

COMMONWEALTH OF PENNSYLVANIA



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December 21, 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 Reply 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

*263835

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 Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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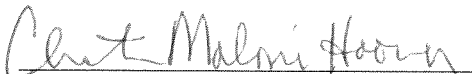
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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	:	

REPLY BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

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

HVUS's arguments on quality of service and other contested issues in its Main Brief are not persuasive. As the party with the burden of proof, HVUS must conclusively demonstrate how its claims are justified under the facts and the law. HVUS has had more than 13 years to make improvements to its water and wastewater systems and operations that would result in water at the tap that is suitable for all household purposes and to make the necessary improvements to its water system. The Company has not rebutted evidence that its service and facilities are inadequate because there continue to be the issues for water service and for wastewater service that remain unresolved. HVUS has not made capital improvements to the system to address the quality of service issues (and has not even made a decision regarding which option to pursue on the water operations). The Company's inadequate service provides a sufficient basis for the Commission to deny the proposed rate increases in their entirety.

II. BACKGROUND AND PROCEDURAL HISTORY

The OCA set forth the background of the Hidden Valley proceedings since 2005 as well as the procedural history of these cases in its Main Brief. OCA M.B. at 5-14.

III. LEGAL STANDARD

As set forth in the OCA's Main Brief at 14, Hidden Valley bears the burden of proof to establish the justness and reasonableness of every element of its requested rate increase, including establishing that it is providing safe, adequate, and reliable service in accordance with Sections 523, 526, and 1501 of the Public Utility Code. 66 Pa. C.S. §§ 523, 526, 1501. In January and April 2018 Orders, the Commission determined that HVUS was not providing adequate water service. McCloskey January 2018 Order and April 2018 Order. Service has not improved and Hidden Valley does not dispute that it is not currently providing adequate water service. It is clear that Hidden Valley cannot meet its burden to establish that it is entitled to its proposed rate relief, or even the level of the rate relief set forth in the Non-Unanimous Settlement. The evidence in this case establishes that HVUS is not entitled to any rate relief in accordance with the requirements of the Public Utility Code and relevant case law.

Regarding wastewater service, in January 2018, the Commission determined in McCloskey that HVUS was not providing adequate wastewater service. McCloskey January 2018 Order. The OCA submits that the additional evidence in this case establishes that HVUS is not yet providing adequate wastewater service. It is clear that Hidden Valley cannot meet its burden to establish that it is entitled to its proposed rate relief. As set forth by OCA, the evidence in this case establishes that HVUS is not entitled to any rate relief in accordance with the requirements of the Public Utility Code and relevant case law.

IV. SUMMARY OF ARGUMENT

Hidden Valley is not providing safe, adequate and reliable water and wastewater service as required by Section 1501 of the Public Utility Code. The evidence establishes a significant, longstanding, chronic failure by HVUS to provide safe, adequate, and reliable service. The customers have paid rates since 2005 that were to reflect adequate service yet they have not received adequate service. Contrary to HVUS's statements, the OCA submits that the customers have not "enjoyed" paying the current rates since 2005 especially because many of them have to purchase bottled water to use for drinking and cooking, have to install whole house or point of use filters and replace them frequently, have to deal with ruined clothing when doing laundry at Hidden Valley, or have given up on doing laundry at Hidden Valley, and frequently have their daily routines interrupted by dealing with the inadequate water service they receive.

The rates that the customers have paid for wastewater service also presume adequate service but that is not what the evidence establishes. As recently as April 2018, HVUS had not installed the back up pumps and the alarms that are required at each of its pump stations. These back up pumps and alarms were required in the 2005 Settlement Agreement of the Application Proceeding. Moreover, the April 2018 Wastewater system engineer's report identified 75 items that need to be addressed for the wastewater system. The evidence shows that 8 items have been completed, 3 items are started and more than 64 items still need to be addressed by HVUS.

The Commission is required to review the quality of service provided by Hidden Valley, and its management efficiency and effectiveness as part of Hidden Valley's water and sewer rate cases. 66 Pa. C.S. §§ 523, 526. HVUS has had more than 13 years to make improvements to its water and wastewater systems and operations that would result in water at the tap that is suitable for all household purposes and to make the necessary improvements to its water system. The

OCA submits that the evidence shows that HVUS continues to provide inadequate water and wastewater service and its rate increase requests should be denied.

V. QUALITY OF SERVICE

A. Introduction

HVUS argues that it is in a Catch-22, that it needs the rate relief in the Non-Unanimous Settlement to make the improvements ordered in McCloskey, and that a “further reduction” is not warranted and would be unconstitutional. HVUS M.B. at 21-44. As set forth below, the OCA submits that there is no Catch-22. HVUS has had more than 13 years to make improvements to its water and wastewater systems and operations that would result in water at the tap that is suitable for all household purposes and to make the necessary improvements to its wastewater system. The rate relief sought by HVUS did not include funding for the improvements required in McCloskey. Moreover, ratemaking requires that the utility provide adequate service and that the utility invest in the capital needed to provide adequate service and then receive rates that reflect the utility’s investments.

B. Legal Background

HVUS argues that a denial of its rate increase requests would deny its constitutional rights. HVUS M.B. at 41-44. HVUS cites Bluefield Water Works and Improvement Co. v. Public Service Commission, 262 U.S. 679 (1923) (Bluefield) and Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944) (Hope). Id. at 41. As discussed in the OCA’s Main Brief, at page 18-25, a utility is entitled to charge rates, sufficient to earn a fair return, if it provides service that is safe, adequate, and reliable. Pa. P.U.C. v. Pa. Gas & Water Co., 68 Pa. PUC 191, 1988 Pa. PUC LEXIS 457 (Sept. 30, 1988) (PG&W 1988). The Commission found that this regulatory bargain had been codified in Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501.

HVUS's arguments ignore the service part of the regulatory bargain. The linkage between rates and service is well-established in case law. In Market Street Railway Co. v. Railroad Commission of California, 324 U.S. 548 (1945) the Supreme Court affirmed a Railroad Commission order that reduced the rates to be charged by a railway company. The Railroad Commission, during an investigation into the rates and service of the Market Street Railway Company, found that it was reasonable to reduce the fare being charged because *inter alia*, service had deteriorated, there was evidence of long-term neglect and inadequate inspection and maintained stock. 324 U.S. at 556. The Supreme Court, in responding to the railway company's arguments that the order was confiscatory under Hope, and that the company was entitled to a sufficient return rejected the argument that the railway company was entitled to a return "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital" and to "enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed." Id. at 566. The Supreme Court found those considerations concerned a company which had the advantage of an economic position which promised to yield what was held to be an excessive return on its investment and that was inapplicable to a company "whose financial integrity already is hopelessly undermined, which could not attract capital on any possible rate, and where investors recognize as lost a part of what they have put in." Market St. Railway, 324 U.S. at 566. It is clear that the rote recitation of Hope is not relevant to the situation in this case where Hidden Valley has provided no evidence that it can attract capital, where it has never ended an operating year without a loss and where despite collecting rates set as if it were providing adequate service, it has not provided adequate service to its customers.

The Commonwealth Court addressed and rejected similar arguments from a water and wastewater utility that argued that a denial of its proposed rate increase based on a finding of inadequate service would violate the Fifth and Fourteenth Amendments to the United States Constitution. National Utilities, Inc. v. Pa. P.U.C., 709 A.2d 972 (Pa. Commw. 1998) (NUI 1998). As explained in the OCA's Main Brief (at 22-23), in the case below, the Commission adopted the ALJ's recommendation and denied NUI's rate increase request in its entirety. 709 A.2d at 975. The Commonwealth Court noted that the ALJ found that the record evidence established a significant failure on the part of NUI to provide water that is fit for all household purposes such as the basic, domestic purposes of drinking, washing, bathing and cooking. 709 A. 2d at 974. The problems experienced by NUI's customers, included: dirty-looking water (brown or rusty), water with unpleasant taste, water with sediment, including grit, highly corrosive water which necessitates frequent replacement of household appliances such as hot water heaters, water outages, and pressure issues. Id. The evidence in the rate case before the Commission also showed that NUI had failed to pay its electric bills for two of its operating divisions which put it at risk of loss of electric service and placing its customers at risk of loss of water service.¹ 709 A. 2d at 975.

On appeal, NUI argued that the denial of the rate increase constituted a violation of the Fifth and Fourteenth Amendments of the United States Constitution. The Commonwealth Court addressed the question of whether Section 526 of the Public Utility Code, giving the Commission the power not to increase rates where there is inadequate service would violate the constitutional requirement that utility is entitled to a reasonable rate of return on its investment.

¹ These quality of service issues are very similar to the service issues raised by HVUS customers.

NUI 1998, 709 A.2d at 976. The Commonwealth Court determined that the Pennsylvania Courts had not addressed the issue of whether a reasonable rate of return for the utility was required regardless of the service provided. Id. at 977. The Commonwealth Court looked to other jurisdictions including the District of Columbia. Id. at 977-80. In reviewing D.C. Transit System, Inc. v. Washington Metropolitan Transit Commission, 466 F.2d 394 (D.C. Cir. 1972), the Commonwealth Court found that the United States Court of Appeals for the D.C. Circuit spoke directly to these issues. The Court of Appeals was asked to determine whether a rate was confiscatory when adequate service was not being provided by the utility to its customers, citing the Transit Commission:

We hold that while we may grant a fare increase, and condition that increase on a carrier's satisfaction of the steps we have found necessary to insure future performance of its statutory obligation to provide economical, efficient and adequate transportation, we are not compelled to do so if we conclude, as we have in this case, that such an order will not provide sufficient assurance that the public will be protected.... **We are forced to conclude that if fares were adjusted before the company produced the required funds, we would have no basis for insuring that they, in fact, would be forthcoming. This, we held would be calling upon the bus rider to pay a fare to an inefficiently and uneconomically operated transit company without any assurance that the company would remedy those defects and fulfill its obligation to the rider by providing in the future, efficient, economical, and adequate transportation. We declined to impose such a one-sided and unjust burden on the bus-riding public.**

NUI 1998, 709 A.2d at 977-78 quoting D.C. Transit, 466 F.2d at 417 (emphasis added). It is important to note that the United States Court of Appeals recognized that permitting the rate increase when service was inadequate was a "one-sided and unjust burden". The OCA submits that accepting HVUS's arguments that it should be permitted to increase rates, even though it is still providing inadequate service would be one-sided and an unjust burden on its ratepayers.

The Commonwealth Court also looked at Petition of Valley Road Sewerage Co., 666 A.2d 992 (1995) which involved a proposed rate increase filed by a sewer utility that had never shown a profit. 666 A.2d at 994. Its rate increase was denied “due to the company’s years of financial mismanagement and because it had received increases twice before with only further deterioration in the company’s financial condition.” NUI 1998, 709 A.2d at 978 citing Valley Road, 666 A.2d at 993-994. The New Jersey Supreme Court stated:

Price and performance are inextricably intertwined. ‘The caliber of a utility’s service need not remain a neutral factor’ in deciding what is a reasonable rate of return [citation omitted]. Neither the constitution nor our statutes require the public ‘to pay for the consequences of lazy or inefficient management.’ [citation omitted]. Superior service commands a higher rate of return as a reward for managerial efficiency, but inferior service deserves less return than normally would be forthcoming. [citation omitted].

* * *

We believe that the obligations of the utility and the consumer are interrelated and reciprocal. The utility’s responsibility is to ‘furnish safe, adequate and proper service’. The consumer is obliged to pay this service’s reasonable worth. But ‘good company management is required; honest stewardship is demanded; [and] diligence is expected.[citation omitted].

NUI 1998, 709 A.2d at 978-79 quoting Valley Road, 666 A.2d at 995. The New Jersey Supreme Court, in concluding that the denial of the rate increase passed constitutional muster, stated:

We also acknowledge that ‘[a] starved utility is in no better position to render proper service than a starved horse or a motor car without fuel.’ [citation omitted]. Nevertheless, if Valley is correct, then it may disregard its public responsibilities at will, yet insist the public pay ever increasing rates for substandard service. Neither the constitution, nor our statute, nor common sense require such a result.

666 A.2d at 996-997. The Commonwealth Court then recognized that to deny NUI 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.” 709 A.2d at 979. The

Commonwealth Court, adopting the “sound reasoning” of D.C. Transit and Valley Road, 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.

NUI 1998, 709 A.2d at 979. The Commonwealth Court affirmed the Commission’s denial of NUI’s rate increase request. Id. at 980.

NUI 1998 establishes that, contrary to HVUS’s arguments, there is no violation of the Fifth and Fourteenth Amendments when the Commission denies a rate increase request due to inadequate service. The Commission must consider whether the utility has fulfilled its service commitment and if it has not, then denying the rate increase request is not in violation of the Constitution. Moreover, as stated in NUI 1998, to hold otherwise would mean that the PUC would be required to give HVUS a reasonable rate of return, or even a modified rate of return under the Non-Unanimous Settlement, solely because it exists. HVUS’s arguments are without merit and should be rejected.

C. Ongoing Inadequate Service to Water & Wastewater Customers

HVUS argues that a further reduction in the rate increase request (below what is reflected in the Non-unanimous Settlement) is not warranted by prior Commission and Court decisions. HVUS M.B. at 33-44. The OCA addressed the case law related to quality of service and denial of rate increase requests at length in its Main Brief. OCA M.B. at 18-25. As discussed below, HVUS has not established that it is entitled to any rate relief, including the levels reflected in the non-unanimous settlement. HVUS has had more than 13 years to make improvements to its system and operations that would result in water at the tap that is suitable for all household purposes and to make the necessary improvement to its wastewater system.

HVUS cites extensively to the Recommended Decision and the Commission's final order in Pa. P.U.C. v. Lake Latonka Water Co., 71 Pa. PUC 507, 522 (1989) (Lake Latonka). HVUS argues that its situation is similar to Lake Latonka because it is caught in a Catch-22. The OCA submits that HVUS is not in a Catch-22. There is no Catch-22 when "quality of service results in a denial of a rate increase because a utility's fulfillment of its service commitment is a *sine quo non* to constitutional protection under confiscation principles." NUI 1998, 709 A.2d at 979.

Moreover, as explained in this case, HVUS has not asked for any capital expenditures or other expenses related to making improvements in the water and wastewater service. As Ms. Sherwood explained:

This rate case utilizes a 2017 historical test year and does not include any claims regarding expenditures related to the options shown in the April 2018 engineer's report. The requested rate increase would address increased expenses incurred since rates were implemented in 2005, but it would not provide the revenue needed to recover any expenditures related to service improvements. Furthermore, at the time of the rate case filing, the Company had not chosen which options it would implement from the April 2018 engineer's report.

OCA St. 1 (W) at 1-2; OCA St. 1 (WW) at 1-2. According to HVUS's engineer's report, the cost of the wastewater improvements is \$227,900 and the cost of the water improvements is between \$852,000 and \$2,389,000. HVUS M.B. at 35. Those costs do not include additional requirements such as testing and replacing water meters. Id. There is no evidence that HVUS has chosen an option for the water system (treatment or alternate source). There is no evidence that HVUS has sought and secured financing for any of these improvements or that it will be able to secure financing for these improvement. There is no assurance that the improvements will be made by HVUS, especially given the experience with its delayed compliance with the 2005 Settlement Agreement. See OCA M.B. at 7-8. There is no evidence that HVUS will be able to comply with the directives in the McCloskey Order, even if it receives the increase in the Non-unanimous Settlement or even if it had received its originally proposed revenue increase.²

HVUS also argues that it is entitled to modest rate relief coupled with conditions designed to improve service, like Lake Latonka.³ This argument is without merit. HVUS has already received rates and a detailed set of conditions designed to improve service as part of the resolution of its Applications for its initial certificates of public convenience in 2005. Applications of Hidden Valley Utility Service to Begin to Offer Water and Wastewater Service to the Public, Docket Nos. A-210117 and A-230101 (Order entered July 15, 2005) (HVUS Applications). The HVUS applications were resolved by Settlement (2005 Settlement

² In fact, as discussed in the OCA's Main Brief, HVUS has asked for relief from the deadlines imposed to comply with the requirement to resolve the water quality of service issues by April 30, 2019. OCA M.B. at 11. In addition, the engineer's report, although filed by April 30, 2018 deadline, did not comply with the Commission's Order because it did not contain a recommendation but rather contained a number of options. Id.; OCA St. 3 (W) at 5-6.

³ Approximately four months after receiving the rate increase at Docket No. R-891257, Lake Latonka and Western Utilities filed an application seeking Commission approval for the sale of Lake Latonka's water system to Western Utilities, which was granted on August 6, 1990. Application of Lake Latonka Water Co. and Western Utils., Inc., 1991 Pa. PUC LEXIS 87, *2 (April 11, 1991). The improvements that Lake Latonka agreed in the rate case to make to improve the service to customers were ordered to be made by Western Utilities. Id.

Agreement). As part of the 2005 Settlement Agreement, initial rates were set to recover annual water revenues of \$182,500 and annual wastewater revenues of \$392,000. In addition, the 2005 Settlement Agreement contained more than 20 requirements related to improving the quality of service that HVUS provided, improving the communications with customers, and instituting ongoing reporting and testing requirements. The 2005 Settlement covered a 10 year time frame.⁴

HVUS has charged rates and received revenues from rates that reflect adequate service for the last thirteen years. It is clear that HVUS was already provided with the type of solution (rate relief and conditions designed to improve service) that was afforded Lake Latonka. For HVUS's customers, that approach did not result in water that is suitable for all household purposes and did not result in safe, adequate and reliable wastewater service. The customers, in exchange for the rate they are paying, are entitled to water that is suitable for all household purposes after nearly 14 years and providing rate relief in this case will not ensure that the improvements will be made.

HVUS also argues that it would be destroyed if it does not receive any rate relief. HVUS M.B. at 35-36. HVUS acknowledges that it is "financially challenged." *Id.* Where a company, through ineffective management, has failed to provide adequate service, a rate increase may be denied. Pa. P.U.C. v. Clean Treatment Sewage Co., 2010 Pa. PUC LEXIS 671, *31 (April 22, 2010) (Clean Treatment). "While the Commission should not micromanage or hamstring a utility in most instances, there are times when a utility's mismanagement has reached the point where the denial of a rate increase in whole or part, pursuant to the provision of Section 526(a), is appropriate." Clean Treatment, at *31. In the case of Clean Treatment Sewer Company, the

⁴ There were issues regarding HVUS's compliance with the 2005 Settlement in the years after it was approved, including as recently as the McCloskey case. *See* OCA M.B. at 7-8.

Commission denied a rate increase with the expectation that the company would interpret the denial as the impetus to work toward providing service that its customers deserved. Clean Treatment, at *33. HVUS filed its rate cases within a few months of the McCloskey Order holding that it is providing inadequate service. The same scenario was present in Clean Treatment (rate case was filed soon after the Commission's Order finding inadequate service in a complaint proceeding). Both HVUS and Clean Treatment had years to implement changes that would result in improved service to their customers, yet failed to do so.

The Company's management is demonstrably ineffective, and the record in these proceedings reveals that the Company has not provided adequate service since 2005. It would be inappropriate to prop up the company with a rate increase when it failed to implement the requirements of the 2005 Settlement Agreement.

HVUS emphasizes the money that it lost over the last ten years. HVUS management made decisions that resulted in the financial position that it has today. For example, from 2005-2017, Mr. Kettler, President of HVUS, received partnership distributions that average \$65,988 each year. HVUS St. 1-R (WW) at 12. The OCA notes that HVUS, as early as 2011, knew or should have known that its flushing project was not resulting in water that was suitable for all household purposes (see OCA St. 3S(W) at 2) and it could have chosen to invest in improvements to the systems that might have made a difference in the water at the customers' taps and would have ensured that the back up pumps and the alarms, for example, were installed and working during the last 10 years.

In its Main Brief, HVUS also relies on two wastewater cases to support its position that it is entitled to rate relief to cover the cost of service even if it is providing inadequate service. HVUS M.B. at 36-38. Specifically, HVUS cites to Pa. P.U.C. v. Delaware Sewer Co., Docket

No. R-2014-2452705 (Order entered July 30, 2015) (Delaware Sewer) and Pa. P.U.C. v. Deer Haven, LLC d/b/a/ Deer Haven Sewer Co., 2011 Pa. PUC LEXIS 1864 (Order entered May 19, 2011) (Deer Haven Sewer). First, the OCA would note that both Delaware Sewer and Deer Haven's rates were set using an operating ratio rather than rate base/rate of return. Delaware Sewer, slip op. at 36; Deer Haven Sewer, slip op. at 9. Therefore, there was no method to adjust the return to recognize inadequate service, but as set forth in both cases, the OCA's position was that denial of the proposed rate increase was an appropriate method to recognize the inadequate service being provided by each wastewater utility. Both cases are further distinguishable from the current case because both were wastewater only rate increase requests, compared to the current water and wastewater rate increase requests. In addition, neither Delaware Sewer nor Deer Haven had as extensive a history of formal complaint proceedings regarding service issues as are found in this case and in Clean Treatment.

While the Commission granted the increases requested by Delaware Sewer and Deer Haven, the Commission eventually opened a Section 529 investigation regarding Delaware Sewer. Investigation Instituted per Section 529 into Whether the Commission Shall Order a Capable Public Utility to Acquire Delaware Sewer Company, Docket No. I-2016-2526085. Regarding Deer Haven, the Commission directed Law Bureau to investigate the inadequate service issues. Deer Haven, slip op. at 49.

Hidden Valley complains that a denial of rate relief will "destroy" the company, and that consequently, the interests of ratepayers and the company are not appropriately balanced. HVUS M.B. at 44. It is not reasonable to provide additional revenues to a utility that is not providing adequate service, and is not financially, technically and managerially viable in the long term. As discussed in V.B., *supra*, approving a rate increase when there is inadequate service places an

unfair, one-sided and unjust burden (D.C. Transit) on the ratepayers and sends a signal that it is acceptable to provide inadequate service because there are no consequences to the utility resulting from that inadequate service.

In a footnote, the Company blithely states that its customers “have enjoyed the same rates since 2005, despite increased costs to the utility. Ratepayers should not be permitted to claim the benefits of their regulatory bargain without accepting the costs thereof.” HVUS M.B. at 44, n. 20.

The reality is that customers have *not* enjoyed those rates, particularly in light of the inadequate quality of service that has been ongoing for nearly 15 years. The supposed “benefits of their regulatory bargain” are nonexistent, as numerous customers testified at the July 27, 2018 public input hearings. Moreover, customers have incurred additional expenses over many years (to install filtration systems, and to buy filters, and bottled water) in addition to paying their bills for water and wastewater service. Other impacts include ruining appliances, and affecting housing values.

I go through filters, similar to the gentleman here that had his six-month filter. I'm running down the valley, pulling down into Greensburg to get filters, heating elements and also filter pumps in the back of that.

In the listing of our properties up here, quite frankly, we're all in a precarious position. We don't list any properties because we know we have to fill out Seller Disclosure Statements. In those Seller Disclosure Statements, it asks us the frank question about the quality of our water here. So we have guilty knowledge, for 21 years, that we have brown water up here. So we either got to game the system or we tell the truth. When you fill out a Disclosure Statement, that you've got issues with your water, it does not help the property values at Hidden Valley. It does not help the sale of the properties at Hidden Valley.

Tr. at 87 (Joseph D. Sarra, Jr.)

We had a home filtration system just installed in the kitchen, because I will not cook with that water. And those systems require filters, two filters that we have to replace them every three to four months.

Tr. at 104 (Mauvaleen Jones)

I've lived here in the same house at Hidden Valley now for 42 years. My water provided by Jimmy is unacceptable for daily use. As a result, I've installed two parallel whole house water filtration systems. I change the filters monthly at a cost of \$11.00 per month, or \$132 per year, year in, year out. That's a lot of money to simply make my water useable and acceptable to use.

Tr. at 11-112 (Tim King)

I change my filter about once a month. It's dry right now. But usually when it comes out, it's pretty wet. It's pretty dark. And this is on a monthly basis I replace the filter. I had to replace the filtering system twice, because it broke already once from — are you aware that the gaskets wear out because of the filtering — and the rust is so heavy, the filters will wear out.

Tr. at 133 (William Castro).

I consider it almost like a silent killer. It's a silent clogger. It's just — the next thing you know, something fails that has water running through it. And now I've remedied the problem. The plumber I use recommended I put a whole house filter. And I think that — but, again, there's the expense. But I've already spent thousands of dollars replacing appliances.

Tr. at 94 (Dennis Carroll).

We have, in our townhouse, a pump installed to increase the water pressure. And it was installed in the house when we bought it 14 years ago. We've replaced it twice, and it needs to be replaced again. We have such low water pressure that you can't really follow any daily routines without this noisy pump churning out some pressure for you.

We have a water filtration system in place. And I change the filter about every two weeks, instead of every three months. And there is sediment in the filter when I change it.

The water might taste — test safe for drinking but we consistently have brown water running from our taps, like everyone else. We often spend time wasting water by running the taps to clear the water, but then, really, you're paying double because you're paying for the wastewater as well as the water that you're just letting run down the drain.

Tr. at 98-99 (Linda Jewison).

I have been aware of the brown water issue since I moved in. . . . How can you ask for an increase of that amount, or any increase, for that matter, given the

product that you're giving me? Would you buy that in a store? Heck no. Would you take it if they were giving it away? Probably not.

Tr. at 110 (Marie Pfab).

What I cannot understand, how a company or anybody can ask for a rate hike and deliver the substandard product, and . . . you're already paying more than anybody else in our surrounding.

Tr. at 100 (Marion Thompson).

Hidden Valley Utility offers a bad water product and we have no options but to use it. They are the only water service here. . . Furthermore, to approve a rate hike at this point, without any kind of consequence to Hidden Valley Utility, only reinforces that they can continue to provide the bad water product to us consumers and have our appliances harmed without any consequences to [the company].

Tr. at 72 (Ann Gaudino).

We inherited the bad water issues that all of my neighbors have complained about. . . Unfortunately, I'm no stranger to foul brown water. While service in the Air Force, I've been at several locations that also had brown water, namely Central South America and Africa. . . Now the homeowners, who have suffered with poor water service, are asked to pay to cover this mismanagement, and they're asked to pay the increase to the same people who mismanaged it in the first place. To say the least, this proposed rate increase . . . is substantial and excessive. To say the most, it is unfair and shameful.

Tr. at 78-79 (Conrad Witalis).

Chris Umble, who has lived at Hidden Valley for nine years, stated that when he first moved in, he was skeptical of his neighbors' warnings about the water quality. He believed that:

[A] PUC-regulated utility, would not be permitted to provide water that was either unsafe or unusable; however, we quickly joined the ranks of homeowners whose experience with the water is anything but satisfactory.

Tr. at 64 (Chris Umble).

The water where I live is — I cannot drink, and . . . I just can't imagine a 100 percent increase, when you can't even drink and concerned about showering.

Tr. at 195 (Kathleen Midock).

Other customers noted that a rate increase is unjustifiable because they have not seen improvements to the quality of service, despite the Company's promises in the 2005 Settlement Agreement.

I feel since they did not comply with the 2005 Settlement Agreement, why should we ever ascertain an increase, even if we had decent water? But we do not have decent water. . . We never, ever, drink the water, nor do we make the ice cubes.

Tr. at 106 (Mauvaleen Jones).

And not to be being addressed since 2005 is absurd, to think that you're going to come back and want more money from us, when we didn't even get the service remedied back then.

Tr. at 107-08 (Sarah Prady).

These water rates are 30 percent higher than anything I've paid anywhere else in the Commonwealth of Pennsylvania. . . So based on our current rates, I can't imagine that there's been a proportionate and appropriate investment in maintaining the quality of the water system. To that end, it's disappointing that Hidden Valley Utility Service has been left off the hook in executing on a 2005 PUC order.

Tr. at 87-88 (Joseph Sarra).

If a roofing contractor came to Hidden Valley in 2005 and said, "I want to repair all of your roofs, all 1,000 of them. I want your money upfront. And I promise I'll do it." And 10 years later, he hadn't fixed any of the roofs, that contractor would be in jail. Instead, he's here asking for another increase.

Tr. at 113 (Tim King).

The fact that they've been ordered to do something, and had ten years to do it and haven't completed that, and then have the gall to ask for the rate increase, to the extent that they do, is surprising.

Tr. at 122 (David Fiola).

Richard Kalla, who has been a homeowner at Hidden Valley for 38 years stated: “I believe it’s a stretch in one’s imagination to expect to find a different response to a rate increase now than we had gotten in 2005.” Tr. at 137 (Richard Kalla).

To Hidden Valley’s customers, there is nothing enjoyable about paying rates for inadequate service, particularly when the poor quality continued more than 10 years after the 2005 Settlement Agreement. The Company’s concern about the alleged inappropriate balance of interests between the company and the ratepayers could only be substantiated if the entirety of the customers’ testimony were disregarded. In this case, the ratepayers have borne the costs of the regulatory bargain without receiving any benefits from Hidden Valley’s service.

HVUS next argues that a modest increase is consistent with gradualism. HVUS M.B. at 38-41. The principle of gradualism, also known as rate continuity, suggests that rate changes should be made in a gradual manner (within the context of the need to collect the overall revenue requirement).⁵ Gradualism principles are considered once there is a determination of a revenue requirement. That is not relevant to the quality of service issues presented in this case. No increase should be granted unless HVUS is providing adequate service. If, in future rate filings, HVUS establishes that it is providing safe, adequate, and reliable service, and there are increases that would result in rate shock, then rates will be set consistent with the principle of gradualism. It is important to note that the assumptions regarding possible future rates, are based on the estimates in the engineer’s report but there is no evidence that HVUS will secure financing to

⁵ Gradualism is a principle of rate design that rates will be increased over time to avoid "rate shock." Pa. P.U.C. v. North Heidelberg Sewer Co., 2013 Pa. PUC LEXIS 356 (Pa. PUC 2013).

make the improvements listed in the report.⁶ Finally, the Company's proposed rate increase for water was an increase of 105% and for wastewater an increase of 63%. HVUS did not propose anything to address rate shock resulting from its proposed increases. Even under the Non-Unanimous Settlement, customers would face substantial increases: water rates would increase by 45.3% and wastewater rates would increase by 26.5% in Phase I and by an additional 49.7% under the Non-Unanimous Settlement. Again, while HVUS has agreed to substantial increases for water and wastewater rates, it has not proposed anything to implement gradualism related to the water and wastewater increases.

⁶ It is also noteworthy that the engineer's water report does not provide a recommendation, as required by the McCloskey order. OCA St. 3 (W) at 5-6

VI. INDEPENDENT AUDIT

In its Main Brief, HVUS argues that it does not oppose this proposal but then proceeds to propose a number of conditions that would render an audit meaningless. See HVUS M.B. at 45-46. The OCA does not oppose an independent audit of the company. However, the OCA does object to the Company's conditions, including the Company's desire to keep the results confidential.

The Commission has existing statutory authority for audits, including management efficiency investigations, for utilities with plant in service valued at not less than \$10,000,000. 66 Pa. C.S. § 516(a) and (b). In addition, the Commission's Bureau of Audits has authority to conduct an audit for utilities that do not fall within the minimum requirements set forth in Section 516, pursuant to the general powers under the Public Utility Code. See 66 Pa. C.S. §§ 308.2(a) (8), 501. If an audit is done, then it should be done with Bureau of Audits oversight.

Although Section 516 would not apply to HVUS due to its much smaller plant in service balance, it is instructive to note that the completed audits performed under Section 516 are public documents. "A summary of the audits mandated by this subsection shall be released to the public, and a complete copy of the audits shall be provided to the Office of Trial Staff and the Office of Consumer Advocate." 66 Pa. C.S. § 516(a). Audits may be performed by an independent consulting firm, which is selected by the Commission, after consultation with the utility company. The firm may be required present testimony in contested litigation that results from the findings of the audit. 66 Pa. C.S. § 516(c). Therefore, although the Company asserts that it would select the auditor, and the audit findings would be proprietary, there is no support in the Public Utility Code for that approach. It would be incongruous for audits to be considered

confidential given the requirement that the Commission is required to consider the efficiency, and effectiveness of management of a utility, including audits as part of a general rate increase filing. 66 Pa. C.S. § 523. The OCA does not oppose an audit conducted by an independent auditor, but would oppose an audit conducted pursuant to the conditions set forth in Hidden Valley's Main Brief.

VII. NON-UNANIMOUS SETTLEMENT PETITION AND JOINT STIPULATION

As set forth in the OCA's Main Brief and this Reply Brief, the OCA opposes any water and wastewater rate increases due to the Company's violations of Sections 523 and 1501 of the Public Utility Code. Thus, the OCA opposes the Non-Unanimous Settlement⁷ because it provides for additional annual water revenues of \$65,557 and additional annual wastewater revenues of \$82,227 in Phase I and a total of \$145,824 in Phase II, when HVUS documents that it has made the improvements ordered in McCloskey. See OCA M.B. at 48-50.

⁷ The OCA does not oppose the provision related to correcting the annual reports that HVUS files with the Commission, because HVUS is already under an obligation to provide true and correct reports. See McCloskey Case, May 2018 Ordering Paragraph 14.

VIII. CONCLUSION

For the reasons set forth above and in the OCA's Main Brief, the OCA submits that Hidden Valley's rate increase requests should be denied.

Respectfully Submitted,



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