

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 Exceptions of Hidden Valley Foundation, Inc., 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 4<sup>th</sup> day of February 2019.

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

v.

HIDDEN VALLEY UTILITY  
SERVICES, L.P. – WATER

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

v.

HIDDEN VALLEY UTILITY  
SERVICES, L.P. – WASTEWATER

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**EXCEPTIONS OF HIDDEN VALLEY FOUNDATION, INC.**

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## I. INTRODUCTION

In response to the rate increase requests of Hidden Valley Utility Services, L.P. (“Company or HVUS”) made on April 28, 2018 calculated to produce additional total operating revenues of \$150,629 (Water) and \$185,432 (Wastewater), the Commission has recommended denial of such increases as requested and instead recommended increases calculated to produce additional total operating revenues of \$65,557 (Water) and \$82,227 (Wastewater) in its Recommended Decision issued on January 15, 2019 (“RD”) based on the Commission’s approval of the Partial Settlement (with modifications) reached by HVUS and the Bureau of Investigation and Enforcement (“BIE”) in this matter.

The Commission’s RD acknowledges its finding in a prior Complaint proceeding against HVUS filed by the Office of Consumer Advocate in 2014 that HVUS has not provided adequate water and wastewater service, in violation of Section 1501 of the Public Utility Code, in the Order entered January 18, 2018 (“McCloskey Order”).<sup>1</sup> Accordingly, the issue in this rate case proceeding is whether the level of inadequate service is sufficiently egregious to justify the Commission’s discretionary decision to deny a proposed rate increase due to that inadequate service. *See* 66 Pa.C.S.A. § 526(a). For the reasons articulated in our Main Brief and Reply Brief, Hidden Valley Foundation, Inc. (the “Foundation”) argues HVUS’ prolonged and chronic inadequate service is indeed sufficiently egregious to warrant the Commission’s use of such discretion to completely deny any rate increase to HVUS.

The Commission’s RD acknowledges HVUS’ disturbing level of grossly inadequate service that has persisted from the time that the Company began its water and wastewater

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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-2014-2447138, p. 23 (Order entered January 18, 2018 (collectively “McCloskey Order” and “McCloskey”).

operations after receiving its certificates of public convenience in 2005, noting that “Hidden Valley has been given over thirteen years in which to correct the issues with its water and wastewater quality – **and its failure to do so is deemed to be a refusal**...Now Hidden Valley comes along and insists in the Partial Settlement these customers, who currently pay, on average, \$345.60 annually for brown, murky water unfit for household use and poor sewer service, must now pay \$508.44 annually for the same poor quality water and sewer service. **Hidden Valley’s position is not persuasive.**” RD at p. 33 (emphasis added). Nonetheless, the presiding officers recommend that the Commission grant a portion of the requests to Hidden Valley by approving, with modifications, the Partial Settlement. Accordingly, the Foundation files the following exceptions to the RD.

## II. EXCEPTIONS

**Foundation Exception No. 1: The presiding officers erred in the RD by recommending that the Partial Settlement represents a fair, just, lawful, and reasonable resolution of this proceeding, and be approved, with modification. See Paragraph 1 on p. 52 of the RD.**

### *A. The settlement rates are not just and reasonable.*

It is well-established under Pennsylvania law that public utility rates must be just and reasonable. 66 Pa. C.S. § 1301. As a public utility, HVUS bears the burden of proof to establish the justness and reasonableness of every element of its requested rate increase. A review of the record in the proceeding demands that HVUS’ proposed rate increases be denied in their entirety because HVUS cannot meet its burden for proving that its rates are just and reasonable unless and until it demonstrates the ability provide adequate, safe and reasonable water and wastewater service to its customers. This has not happened and has no likelihood of happening any time soon. The Commission acknowledges that the *McCloskey Decisions* previously gave the Commission the opportunity to consider whether Hidden Valley should be allowed to continue to

operate a public utility and provide service to its customers in exchange for remuneration, and further acknowledges that while the Commission found that Hidden Valley failed to provide adequate, safe and reasonable service in that proceeding, it also determined that the Company provided sufficient level of service that it should not be acquired by another capable public utility pursuant to 66 Pa. C.S.A. §529(a). RD at p. 32.

The Commission now has another opportunity to consider whether HVUS should be allowed to continue to operate as a public utility and the Foundation implores the Commission to not let HVUS off the hook again. Given the Commission's recent Opinion and Order adopted and entered on January 17, 2019 in *McCloskey* denying HVUS' Second Petition for Amendment, the Recommended Decision should be modified in accordance with the Commission's findings there, most importantly the following:

**As expressed in the *January 2018 Order*, we viewed any further delays in complying with the deadlines of this long-standing proceeding as possibly indicative of the Company's lack of competency to operate and of its ability to provide reasonable and adequate service. Considering the Company's admission that it will not be able to comply with the deadline set forth in Ordering Paragraph No. 8 of the *May 2018 Order*, and in light of the possible evidentiary questions related to the estimated schedules provided by the Company's engineer and the financing plans for any of such proposals, we find that it would be appropriate to proceed to the hearing procedures set forth in the *May 2018 Order*.**

*Opinion and Order adopted and entered on January 17, 2019 in McCloskey.* If the Commission now believes that it is appropriate to proceed to the Section 529(a) procedures and that the Company's further delay and failure to comply with the *McCloskey* deadlines is indicative of the Company's lack of competency to operate and its inability to provide reasonable and adequate service, then it is an unavoidable conclusion that Company's level of inadequate service is sufficiently egregious to justify the Commission's discretionary decision to deny a proposed rate increase due to that inadequate service. How can the Company be said to have proven the

justness and reasonableness of every element of its rate increase under such circumstances?

Simply put, it cannot. Given that the Commission has found that it is appropriate to proceed to the Section 529(a) proceeding based on the Company's incompetency to operate and inability to provide reasonable and adequate service, no rate increase is just and reasonable. The Commission should exercise its discretion to completely deny any rate increase due to such blatantly inadequate service pursuant to 66 Pa.C.S.A. § 526(a).

***B. The Joint Petition for Non-Unanimous Settlement is not in the public interest.***

It is not in the public interest for the Commission to approve the Joint Petition for Non-Unanimous Settlement, in whole or in part, because the Settlement provides additional revenue to HVUS when the Company has proven over the course of its entire existence that it is incompetent to operate as a water and wastewater utility and is wholly unable to provide reasonable and adequate service. The Commission notes in the RD that its goal must be to do what is best for the public in general and the customers specifically (RD p. 34) but fails to acknowledge what the customers of HVUS have known for years—what is best for the customers of HVUS is that someone other than HVUS provides their water and wastewater services. Having HVUS' customers pay HVUS more for its inadequate services provides no guarantee that HVUS will actually use the additional revenues to make the necessary repairs and improvements required by *McCloskey*. The Commission states that the recommended increases “ensure Hidden Valley has the money needed to make these repairs” (RD, p. 34) but providing this additional revenue to HVUS with no restrictions on how such revenue must be spent is not in the best interest of anyone except HVUS and its owners.

If the Commission knows that the Company is incompetent to operate and unable to provide reasonable and adequate service, such that the Commission has found that it is now

appropriate to proceed to a Section 529(a) proceeding, how can providing more revenue to HVUS be in the best interests of the public or the customers of HVUS? Without very specific restrictions on what HVUS is allowed to do with the additional revenues provided by the rate increase, what prevents the owners of HVUS from simply continuing to take distributions and neglect the necessary repairs and maintenance that have been deferred and ignored over the course of the Company's history? The answer is nothing.

The Commission cites as persuasive the assertions of BIE in the Partial Settlement that Hidden Valley needs additional sums in order to comply with the totality of the *McCloskey Decisions* Order RD at p. 33), but we now know that the Commission has also acknowledged the Company's own admission that it cannot comply with the *McCloskey Decisions* Order. *Opinion and Order adopted and entered on January 17, 2019 in McCloskey*. How can it be in the best interest of the public or the customers of HVUS to simply ignore this reality and provide the Company with additional revenues on the basis that it will help comply with an Order that both HVUS and the Commission acknowledge the Company cannot do? It is not. Instead of providing HVUS additional revenues in a misguided effort to save a sinking ship, the Commission should proceed with the Section 529(a) proceeding and finally give the customers of HVUS the opportunity to have adequate service by finding an entity with the capacity to do so. That is what is in the best interests of the public and the customers of HVUS.

**Foundation Exception No. 2: The presiding officers erred in the RD by recommending that the base rate for the water division be increased by \$65,557, to produce annual revenues not in excess of \$206,112 annually. See Paragraph 2 on p. 52 of the RD.**

*A. The settlement rates are not just and reasonable. See the reasoning provided in*

Foundation Exception No. 1, part A, above.

**Foundation Exception No. 3: The presiding officers erred in the RD by recommending that the base rate for the wastewater division be increased by \$82,227, to produce annual revenues not in excess of \$375,866 annually. See Paragraph 3 on p. 52 of the RD.**

*A. The Settlement rates are not just and reasonable. See the reasoning provided in Foundation Exception No. 1, part A, above.*

**Foundation Exception No. 4: The presiding officers' recommendation that Hidden Valley be ordered to file with the Secretary's Bureau and the Bureau of Technical Utility Services corrected annual reports from 2015 through 2018 prepare by or reviewed by a rate consultant within 90 days from the date of the Final Order in these proceedings (See Paragraph No. 4 on p. 52 of the RD) should be modified as follows:**

"4. That Hidden Valley be ordered to file with the Secretary's Bureau and the Bureau of Technical Utility Services corrected annual reports from 2015 through 2018 prepared by a Certified Public Accountant (CPA) to ensure that its annual reports are prepared accurately and in accordance with Generally Accepted Accounting Principles (GAAP) applied on a consistent basis within 90 days from the date of the Final Order in these proceeding."

*A. See the reasoning provided in the Exceptions of Robert J. Kollar in this proceeding.*

**Foundation Exception No. 5: The presiding officers' recommendation that Hidden Valley be ordered to file with the Secretary's Bureau and the Bureau of Technical Services, within 120 days from the date of the Final Order in these proceedings, an independent financial audit of its records from 2015 through 2018 conducted by an outside independent financial accounting firm or office which has not previously provided auditing services to Hidden Valley (See Paragraph No. 4 on p. 52 of the RD) should be modified as follows:**

"5. That Hidden Valley be ordered to file with the Secretary's Bureau and the Bureau of Technical Services, within 120 days from the date of the Final Order in these proceedings, an independent financial audit of its records from 2015 through 2018 conducted by an outside independent Certified Public Accounting Firm which has not previously provided auditing or accounting services to Hidden Valley Utility Services, L.P., or to any business entity in which the owners of Hidden Valley have a financial interest, or to the individual owners of Hidden Valley. The Firm selected shall have the necessary expertise in accounting and auditing of small utilities in order to perform the audit."

*A. See the reasoning provided in the Exceptions of Robert J. Kollar in this proceeding.*

**Foundation Exception No. 6: The presiding officers erred in the RD by recommending that the Joint Petition for Non-Unanimous Settlement is approved with modification. See Paragraph 1 on p. 56 of the RD.**

*A. The settlement rates are not just and reasonable. See the reasoning provided in Foundation Exception No. 1, part A, above.*

*B. The Joint Petition for Non-Unanimous Settlement is not in the public interest. See*

*the reasoning provided in Foundation Exception No. 1, part B, above.*

**Foundation Exception No. 7: The presiding officers erred in the RD by recommending that, upon final entry of a Commission Order in this proceeding, Hidden Valley Utility Services, L.P. – Water, is authorized to file water tariffs, tariff supplements or tariff revisions containing rates, rules and regulations, consistent with the findings herein, to produce annual revenues not in excess of \$206,112, which is an increase over present revenues of \$65,557. See Paragraph 4 on p. 56 of the RD.**

*A. The settlement rates are not just and reasonable. See the reasoning provided in Foundation Exception No. 1, part A, above.*

**Foundation Exception No. 8: The presiding officers erred in the RD by recommending that, upon final entry of a Commission Order in this proceeding, Hidden Valley Utility Services, L.P. – Water, is authorized to file wastewater tariffs, tariff supplements or tariff revisions containing rates, rules and regulations, consistent with the findings herein, to produce annual revenues not in excess of \$375,866, which is an increase over present revenues of \$82,227. See Paragraph 5 on p. 56 of the RD.**

*B. The settlement rates are not just and reasonable. See the reasoning provided in Foundation Exception No. 1, part A, above.*

**Foundation Exception No. 9: The presiding officers' recommendation that, within 90 days after the entry of the Commission's final order in this proceeding, Hidden Valley Utility Services, L.P. shall submit to the Commission's Secretary's Bureau and the Commission's Bureau of Technical Utility Services corrected annual reports for the years 2015-2018 prepared by or reviewed by a rate consultant prior to submission to the Commission (See Paragraph No. 7 on p. 57 of the RD) should be modified as follows:**

“7. That, within 90 days after the entry of the Commission’s final order in this proceeding, Hidden Valley Utility Services, L.P. shall submit to the Commission’s Secretary’s Bureau and the Commission’s Bureau of Technical Utility Services corrected annual reports for the years 2015-2018 prepared by a Certified Public Accountant (CPA) to ensure that its annual reports are prepared accurately and in accordance with Generally Accepted Accounting Principles (GAAP) applied on a consistent basis prior to submission to the Commission.”

A. See the reasoning provided in the Exceptions of Robert J. Kollar in this proceeding.

**Foundation Exception No. 10: The presiding officers’ recommendation that, during the period 2019-2023 or until its next rate case, whichever is earlier, Hidden Valley Utility Services, L.P. shall have its annual report prepared or reviewed by a rate consultant prior to submission to the Commission (See Paragraph No. 8 on p. 57 of the RD) should be modified as follows:**

“8. That, during the period 2019-2023 or until its next rate case, whichever is earlier, Hidden Valley Utility Services, L.P. shall have its annual report prepared by a Certified Public Accountant (CPA) to ensure that its annual reports are prepared accurately and in accordance with Generally Accepted Accounting Principles (GAAP) applied on a consistent basis prior to submission to the Commission.”

A. See the reasoning provided in the Exceptions of Robert J. Kollar in this proceeding.

**Foundation Exception No. 11: The presiding officers’ recommendation that, within 120 days of the Commission’s final order in these proceedings, Hidden Valley Utility Services, L.P. shall cause to be conducted an independent financial audit of its records from 2015 through 2018 by an outside independent financial accounting firm or office which has not previously provided auditing services to Hidden Valley Utility Services, L.P.; that the Company shall file a notice at this docket number and serve a copy of said notice on all parties to this proceeding, stating that the independent financial audit has been completed; and that the Company shall submit the independent financial audit to the Commission’s Secretary’s Bureau and the Commission’s Bureau of Technical Utility Services (See Paragraph No. 9 on p. 57 of the RD) should be modified as follows:**

“11. That, within 120 days of the Commission’s final order in these proceedings, Hidden Valley Utility Services, L.P. shall cause to be conducted an independent financial audit of its records from 2015 through 2018 by an outside independent Certified Public Accounting Firm which has not previously provided auditing or accounting services to Hidden Valley Utility Services, L.P., or to any business entity in which the owners of Hidden Valley have a financial interest, or to the individual owners of Hidden Valley. That the Firm selected shall have the necessary expertise in accounting and auditing of small utilities in order to perform the audit. That the Company shall file a notice at this docket number and serve a copy of said notice on all parties to this proceeding, stating that identity of the auditing firm selected to complete the audits

along with an estimated timetable for their completion. That the complete audit report, including financial statements and footnotes, shall be filed and made available for review by all parties to the proceeding at this docket number in addition to being filed with the Commission's Secretary's Bureau and the Bureau of Technical Utility Services. That, within 60 days of receiving the audited financial statements, the Bureau of Technical Utility Services shall provide a report to the Commission which shall be filed and made available for review by all parties to this proceeding at this docket number indicating the following: (a) its receipt of the audited financial statements; and (b) that it has reviewed the audited financial statements and include a list of any concerns it has regarding the financial ability of Hidden Valley as a result of its review. That the audit requirement shall remain in effect until all requirements of the McCloskey case have been met."

A. See the reasoning provided in the Exceptions of Robert J. Kollar in this proceeding.

### III. CONCLUSION

The Foundation continues its objection to the Joint Petition of Non-Unanimous Settlement as not being in the public interest or the interest of the Foundation's members and customers of HVUS and respectfully requests that the Commission modify its Recommended Decision to be consistent with the Exceptions of Hidden Valley Foundation, Inc.

Respectfully submitted,



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