 125 (Oster); 128, 135 (Castro); 185, 186, 189 (Hammer, Hammer Exhibits 1 and 2); 192 (Okunewick); 194, 195 (Midock); 200 (Watson).
- Multiple customers stated that they purchased home filtration systems or other filter types as a result of the dirty water, but that they needed to change filters or replace the systems frequently. Tr., 65 (Umble); 78 (Witalis); 87 (Sarra); 92, 94 (Carroll); 98 (Jewison) Ms. Jewison changes the filter in her home every two weeks; 104 (Jones); 111, 112 (King) Mr. King explained that he changes the filters monthly at a cost of \$11 per month or \$132 per year, "year in, year out"; 129, 133, 135 (Castro) Mr. Castro explained that even with the filtering system, it does not completely resolve the issue and that there is grit in the water; 192 (Okunewick); 195 (Midock); 199-200 (Watson); 201 (Ebaugh). Ms. Ebaugh

explained that the filters that she uses are a chalk white, like computer paper when she puts a new filter into her whole house filtrations system. She said that it turns brown after two days. Tr. 202.

- Multiple customers reported that they use only bottled water for drinking, cooking, and other household activities. Tr. 83, 84 (Sinclair); 86 (Sarra); 103 (Jones); 110 (Pfab); 115 (Starzl) Ms. Starzl explained that she cannot use the ice made by her refrigerator because of the horrible taste; 166 (Kollar); 181 (Cravotta); 195 (Middock).
- Other customers complained that they could not properly perform household tasks such as laundry or cooking, citing instances of dirty and ruined laundry. Tr. 84 (Sinclair); 99 (Jewison); 104-05 (Jones); 109 (Pfab); 115 (Starzl); 125 (Oster); 166 (Kollar).
- Customers stated that they experience stained toilets, bathtubs, and other appliances, which required replacement. Tr. 65 (Umble); 70-71 (Guadino); 82 (Sinclair); 99 (Jewison); 125 (Oster); 129 (Castro); 181 (Cravotta); 186 (Hammer); 195 (Midock).
- Specific appliances that suffer from reduced life and need replacing as a result of the poor water quality include:
 - water heaters, Tr. 65 (Umble); 71 (Guadino); 92 (Carroll); 114 (Starzl); 126 (Oster); 165 (Kollar); 194 (Midock);
 - filters, Tr. 104 (Jones); 111, 112 (King); 135 (Castro); 200 (Watson);
 - toilets, Tr. 71 (Guadino); 126 (Oster); 129 (Castro); 181 (Cravotta);
 - sinks, Tr. 71 (Guadino); 181 (Cravotta);
 - refrigerators, Tr. 126 (Oster);
 - humidifiers, Tr. 92, 93 (Carroll);
 - garbage disposals, Tr. 71 (Guadino); 126 (Oster);

- dishwashers, Tr. 71 (Guadino); 126 (Oster)
- washing machines, Tr. 71 (Guadino);
- Customers also related issues with inconsistent water pressure, even with pumps installed in some residences. Tr. 65 (Umble); 78, 79 (Witalis); 98 (Jewison) Ms. Jewison's home has had a pump installed since she and her husband bought it 14 years ago. The pump has been replaced twice and needs to be replaced again; 114-17 (Starzl). Ms. Starzl has had three water pumps during the time that she has lived in Hidden Valley and her most recent pump cost \$1,000.

Mr. Fought reviewed the testimony presented by the customers at the Public Input Hearings on July 27, 2018 regarding the water they receive and the damages it causes to their laundry, water heaters, washing machines, dishwashers, and plumbing fixtures. OCA St. 3 at 12. He stated:

It is my opinion that the customers' testimony provides a credible description of the problems caused by improperly treated iron and manganese in the Company's water. In addition to their testimony, many customers provided photographs and filters taken from their home water filtration systems. The discoloration is consistent with improperly treated iron and manganese.

OCA St. 3 (W) at 12. Mr. Fought also reviewed the complaints received by the Company and found that there were 45 complaints from January 1, 2015 to June 22, 2018 and of those, 37 were about dirty water. Id.; Exh. TLF-4. He also noted that he reviewed 25 informal complaints filed at the PUC in response to the notice of the rate proceeding. Of those, 23 specifically complained about brown or dirty water. OCA St. 3 (W) at 12. As pointed out by Mr. Fought, those complaints are consistent with the testimony at the Public Input hearings and are the same quality of service issues that were present in 2005 and recognized in the 2018 McCloskey Order and are still impacting customers today. OCA St. 3S (W) at 5.

The poor quality of service as summarized above, in addition to disrupting the most basic functions of cooking, laundry, drinking water, also clearly has a financial impact on HVUS customers beyond what they pay to HVUS for their water service. Moreover, the advice to run the water to allow it to go from brown to clear is a cost to customers on both the water and the wastewater bill. This further indicates that HVUS is failing to provide adequate, efficient, safe and reasonable service.

The testimony of the customers at the public input hearings establishes the significant failure of HVUS to supply water that can be used for all household purposes. The discolored water, staining of fixtures and laundry, the need to buy bottled water and install filtration systems, and still deal with the discolored water are not reasonable things to do when a water customer is paying rates to a public utility. The evidence shows that the water service being provided today does not meet the requirements of Section 1501 of the Public Utility Code. Hidden Valley continues to fail to meet the requirements of Section 1501 by failing to make the necessary changes, alterations, and improvements to its facilities for the accommodation and safety of its customers.

In rebuttal, Company witness Glenn Fodor stated that Hidden Valley “has no current DEP violations with regard to its water system. . . . Hidden Valley’s water is safe to drink. DEP has brought no enforcement actions against Hidden Valley.”¹³ HVUS St. 4-R, at 2. As discussed above, it is clear that the Commission can find inadequate service even if there are no DEP violations. Lake Latonka, 71 Pa. PUC at 522; Shickshinny Water, 64 Pa. PUC at 296-97; Fitz Henry Water, 51 Pa. PUC at 291. The Commission’s standard is water that is suitable for all household purposes. PG&W 1986.

¹³ The Company’s water exceeded the maximum contaminant level (MCL) for iron (0.3 milligrams per liter (mg/l)) and manganese (0.05 mg/l). OCA St. 3 (W) at 3.

In rebuttal, Company President Kettler also asserted that, as per the Commission's Order, the Company has until April 2019 to comply with the engineer's report received in April 2018 regarding discolored water. HVUS St. 1-R (W) at 18. The OCA does not disagree with his statement. However, the rate case is pending before the Commission now, and must be decided based on the evidence in this proceeding, not what may happen in the future. See PG&W 1988. Moreover, as discussed above, HVUS has filed a Petition for Amendment of the Commission's January 2018 McCloskey Order. In its Petition for Amendment, HVUS has asked that the April 30, 2019 deadline (for either an interconnection or treatment for the wells) be replaced with reporting requirements and has indicated that it has not chosen an option (interconnection or treatment for the wells) and that it may be 4-5 years before it implements a solution to the iron and manganese problems. See HVUS Petition at 4.

Mr. Kettler, who is not an engineer, also testified in rebuttal that Mr. Fought did not address the Company's looping of some dead ends since 2005, other improvements to the system since 2008, and the Company's flushing of mains in response to complaints and as required by the 2005 Application Settlement. See OCA St. 3S at 1. Mr. Fought addressed these criticisms, as follows:

Looping dead ends where possible is generally required to mitigate the negative effects of having older/uncirculated water at the dead ends. According to Mr. Kettler, HVUS has installed nine loops (the most recent one on September 15, 2018) in the last 14 years. HVUS St. 1-R at 17. The loops have not solved the poor water quality related to iron/manganese. Also, it should be noted that the Company started sequestering the iron and manganese just prior to 2005 and the mains were flushed to rid them of prior iron and manganese deposits in the hope that the iron/manganese problem would be solved by sequestration. I did not mention improvements made after 2008 because they did not solve the iron/manganese problem.

OCA St. 3S (W) at 2. The continued failure of HVUS to provide water that is suitable for all household purposes means that HVUS continues to violate Section 1501 of the Public Utility Code.

Also in rebuttal, Mr. Kettler stated that HVUS should have the opportunity to comply with the McCloskey Order before the Commission “imposes a sanction, such as denying a rate increase.” HVUS St. 1-R (W) at 18. First, as discussed above, the denial of a rate increase is not a “sanction” but rather a regulatory response that is grounded in the Public Utility Code and precedent based upon the utility’s obligation to provide safe, adequate and reliable service in exchange for the collection of Commission-made rates. Second, Mr. Fought testified that waiting for compliance with the McCloskey Order is not reasonable for a number of reasons, including the fact that the Company’s engineering report submitted in April 2018 did not recommend a solution for the iron and manganese problem (OCA St. 3S at 2), as was required by the McCloskey Order. Mr. Fought also noted that the Company knew or should have known by 2011 that sequestration had not solved the iron and manganese problem, yet the Company did nothing to look for alternative solutions. See OCA St. 3S at 2. Specifically, Mr. Fought stated:

After a pilot period of sequestration, the sequestration was permitted by DEP in July 2008 after the Company made changes to its sequestration chemical and some equipment changes. By 2011 the iron/manganese should have been flushed out of the pipes. Since the problem continued, sequestration was not working. Thus, by 2011, it is my opinion that Mr. Kettler knew or should have known that sequestration had not solved the iron/manganese problem and that a treatment plant or using another water source was required. The Company has had sufficient time to determine how to proceed, to try to secure financing, and finance the selected solution to eliminate the iron/manganese problem.

OCA St. 3S at 2.

2. Other Service Issues

a. Customer Meters

The McCloskey Order directs Hidden Valley to replace and/or test customer meters in order to comply with 52 Pa. Code § 65.8(b) by April 30, 2019. McCloskey January 2018 Order at 62. Section 65.8(b) sets forth the time frames for testing meters of different sizes, the allowable error levels, and the records that need to be maintained for each meter. OCA St. 3 (W) at 6-8; 52 Pa. Code § 65.8(b). According to the Engineer's report, the Company has 624 meters that need to be replaced or tested by April 30, 2019, which would equate to three meters per working day from April 30, 2018 to April 30, 2019. Id. at 6; Exhibit TLF-1.

In rebuttal, Mr. Kettler said that he expects the testing and replacing of customers' meters to be complete by April 30, 2019. HVUS St. 1-R at 19. However, as of September 24, 2018, the Company had tested and/or replaced only 65 meters. OCA St. 3S at 3. As Mr. Fought explained, the Company should have tested and/or replaced 200-300 meters by September 24 in order to be on schedule to complete the meter testing and/or replacing by April 30, 2019. The OCA submits that the evidence in this proceeding indicates that the Company will not be able to complete the testing and replacing of meters by April 30, 2019. This is another example of the Company's inability to perform the most basic tasks of a PUC-regulated water utility.

b. Unaccounted for Water

Mr. Fought explained the importance of calculating unaccounted for water (UFW):

Calculating the amount of UFW is a method of estimating the amount of non-revenue water in a water distribution system due to leaks and inaccurate meter readings. Reducing the non-revenue water saves money in chemical and power costs and provides for important water conservation in areas that have limited water supply sources. The accuracy of the UFW estimate depends on

reliable estimates of unavoidable non-metered water uses such as flushing the distribution system, firefighting, normal pipe leakage, repaired main breaks, etc. Keeping track of UFW gives a water utility an indication of the extent of unknown leaks in the distribution system so that informed decisions can be made on the necessity of finding and repairing leaks.

* * *

According to 52 Pa. Code § 65.20(4), 'Levels of unaccounted-for water should be kept within reasonable amounts. Levels above 20% have been considered by the Commission to be excessive.'

OCA St. 3 at 8-9. Mr. Fought explained that there are several ways to measure UFW including the PUC method which is shown in Section 500 of the PUC Annual Report form for public water utilities. Id. at 8. The PUC method calculates UFW by starting with the total water delivered for distribution and sales and subtracts total sales (measured by metered usage, if all customers are metered) and subtracts non-revenue usage and allowance (defined as main flushing, blow off use, unavoidable leakage, located and repaired breaks in mains and services and other). Id. Another method to measure UFW is Water Audit Methodology established by the International Water Association (IWA) and the American Water Works Association (AWWA). Id. He noted that the Water Audit Methodology is generally becoming a more accepted method of identifying the amounts of wasted water. Id. Mr. Fought stated that either method, "if properly utilized, provide water utilities with information needed to improve operational efficiency." Id. Mr. Fought also noted that the 2005 Settlement Agreement in the Application proceedings included a provision that required the Company to reduce its UFW levels to 20% within two years of the effective date. OCA St. 3 (W) at 9; McCloskey Case ALJ Exhibit 2 (2005 Settlement Agreement ¶ C.22).

Mr. Fought reviewed the UFW for 2015 (15.1%), 2016 (18.4%), and 2017 (31.4%) as reported by HVUS on its PUC Annual Reports. OCA St. 3 (W), Exh. TLF-2. He found that for those three years, of the total water delivered into the distribution system, only 33% on average

was water sold to customers, while 2% on average was used for flushing, 11% on average was used for blow offs, 33% on average was used for leaks, and 21% on average was UFW.

Mr. Fought stated that it is uncommon for water utilities to use 11% of the total water delivered to the distribution system for blow-offs but he recognized that HVUS has used blow-off valves to try to solve the iron and manganese problems. OCA St. 3 (W) at 9. However, that process has not solved the iron and manganese problems. As Mr. Fought indicated HVUS knew or should have known by 2011 that, about two years after beginning sequestration, that sequestration was not working and should have found a long term solution that was not dependent on consistently using 11% of the total water delivered into the distribution system for blow-offs. In rebuttal, Mr. Kettler relied on the UFW being less than 20% in two years, and claimed that 2017 was high because of a large leak. HVUS St. 1-R (W) at 19. However, Mr. Fought noted the UFW levels for 2015 and 2016 that are less than 20% is after the subtraction of the 11% for blow-offs and other estimates of non-revenue water, including leaks.¹⁴ See OCA St. 3S at 4. Moreover, the amount of volumes attributed to leaks in 2017 is approximately 6.5 million which is about 20% of the total water delivered into the system. In comparison, in 2015, volumes attributable to leaks were 20.9 million gallons, or 45% of the total volumes delivered and in 2016, volumes attributable to leaks were 11.2 million, or 30% of the total volumes delivered. See Exh. TLF-2.

c. Isolation Valves

Mr. Fought recommended that Hidden Valley exercise its 154 isolation valves (1/2 each year)¹⁵, and keep records of the location, the date of the attempt to exercise each valve and whether it was able to be exercised and repair or replace each valve that was not able to be

¹⁴ The percentage of water volumes estimated for leaks (33% over the last three years) is a concern and appears to be indicative of problems with the state of the distribution system.

¹⁵ Mr. Fought explained that valves should be exercised annually or at least once every two years. OCA St. 3 at 11.

exercised. OCA St. 3 (W) at 11. In his testimony, Mr. Fought explained what isolation valves are and why exercising valves is an important part of a water utility's ongoing operation and maintenance: OCA St. 3 (W) at 10-11. Exercising isolation valves on a regular basis (every 1-2 years), and keeping accurate records of which valves have been exercised should be part of the ongoing operations of HVUS. Mr. Fought recommended that the Company should provide a report of its records of exercising valves and repair and replacement schedule to the OCA and to the Commission's Bureau of Technical Utility Services. Id. at 11.

In rebuttal, Mr. Kettler claimed that the Company would exercise isolation valves if the costs were included in rates because that is a task that is above and beyond those specified in the McCloskey Order. HVUS St. 1-R at 20. However, as Mr. Fought noted, the Company is responsible for properly maintaining all its facilities, and the costs of exercising isolation valves should be included in its existing expenses and rates. OCA St. 3S (W) at 4. Moreover, given the Company's response to OCA III-36 (Exh. TLF-3), it has been exercising its isolation valves and would need to provide the missing information recommended by Mr. Fought which would include the location of the valves exercised, and the date.

d. Summary

The record in this case clearly establishes that the water provided by HVUS is not suitable for all household purposes. HVUS has failed to properly treat its water, resulting in water that is not usable for basic purposes such as drinking, cooking, bathing, or washing clothes, and which damages appliances and fixtures. Therefore, HVUS is failing to provide "adequate, efficient, safe, and reasonable service" as required by Section 1501. The OCA submits that the appropriate remedy is to deny the rate increase request in its entirety.

The OCA's recommendation is consistent with prior cases where the Commission has allowed a utility less than the indicated rate of return where service does not meet the requirements of Section 1501.¹⁶ See, e.g., PG&W 1986, 61 Pa. PUC 409 at 415-16, 425, 427, 74 PUR4th 238 at 244-45, 254, 256; PG&W 1988 at 195-96; Pa. P.U.C. v. National Util., Inc., 1997 Pa. PUC LEXIS 100, aff'd, NUI 1988. Further, the Commonwealth Court has affirmed the Commission's authority to deny rate increases because of inadequate service, even where the utility argued that without the increase, it would not have enough revenue to continue operating:

While we recognize that to starve NUI of a rate increase may hinder its abilities to upgrade its systems, we also recognize that a public utility is not entitled to a rate increase when its service is so inadequate. As the D.C. Court of Appeals observed, a utility's fulfillment of its service commitment is a sine qua non to constitutional protection under confiscation principles. To hold otherwise would mean that regardless of the level of service provided by a utility, or if the utility provided no service, the PUC would be required to give the utility a reasonable rate of return solely because it exists. In this case, there was ample evidence of an inadequate level of service that did not justify any increase in rates.

NUI 1988 at 979.

It is important to note that Hidden Valley has taken the position that it is entitled to rate relief despite the long-term inadequate service that it provides to its customers. That position is without support. As discussed above, the Commission has the authority to deny the rate increase in its entirety and should do so in this proceeding. HVUS also argues that to deny the rate increase would be a sanction, which it is not, as discussed above. Finally, HVUS argues that it should not be denied rate relief until it is determined if it meets the deadlines in the McCloskey case. That position is not tenable given that it determined to file the rate case three months after the McCloskey order was entered. HVUS essentially asks the Commission to ignore that there was the finding of inadequate service in January 2018, that it filed a rate case in April 2018 when

¹⁶Conversely, if the Commission finds that a utility is providing especially efficient and reasonable service, it has allowed more than the indicated rate of return. Pa. P.U.C. v. Aqua Pennsylvania, Inc., 236 PUR4th 218, 247-48 (Pa. PUC 2004); 52 Pa. Code § 69.711(b)(1).

it had not yet met the requirements in the McCloskey order, and that its customers continue to receive and pay for water that is not suitable for all household purposes. The OCA submits that Hidden Valley's position should be rejected and the rate increase denied in its entirety.

3. Wastewater

Mr. Fought¹⁷ provided a description of the Company's wastewater system and facilities:

The Company provides service to the Hidden Valley Development in Jefferson Township, Somerset County, Pennsylvania. Construction of the Company's sewage collection system was started in the early 1970s and was extended as Hidden Valley has developed over the years. In the late 1980s replacements and repairs were made to the collection system to eliminate excess infiltration/inflow (I/I). The collection system includes approximately 1.8 miles of sewer pipe, 460 manholes, and 1,170 service connections. The conveyance system includes six pumping stations and approximately 1.75 miles of force main.

The Company has two wastewater treatment plants.

Treatment Plant No. 1 is an extended aeration activated sludge plant with a rated capacity of 100,000 gallons per day (gpd) serving approximately 864 Equivalent Dwelling Units (EDUs).

Treatment Plant No. 2 is an aerated facultative treatment lagoon¹⁸ plant with a 30,000 gpd capacity serving approximately 305 EDUs.

The effluent from both Treatment Plants discharges to a 3 million gallon (mg) storage lagoon and is then pumped to a spray irrigation field or diluted and used for snow making.

OCA St. 3 (WW) at 1-2.

The Company has six submersible grinder pumping stations, which are equipped with two submersible pumps that are turned on and off by three float switches. OCA St. 3 (WW) at 2. When sewage reaches a certain height, a float switch will activate a primary pump. If the sewage continues to rise, the next float switch will activate the backup pump. A fourth switch activates an alarm when the sewage exceeds the capacity of both pumps. OCA St. 3 (WW) at 2, 3.

¹⁷ Mr. Fought was the OCA's expert in Hidden Valley's Application and Complaint cases.

¹⁸ a type of stabilization pond used for biological treatment of industrial and domestic wastewater

Q. Have you noticed any problems with the Company's pumping stations?

A. During my inspection on May 1, 2014, I requested to inspect a typical pump station. That station did not have a backup pump installed. The operator advised me that he removed a pump from a similar pump station so that he could quickly install that pump if needed due to a pump failure in any of the pump stations. That means that at least two pumping stations did not have a backup pump installed. We then checked the alarm float switch and it did not work.

During my inspection on June 25, 2015, I was advised by the operator that two of the pumping stations did not have backup pumps installed; but they were stored at Treatment Plant No. 1. We inspected three of the pump stations and tested the alarm at one of those stations. It did not work.

All of the pumping stations should have primary and backup pumps installed and in operating condition, together with an alarm that properly activates.

OCA St. 3 (WW) at 3, 4.

The Company continues to improperly operate and equip its wastewater treatment and pumping facilities. Proper operation of these facilities is important in order to prevent contamination of streams and groundwater. OCA St. 3 (WW) at 2. As a result of the Company's improper maintenance of its pumping stations, it is possible for sewage to back up into customer homes and buildings. OCA St. 3 (WW) at 4. Sewage can also overflow and contaminate the ground and groundwater, which is more likely when backup pumps are not installed. OCA St. 3 (WW) at 4.

The Engineer's Report, required by the McCloskey January 2018 Order, identified deficiencies, made recommendations, estimated costs, and prioritized recommended repairs and replacements to the Company's wastewater pumping and treatment facilities. OCA St. 3 (WW) at 5-6; Exh. TLF-1. The Engineer's Report identified seventy-five projects that need to be completed by HVUS. OCA St. 3S (WW) at 3; Exh. TLF-1. As of July 27, 2018, there were eight projects that were completed, three that were started and sixty-four that are not started.

OCA St. 3S (WW) at 3. Mr. Fought found that the total number of deficiencies identified in the Engineer's Report indicates that the wastewater treatment plant and pumping stations have not been properly maintained for many years.

In rebuttal, Hidden Valley Vice President of Operations Glenn Fodor said that all pumping stations have two working pumps installed and that all alarms are operational. HVUS St. 4-R (WW), at 2. He further explained that samples taken from the wastewater system have all been within NPDES permit limitations and that the company is currently not in violation of the DEP. HVUS St. 4-R, at 3.

OCA witness Fought responded that based on the April 2018 engineer report, some pumping stations still lacked backup pumps. OCA. St. 3S (WW) at 1, 2. In addition, Mr. Kettler testified that to his knowledge, there had been no incidents where sewage caused contamination. Fought agreed, but stated that "that does not mean that the Company acted appropriately. It had not equipped all stations with backup pumps and operating alarms. All of the pumping stations should have primary backup pumps installed and in operating condition, together with an alarm that properly activates." OCA St. 3S (WW) at 2.

D. The Commission's Finding of Inadequate Service In the McCloskey Case

1. Introduction

On January 18, 2018, the Commission entered an Order in which it determined that HVUS violated Section 1501 by failing to provide adequate and reasonable service to its water and wastewater customers. January 2018 Order at 23. In applying a one-year deadline for the company to take corrective measures, the Commission noted that “[i]t 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.” January 2018 Order at 31.

2. In McCloskey, the Commission Found That HVUS’s Water is Not Suitable for Household Purposes.

As was explained above, the water quality issues in Hidden Valley are primarily due to a lack of adequate treatment for the iron and manganese, which occur at high levels in the well water used to serve customers. McCloskey Case OCA St. 2 at 2.

During the public input hearings in the complaint proceedings, held on June 25, 2015, the testimony of numerous HVUS customers confirmed that sequestration was not effectively treating the water, and demonstrated that the water that the Company provided was not suitable for household purposes. The thirty-two individuals that testified at the June 25, 2015 Public Input Hearings raised concerns related to or about:

- intermittent brown or rust colored water McCloskey Case see e.g., Tr.44, 54, 58, 63, 73, 82, 96, 101, 136, 160, 174, 234.
- do not drink the water due to the water quality issues. McCloskey Case Tr. at 58, 70, 76, 78, 108, 127, 194, 224;
- purchase bottled water for consumption. McCloskey Case Tr. 45, 58, 71, 102, 149, 194, 212;

- cannot cook with the water, or will only cook with the water if it is boiled first. McCloskey Case Tr. 58, 91, 108, 127, 194, 224, 234;
 - concerns about bathing in the water McCloskey Case Tr. 58, 72, 152
 - unable to wash dishes McCloskey Case Tr. 100, 108;
 - stained or ruined clothes or sheets when they have done laundry at Hidden Valley Resort. McCloskey Case Tr. 54, 63, 98, 129, 183, 186, 198, 224.
 - Hidden Valley Resort’s hotel, was unable to do laundry on-site, but instead trucked laundry to Seven Springs Resort to be washed. As David Runco, hotel general manager for Seven Springs, testified, “[n]o linens, sheets, bedspreads, towels, shower curtains or table cloths are laundered on site. The water causes a discoloration to the linen.” McCloskey Case Tr. 211-212.
 - Staining and damage to appliances and fixtures, including water heaters, requiring those items to be replaced more frequently than would normally be expected. McCloskey Case Tr. 45, 46, 50, 54, 58, 59, 69, 70, 79, 115, 129, 130, 149, 161, 179, 183, 185, 190, 199, 207-08, 212, 213, 215, 230, 234, 290, 291.
 - low water pressure McCloskey Case Tr. 45, 50, 58, 72, 91, 99, 160, 212;
 - outages associated with main breaks. McCloskey Case Tr. 54-55, 83, 99, 120.
3. HVUS’s Water Quality Issues Are Longstanding.

The water quality problems in Hidden Valley are longstanding. A public input hearing was held on October 7, 2004 in the HVUS service territory during the 2004 Application proceeding. The 2004 Public Input Hearing testimony addressed many of the same quality of service issues raised in the current proceeding and in the McCloskey case, including customers’ inability to drink, cook, shower, and launder clothes, as well as the effect on appliances and fixtures. See McCloskey Case ALJ Exh. 3 (2004 Public Input Hearing Transcript) - 2004 PIH Tr. 95, 100, 104, 122 (staining); 2004 PIH Tr. 110 (replaced toilets and faucets); 2004 PIH Tr. 97, 120 (replaced water heater); 2004 PIH Tr. 92, 117, 135 (ruined or stained laundry); 2004 PIH Tr. 96 (purchase bottled water); 2004 PIH Tr. 95-96, 100, 117 (will not do laundry or limited laundry); 2004 PIH Tr. 96, 118 (will not drink tap water); 2004 PIH Tr. 117 (will not bathe with

water); 2004 PIH Tr. 90, 118, 122 (low water pressure or outages); 2004 PIH Tr. 100, 104, 113, 121, 135 (installed filtration system); 2004 PIH Tr. 102, 104, 109, 113 (must change filters frequently). The testimony also showed that, even in 2004, the customers had *already* endured water quality problems for many years.¹⁹ As discussed above, the Company acknowledged the water quality problems and even encouraged homeowners to install filtration systems to help address the problem. OCA St. 1S at 13; 2004 PIH Tr. at 72-74.

Many of the same issues raised in the McCloskey case and in the current proceedings were intended to be resolved by the 2005 Settlement of the Application proceedings. More than 10 years had passed at the time of the litigation of the McCloskey case and nearly 13 years at the time of the Order, yet the iron and manganese problems continued and continue today. As Mr. Fought concluded, “It is apparent the sequestration that has been used by the Company since 2006 has not permanently solved the problems caused by iron and manganese.” McCloskey Case OCA St. 2 at 9. Sequestration can be an effective treatment method in theory, but it does not work well for this particular system due to the intermittent use of water. McCloskey Case OCA St. 2S at 4. The fact remains that the system has always served a resort community with intermittent usage, and sequestration has not solved the water quality problems. The way the system is utilized will not change, given the nature of the resort community; rather, a more appropriate treatment method or interconnection needs to be employed that will work for this system and level of usage. Paragraph C.20 of the 2005 Settlement required that HVUS find a solution that would “permanently solve the problems caused by the levels of iron and manganese in its water,” but the problems persisted 10 years later during the complaint proceeding and at this time during the rate proceeding.

¹⁹ The water and wastewater system were operated without Certificates of Public Convenience until a customer filed a complaint in 2002. See Boyer and Pa. Office of Trial Staff v. Hidden Valley Resort, L.P., Docket Nos. C-20028823 and C-20039320, Order (Nov. 14, 2003).

4. Wastewater

Regarding wastewater service in the McCloskey case, the Commission adopted the ALJ's finding that HVUS failed to properly maintain its wastewater treatment plant. January 2018 Order at 50. The ALJ specifically said that “[a]s of the date of the hearing, the project to install or maintain backup pumps at the pumping stations and working alarms had not been entirely completed. This work is necessary in order to prevent sewage overflow from the system.” Initial Decision at 21. Consequently, the Company failed to provide safe, adequate, and reasonable wastewater service, in violation of Section 1501.²⁰ The Commission directed the Company to file an Engineer's Report by April 30, 2018, which the Company did. The Report, as discussed above, contained 75 recommendations that are to be completed by April 30, 2019.

²⁰In its January 2018 Order, the Commission indicated that it would initiate a proceeding under 66 Pa. C.S. § 529 upon notice of the Company's failure to meet any of the deadlines within its order.

VI. INDEPENDENT AUDIT

Hidden Valley Foundation recommended an independent audit be conducted of Hidden Valley Utility Services. The OCA does not oppose this recommendation.

VII. NON-UNANIMOUS SETTLEMENT PETITION

A. Revenue Requirement

On November 19, HVUS filed a Joint Petition for Approval of Non-Unanimous Settlement (Non-Unanimous Settlement) that was executed by HVUS and I&E. The Non-Unanimous Settlement provides for an increase in water revenues of \$65,557 over present rates (¶ A(1)(a)) and an increase in wastewater revenues of \$82,227 in Phase I (¶ A(1)(b)) and a total of \$145,824 in additional annual wastewater revenues in Phase II when a condition has been met. ¶ A(2). That condition will be met when HVUS submits a report and verification from its engineer that it has made all repairs, modifications and improvements to the wastewater system as required by the McCloskey Order on Reconsideration. The Non-Unanimous Settlement also provides that if it is approved, the rates proposed by HVUS will be scaled back proportionally. ¶B; Appendix A. Also, HVUS agrees to correct its annual reports for the years 2015-2018 and have them reviewed by a rate consultant. ¶ C (1). The OCA, Hidden Valley Foundation, and Mr. Kollar are not signatories to the Non-Unanimous Settlement.

All of the active parties executed a Joint Stipulation on November 16, 2018.²¹ The Joint Stipulation indicates the issues preserved for litigation (¶¶ 3,5). It also indicates that the revenue requirement agreed to by HVUS and I&E in the Non-Unanimous Settlement are the maximum that should be granted if the Commission does not deny HVUS's requests in their entirety. Joint Stipulation, ¶ 4. The Joint Stipulation does not preclude revenue requirements between the OCA's recommendation of no increase and the levels agreed to by HVUS and I&E. Finally, the Joint Stipulation provides that the OCA and the Foundation will address their reasons for not joining the Non-Unanimous Settlement in briefs. Joint Stipulation, ¶ 2.

²¹ Mr. Kollar, an active party, did not oppose the Stipulation.

As set forth above, the OCA's position is that HVUS is not providing safe, adequate, and reliable water and wastewater service in accordance with the requirement of Section 1501 of the Public Utility Code. *See V, supra*. As set forth in Section III, *supra*, the Public Utility Code and case law provides that a denial of a rate increase is an appropriate remedy for the failure of a utility to provide adequate service. The OCA's position is that HVUS has provided inadequate service since at least 2004 and it continues to provide inadequate service today. The current case does not contain any expenses or capital projects related to improving the service it provides to its customers, so the revenue requirement agreed to by HVUS and I&E will not be used to make any improvements that will solve the iron and manganese problems, or to address the long list of issues in the engineer's report for wastewater. Moreover, in its Petition for Amendment of the McCloskey Order, HVUS states that it will not be able to meet the April 30, 2019 deadline to address the inadequate water service. HVUS Petition at ¶ 22. HVUS's Petition asks that the one year deadline (April 30, 2019) be replaced with a series of milestone deadlines related to the option HVUS chooses or in the alternative, change the one-year deadline to a four-year deadline. Petition at 8-9.

Regarding the agreed upon revenue requirement, the OCA would note that its accounting witness provided revenue requirement schedules that were higher than the agreed upon water revenue but is less than the Phase II wastewater revenue requirement. Under the OCA's revenue requirement calculations, including the OCA's cost of equity recommendations (both without considering quality of service), the resulting rate of return was 7.26% (water) and 7.35% (wastewater). The agreed upon wastewater requirement appears to have a resulting rate of return that is greater than what was used by OCA in calculating its wastewater revenue requirement of \$117,686. Regarding the water revenue requirement, the OCA submits that the \$65,557 also

appears to have a return on equity that is more than 0%. The OCA would note that the resulting rate of return is not provided with the non-unanimous settlement, but the revenue increases permitted by the non-unanimous settlement are higher than the revenue increases indicated by I&E's primary litigation position (0% return on equity). I&E's calculated revenue increases using a 0% return on equity were \$57,753 for water and \$69,175 for wastewater. I&E St. No. 1 (W) at 3; I&E St. No. 1 (WW) at 3. Because the non-unanimous settlement allows for increases greater than these it appear that the revenue requirements provide a positive return on equity for HVUS.

B. Rate Structure

The OCA takes no position on the scaleback proposal because OCA's position is that no increase should be granted.

C. Annual Reports

The OCA supports the proposal that requires HVUS to correct any existing annual reports on file with the Commission and requires HVUS to have a consultant review the reports. The OCA notes that its support of this provision should not be interpreted to mean that it supports any revenue requirement increase in these proceedings.

VIII. CONCLUSION

For all of the following reasons discussed above, the Office of Consumer Advocate submits that Hidden Valley Utility Services' proposal to increase rates for water and wastewater customers should be denied.

Respectfully Submitted,



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Dated: December 11, 2018
263145

1. Hidden Valley serves approximately 1,156 water customers and 1,154 wastewater customers in a portion of Jefferson Township, Somerset County, Pennsylvania. HVUS St. 1 (W) at 2
2. On April 27, 2018, HVUS filed Supplement No. 1 to Tariff Water – Pa. P.U.C. No. 1 and Supplement No. 1 to Tariff Wastewater – Pa. P.U.C. No. 1, respectively, to become effective July 1, 2018. HVUS St. 1 (WW) at 2.
3. The proposed water tariff contained changes in rates calculated to recover an estimated annual increase in base rate revenues of \$150,629. This represents an approximate 107.2% increase in the Company’s annual water revenues. HVUS Exh. PRH-2 at 5-7 (W)
4. Under the Company’s proposal, the proposed water base rates for an average water customer using 9,000 gallons per quarter would increase from \$74.73 to \$145.80, or by 95.1%. HVUS Exh. PRH-2 at 14, 15 (W).
5. The proposed wastewater tariff contained changes in rates calculated to recover an estimated annual increase in base rate revenues of \$185,432. This represents an approximate 63.1% increase in the Company’s annual wastewater revenues. HVUS Exh. PRH-2 at 5-7 (WW).
6. Under the Company’s proposal, the proposed wastewater base rates for an average wastewater customer using 9,000 gallons of water per quarter would increase from \$167.40 to \$270.30, or by 61.5%. HVUS Exh. PRH-2 at 14, 15 (WW).
7. The Company’s customers have been subject to iron and manganese problems since 2004 or earlier. OCA St. 3(W) at 2.

8. Iron and manganese are minerals that are naturally occurring in many ground water aquifers such as the wells used by HVUS. OCA St. 3 (W) at 2.
9. When the iron and manganese are dissolved, the water is clear. But when the water is exposed to air, iron and manganese are oxidized and change from the colorless, dissolved forms to colored, solid forms. OCA St. 3 (W) at 2.
10. Iron precipitates as red-brown particles: the larger particles settle out of the water, but smaller particles may remain suspended and give the water a red tint. OCA St. 3 (W) at 2.
11. Manganese forms a black precipitate or causes a black tint to the water. OCA St. 3 (W) at 2.
12. Iron will cause reddish-brown staining of laundry, porcelain, dishes, utensils and even glassware. OCA St. 3 (W) at 2.
13. Manganese acts in a similar way but causes a brownish-black stain. Soaps and detergents do not remove these stains, and the use of chlorine bleach and alkaline builders (such as sodium and carbonate) may intensify the stains. OCA St. 3 (W) at 2.
14. Iron and manganese can affect the flavor and color of food and water. They may react with tannins in coffee, tea, and some alcoholic beverages to produce a black sludge, which negatively affects both taste and appearance. OCA St. 3 (W) at 2.
15. Iron precipitates can cause problems if they build up in mains and service lines, pressure tanks, water heaters or water softeners. These deposits will shorten the useful lives of washing machines, dishwashers, hot water heaters, etc. OCA St. 3 (W) at 2-3.

16. More energy is required to heat water in hot water heaters that have their heating rods coated with the mineral deposits. In some cases, iron and/or manganese bacteria can exist in the water and form slime in toilet tanks, etc. OCA St. 3 (W) at 3.
17. The Pennsylvania Safe Drinking Water Act (Safe Drinking Water Act) sets a Maximum Contaminate Level (MCL) of 0.3 milligrams per liter (mg/l) for iron and 0.05 mg/l for manganese. OCA St. 3(W) at 3.
18. A DEP “Water Supply Inspection” Report dated 3/16/05, indicated that the iron and manganese concentration of Well No. 1 was around 2.4 mg/l on July 1, 2004. OCA St. 3 (W) at 3.
19. In order to reduce the iron/manganese concentration in the water, the Company replaced the drop pipe at Well No. 1 and made adjustments to its chemical feed injection points and controls. OCA St. 3 (W) at 3-4.
20. The Company completed a one-year trial sequestration period and on July 24, 2008 was granted a permit from DEP for sequestration. OCA St. 3 (W) at 4.
21. The Company has never been successful in preventing iron and manganese problems by sequestration after the one-year trial sequestration period. OCA St. 3 (W) at 4.
22. The Company’s other responses to solving the iron/manganese problem include flushing the mains in response to complaints, installing automatic operating blow-off valves, and removing iron/manganese deposits from the 250,000 gallon reservoir. OCA St. 3 (W) at 4.

23. DEP's Public Water Supply Manual, Part II - Community System Design Standards (DEP Public Water Supply Manual) sequestration can be used when the total of the of iron and manganese concentrations does not exceed 1.0 mg/l. OCA St. 3 (W) at 4.
24. Sequestration has not solved the Company's iron and manganese problems because the effectiveness of sequestration diminishes with time. In as little as four days, iron and manganese can settle out of the water. OCA St. 3 (W) at 4.
25. Many customers live in Hidden Valley part-time, primarily on weekends and holidays. OCA St. 3 (W) at 4.
26. The 250,000 gallon storage tank allows iron and manganese to settle out of the water during week days when there is low water demand. OCA St. 3 (W) at 4.
27. During week days, the customer withdrawals from water mains that are not on a direct route to the Storage Tank will be reduced, allowing the effectiveness of the sequestration to diminish as water sits in the distribution system. OCA St. 3 (W) at 4.
28. This explains why many of the part-time residents have to run their water for 30 minutes or so to get clear water when they return after an absence. They have do this to remove the water affected by the iron and manganese that has oxidized in the nearby mains. OCA St. 3 (W) at 4.
29. The DEP Public Water Manual provides that the treatment process used will depend upon the character of the raw water. OCA St. 3 (W) at 5.

30. The selection of one or more treatment processes must meet specific local conditions as determined by engineering investigations, including chemical analysis of representative samples of water to be treated. OCA St. 3 (W) at 5.
31. It may be necessary to conduct a pilot plant study in order to gather all information to be used as the basis of design. Consideration should be given to adjusting pH of the raw water to optimize the chemical reaction. OCA St. 3 (W) at 5.
32. Two public input hearings were held in this proceeding, at which 32 customers testified. Tr. 36-206.
33. Many customers testified that they experienced dirty or brown water on a regular basis. Tr., 65 (Umble); 70 (Guadino); 78 (Witalis); 82, 84 (Sinclair); 86, 87 (Sarraz); 98, 99 (Jewison); 104, 105 (Jones); 108, 111 (Pfab); 112 (King); 116 (Starzl); 125 (Oster); 128, 135 (Castro); 185, 186, 189 (Hammer, Hammer Exhibits 1 and 2); 192 (Okunewick); 194, 195 (Midock); 200 (Watson).
34. Multiple customers stated that they purchased home filtration systems or other filter types as a result of the dirty water, but that they needed to change filters or replace the systems frequently. Tr., 65 (Umble); 78 (Witalis); 87 (Sarraz); 92, 94 (Carroll); 98 (Jewison) Ms. Jewison changes the filter in her home every two weeks; 104 (Jones); 111, 112 (King) Mr. King explained that he changes the filters monthly at a cost of \$11 per month or \$132 per year, “year in, year out”; 129, 133, 135 (Castro) Mr. Castro explained that even with the filtering system, it does not completely resolve the issue and that there is grit in the water; 192 (Okunewick); 195 (Midock); 199-200 (Watson); 201 (Ebaugh).

35. Ms. Ebaugh explained that the filters that she uses are a chalk white, like computer paper when she puts a new filter into her whole house filtrations system. She said that it turns brown after two days. Tr. 202.
36. Multiple customers reported that they use only bottled water for drinking, cooking, and other household activities. Tr. 83, 84 (Sinclair); 86 (Sarra); 103 (Jones); 110 (Pfab); 115 (Starzl) Ms. Starzl explained that she cannot use the ice made by her refrigerator because of the horrible taste; 166 (Kollar); 181 (Cravotta); 195 (Middock).
37. Customers stated that they could not properly perform household tasks such as laundry or cooking, citing instances of dirty and ruined laundry. Tr. 84 (Sinclair); 99 (Jewison); 104-05 (Jones); 109 (Pfab); 115 (Starzl); 125 (Oster); 166 (Kollar).
38. Customers stated that they experience stained toilets, bathtubs, and other appliances, which required replacement. Tr. 65 (Umble); 70-71 (Guadino); 82 (Sinclair); 99 (Jewison); 125 (Oster); 129 (Castro); 181 (Cravotta); 186 (Hammer); 195 (Midock).
39. Customer testified that specific appliances that suffer from reduced life and need replacing as a result of the poor water quality include:
 - a. water heaters, Tr. 65 (Umble); 71 (Guadino); 92 (Carroll); 114 (Starzl); 126 (Oster); 165 (Kollar); 194 (Midock);
 - b. filters, Tr. 104 (Jones); 111, 112 (King); 135 (Castro); 200 (Watson);
 - c. toilets, Tr. 71 (Guadino); 126 (Oster); 129 (Castro); 181 (Cravotta);
 - d. sinks, Tr. 71 (Guadino); 181 (Cravotta);
 - e. refrigerators, Tr. 126 (Oster);
 - f. humidifiers, Tr. 92, 93 (Carroll);
 - g. garbage disposals, Tr. 71 (Guadino); 126 (Oster);

- h. dishwashers, Tr. 71 (Guadino); 126 (Oster)
 - i. washing machines, Tr. 71 (Guadino);
40. Customers also experienced issues with inconsistent water pressure, even with pumps installed in some residences. Tr. 65 (Umble); 78, 79 (Witalis); 98 (Jewison)
41. Ms. Jewison's home has had a pump installed since she and her husband bought it 14 years ago. The pump has been replaced twice and needs to be replaced again; 114-17 (Starzl).
42. Ms. Starzl has had three water pumps during the time that she has lived in Hidden Valley and her most recent pump cost \$1,000.
43. The Company received 45 complaints from January 1, 2015 to June 22, 2018 and of those, 37 were about dirty water. Exh. TLF-4.
44. Twenty-five informal complaints filed at the PUC in response to the notice of the rate proceeding were reviewed by Mr. Fought. Of those, 23 specifically complained about brown or dirty water. OCA St. 3 (W) at 12.
45. Mr. Fought found that the complaints are consistent with the testimony at the Public Input hearings and are the same quality of service issues that were present in 2005 and recognized in the 2018 McCloskey Order and are still impacting customers today. OCA St. 3S (W) at 5.
46. Customers are advised to run the water to allow it to go from brown to clear and that is a cost to customers on both the water and the wastewater bill. Tr. 66, 98, 105, 116, 121.
47. The discolored water, staining of fixtures and laundry, the need to buy bottled water and install filtration systems, and still deal with the discolored water are not reasonable things to do when a water customer is paying rates to a public utility.

48. The water is not suitable for drinking, cooking, and laundry and other household purposes.
49. Hidden Valley continues to fail to make the necessary changes, alterations, and improvements to its facilities for the accommodation and safety of its customers.
50. HVUS filed a Petition for Amendment of the April 30, 2019 deadline (for either an interconnection or treatment for the wells) asking that it be replaced with reporting requirements and has indicated that it has not chosen an option (interconnection or treatment for the wells).
51. HVUS has said that it may be 4 years before it implements a solution to the iron and manganese problems. HVUS Petition at 4.
52. Looping dead ends where possible is generally required to mitigate the negative effects of having older/uncirculated water at the dead ends. OCA St. 3S (W) at 2.
53. HVUS has installed nine loops (the most recent one on September 15, 2018) in the last 14 years. HVUS St. 1-R at 17.
54. The loops have not solved the poor water quality related to iron/manganese. OCA St. 3S (W) at 2
55. The Company started sequestering the iron and manganese just prior to 2005 and the mains were flushed to rid them of prior iron and manganese deposits in the hope that the iron/manganese problem would be solved by sequestration. OCA St. 3S (W) at 2.
56. The Company knew or should have known by 2011 that sequestration had not solved the iron and manganese problem, yet the Company did nothing to look for alternative solutions. OCA St. 3S at 2.

57. After a pilot period of sequestration, the sequestration was permitted by DEP in July 2008 after the Company made changes to its sequestration chemical and some equipment changes. OCA St. 3S at 2.
58. By 2011 the iron/manganese should have been flushed out of the pipes. Since the problem continued, sequestration was not working. OCA St. 3S at 2.
59. By 2011, HVUS knew or should have known that sequestration had not solved the iron/manganese problem and that a treatment plant or using another water source was required. OCA St. 3S at 2.
60. The Company has had sufficient time to determine how to proceed, to try to secure financing, and finance the selected solution to eliminate the iron/manganese problem. OCA St. 3S at 2.
61. The McCloskey Order directs Hidden Valley to replace and/or test customer meters in order to comply with 52 Pa. Code § 65.8(b) by April 30, 2019. McCloskey January 2018 Order at 62.
62. The Company has 624 meters that need to be replaced or tested by April 30, 2019, which would equate to three meters per working day from April 30, 2018 to April 30, 2019. Exhibit TLF-1.
63. As of September 24, 2018, the Company had tested and/or replaced only 65 meters. OCA St. 3S at 3.
64. Calculating the amount of UFW is a method of estimating the amount of non-revenue water in a water distribution system due to leaks and inaccurate meter readings. OCA St. 3 at 8-9.

65. Reducing the non-revenue water saves money in chemical and power costs and provides for important water conservation in areas that have limited water supply sources. OCA St. 3 at 8-9.
66. The accuracy of the UFW estimate depends on reliable estimates of unavoidable non-metered water uses such as flushing the distribution system, firefighting, normal pipe leakage, repaired main breaks, etc. OCA St. 3 at 8-9.
67. Keeping track of UFW gives a water utility an indication of the extent of unknown leaks in the distribution system so that informed decisions can be made on the necessity of finding and repairing leaks. OCA St. 3 at 8-9.
68. 52 Pa. Code § 65.20(4) provides: Levels of unaccounted-for water should be kept within reasonable amounts. Levels above 20% have been considered by the Commission to be excessive. OCA St. 3 at 8-9.
69. The UFW for 2015 (15.1%), 2016 (18.4%), and 2017 (31.4%) as reported by HVUS on its PUC Annual Reports. OCA St. 3 (W), Exh. TLF-2.
70. For those three years, of the total water delivered into the distribution system, only 33% on average was water sold to customers, while 2% on average was used for flushing, 11% on average was used for blow offs, 33% on average was used for leaks, and 21% on average was UFW. OCA St. 3 (W) at 9.
71. It is uncommon for water utilities to use 11% of the total water delivered to the distribution system for blow-offs but he recognized that HVUS has used blow-off valves to try to solve the iron and manganese problems. OCA St. 3 (W) at 9. However, that process has not solved the iron and manganese problems.

72. The UFW levels for 2015 and 2016 are less than 20% only after the subtraction of the 11% for blow-offs and other estimates of non-revenue water, including leaks. OCA St. 3S at 4.
73. The amount of volumes attributed to leaks in 2017 is approximately 6.5 million which is about 20% of the total water delivered into the system. In comparison, in 2015, volumes attributable to leaks were 20.9 million gallons, or 45% of the total volumes delivered and in 2016, volumes attributable to leaks were 11.2 million, or 30% of the total volumes delivered. Exh. TLF-2.
74. Hidden Valley should exercise its 154 isolation valves (1/2 each year), and keep records of the location, the date of the attempt to exercise each valve and whether it was able to be exercised and repair or replace each valve that was not able to be exercised. OCA St. 3 (W) at 11.
75. Exercising isolation valves and keeping accurate records is an important part of a water utility's ongoing operation and maintenance: OCA St. 3 (W) at 10-11.
76. The Company is responsible for properly maintaining all its facilities, and the costs of exercising isolation valves should be included in its existing expenses and rates. OCA St. 3S (W) at 4.
77. Given the Company's response to OCA III-36 (Exh. TLF-3), it has been exercising its isolation valves and would need to provide the missing information recommended by Mr. Fought which would include the location of the valves exercised, and the date.
78. The Company provides wastewater service to the Hidden Valley Development in Jefferson Township, Somerset County, Pennsylvania. OCA St. 3 (WW) at 1-2

79. Construction of the Company's sewage collection system was started in the early 1970s and was extended as Hidden Valley has developed over the years. OCA St. 3 (WW) at 1-2
80. In the late 1980s replacements and repairs were made to the collection system to eliminate excess infiltration/inflow (I/I). OCA St. 3 (WW) at 1-2
81. The collection system includes approximately 1.8 miles of sewer pipe, 460 manholes, and 1,170 service connections. OCA St. 3 (WW) at 1-2
82. The conveyance system includes six pumping stations and approximately 1.75 miles of force main. OCA St. 3 (WW) at 1-2
83. The Company has two wastewater treatment plants. OCA St. 3 (WW) at 1-2
84. Treatment Plant No. 1 is an extended aeration activated sludge plant with a rated capacity of 100,000 gallons per day (gpd) serving approximately 864 Equivalent Dwelling Units (EDUs). OCA St. 3 (WW) at 1-2
85. Treatment Plant No. 2 is an aerated facultative treatment lagoon plant with a 30,000 gpd capacity serving approximately 305 EDUs. OCA St. 3 (WW) at 1-2
86. The effluent from both Treatment Plants discharges to a 3 million gallon (mg) storage lagoon and is then pumped to a spray irrigation field or diluted and used for snow making. OCA St. 3 (WW) at 1-2.
87. The Company has six submersible grinder pumping stations, which are equipped with two submersible pumps that are turned on and off by three float switches. OCA St. 3 (WW) at 2.
88. When sewage reaches a certain height, a float switch will activate a primary pump. If the sewage continues to rise, the next float switch will activate the backup pump. A fourth

- switch activates an alarm when the sewage exceeds the capacity of both pumps. OCA St. 3 (WW) at 2, 3.
89. All of the pumping stations should have primary and backup pumps installed and in operating condition, together with an alarm that properly activates. OCA St. 3 (WW) at 3, 4.
90. Proper operation of these facilities is important in order to prevent contamination of streams and groundwater. OCA St. 3 (WW) at 2.
91. As a result of the Company's improper maintenance of its pumping stations, it is possible for sewage to back up into customer homes and buildings. OCA St. 3 (WW) at 4.
92. Sewage can also overflow and contaminate the ground and groundwater, which is more likely when backup pumps are not installed. OCA St. 3 (WW) at 4.
93. The Engineer's Wastewater Report, required by the McCloskey January 2018 Order, identified deficiencies, made recommendations, estimated costs, and prioritized recommended repairs and replacements to the Company's wastewater pumping and treatment facilities. OCA St. 3 (WW) at 5-6; Exh. TLF-1.
94. The Engineer's Wastewater Report identified seventy-five projects that need to be completed by HVUS. OCA St. 3S (WW) at 3; Exh. TLF-1.
95. As of July 27, 2018, there were eight projects that were completed, three that were started and sixty-four that are not started. OCA St. 3S (WW) at 3.
96. The total number of deficiencies identified in the Engineer's Wastewater Report indicates that the wastewater treatment plant and pumping stations have not been properly maintained for many years. OCA St. 3S (WW) at 6.

97. The April 2018 Engineer's Wastewater report stated that some pumping stations still lacked backup pumps. OCA. St. 3S (WW) at 1, 2.
98. All of the pumping stations should have primary backup pumps installed and in operating condition, together with an alarm that properly activates." OCA St. 3S (WW) at 2.

Proposed Conclusions of Law

1. Hidden Valley Utility Services bears the burden of proving by a preponderance of the evidence that it provides adequate water and wastewater service to its customers. 66 Pa. C.S. § 332(a);
2. Hidden Valley Utility Services has not met its burden of proving by a preponderance of the evidence that it provides “adequate, efficient, safe, and reasonable service and facilities” for its water and wastewater systems as required of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501.
3. The Rates as submitted by HVUS in Supplement No. 1 to Tariff Water and in Supplement No. 1 to Tariff Wastewater are unreasonable and unjust.
4. The water provided by HVUS is not suitable for basic household purposes, and as such HVUS is failing to provide “adequate, safe, and reasonable service” in violation of 66 Pa. C.S. § 1501. See Pa. P.U.C. v. Pa. Gas and Water Co., 61 Pa. PUC 409, 416, 74 PUR4th 238, 245 (1986); Pa. P.U.C. v. Pennsylvania-American Water Co., 71 Pa. PUC 210, 218-19 (1989); Pa. P.U.C. v. Nat’l Utils., Inc., 87 Pa. PUC 1, 5 (1997).
5. HVUS has failed to properly maintain and operate its wastewater system, which constitutes a failure to provide adequate wastewater service. 66 Pa. C.S. § 1501.
6. HVUS is obligated to remedy any deficiencies in its system to ensure that its customers receive “adequate, efficient, safe, and reasonable service.” 66 Pa. C.S. § 501, 1501.
7. The Commission has the authority to require HVUS to take steps necessary to provide adequate service. 66 Pa. C.S. § 501, 1501.
8. HVUS has failed to maintain managerial, technical, and financial fitness as required by the Public Utility Code. 66 Pa. C.S. §§ 501(a), 1103, 1501.
9. In exchange for customers paying rates for utility service, HVUS is obligated to provide safe, adequate, and reasonable service. 66 Pa. C.S. §§ 523, 1501.
10. The Commission has the authority and obligation to deny a rate increase due to inadequate service. 66 Pa. C.S. §§ 501, 523, 526, 1501.

Proposed Ordering Paragraphs

IT IS ORDERED:

1. That Hidden Valley Utility Services shall not place into effect the rates contained in its Tariff Water – Pa. P.U.C. No. 1, Supplement No. 1, the same having been found to be unjust, unreasonable, and therefore unlawful.
2. That Hidden Valley Utility Services shall not place into effect the rates contained in its Tariff Wastewater – Pa. P.U.C. No. 1, Supplement No. 1, the same having been found to be unjust, unreasonable, and therefore unlawful.
3. That the Office of Consumer Advocate’s Complaints filed at C-2018-3001841 and C-2018-3001843 be sustained consistent with this Opinion and Order.
4. That the following Complaints be sustained consistent with this Opinion and Order:
Gerry and Melissa Pindroh, at C-2018-3001787; Debra J. Simpson, at C-2018-3002179; Tom and Shelley Conroy, at C-2018-3002198, C-2018-3002200; John Cupps, at C-2018-3002468, C-2018-3002459; David Oster, at C-2018-3002470, C-2018-3002475, Toni Gorenc, at C-2018-3002480, C-2018-3002481; David Brodland, at C-2018-3002485, C-2018-3002487; Robert and Katherine Bair, at C-2018-3002587; Jerome and Barbara Cypher, at C-2018-3002671, C-2018-3002683; Jon and Nina Lewis, at C-2018-3002701, C-2018-3002698, Celeste Emrick, at C-2018-3003020; Robert Kollar, at C-2018-3003370, C-2018-3003372; Hidden Valley Foundation, Inc., at C-2018-3003528, C-2018-3003529.
5. That this docket shall be marked closed.

OCA – Sponsored Testimony, Exhibits and Appendices

The following OCA Testimony and Exhibits were admitted into the record at the Evidentiary Hearing on November 16, 2018:

Direct Testimony of Stacy L. Sherwood, OCA Statement 1 – Water

OCA Appendix A – Background and Qualifications of Stacy L. Sherwood

OCA Exhibits – SLS-1, SLS-2, SLS-3, SLS-4, SLS-5, SLS-6, SLS-7, SLS-8

Surrebuttal Testimony of Stacy L. Sherwood, OCA Statement 1S – Water

OCA Exhibits – SLS-1, SLS-2, SLS-3, SLS-4, SLS-5, SLS-6, SLS-7, SLS-8

Direct Testimony of Stacy L. Sherwood, OCA Statement 1 – Wastewater

OCA Appendix A – Background and Qualifications of Stacy L. Sherwood

OCA Exhibits – SLS-1, SLS-2, SLS-3, SLS-4, SLS-5, SLS-6, SLS-7, SLS-8

Surrebuttal Testimony of Stacy L. Sherwood, OCA Statement 1S – Wastewater

OCA Exhibits - SLS-1, SLS-2, SLS-3, SLS-4, SLS-5, SLS-6, SLS-7, SLS-8

Direct Testimony of Aaron L. Rothschild, OCA Statement 2 – Water and Wastewater

OCA Appendix A – Background and Qualifications of Aaron L. Rothschild

OCA Exhibits – ALR-1, ALR-2, ALR-3, ALR-4, ALR-5, ALR-6, ALR-7, ALR-8,
ALR-9

Surrebuttal Testimony of Aaron L. Rothschild, OCA Statement 2S – Water and
Wastewater

OCA Exhibits – ALR-1, ALR-2, ALR-3, ALR-4, ALR-5

Direct Testimony of Terry L. Fought, OCA Statement 3 – Water

OCA Appendix A – Background and Qualifications of Terry L. Fought

OCA Exhibits – TLF-1, TLF-2, TLF-3, TLF-4

Surrebuttal Testimony of Terry L. Fought, OCA Statement 3S – Water

Direct Testimony of Terry L. Fought, OCA Statement 3 – Wastewater

OCA Appendix A – Background and Qualifications of Terry L. Fought

OCA Exhibits – TLF-1

Surrebuttal Testimony of Terry L. Fought, OCA Statement 3S – Wastewater