



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE  
REFER TO OUR FILE

February 4, 2019

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

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

Dear Secretary Chiavetta:

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

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

Sincerely,

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

ACK/jfm  
Enclosure

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

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Exceptions** dated February 4, 2019, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

**Served via First Class and Electronic Mail**

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	
v.	:	Docket No. R-2018-3001307
	:	
Hidden Valley Utility Services, L.P.- Wastewater	:	
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**EXCEPTIONS  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Allison C. Kaster  
Deputy Chief Prosecutor  
PA Attorney ID No. 93176

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Dated: February 4, 2019

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## I. INTRODUCTION

On April 28, 2018, Hidden Valley Utility Services, L.P. – Water and Hidden Valley Utility Services, L.P. – Wastewater (collectively, “Company” or “HVUS”) requested an increase to total annual operating revenues of \$150,629 and \$185,432, respectively. The Recommended Decision (“RD”) issued on January 15, 2019 thoroughly explained that determination of just and reasonable rates for HVUS and its customers is impacted by the Company’s ongoing history of providing inadequate water and wastewater service. These service issues were the subject of a Complaint initiated by the Office of Consumer Advocate against the Company in 2014. The Commission issued an Order (“McCloskey Order”) in January 2018 finding that the Company is not providing adequate and reasonable service to its water and wastewater customers in violation of Section 1501 of the Public Utility Code (“Code”).<sup>1</sup> The McCloskey Order contained extensive ordering paragraphs requiring the Company to remedy these service issues so that HVUS customers receive safe, adequate and reasonable utility service as required by the Code. Bringing HVUS service into compliance with Section 1501 is addressed in the McCloskey Order; therefore, the issue in this proceeding is what level of rates are just and reasonable under Section 1301 given these ongoing service issues.

In its direct and surrebuttal testimonies, I&E strenuously argued that the Company not be permitted to earn a return on equity until the Company was in compliance with the

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

McCloskey Order and HVUS customers receive adequate and reasonable water and sewer service. I&E's rate of return witness summarized the position as follows:

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

This 0.00% equity recommendation resulted in I&E's primary revenue requirement recommendation of \$65,544<sup>3</sup> for water and \$82,236<sup>4</sup> for wastewater. I&E argued that this recommendation serves the public interest because it allows the Company to recover prudent operating expenses and used and useful plant but does not allow the Company to earn a profit, which is appropriate given that the Commission recently determined that the Company's service violates Section 1501 the Code.

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

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<sup>2</sup> I&E Statement No. 2 (Water), p. 25; I&E Statement No. 2 (Wastewater ), p. 25.

<sup>3</sup> I&E St. No. 1-SR (Water), p. 3.

<sup>4</sup> I&E St. No. 1-SR (Wastewater), p. 3.



the agreed upon revenue requirements are supported by I&E's testimony. As such, I&E's statement in support of the Settlement indicated that approval is in the public interest because it provides the Company a reasonable increase to recover prudent operating expenses while moderating the amount paid by HVUS customers due to the ongoing service issues.

On January 15, 2019, the Secretary's Bureau issued the Recommended Decision of ALJs Hoyer and Dunderdale, which approved the Settlement with modification. The RD recommended approval of the \$65,557 revenue increase proposed in Settlement for HVUS water operations and also recommended approval of the first step revenue increase of \$82,227 for HVUS wastewater operations. However, the RD rejected the proposed second wastewater step increase to \$145,842 stating that this Settlement modification "is in the public interest and justified because Hidden valley failed for over thirteen years to provide adequate water and wastewater services."<sup>5</sup> I&E appreciates the ALJs recognition of these service issues and the impact on HVUS customers; however, it respectfully asks the Commission to reconsider the second wastewater step proposed in Settlement given that HVUS wastewater service does not have the lengthy and troublesome history as the water service and because the second step only becomes effective when the HVUS has complied with the wastewater improvements required by the McCloskey Order.

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<sup>5</sup> RD at 49-50.

Accordingly, in these Exceptions, I&E respectfully requests that the Settlement, including the second wastewater step upon compliance with the McCloskey Order, be approved by the Commission without modification.

## II. EXCEPTIONS

### **I&E Exception No. 1: The RD improperly modified the Settlement by rejecting the proposed wastewater phase-in.**

#### **A. The Commission encourages settlement.**

It is the policy of the Commission to encourage settlements.<sup>6</sup> The Commission's policy statement recognizes that settlement terms are often preferable to the results achieved in fully litigated proceedings:

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402—69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases.<sup>7</sup>

I&E did not enter into this Settlement lightly given the complexity of the service issues and the impact on HVUS customers. I&E vigorously represented its positions in this proceeding by engaging in extensive formal and informal discovery, attending two mediation sessions that failed to result in a resolution of any issues, preparing multiple

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<sup>6</sup> 52 Pa. Code § 5.231.

<sup>7</sup> 52 Pa. Code § 69.401.

rounds of testimony, attending two Public Input Hearings and engaging in lengthy settlement discussions. Much of I&E's effort was focused on how best to reflect the service concerns experienced by HVUS customers in tariff rates while also recognizing that the Company had not increased rates for approximately thirteen years.

In testimony, I&E balanced these concerns to arrive at its recommendation to permit the Company recovery of reasonable expenses, plant, and taxes but not to allow recovery of any return on equity given that the Commission's McCloskey Order found both water and wastewater service to violate Section 1501 of the Code. As noted in I&E's rate of return testimony, the landmark *Bluefield*<sup>8</sup> and *Hope*<sup>9</sup> cases establish the principles that are generally accepted as the appropriate criteria for measuring a fair rate of return; however, I&E argued that this proceeding involved "extraordinary circumstances" due to the Company's failure to satisfy its obligation to provide adequate and reasonable service to its water and wastewater customers.<sup>10</sup>

However, for settlement purposes I&E believed it was important to differentiate between HVUS water and wastewater service. HVUS customer testimony detailing service concerns overwhelmingly point to inadequate water service rather than inadequate wastewater service. To be clear, I&E fully recognizes that the Commission determined that HVUS is currently providing inadequate wastewater service in the

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<sup>8</sup> *Bluefield Water Works & Improvements Co. v. Public Service Comm. of West Virginia*, 262 U.S. 679 (1973).

<sup>9</sup> *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

<sup>10</sup> I&E St No. 2 (Water), p. 22; I&E St. No. 2 (Wastewater), p. 22.

McCloskey Order. In recognition of this fact, the second step proposed in the Settlement can only be phased-in upon complying with the McCloskey Order requirements.

Those requirements are significant. Specifically, the McCloskey Order required HVUS to obtain a written report from an independent wastewater engineer and extensively evaluate the wastewater system:

...the [wastewater engineer's] report shall contain recommendations and a cost analysis to identify whether or not the pumping stations are equipped and operating properly, whether an adequate and appropriate type and number of pumps and alarms are being utilized and maintained in operating conditions, and identify any deficiencies, repairs, maintenance, replacements or improvements and recommendations to ensure that reasonable and adequate wastewater services are being provided to its customers. The engineer shall inspect all wastewater facilities, tanks and equipment and prepare a report of its findings. The report shall confirm that the wastewater treatment plant and equipment is installed, properly maintained and operable. If this is not the case, then the engineer shall include a schedule for making all repairs, replacements and/or maintenance and to correct any found deficiencies recommend any maintenance or improvements in the report. The report shall include a survey of the lagoon at Treatment Plant No. 2 to estimate the current capacity and provide a timeframe for removal of sediment. The report shall also confirm the draining, inspection, repair, and repainting of Tank 1 (side 1). The report shall also include an evaluation and proposed remedy to ensure that Hidden Valley Utility Services, L.P., is providing adequate and reasonable wastewater services to its customers.<sup>11</sup>

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

On April 19, 2018, HVUS filed the wastewater engineer's report with the Commission. I&E provided the report in I&E Exhibit No. 3 and summarized it in direct testimony as follows:

The Wastewater Engineer's Report evaluated the Company's wastewater facilities and provided estimated costs to correct identified deficiencies (I&E Exhibit No. 3, Sch. 2). The Wastewater Engineer's Report found the two sewage treatment plants to be in fair condition and the condition of the six pump stations ranged from good to poor (I&E Exhibit No. 3, Sch. 2, pp. 4-6). The Wastewater Engineer's Report estimated the maintenance and repair costs as follows (I&E Exhibit No. 3, Sch. 2, pp. 4-8):

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

The Wastewater Engineer's Report estimated two years to complete the recommended repairs (I&E Exhibit No. 3, Sch. 2, p. 53).<sup>12</sup>

These costs total approximately \$228,000. Pursuant to the Settlement, the second phase of the wastewater increase, from \$82,227 to \$145,842, will not be implemented until all of the wastewater engineer's recommendations have been completed.

Consistent with the Commission's policy encouraging settlement, I&E engaged in good faith settlement negotiations to determine if a full or partial settlement of contested issues was possible. All of I&E's concerns were fully addressed in the Settlement;

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<sup>12</sup> I&E St. No. 3 (Wastewater), p. 11.

therefore, I&E maintains that the wastewater Settlement rates negotiated between I&E and the Company are in the public interest and should not be modified.

**B. The Settlement rates are just and reasonable.**

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

In its direct and surrebuttal testimonies, I&E's primary revenue requirement recommendation was based on a revenue increase that did not allow the Company a return on equity due to the ongoing service issues in its service territory. I&E's primary recommended water revenue requirement was \$65,544<sup>13</sup> and its primary wastewater revenue requirement was \$82,236.<sup>14</sup> In the event that the Commission did not accept I&E's primary recommendation of 0.00% cost of equity, I&E conducted a traditional rate of return analysis which resulted in a recommended \$111,199<sup>15</sup> revenue increase for

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<sup>13</sup> I&E St. No. 1-SR (Water), p. 3.

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

<sup>15</sup> I&E St. No. 1-SR (Water), p. 4.

water service and \$145,807<sup>16</sup> increase for wastewater service. Although this is a black box Settlement, the agreed upon revenue requirements for water (\$65,557) and wastewater (\$82,227 initially and \$145,824 when improvements are made) service are supported by the primary and secondary litigation positions contained in I&E's testimony.

The RD approved the Settlement rates for the Company's water operations and the first step for wastewater operations, but it modified the Settlement by rejecting the second wastewater step to \$145,824 because no ROE on equity is warranted due to the history of service issues. I&E appreciates the ALJs' recognition of its position in the RD and understands the complexity of developing just and reasonable rates given the service issues that have impacted HVUS customers for too long. The RD states:

A Commission-approved rate which does not allow for any return on equity is no small feat and, although permitted under the law, it is a rare case when the Commission exercises its discretionary authority to eliminate any return on equity to a utility. However, the presiding officers here recommend the Commission take this unusual step due to the plethora of poor quality service issues over the past 13 years for this public utility.<sup>17</sup>

I&E does not dispute this reasoning as it is the very position I&E advanced throughout its testimony while litigating this proceeding. However, as indicated above, for settlement purposes I&E analyzed the HVUS water and wastewater cases on a standalone basis to determine whether there was any room for compromise.

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<sup>16</sup> I&E St. No. 1-SR (Wastewater), p. 4.

<sup>17</sup> RD at 51.

For water service, the position I&E advanced in testimony is essentially what was agreed upon in the Settlement. In I&E Statement No. 1-SR, I&E recommended 0.00% ROE, which resulted in a revenue increase of \$65,544. The agreed upon Settlement increase for water of \$65,557 is very closely aligned to I&E's proposed revenue requirement. As discussed in the RD, the unusual step of not including a ROE is justified for HVUS water service given the well documented and longstanding history of service concerns.

Similarly, for wastewater service, the first step of the Settlement increase of \$82,227 mirrors I&E's primary wastewater revenue requirement of \$82,236, which allowed 0.00% ROE due to the Company's failure to comply with Section 1501 of the Code.<sup>18</sup> The wastewater Settlement rates proposed a second increase of \$145,842 once the engineer's recommendations have been completed as required by the McCloskey Order. This second step in the Settlement mirrors the traditional rate of return analysis that I&E conducted in testimony. This analysis determined that if HVUS had been providing adequate and reasonable wastewater service I&E would have recommended a 9.13% cost rate of common equity, resulting in a wastewater increase of \$145,807.<sup>19</sup> I&E asserts that the Settlement's proposed wastewater phase-in is appropriate for two reasons. First, while the record contains overwhelming evidence of ongoing inadequate water service, there is not similar customer testimony about HVUS wastewater service. As recounted in the RD, many HVUS customers gave compelling testimony detailing all the ways HVUS

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

<sup>19</sup> I&E St. No. 1-SR (Wastewater), p. 4. I&E St. No. 2-SR (Wastewater), p. 15.



water service negatively impacts their daily lives (including, but not limited to, brown or rusty water that customers will not drink, damaged clothing, permanent stains on bathroom and kitchen fixtures) but similar testimony was not provided about wastewater service issues.<sup>20</sup> This should not be interpreted to mean that HVUS is currently providing adequate and reasonable wastewater service given that the Commission's recent McCloskey Order found that both HVUS water and wastewater service are in violation of Section 1501 of the Code. However, the record evidence demonstrates that HVUS customers are not as significantly impacted by the Company's wastewater service as they are by the water service. Second, it is important to reiterate that the second step of the Settlement phase-in will not become effective until HVUS has complied with the extensive McCloskey Order requirements. Its facilities have been reviewed by an independent wastewater engineer and the report identified approximately seventy-five projects that must be completed at an estimated cost of \$229,000.<sup>21</sup> Therefore, under the Settlement, HVUS will not be permitted to earn a ROE until the Company has made significant improvements to its wastewater system.

Therefore, I&E respectfully requests that the RD's modification to the Settlement be rejected and that the Settlement, including the second step of the wastewater phase-in, be approved.

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<sup>20</sup> RD at 6-17.

<sup>21</sup> RD at 20.

### III. CONCLUSION

The Commission's Bureau of Investigation and Enforcement represents that it supports the Joint Petition of Non-Unanimous Settlement as being in the public interest and respectfully requests that the Commission approve the terms and conditions contained in the Settlement without modification.

Respectfully submitted,



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Deputy Chief Prosecutor  
PA Attorney ID No. 93176

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Dated: February 4, 2019