PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Harrisburg, PA 17105-3265

Public Meeting held March 14, 2019

Commissioners Present:

Gladys M. Brown, Chairman

David W. Sweet, Vice Chairman

Norman J. Kennard

Andrew G. Place

John F. Coleman, Jr.

Pennsylvania Public Utility Commission R-2018-3001306

Gerry and Melissa Pindroh C-2018-3001787

Office of Consumer Advocate C-2018-3001841

Debra J. Simpson C-2018-3002179

Tom and Shelley Conroy C-2018-3002198

John Cupps C-2018-3002468

David Oster C-2018-3002470

Toni Gorenc C-2018-3002480

David Brodland C-2018-3002485

Robert and Katherine Bair C-2018-3002587

Jerome and Barbara Cypher C-2018-3002671

Jon and Nina Lewis C-2018-3002701

Celeste Emrick C-2018-3003020

Robert J. Kollar C-2018-3003370

Hidden Valley Foundation, Inc. C-2018-3003528

v.

Hidden Valley Utility Services, L.P. – Water

Pennsylvania Public Utility Commission R-2018-3001307

Office of Consumer Advocate C-2018-3001843

Tom and Shelley Conroy C-2018-3002200

John Cupps C-2018-3002459

David Oster C-2018-3002475

Toni Gorenc C-2018-3002481

David Brodland C-2018-3002487

Jerome and Barbara Cypher C-2018-3002683

Jon and Nina Lewis C-2018-3002698

Robert J. Kollar C-2018-3003372

Hidden Valley Foundation, Inc. C-2018-3003529

v.

Hidden Valley Utility Services, L.P. – Wastewater

**OPINION AND ORDER**

**BY THE COMMISSION:**

# I. Matter Before the Commission

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Hidden Valley Utility Services, L.P. – Water and Hidden Valley Utility Services, L.P. – Wastewater (collectively, HVUS or Company), the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), an Intervenor, Robert Kollar (Mr. Kollar), filed on February 4, 2019, and the Exceptions of Hidden Valley Foundation (Foundation),[[1]](#footnote-2) filed on February 5, 2019, to the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Mark A. Hoyer and Katrina L. Dunderdale, issued January 25, 2019, relative to the above-captioned proceedings. Replies to Exceptions were filed on February 8, 2019, by HVUS, I&E, the OCA, and the Foundation. Also before the Commission is a Joint Petition for approval of a Non-Unanimous Settlement (Non-Unanimous Settlement or Settlement) filed by HVUS and I&E (Joint Petitioners) on November 19, 2018**.**

For the reasons stated, *infra*, we shall deny the Exceptions filed by HVUS, the OCA, I&E, the Foundation, and Mr. Kollar, adopt the Recommended Decision, and approve the Joint Petition for approval of a Non-Unanimous Settlement, with modification.

As discussed below, HVUS originally proposed a rate base change that would have increased its annual water revenues by $150,629, or 107.2% over present rates; and annual wastewater revenues by $185,432, or 63.1% over present rates, based on a historical test year (HTY) ending December 31, 2017. In this Opinion and Order, we shall approve an annual water revenue increase of $65,557, or 46.6%, and an annual wastewater revenue increase of $82,227, or 28.0%, based on the Non-Unanimous Settlement, as modified.

# II. History of the Proceeding

On April 27, 2018, HVUS filed Supplement No. 1 to Tariff Water – Pa. P.U.C. No. 1 (Water Supplement No. 1) at Docket No. R-2018-3001306, proposing an increase in rates designed to produce an additional $150,629, or a 107.2% increase, in total annual operating revenues. Approval of Water Supplement No. 1 would result in an increase of the average water bill for a residential customer using 2,100 gallons per quarter within the Company’s service territory from $26.64 to $54.72 per quarter, or an increase of 105.4%. The average water bill for a commercial customer using 16,000 gallons would increase from $123.52 to $238.20 per quarter, or an increase of 92.8%.

Also, on April 27, 2018, HVUS filed Supplement No. 1 to Tariff Wastewater – Pa. P.U.C. No. 1 (Wastewater Supplement No. 1) at Docket No. R‑2018‑3001307, proposing an increase in rates designed to produce an additional $185,432, or an increase of 63.1%, in total annual operating revenues. Approval of Wastewater Supplement No. 1 would result in an increase in the average wastewater bill for a residential customer using 2,100 gallons per quarter within the Company’s service territory from $59.76 to $96.42 per quarter, or an increase of 61.3%. The average wastewater bill for a commercial customer using 16,000 gallons would also increase from $276.60 to $446.70 per quarter, or an increase of 61.5%. Both Water Supplement No. 1 and Wastewater Supplement No. 1, which were based on a 2017 historic test year, were filed to become effective July 1, 2018.

On May 14, 2018, the OCA filed a Formal Complaint (Complaint) against the Company’s proposed Water Supplement No. 1, at Docket No. C-2018-3001841, and the Wastewater Supplement No. 1, at Docket No. C-2018-3001843. Several *pro se* Complainants also filed Complaints against the proposed water and wastewater rate increases.

By order entered May 17, 2018 *(May 2018 Suspension Order)*, pursuant to Section 1308(d) of the Public Utility Code (Code), 66 Pa. C.S. § 1308(d), the Commission suspended the filings for investigation to determine the lawfulness, justness and reasonableness of the rates, until February 19, 2019, unless permitted by Commission Order to become effective at an earlier date. HVUS agreed to enter mediation with the Parties in the two base rate cases. Accordingly, HVUS filed Tariff Supplements at each docket on May 23, 2018, to further suspend these matters until April 1, 2019.

On July 27, 2018, two public input hearings were held, as scheduled, at the Hidden Valley Resort-Alpine Room. A total of thirty-two HVUS customers testified at the public input hearings.

On November 16, 2018, the ALJs convened an evidentiary hearing. Counsel for HVUS, I&E and the Foundation were present. At the evidentiary hearing, the Parties offered for admission into evidence four documents. The documents were marked as Joint Exhibits 1, 2 and 3 and HVUS Exhibit RMK-Rejoinder 1. The documents were admitted into the hearing record and the ALJs asked the Parties to submit the joint documents in writing after the hearing. Joint Exhibit 1 was a Joint Stipulation for the Admission of Evidence (Stipulation to Admit); Joint Exhibit 2 was the Non-Unanimous Settlement; and Joint Exhibit 3 was the Joint Stipulation (Joint Stipulation). Also, at the evidentiary hearing, the OCA orally requested to be admitted into evidence the evidentiary record in two prior cases. The two prior cases were *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, LP – Water*, Docket No. C‑2014-2447138 and *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, LP – Wastewater*, Docket No. C-2014-2447169 (Order entered January 18, 2018) *(January 2018 McCloskey Order).*[[2]](#footnote-3) The Parties did not object to the OCA’s request. Therefore, the ALJs orally granted the request but directed the OCA to file a written motion to include a recitation of precisely which documents would be included from the two complaint proceedings.

On November 19, 2018, HVUS filed a Joint Petition for Approval of the Non-Unanimous Settlement in both proceedings. The Joint Petitioners requested that the Commission approve the Non-Unanimous Settlement without modification.

On November 21, 2018, the OCA filed a Motion to Admit Evidence. The Motion to Admit Evidence listed the specific items from the evidentiary record in the *January 2018 McCloskey Order* that the OCA asked to have admitted into evidence.

On November 29, 2018, the ALJs issued the Second Interim Order which granted the OCA’s Motion to Admit Evidence.

On December 11, 2018, HVUS, I&E, the OCA, and the Foundation filed Main Briefs. Each of these Parties filed Reply Briefs on December 21, 2018. The record was closed on December 26, 2018. The record includes a 318-page transcript and the Parties’ testimonies and exhibits. The ALJs’ Recommended Decision was issued on January 25, 2019, wherein they recommended approval of the Settlement, with modification.[[3]](#footnote-4)

As noted, Exceptions were filed by HVUS, I&E, the OCA, and Mr. Kollar, on February 4, 2019, and by the Foundation on February 5, 2019. Replies to Exceptions were filed by HVUS, I&E, the OCA, and the Foundation on February 8, 2019.

# III. Description of the Company

HVUS is a limited partnership[[4]](#footnote-5) which owns and operates a water treatment and distribution system and a wastewater collection and treatment system in Jefferson Township, Somerset County, Pennsylvania. The Company’s service territory consists of approximately 1,399 acres which follows the geographic boundary of the Hidden Valley Resort (Resort), a ski and golf resort community located in Jefferson Township, Somerset County, Pennsylvania. HVUS M.B. at 4.

On February 12, 2004, HVUS filed two applications for approval to begin to offer, render, furnish or supply water and wastewater services to the public in Hidden Valley at Docket Nos. A-00210117 and A-00230101 (2004 Applications). Protests to the Applications were filed. Thereafter, the Parties reached a settlement agreement (2005 Settlement) which addressed the issues and protests raised in the 2004 Applications proceedings.By Final Order entered July 15, 2005 (*July 2005 Order*), the Commission approved the 2005 Settlement and granted the 2004 Applications.

HVUS’s water system presently serves approximately 1,156 residential and non-residential customers including approximately eighteen availability customers and fifty private fire customers. HVUS’s water system consists of two wells, treatment facilities, high service pumps, a 250,000-gallon storage tank, and a distribution system containing approximately eighteen miles of water mains, fire hydrants, approximately 1,175 connections and miscellaneous valves. HVUS M.B. at 5. HVUS’s water system has a history of problems with iron and manganese in the water dating back to at least 2004. HVUS currently treats the iron and manganese using a sequestration method. HVUS M.B*.* at 6.

HVUS’s wastewater system presently serves approximately 1,154 residential and non-residential customers including approximately eighteen availability customers. The wastewater system which has been in operation since the mid-1980s, includes two treatment plants. Plant No. 1 has a 100,000 gallons per day (gpd) capacity while Plant No. 2 has a 30,000-gpd capacity. Plant No. 1 also has 300,000-gallon equalization tanks. Treated effluent from both plants is pumped to a storage lagoon for treatment on a twenty-acre spray field. The wastewater collection system contains six grinder pump stations. Demand on the water and wastewater systems fluctuates with maximum demands occurring during weekends and holidays because most connections on the system are seasonal/weekend customers. These demands on the treatment plants require HVUS to respond to unusual operational conditions due to the transient resort population with peak flows occurring on winter weekends and low-flow conditions during the week and in the spring and fall. HVUS M.B at 5, 6-7.

The 2005 Settlementrequired HVUS to implement changes and improvements to provide adequate, safe, and reasonable service and to address long-term problems including brown or rust-colored water, low water pressure, and high levels of unaccounted-for water. HVUS’s rates were set at the time of the 2005 Settlement and have not been increased since that time.[[5]](#footnote-6)

# IV. Summary of the *January 2018 McCloskey Order*

On October 9, 2014, the OCA filed a Formal Complaint against HVUS, regarding water services, at Docket No. C‑2014-2447138 (Water Complaint) and wastewater services, at Docket No. C‑2014-2447169 (Wastewater Complaint). In the Water Complaint, the OCA averred that the Company failed to provide adequate, safe and reasonable service, regarding water system issues, alleging, *inter alia,* continuing incidents of dirty, brown and rusty water; lack of proper equipment; the failure to properly maintain water tanks; low water pressure which is alleged to be inadequate for basic household uses, and lack of system maintenance. The OCA further alleged the existence of financial and managerial problems. In the Wastewater Complaint, the OCA averred, in part, that the Company failed to provide adequate, safe and reasonable service, and that the system lacks certain equipment. The OCA further alleged the existence of financial and managerial problems similar to those pertaining to the water system.

In an Initial Decision issued on September 9, 2016, ALJ Jeffrey A. Watson sustained the Water and Wastewater Complaints filed by the OCA and imposed a corrective plan to implement improvements to the water and wastewater systems operated by HVUS.[[6]](#footnote-7) The OCA, HVUS, and the Intervenors filed Exceptions on September 29, 2016. On October 10, 2016, the Intervenors filed Replies to Exceptions, and on October 11, 2016, the OCA and the Company filed Replies to Exceptions.

In the *January 2018 McCloskey Order*, we granted the Exceptions of the OCA, HVUS, and the Intervenors, in part, and denied them in part, and adopted the Initial Decision, as modified. Among other things, we addressed the following in the *January 2018 McCloskey Order*:

1. **Rate Reduction and Usage Allowance**

We first addressed the OCA’s Exception No. 1 and its request to impose a rate reduction of fifty percent for both water and wastewater service or alternatively a customer usage allowance. We agreed with ALJ Watson’s finding that the Company failed to provide adequate and reasonable service to its water and wastewater customers. Thus, we determined that HVUS did not comply with Section 1501 of the Code. However, we declined to impose the OCA’s recommended remedy of a rate reduction. Additionally, we did not believe that the OCA’s alternate recommendation of a usage allowance was fully supported by the record. *January 2018 McCloskey Order* at 23-26.

1. **Compliance Deadlines**

Next, we addressed the OCA’s second Exception, which criticized the Initial Decision for not including all of the OCA’s recommendations for ensuring compliance with the deadlines for resolving the Company’s water and wastewater problems. We also considered HVUS’s second Exception, which contended that ALJ Watson established an arbitrary and unrealistic one-year deadline for the completion of projects to improve the Company’s system. Upon review, we granted, in part, and denied, in part, the OCA Exception No. 2, and denied HVUS Exception No. 2.

Regarding the OCA’s Exception No. 2, we noted our rejection of the OCA’s requested rate relief. Thus, we denied the Exception to the extent that it requested a rate reduction as a deadline compliance measure for the reasons discussed in the disposition above. However, due to the extended time-period for compliance with the 2005 Settlement and the lack of resolution of the outstanding service problems, we believed there should be some mechanism for ensuring that further compliance deadlines are met. We explained that any failure to further comply with the deadlines set forth in the *January 2018 McCloskey Order* could be indicative of the Company’s lack of competency to operate and of the inability to provide reasonable and adequate service. Accordingly, we modified the Initial Decision to clarify that upon notice of the Company’s failure to comply with any applicable deadlines, we shall initiate a separate proceeding pursuant to 66 Pa. C.S. § 529 (Section 529 Proceeding) (relating to directing a competent utility to operate or acquire a small wastewater utility that has jeopardized public safety by failing to provide reasonable and adequate service). We further discussed our rationale for limiting the enforcement provisions to compliance with the deadlines specified in its Opinion and Order. *January 2018 McCloskey Order* at 29-31.

As to HVUS’s second Exception, we explained that the Company’s customers have been suffering from poor water quality and unreasonable service for years. We emphasized that any subsequent delays in failing to remediate the problems due to the failure to meet compliance deadlines would be unacceptable. Accordingly, we explained that the one-year deadline for implementing the corrective measures established in the engineer’s report sets an objective guideline for compliance. We also stated that, if additional time were deemed critical, the Company could petition the Commission for relief to modify the deadline pursuant to Section 5.572(d) of the Code. *January 2018 McCloskey Order* at 31.

1. **Ordering Paragraph Revisions**

In their third Exception, the Intervenors objected to several ordering paragraphs in the Initial Decision as providing unreasonable extensions of time for complying with the 2005 Settlement and failing to provide clear penalties and consequences for future noncompliance by HVUS. The Intervenors requested several modifications to help establish sufficient enforcement measures. Likewise, the OCA in its third Exception requested modifications of several ordering paragraphs in the Initial Decision and the addition of other ordering paragraphs to ensure that the water being provided to customers is treated as effectively as possible.[[7]](#footnote-8)

We granted the Intervenors’ Exception No. 3, in part, to the extent that it sought a clarification of Ordering Paragraph No. 12 in the Initial Decision which addressed the filing of corrected annual reports. We explained that the language in the ordering paragraph required the Company to “make all reasonable efforts to timely file correct information in its annual reports” which was potentially ambiguous and inconsistent with the 180‑day timeline for compliance set forth in the ordering paragraph. Accordingly, we modified the Initial Decision by deleting the “reasonable efforts” language so that it would be clear that any corrective filings or amendments must be submitted to the Commission within 180 days of entry of that Opinion and Order. This modification was incorporated in Ordering Paragraph No. 14 of the *January 2018 McCloskey Order*. We denied the remainder of Intervenors Exception No. 3 on the basis that sufficient corrective measures are contained in other portions of the disposition and ordering paragraphs in the *January 2018 McCloskey Order*. *January 2018 McCloskey Order* at 39-40.

We found the requested clarification of several ordering paragraphs and the addition of the new ordering paragraphs to be reasonable and supported by the evidentiary record. Moreover, we noted the Company’s lack of objections to these modifications. As such, we granted the OCA’s Exception and modified the Initial Decision. Specifically, we incorporated the requested modifications in Ordering Paragraph Nos. 6, 9, 20, 22, 23, 24, and 25 of the *January 2018 McCloskey Order*.[[8]](#footnote-9) *January 2018 McCloskey Order* at 40.

1. **Additional Hearings**

In its Exception No. 4, the OCA requested enhancements to Ordering Paragraph No. 18 of the Initial Decision which established a procedure for the OCA to investigate the completed rehabilitative measures conducted by the Company or alternatively permitted a referral to the Commission’s Bureau of Technical Utility Services (TUS) for review. The OCA requested that the Commission clarify that, first, the Company must carry the burden of proving that the service and facilities are no longer inadequate; and, second, the hearing must address the requirements of Section 529 of the Code, 66 Pa. C.S. § 529. *January 2018 McCloskey Order* at 40-42.

In our disposition, we emphasized our intention to reduce any further delays in the event a subsequent evidentiary hearing becomes necessary to evaluate the propriety of the Commission’s rehabilitative measures. We found that the OCA’s proposal in its Exception No. 4 would help in this regard. By requiring the Company to carry the burden of proving that its service and facilities are no longer inadequate and mandating that any subsequent hearing address the requirements of Section 529 of the Code, 66 Pa. C.S. § 529, we found that the timeframe for final resolution of the outstanding issues in the *January 2018 McCloskey Order* proceeding should be streamlined. Further, we noted that the Company did not object to the OCA’s proposal. Thus, we granted OCA Exception No. 4 and modified the Initial Decision to incorporate the modifications. *January 2018 McCloskey Order* at 42.

1. **Customer Bills**

Next, we considered the OCA’s Exceptions pertaining to the Ordering Paragraphs of the Initial Decision, which required the Company to modify its billing practices to ensure compliance with all Commission requirements and to provide a copy of the revised bill form to the OCA within ninety days of the final Commission Order in that proceeding. The OCA argued that we should modify the Ordering Paragraphs to provide a sufficient advance opportunity to review and provide input on the bill revisions. *January 2018 McCloskey Order* at 43.

We granted the OCA’s Exception No. 5, finding that it would be beneficial to the Company’s customers for the OCA to provide input on the bill revisions. Moreover, we noted that the Company did not object to this proposal. To facilitate the OCA’s input and review, we directed HVUS to seek input from the OCA about its draft customer bills within sixty days from the date of entry of the *January 2018 McCloskey Order*. *Id.*

1. **Utility Bills**

Ordering Paragraph No. 13 of the Initial Decision required HVUS to pay all electric and telephone bills in a timely manner to ensure adequate and reasonable service to its customers. In the *January 2018 McCloskey Order*, we addressed the OCA’s Exception No. 6, which argued that the ALJ failed to include important oversight mechanisms in Ordering Paragraph No. 13 to ensure compliance with the payment obligations. *January 2018 McCloskey Order* at 44.

Regarding the payment of electric bills, the OCA recommended that the Company be required to execute appropriate authorization forms permitting its electric provider, Pennsylvania Electric Company (Penelec), to continue providing monthly billing and payment information for all HVUS accounts to the OCA until June 10, 2018. The OCA argued, in part, that having monthly payment information will allow the OCA to timely respond to late payments before they escalate to termination notices and put the utility’s ability to provide continuous water and wastewater service in jeopardy. The OCA also asserted that its requested relief imposes a minor burden on HVUS, requiring the Company to simply execute written authorization for Penelec to release its account information to the OCA. Moreover, the OCA noted, the submission of account information for monitoring provides a reciprocal benefit to Penelec by encouraging timely payment by the Company. *January 2018 McCloskey Order* at 44.

Regarding the payment of telephone bills, the OCA requested that its recommendation of an annual update on telephone service be adopted. Specifically, the OCA requested that copies of the Company’s bills for telephone service be provided to ensure that HVUS will maintain phone service at the numbers listed on the bills, so customers are able to reliably contact the Company. *January 2018 McCloskey Order* at 44.

In our disposition, we agreed that timely payment of the Company’s electric and telephone bills is critical to ensuring adequate and reasonable service to its customers. We found that the OCA’s proposed mechanism for monitoring payment of the electric and telephone bills involves a minimal burden on HVUS and appeared to be an appropriate modification to the Initial Decision. Noting the lack of objection by the Company to this modification, we found it to be reasonable and supported by the evidentiary record. Thus, we granted OCA Exception No. 6. *January 2018 McCloskey Order* at 45.

1. **Customer Meetings**

Moving to the requirement of scheduling semi-annual customer meetings, we addressed the OCA’s Exception No. 7, which requested clarification to add specific dates to ensure that the meetings are well-attended and useful to both the Company and its customers. Additionally, the OCA requested that the Company be required to confer with the Foundation, which is the Hidden Valley homeowner’s association, regarding dates that may result in higher attendance and increased communications with the customers. *January 2018 McCloskey Order* at 45-46.

We also addressed the Company’s Exception No. 1 which requested modification of the customer meeting provision in Ordering Paragraph No. 3 to explicitly state that the semi-annual meetings should be held only until the line replacement work referenced in Ordering Paragraph No. 3 of the *January 2018 McCloskey Order* is completed.[[9]](#footnote-10) Alternatively, the Company asserted that we should require semi-annual customer meetings until HVUS completes the projects necessary to comply with the our final Order in that proceeding. *January 2018 McCloskey Order* at 46.

We granted the OCA’s Exception No. 7, finding that the requested modifications would help ensure appropriate customer involvement. Additionally, we agreed with the Company that the mandatory customer meetings need not be held in perpetuity. Rather, we determined that the meetings could be concluded upon the filing of a status report by the Company and its engineer, and a report from the OCA and TUS evidencing completion of all the requirements and the closing of the proceeding. Although we encouraged the Company to continue to provide contact opportunities and public meetings by which customers could receive information and provide input to the Company about its services, we declined to mandate these meetings after final resolution of the issues in that proceeding. Accordingly, we granted HVUS Exception No. 1, in part.[[10]](#footnote-11) *January 2018 McCloskey Order* at 48.

1. **Wastewater Violations**

Next, we addressed the Company’s objection to ALJ Watson’s finding that HVUS failed to provide adequate wastewater service in violation of Section 1501 of the Code. Upon review, we found that the ALJ’s findings and conclusions regarding the wastewater violations were well reasoned and amply supported by the evidentiary record. Accordingly, we denied HVUS Exception No. 3. *January 2018 McCloskey Order* at 49‑50.

1. **Civil Penalties**

We also addressed the Intervenors’ Exception No. 1, which argued that we should have imposed civil penalties on the Company after concluding that HVUS failed to comply with the 2005 Settlement. In rejecting the Intervenors’ arguments, we explained that we were not required to impose a civil penalty for failure to comply with the 2005 Settlement. Rather, the imposition of a civil penalty for violating the Code or a Commission Regulation or Order is a discretionary exercise.[[11]](#footnote-12) *January 2018 McCloskey Order* at 52.

Next, we indicated our agreement with the ALJ’s decision not to impose civil penalties in this proceeding. However, we found that the ALJ should have considered the ten factors pursuant to the Commission’s policy statement in considering whether a civil penalty should be applied in this case and conducted an evaluation of the factors set forth in 52 Pa. Code § 69.1201(c). Upon consideration of all the factors, we noted that some of the Company’s actions merited or supported a civil penalty, but that we declined to issue or impose a civil penalty at that time. *January 2018 McCloskey Order* at 52-56.

1. **Receivership**

Finally, we addressed the Intervenors’ Exception No. 2 pertaining to the ALJ’s failure to find that the Company was insolvent and lacked managerial and financial fitness. The Intervenors also argued that the evidence already supported an immediate Commission Order directing acquisition of HVUS by a viable utility pursuant to 66 Pa. C.S. § 529(a). *January 2018 McCloskey Order* at 56-59.

We agreed with ALJ Watson that the record evidence did not support a finding that the Company should be placed in receivership. Although such a remedy could be considered in the context of a Section 529 Proceeding should one be deemed necessary in the future, we explained that such a finding would be inappropriate under the present procedural posture of that case. Instituting a Section 529 Proceeding would, in part, require notice to the appropriate parties and the holding of an evidentiary hearing to consider statutory factors before we can order a capable public utility to acquire HVUS. 66 Pa. C.S. §§ 529(c) and (h). Accordingly, we denied the Intervenors’ Exception No. 2. *January 2018 McCloskey Order* at 56-60.

# V. Summary of the *May 2018 McCloskey Order*

On February 2, 2018, HVUS filed its Petition seeking clarification and reconsideration of the *January 2018 McCloskey Order*. By Order entered February 8, 2018, we granted the Petition, pending further review of, and consideration on, the merits. On February 12, 2018, the OCA and the Intervenors filed their respective Answers to the Petition.

On April 11, 2018, the Company filed its first sixty-day status report with the Commission which was required by Ordering Paragraph No. 17 of the *January 2018 McCloskey Order*.[[12]](#footnote-13) Additionally, on April 18, 2018, HVUS filed the Engineer’s Reports required by Ordering Paragraph Nos. 6 and 9 and the revised bill form for review required by Ordering Paragraph Nos. 12 and 13 of the *January 2018 McCloskey Order*.

In its Petition, HVUS raised three objections to separate ordering paragraphs contained in the *January 2018 McCloskey Order*. First, the Company believed that Ordering Paragraph No. 8, pertaining to the deadline for compliance with the engineer’s report required by the *January 2018 McCloskey Order* (Engineer’s Report), is confusing and should be clarified. Second, HVUS argued that the requirement to submit an authorization to Penelec to release monthly bills and payment information, as set forth in Ordering Paragraph No. 15, should be eliminated. Third, HVUS asserted that we should reconsider the investigation requirement in Ordering Paragraph No. 20 by tasking TUS with any subsequent investigation rather than the OCA.

In the *May 2018 McCloskey Order*, we addressed the Company’s first argument pertaining to the deadline for compliance with the engineer’s recommendations. We disagreed with the Company’s alternate interpretation, which limits application of the one-year deadline to only the treatment plant reassessment. Rather, we agreed with the OCA that such an alternate interpretation is inconsistent with our discussion in the *January 2018 McCloskey Order*. In our prior determination, we held that “[a]ny subsequent delays in failing to remediate the problems due to the failure to meet compliance deadlines would be unacceptable. The one-year deadline for implementing the corrective measures established in the [Engineer’s Report] sets an objective guideline for compliance.” *January 2018 McCloskey Order* at 31. Thus, we did not believe that the Petition offered a new or novel argument or identified considerations which appeared to have been overlooked. Nonetheless, in the interest of avoiding any possible confusion, we revised the provision to incorporate the adjustments suggested by the OCA. *May 2018 McCloskey Order* at 23.

Regarding the Company’s second argument objecting to the continued monitoring of electric service bills and payments, we denied the Petitioner’s request to eliminate the monitoring provision. We explained that during the Exception stage, the Company did not object to the language proposed by the OCA, which ultimately was incorporated into Ordering Paragraph No. 15. Accordingly, on the basis of judicial economy, we declined to consider the Company’s arguments to eliminate the monitoring provisions set forth in Ordering Paragraph No. 15. *May 2018 McCloskey Order* at 23.

Regarding the third argument pertaining to an investigation following HVUS’s final status report, we granted the Petition as to this issue. Although the Company failed to raise an objection about this provision during the Exception stage, we noted that it appeared we overlooked the potential issue of giving a party litigant, such as the OCA, an investigatory role after the submission of the final status report. Therefore, we concluded that upon filing of the final status report, the examination of the repairs, modifications, and rehabilitative and maintenance procedures, as well as the water quality status, should rest with TUS. Moreover, we found that if TUS determines and reports that the remedial measures are inadequate or unreasonable, the matter should be referred to the Office of Administrative Law Judge for further evidentiary hearings. As such, we revised Ordering Paragraph No. 20 to delete the references to the OCA pertaining to investigation and reporting. *May 2018 McCloskey Order* at 24.

# VI. Summary of the *January 2019 McCloskey Order*

On October 18, 2018, HVUS filed a second Petition for Amendment (Second Petition) seeking an amendment of the *May 2018 McCloskey Order*. In the Second Petition, HVUS explained that the Commission ordered it to obtain an Engineer’s Report with recommendations to address iron and manganese in the Company’s water supply and to implement the engineer’s recommendations within one year. The Company averred that it filed the required Engineer’s Report on April 18, 2018, which gave four options for resolving the issues with iron and manganese in the water (two options involve the construction of a treatment plant and two options involve the construction of a pipeline to obtain water from another source). According to the Company, implementing any of the recommendations in the Engineer’s Report will require at least four years. Additionally, HVUS asserted that the estimated cost of the options as set forth in the April 2018 Engineer’s Report range from approximately $850,000 to almost $2,400,000. HVUS also stated that its management is working with its engineers to obtain additional information in order to select the best option for the Company and its customers. The Company further indicated that its engineer provided updated cost estimates on October 15, 2018, for two of the recommendations set forth in the originally filed Engineer’s Report. According to the updated estimates, the cost of the project would now range from approximately $1,150,000 to $2,400,000. *January 2019 McCloskey Order* at 19.

Based on the Engineer’s Report, the Company requested that the one-year deadline in the Order be modified to adopt an approach similar to one which it contends is commonly used in rail-highway crossing cases. Accordingly, rather than establishing a single deadline for the completion of construction, HVUS requested that we establish a series of deadlines for important milestones in the design and construction process. Alternatively, the Company requested that the one-year deadline for completion of the engineer’s recommendation be extended to four years. *January 2019 McCloskey Order* at 20. In addition, the Company argued that the *McCloskey Orders* overlooked the need for the Company to investigate and choose a financing plan for the project. According to HVUS, financing options are critical, considering the rate impact that any of the four options will have on the approximately 1,170 customers of the water system. *January 2019 McCloskey Order* at 19.

In support of its request to amend the compliance deadline, the Company submitted that the basis for the one-year deadline set forth in Ordering Paragraph No. 8 is unclear. However, HVUS asserted that it is clear from the Engineer’s Report that a new water treatment plant or a new pipeline to an alternate water source cannot be constructed and operational prior to April 18, 2019. Further, the Company referenced the following statement contained in the *January 2018 McCloskey Order* pertaining to the one-year deadline for implementing the corrective measures: “If additional time is deemed critical, the Company may petition the Commission for relief to modify the deadline pursuant to Section 5.572(d) of the Code.” *January 2019 McCloskey Order* at 20-21, citing Second Petition at 6 (quoting *January 2018 Order* at 31).

# According to the Company, it is significant that HVUS filed its Second Petition more than five months prior to the deadline established in the *January 2018 McCloskey Order*. Moreover, the Company averred it was making a good faith effort to comply with the *January 2018 McCloskey Order* and the *May 2018 McCloskey Order*. The Company submitted that it has filed status reports every sixty days, as required by Ordering Paragraph No. 17, and those reports indicate that the Company has met the deadlines established in the Order, as of the date of its Second Petition.[[13]](#footnote-14) Additionally, the Company reiterated that its management is meeting with its engineer to select the best option for HVUS. The Company further submitted that its management has also filed the instant rate case to enable it to fund the extensive improvements required by the *McCloskey Orders,* *January 2019 McCloskey Order* at 21 (citing Second Petition at 7).

We declined to exercise our discretion to amend the *May 2018 McCloskey Order*. As to the Company’s first argument, we noted that the Company previously raised objections to the one-year deadline. We stated that in the *January 2018 McCloskey Order*, we rejected HVUS’s Exception to the one-year deadline for the completion of projects to improve the Company’s system. In that Order, we explained that:

[D]ue to the extended time-period for compliance with the 2005 Settlement and the lack of resolution of the outstanding service problems, we believe there should be some mechanism for ensuring that further compliance deadlines are met. Any failure to further comply with the deadlines set

forth in this Opinion and Order could be indicative of the Company’s lack of competency to operate and of the ability to provide reasonable and adequate service.

*January 2019 Order McCloskey Order* at 27-28 (citing *January 2018 McCloskey Order* at 31). We further emphasized:

It is apparent that the Company’ 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. The one-year deadline for implementing the corrective measures established in the engineer’s report sets an objective guideline for compliance.

*January 2019 McCloskey Order* at 28 (citing *January 2018 McCloskey Order* at 31). The Commission also pointed out that in its First Petition seeking clarification of the *January 2018 McCloskey Order*, the Company did not specifically object to the one-year compliance deadline and that the Company indicated that the deadline would not be problematic stating “[T]he Company is confident that it has already taken many of the steps that would be outlined in any engineering report evaluating the water or wastewater system. For those measures that HVUS has undertaken already, the one-year deadline would be moot.” *January 2019 McCloskey Order* at 28 (citing First Petition at 3). The Commission noted that the Company argued that the one-year compliance deadline was potentially ambiguous and subject to an alternate interpretation – that HVUS would be required to comply with the recommendations contained in the engineer’s report based on the timetables and deadlines for completion of the projects set forth in the Engineer’s Report. *January 2019 McCloskey Order* at 28.

Similarly, we pointed out that in our *May 2018 McCloskey Order*, we rejected the alternate interpretation offered by the Company and reiterated that any improvements must be implemented within one-year of the Engineer’s Report. We stated that in making this determination, we found that the Company provided no new or novel arguments or identified considerations which were overlooked in the *January 2018 McCloskey Order*. However, in order to avoid any possible confusion, we clarified Ordering Paragraph No. 8 of the *May 2018 McCloskey Order* to emphasize that the proposed improvements must be completed within one-year of the Engineer’s Report. *January 2019 McCloskey Order* at 28 (citing *May 2018 McCloskey Order* at 18).

Therefore, we clarified that the Petitioner’s argument that the one-year compliance deadline is arbitrary was clearly addressed and rejected in the *January 2018 McCloskey Order*. We further noted that the Petitioner did not directly challenge the one-year compliance deadline in its First Petition but instead sought a clarification pertaining to a claimed alternate interpretation. We rejected that alternate argument in the *May 2018 McCloskey Order* and reiterated the importance of the compliance deadline date. *January 2019 McCloskey Order* at 29-30.

Furthermore, although we acknowledged that the Engineer’s Report was filed prior to the issuance of the *May 2018 McCloskey Order*, we noted that the Company did not file its Second Petition until October 18, 2018 – over five months after the issuance of the *May 2018 McCloskey Order* and six months after the date of the Engineer’s Report. We stated that it was incumbent upon the Company to timely notify the Commission of any concerns with the one-year compliance deadline particularly in light of its apparent prior position that compliance would not be problematic. We noted that the delayed filing of the Company’s Second Petition was concerning and weighed against our exercising our discretion to disturb the *May 2018 McCloskey Order*. *January 2019 McCloskey Order.* at 30.

We also found concerning the Petitioner’s second main argument that HVUS needs more time to investigate and choose a financing plan for any of the options proposed in the Engineer’s Report. We acknowledged the Company’s explanation that its engineer prepared a revised cost estimate of the remediation proposals on October 15, 2018, and that this document was not available for our consideration before the issuance of the *May 2018 McCloskey Order*. We further acknowledged the Company’s averment that its proposed rate increases filed in the instant proceeding will enable it to fund the extensive improvements required in the *January 2018 McCloskey Order* and the *May 2018 McCloskey Order* but that the proposed increase is pending before the Commission. However, in line with the OCA’s arguments, we doubted the Company’s position as the instant rate increase request used a 2017 HTY and there are no claims in that test year which include any expenditures related to the four proposals in the Engineer’s Report. Moreover, the Company acknowledged its difficulty in obtaining financing pending the outcome of the instant rate increase proceeding and provided no proposal or details on how it would secure financing options for expenditures ranging from $1,150,000 to $2,400,000 even if its requested rate increases are granted. Rather, the Second Petition included a proposed amendment to the *May McCloskey 2018 Order* which would permit the Company to file plans for the water treatment plant or pipeline with a financing plan with TUS by April 18, 2019. *January 2019 McCloskey Order.* at 30-31.

Thus, we stressed in the *January 2018 McCloskey Order* that any further delays in complying with the deadlines of that long-standing proceeding would be viewed as possibly indicative of the Company’s lack of competency to operate and of its inability to provide reasonable and adequate service. We further found that 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 McCloskey 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, it would be appropriate to proceed to the hearing procedures set forth in the *May 2018 McCloskey Order*. We stated that adhering to the process outlined in our prior Orders is preferential to the amendments suggested by HVUS because the requested modifications would result in further delays without any assurances that subsequent compliance deadlines could be met or that proposed improvements could be adequately funded. Hence, we concluded that such an indeterminate approach would appear to be detrimental to the interest of the Company’s customers who have suffered from the long-term water service problems. Therefore, we denied the Second Petition filed by HVUS. *January 2019 McCloskey Order.* at 31.[[14]](#footnote-15)

# VII. Rate Increase Public Input Hearings

As previously indicated, ALJ Hoyer conducted public input hearings on July 27, 2018, at 2:00 p.m. and 6:00 p.m., at the Hidden Valley Resort in Hidden Valley, Pennsylvania. Present during the hearings were counsel for HVUS, I&E, the OCA and the Foundation. Also, present were thirty-two HVUS customers who testified in person. Twenty customers testified during the 2:00 p.m. hearing and twelve customers testified during the 6:00 p.m. hearing. Four exhibits were marked and introduced into the record as evidence: Sinclair Exhibit 1; Fiola Exhibit 1; Hammer Exhibit 1; and Hammer Exhibit 2.

In summary, the thirty-two witnesses raised six major issues concerning HVUS’ handling of its water and wastewater system and its requests for rate increases. The six issues are: (1) the poor water quality, (2) the damage that the poor water quality has done to home appliances, (3) the negative effect that the Company’s system, and the rate increases, will have on local economic growth, (4) the rate increases are significant and should rather be more incremental over a longer period of time, (5) the poor fiscal management/business practices of HVUS, and (6) the terms of the 2005 Settlement have not been fulfilled. The testimonies of the thirty-two customers depicted the quality of the Company’s water supply, which they described as brown and murky, and complained that it causes damage to their household appliances due to high mineral content in the water. A description of the testimonies of the thirty-two witnesses can be found on pages 7-17 of the ALJs’ Recommended Decision. Table 1 below summarizes the number of customers who complained about each issue.

**Table 1: Summary of Customers and Complaint Issue**

|  |  |
| --- | --- |
| **Problem** | **Number of Customers** |
| Water quality | 28 |
| Appliance damage | 20 |
| Economic growth | 7 |
| Significant rate increase | 15 |
| Fiscal management/business practices | 27 |
| 2005 Settlement terms not fulfilled | 16 |

# VIII. Discussion of Non-Litigated Issues

**A.** **Joint Stipulation for the Admission of Evidence**

At the evidentiary hearing, HVUS, I&E, the OCA, and the Foundation (collectively, the Stipulating Parties), offered the Stipulation to Admit and asked that the Stipulation to Admit be marked as “Joint Exhibit 1” and be admitted into evidence. No Party objected and the ALJs admitted Joint Exhibit 1 into the hearing record.

The Stipulation to Admit was proffered by the Stipulating Parties for two purposes: (1) to admit testimony the Stipulating Parties agreed was authentic and which would not be subject to cross-examination; and (2) to preserve two issues which two of the Stipulating Parties (the OCA and the Foundation) wished to contest. More specifically, the OCA and the Foundation wished to preserve their right to argue against the rate increases sought by HVUS and to argue for the need to order HVUS to provide an independent financial audit.

The Stipulating Parties made the following *verbatim* assertions in the Stipulation to Admit, at Paragraphs 1 and 2:

In support of the Stipulation, the Stipulating Parties represented as follows:

1. The Stipulating Parties hereby jointly stipulate to the authenticity of and admission into the evidentiary record in this matter of the following testimony and exhibits:

a. On behalf of Hidden Valley

(1) Rebuttal Testimony of Harold Walker III in Docket Nos. R‑2018-3001306 and R-2018-3001307, including Appendix A and Exhibit consisting of Schedules 1-20.

b. On behalf of I&E:

(1) Direct Testimony of Christopher M. Henkel at Docket No. R 2018-3001306 including Appendix A and I&E Exhibit No. 2;

(2) Surrebuttal Testimony of Christopher M. Henkel at Docket No. R-2018-3001306;

(3) Direct Testimony of Christopher M. Henkel at Docket No. R 2018-3001307 including Appendix A and I&E Exhibit No. 2; and

(4) Surrebuttal Testimony of Christopher M. Henkel at Docket No. R-2018-3001307.

c. On behalf of OCA:

(1) Direct Testimony of Aaron L. Rothschild in Docket Nos. R‑2018-3001306 and R-2018-3001307 including Resume of Aaron L. Rothschild and Schedules ALR 1 through ALR 9; and

(2) Surrebuttal Testimony of Aaron L. Rothschild in Docket Nos. R-2018-3001306 and R-2018-3001307.

2. This Stipulation is being presented only to resolve issues in the above-captioned proceedings. Regardless of whether this Stipulation is approved, no adverse inference shall be drawn, nor shall prejudice result to any Stipulating Party in this or any future proceeding as a consequence of this Stipulation, or any of its terms or conditions.

**B. Joint Stipulation**

At the evidentiary hearing, the Stipulating Parties also offered a Joint Stipulation and asked that the Joint Stipulation be marked as “Joint Exhibit 3” and be admitted into evidence. No party objected and the Joint Exhibit 3 was admitted. The Stipulating Parties made the following *verbatim* assertions in the Joint Stipulation:

1. Hidden Valley and the Bureau of Investigation and Enforcement have entered into a non-unanimous settlement of all issues in this proceeding (“Non-Unanimous Settlement”).

2. The OCA and the Foundation do not join the Settlement Terms proposed in the Joint Petition for Approval of Non-Unanimous Settlement. To the extent applicable, the OCA and the Foundation will address their reasons for not joining the Non-Unanimous Settlement in their Main and Reply Briefs.

3. The OCA and the Foundation wish to preserve the following issue for litigation:

Whether the Commission should deny Hidden Valley Utility Services, L.P., any rate increase for water and wastewater, pursuant to 66 Pa. C.S. §§ 523 and 526, due to quality of service.

4. The OCA and the Foundation agree that, if the Commission does not deny Hidden Valley’s request, in its entirety, pursuant to 66 Pa. C.S. § 526, the Commission should not approve a revenue requirement that is more than the revenue requirement stated in the Non-Unanimous Settlement.

5. The Foundation also wishes to preserve the following issue for litigation:

Whether the Commission should order Hidden Valley Utility Services, L.P. to complete an independent financial audit.

6. The Stipulating Parties agree to preserve the issues identified in Paragraphs 3 and 5 for litigation before, and resolution by, the Pennsylvania Public Utility Commission as part of these pending rate case proceedings.

7. The Stipulating Parties waive rejoinder and cross-examination of all witnesses regarding revenue requirement and rate of return.

8. This Stipulation is being presented to limit and clarify the issues remaining in dispute in the above-captioned proceedings. Regardless of whether this Stipulation is approved, no adverse inference shall be drawn, nor shall prejudice result to any Stipulating Party in this or any future proceeding as a consequence of this Stipulation, or any of its terms or conditions.

# IX. Discussion of the Non-Unanimous Settlement

## Terms and Conditions of the Settlement

In the Settlement, the Joint Petitioners agreed to various provisions concerning the revenue requirement, rate design and annual reports. Attached to the Settlement as Appendix A was the revenue requirement and the rate design agreed upon by the Joint Petitioners. In support of their agreement, HVUS and I&E provided the following Settlement Terms:

1. Revenue Requirement

(1) Following entry of a Commission final order approving this Settlement, Hidden Valley will file compliance tariffs as follows:

(a) A water tariff with new rates designed to

produce $65,557 in additional annual operating revenue over present rates;[[15]](#footnote-16) and

(b) A wastewater tariff with new rates designed to

produce $82,227 in additional annual operating revenue over present rates.[[16]](#footnote-17)

(2) In addition, upon submission of Hidden Valley’s report and verification from its engineer stating that all repairs, modifications and improvements to Hidden Valley’s wastewater system have been completed, as required by Ordering Paragraphs 11 and 19 of the Commission’s May 3, 2018 Order on Reconsideration in McCloskey v. Hidden Valley Utility Services, L.P., Docket Nos. C-2014-2447138 and C-2014-2447169, Hidden Valley will file a compliance tariff designed to produce a total of $145,824 in additional annual operating revenue over present rates.[[17]](#footnote-18)

1. Rate Design

To implement the revenue requirements stated above, the rates proposed by Hidden Valley Utility Services, L.P. shall be scaled back proportionally, as shown on Appendix A.

1. Annual Reports

(1) Hidden Valley will correct its annual reports for the years 2015-2018. Specifically, Hidden Valley will have these annual reports prepared or reviewed by a rate consultant prior to submission to the Commission. These corrected annual reports will be filed within six months after the entry of a final Commission Order in this proceeding.

(2) For annual reports submitted to the Commission during the period 2019-2023, or until its next rate case, whichever is earlier, Hidden Valley shall have its annual reports prepared or reviewed by a rate consultant.

Non-Unanimous Settlement at 2-3. The Joint Petitioners acknowledged that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Party’s position with respect to any issues raised in this proceeding. The Joint Petitioners indicated that the Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement the Settlement. Finally, the Joint Petitioners requested that the ALJ and the Commission approve the Non-Unanimous Settlement without modification. *Id.* at 3.

## B. Legal Standards

The purpose of this investigation is to establish rates for HVUS’s customers that are “just and reasonable” pursuant to Section 1301 of the Code, 66 Pa. C.S. § 1301. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia,* 262 U.S. 679 (1923).

In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield, supra,* and *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield* the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

*Bluefield,* 262 U.S. at 692-3.

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

The Non-Unanimous Settlement, in this case, is a “black box” settlement. This means that the Parties did not specify each and every element of the revenue requirement calculations. The Commission has recognized that “black box “settlements can serve an important purpose in reaching consensus in rate cases:

We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company’s revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company’s cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases.

*Pa.* *PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013), at 28 (citations omitted).

Rate cases are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a rate case settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004) (*York Water*); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

With regard to the burden of proof in this matter, Section 315(a) of the Code provides:

**§ 315. Burden of proof**

1. **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 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. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

66 Pa. C.S. § 315(a). Consequently, in this proceeding, HVUS has the burden to prove that the rate increases proposed by the Non-Unanimous Settlement are just and reasonable. The Joint Petitioners have reached an accord on several issues and claims that arose in this proceeding and submitted the Settlement. The Joint Petitioners have the burden to prove that the Settlement is in the public interest.

**C. ALJs’ Findings Regarding the Settlement**

In their analysis of the Settlement, the ALJs acknowledged the Company’s request of a 105.4% increase to its water base rate for the average residential water customer using 2,100 gallons or an increase from $26.64 to $54.72 per quarter. The ALJs stated that currently, the average residential water customer of the Company pays $106.56 annually for water which is high in iron and manganese, is brown and murky, and damages household appliances due to high mineral content. The ALJs noted that Water Supplement No. 1 proposed to have an average residential water customer pay $218.88 annually for the same inadequate water which is unsuitable for household use. R.D. at 46. The ALJs also noted that Wastewater Supplement No. 1 proposed an increase of 61.3% to the Company’s wastewater base rate for the average residential wastewater customer using 2,100 gallons or an increase from $59.76 to $96.42 per quarter. According to the ALJs, based on the request, the average rate of a residential customer receiving wastewater services from the Company would increase from $239.04 annually to $385.68 annually. *Id.*

The ALJs stated that under the Settlement, the rates of an average residential water customer using 2,100 gallons would increase from $26.64 per quarter ($106.56 annually) to $38.70 per quarter ($154.80 annually) while the average rate of a residential wastewater customer using 2,100 gallons would increase from $59.76 per quarter ($239.04 annually) to $88.41 per quarter ($353.64 annually) within a two-tier system. The ALJs noted that for wastewater, the average residential rates would initially increase from $59.76 per quarter ($239.04 annually) to $75.58 per quarter ($302.32 annually) and, after January 31, 2019, would increase to $88.41 per quarter ($353.64 annually) if HVUS made the required improvements and the improvements are verified by the Commission. R.D. at 46.

In deciding whether the provisions of the Settlement are fair, just, reasonable and in the public interest, and whether the Commission should approve the Settlement without modification as requested by the Joint Petitioners, the ALJs recommended that the Commission approve the Settlement but eliminate the second step in the phased-in wastewater rates. In modifying the Settlement, the ALJs stated that as a certificated utility, HVUS is entitled to recover all reasonably incurred expenses, including the normal cost of operations, maintenance, labor, fuel, administrative costs, depreciation, taxes and improvements made to the water or wastewater facilities. RD*.* at 47.[[18]](#footnote-19) However, in determining whether the Settlement is in the public interest, the ALJs opined that HVUS has not completed all of the improvements required by the *January 2018 McCloskey* *Order* and the *May 2018 McCloskey* *Order*. The ALJs, nonetheless, acknowledged that some of the Commission-mandated deadlines in the *McCloskey* *Order*s have not expired yet and the *McCloskey* proceedings remain open before the Commission. The ALJs found that while HVUS has completed some tasks dictated by the Commission, the level of inadequate service by the Company is egregious enough to deny a portion of the Company’s requested rate increase. R.D. at 47.

The ALJs also stated that the Settlement attempts to strike an appropriate balance between the interests of the Company’s request for higher revenue to pay for the required improvements versus the ratepayers’ legitimate need to receive a quality utility service without paying excessive amounts for that service. The ALJs noted that the Settlement provides HVUS with an increased level of revenue that is needed to address the quality of service issues which remain unresolved while denying any return for water services and an unknown level of return for wastewater services, provided all mandated improvements are made. R.D*.* at 47-48.

Specifically, the ALJs opined that the *water* revenue increase totaling $65,557, or an approximately 46.6% increase over present rates in the Settlement is significantly less than the original request in which the Company asked the Commission to approve an increase totaling $150,629, or approximately 107.2%. According to the ALJs, if the Settlement was approved without modification, the average residential water customer using 2,100 gallons per quarter would have paid $38.70 per quarter which is an increase totaling $12.06 per quarter (or 45.3%) over current rates. On the wastewater side, the ALJs stated that approval of the Settlement would result in a two-step increase in rates. In essence, the wastewater rates would increase, or “step up,” after HVUS documents that it has made the wastewater improvements required by the *McCloskey Orders*. According to the ALJs, the Company has indicated that it expects to complete the improvements by January 31, 2019, because that is the date specified by the Commission in the *McCloskey*proceedings. However, the ALJs agreed with I&E that the required improvements will take two years to implement and that HVUS will not be able to meet the requirement to make the mandated improvements for a significant period. The ALJs pointed out that the Joint Petitioners reached the Non-Unanimous Settlement despite the Company’s delay in making the required improvements. R.D*.* at 48.

Next, the ALJs pointed out that the Joint Petitioners acknowledge the Settlement is a “black box” settlement. The ALJs also acknowledged that for the *water* rates, I&E initially contended that the Company should be allowed to recover operating expenses and plant claimed in the base rate filing but should not be allowed to earn a return on equity because the Commission has determined in the *McCloskey Orders* that HVUS did not provide adequate and reasonable water service. Nevertheless, according to the ALJs, in the Settlement, the Joint Petitioners agree with I&E’s secondary litigation position, which is that HVUS be permitted to obtain a return on equity on the wastewater rates after the improvements have been made and verified by the Commission. R.D*.* at 49.

The ALJs further pointed out that the Settlement also includes an agreement from the Company to file corrected annual reports. These corrected annual reports are intended to correct the errors contained in the annual reports submitted by the Company following the *McCloskey* proceedings. According to the ALJs, HVUS also agreed that the annual reports from the years 2015 to 2018 would be prepared by or reviewed by a rate consultant, instead of being prepared only by Mr. Kettler, and would be filed within six months from when the Commission issues a final Order in the instant proceeding. The ALJs noted that the Company acknowledged the annual reports contained errors when its corrected reports were submitted in the *McCloskey* proceedings in 2018 and the Company further agreed that any annual reports submitted to the Commission by HVUS for the time period from 2019 to 2023 will be prepared by or reviewed by a rate consultant before their submission. R.D*.* at 49.

Therefore, the ALJs recommended approval of the Settlement but with modifications. The ALJs stated that the recommended modifications are in the public interest and are justified because HVUS has for over thirteen years failed to provide adequate water and wastewater services. According to the ALJs, as of the close of record in the instant proceeding, the Company continues to provide inadequate service with water that is unfit for household purposes and which no person should be forced to drink. The ALJs also noted that the revenue requirements for the Company’s water and wastewater services in the Settlement are significantly lower than those originally requested by HVUS but will provide the funding needed to make the Commission-mandated improvements. R.D*.* at 49-50.

Furthermore, the ALJs stated that while they did not find the evidence provided by HVUS to be credible as it contained several inaccuracies, they were persuaded by I&E’s evidence which provided that $65,557 was needed in additional revenue for water service, and $82,227 was needed in additional revenue for wastewater service in order to cover the costs of service, maintenance and improvements without a return on equity. According to the ALJs, I&E indicated that its secondary litigation position allowed for a slightly higher increase in water revenue than the OCA did because it made corrections to its own calculations. Therefore, the ALJs recommended that the Commission accept I&E’s testimony that an increase totaling $65,557 for water service will result in a 0.00% return on equity for the Company. R.D*.* at 50.

However, the ALJs disagreed with I&E regarding the need for a two-step increase to implement a revenue increase that results in a 47.9% increase in wastewater rates and permits HVUS to obtain an unknown return on equity. The ALJs opined that as of the date of close of record in this proceeding, HVUS had not implemented all of the wastewater improvements mandated by the Commission in the *McCloskey Orders*. The ALJs disagreed with the Joint Petitioners’ justification for the second step increase stating that if the Company wants to obtain the second step increase for the wastewater revenue, then it needs to provide quality wastewater service. Therefore, the ALJs recommended that HVUS be permitted to increase its revenue requirement for water and wastewater service but not to the extent specified in the Settlement. Although they acknowledged that there is sufficient evidence in this proceeding to meet the Company’s burden of proving that additional revenue is needed in order to effectuate the several improvements required by the *McCloskey Orders,* the ALJs, nonetheless, stated that HVUS should not be permitted to earn a return on equity for either water or wastewater service due to the plethora of service issues prevalent in the Company’s water and wastewater systems. Hence, the ALJs recommended that HVUS should only be permitted the first-step increase for the wastewater rates proposed in the Settlement. R.D*.* at 50-51.

Consistent with their recommended approval of the Non-Unanimous Settlement with modifications, the ALJs stated that the average residential water customer using 2,100 gallons per quarter should pay $38.70 per quarter or an increase of $12.09per quarter (or 45.3%) over current water rates. In addition, the ALJs recommended that the average residential wastewater customer using 2,100 gallons per quarter should pay $75.58 per quarter or an increase of $25.19per quarter (or 26.5%) over current wastewater rates. According to the ALJs, while these recommended rate increases are no doubt frustrating and aggravating for the customers who still do not have quality service, they are just and reasonable because: (1) this increase is the first increase for the Company in over thirteen years; (2) HVUS has made some improvements to its water and wastewater systems; and (3) the approved increases are intended to eliminate or limit the return on equity which the Company can earn. R.D. at 51.

Next, the ALJs indicated that it is important to note that the recommended increase shows the Company will not receive any return, *i.e.,* profit, from the increased water and wastewater revenues. The ALJs emphasized that a Commission-approved rate which does not allow for any return on equity is no small feat and that although permitted under the law, the Commission rarely exercises its discretionary authority to eliminate a utility’s return on equity. However, in this case, the ALJs recommended that the Commission take this unusual step due to the plethora of poor-quality service issues by the Company over the past thirteen years.[[19]](#footnote-20) R.D. at 51.

On the issue of the annual reports, the ALJs supported the refiling of the Company’s reviewed and corrected annual reports. According to the ALJs, the Company’s agreement to refile corrected annual reports using the services of a rate consultant will provide the customers and the Commission with some reassurance and it will also provide a means by which the Company’s improvements can be verified. However, the ALJs also acknowledged the Foundation’s lack of confidence in the Company’s ability to timely refile the corrected annual reports. The ALJs noted the Foundation’s argument that it took HVUS a long time to provide corrected reports, especially, given the fact that not only has the Company already submitted corrected reports once but that there is little confidence in the financial numbers provided by HVUS in this proceeding. Therefore, the ALJs recommended that the Company obtain a financial audit for 2015 to 2018 from an outside independent financial accounting firm or office which has not previously provided auditing services to HVUS. R.D*.* at 51-52.

Based on all of the above reasons, the ALJs recommended that the Commission approve the Non-Unanimous Settlement but with modifications. R.D. at 52.

**D. Disposition**

As noted above, it is the policy of the Commission to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *See e.g.*, *York Water.*

As will be more fully explained below, we shall adopt the ALJs’ recommendation as being in the public interest and approve the Non-Unanimous Settlement, with modification.

# X. Discussion of Contested Issues

Two issues were fully litigated in this proceeding: (1) the contention of the OCA and the Foundation that pursuant to provisions at 66 Pa. C.S. § 523 and § 526, the Commission should deny any rate increase requested by HVUS for both water and wastewater services due to inadequate quality of service provided by the Company; and (2) the contention initially made by the Foundation and joined by the OCA, that the Commission order HVUS to complete an independent financial audit of its records. These contested issues will be addressed as discussed below.

1. **Denial of the Revenue Requirement and Rate Design of HVUS’s Requested Rate Increases**

#### Positions of the Parties

1. **HVUS’s Position**

HVUS argued that pursuant to the Settlement, it has agreed to reduce its proposed water rate increase from $150,629 to $65,557. The Company averred it also agreed to reduce its proposed wastewater increase from $185,432 to: (1) an initial step increase of $82,227 following entry of a Commission Order approving the Settlement, and (2) a second step increase of an additional $63,537 for a total increase of $145,824, upon submission of the Company’s report with a verification from its engineer, stating that all repairs, modifications and improvements to HVUS’s wastewater system have been completed, as required by Ordering Paragraph Nos. 11 and 19 of the *May 2018 McCloskey Order*. HVUS averred that the total amount of the increase in the Settlement is approximately 62.9% of the Company’s total originally requested water and wastewater rate increases. HVUS M.B. at 16.

HVUS stated that while this is a “black box” settlement, the amount of the increase for the water system is almost identical to I&E’s primary litigation position, *infra*, which was that the Company should not be allowed to receive any return on equity because the *McCloskey* *Orders* held that HVUS is in violation of Section 1501 of the Code. Similarly, the Company averred the first step of the increase for the wastewater system is also almost identical to I&E’s primary litigation position, which also indicated that the Company should be allowed to increase rates to cover its costs, but should not be permitted to receive any return on equity because the *McCloskey* *Orders* held that HVUS is in violation of Section 1501 of the Code. The Company further argued that the second step increase for its wastewater service is almost identical to I&E’s secondary litigation position, which is that HVUS should be permitted to increase rates to cover its costs, as well as earn a return on equity. The Company reasoned that because the second step increase would only occur after HVUS complies with the mandates of the *McCloskey* *Orders*, there is no reason to deny HVUS a return on equity. HVUS asserted that the Commission should approve the Settlement because it is supported by substantial evidence on the record. HVUS M.B. at 16-17.

Furthermore, the Company stated that pursuant to the Stipulation, the agreed-upon revenue requirement is a “ceiling” and that the OCA and the Foundation reserved for litigation whether the Commission should deny HVUS any rate increase for water and wastewater pursuant to 66 Pa. C.S. §§ 523 and 526, due to quality of service issues. From the Company’s perspective, by combining a modest increase in rates with the improvement plan established by the Commission in the *McCloskey Orders,* the Settlement represents an appropriate balancing of the interests of the utility and the ratepayers. The Company further argued that the Settlement presents a practical way of addressing the present “Catch-22” by allowing the Company a modest increase in rates that will be used to improve service to ratepayers. Therefore, HVUS requested that the Commission approve the Settlement. HVUS M.B*.* at 17-18, 26-30.

Additionally, the Company averred that similar to the Commission’s concern in the *McCloskey Orders,* not only would a rejection of the proposed rate increase prevent the Company from complying with the directives in the *McCloskey Orders,* it would be unreasonably harsh for the Commission to impose a costly and expensive improvement plan on a Company that is already losing money and then deny the Company rate relief that would enable it to comply with the improvement plan. In addition, HVUS argued that while prior Commission decisions have held that a denial of rate relief is only warranted where the Commission finds serious deficiencies in the utility’s services, the evidence in this case does not support that the Company is currently providing wastewater service that is so poor as to warrant the extreme remedy of denying any rate relief. HVUS M.B. at 18-19, 33-36.

Next, the Company indicated that it is presently not covering the costs of providing service, largely because it has not raised its rates since 2005. According to the Company, in 2017, its net operating income available for return for the Company’s wastewater system was a negative $105,045 while that of the water system was a negative $51,736 for a total system loss of $156,781. The Company stated that the Commission should permit the modest rate increases set forth in the Settlement because if the Company is not permitted to raise rates at all until it complies with the *McCloskey Orders,* as advocated by the opposing Parties, the instant rate increases will be re-filed at the same time that the Company seeks to recover the costs of complying with the *McCloskey Orders*. Therefore, the Company requested that the Commission approve the Settlement because it more appropriately balances the interests of the Company and its ratepayers. HVUS M.B. at 19-21, 36-38.

1. **I&E’s Position**

In its direct and surrebuttal testimonies, I&E argued that the Company should not be permitted to earn a return on equity until it complies with the *McCloskey Orders* and until HVUS’s customers have begun to receive adequate and reasonable water and wastewater services. According to I&E, the 0.00% return on equity recommendation resulted in I&E’s primary revenue requirement recommendation of $65,544 for water and $82,236 for wastewater. I&E M.B. at 8 (citing I&E St. 1-SR (Water) at 3; I&E St. 1-SR (Wastewater) at 3). I&E argued this recommendation serves the public interest because it allows the Company to recover prudent operating expenses and used and useful plant but does not allow the Company to earn a profit, which is appropriate given that the Commission recently determined that HVUS is not providing adequate and reasonable water and wastewater service in violation of Section 1501 of the Code. I&E M.B. at 8.

I&E averred that it 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 its testimony. According to I&E, 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 Orders*. I&E further indicated that although it is a black box Settlement, the agreed-upon revenue requirements are supported by its testimony. As such, I&E believes the Settlement is in the public interest because it provides the Company with a reasonable increase to recover operating expenses and plant in rates while allowing only a moderate increase due to the ongoing service issues. I&E M.B. at 8-9.

1. **OCA’s Position**

On the other hand, the OCA asseverated that because HVUS does not currently provide safe, adequate and reliable service to its customers as is required under Section 1501 of the Code, the Company should not be afforded any increase to its water or wastewater rates. OCA M.B. at 16, 49. The OCA cited to the testimony of its witness Mr. Fought who explained that the levels of iron and manganese in HVUS’s well and in its distribution system have had detrimental effects on the Company’s customers since at least 2004. Namely, Mr. Fought testified that HVUS’s method of sequestering the iron and manganese has proven to be an inadequate treatment method. *Id.* at 26-28 (citing OCA St. 3 at 2-5). The OCA asserted that the testimony of HVUS’s customers, provided at the two public input hearings in this proceeding, confirms that sequestration has not been effective and that the water HVUS provides is not suitable to be used for household purposes. More specifically, the OCA noted that HVUS’s customers testified, *inter alia,* (1) that the water is discolored and brown; (2) that the water pressure is low or inconsistent; (3) that they only use bottled water for drinking, cooking, and other household activities because the water provided by HVUS is not safe to drink and has caused dirty or ruined laundry; (4) that the poor water quality has stained toilets, bathtubs, and other appliances which has caused reduced appliance life and has required that these items be replaced; and (5) that although some of HVUS’s customers have purchased home filtration systems, the dirty water has caused the customers to need to quickly replace these systems. OCA M.B. at 29-31 (citing Tr. at 36-206).

Similarly, the OCA alleged that HVUS improperly operates and equips its wastewater treatment and pumping facilities. Namely, the OCA pointed out that HVUS does not have backup pumps installed at its pumping stations. The OCA emphasized that proper operation of these facilities is important in preventing contamination of streams and groundwater. Additionally, the OCA averred that 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 M.B. at 40-42.

The OCA stressed that the Company has had longstanding water quality issues. As background, the OCA explained that many of the same issues raised in the instant case were also raised both in the 2004 Applications proceedings that established HVUS as a public utility and in the *McCloskey* proceedings. The OCA noted that in the *January 2018 McCloskey Order,* the Commission determined that HVUS violated Section 1501 of the Code by failing to provide reasonable and adequate service to its water and wastewater customers and applied a one-year deadline for the Company to take corrective measures. Further, the OCA noted that in the *January 2018 McCloskey Order,* the Commission ruled that HVUS failed to properly maintain its wastewater treatment plant and directed the Company to file an Engineer’s Report by April of 2018. OCA M.B. at 35, 41-46 (citing *January 2018 McCloskey Order* at 23, 31, 50, 62). The OCA explained that the Engineer’s Report identified seventy-five projects that need to be completed by HVUS, but that sixty-four have not yet been started. Further, the OCA noted that the Engineer’s Report contained no remedy to address the iron and manganese problems. OCA M.B. at 34, 41.

The OCA argued that part of the rates that the Company’s customers pay goes toward the maintenance of the water and wastewater system. However, the OCA pointed out that in the instant case, HVUS does not include any expenses or capital projects that will improve its service by solving the iron and manganese problems or to address the myriad of issues identified in the Engineer’s Report. Accordingly, in light of the Company’s continued failure to provide safe, adequate, and reliable service, the OCA opposed the Non-Unanimous Settlement reached by HVUS and I&E. In the OCA’s view, the Commission should exercise its authority under Sections 523 and 526 of the Code and should deny HVUS’s proposed rate increases until such time as the Company’s customers are receiving safe, adequate, and reliable service. The OCA took the position that the denial of a rate increase at this time is not a “sanction” against the Company, but rather, is a regulatory response grounded in the Code and in Commission precedent based upon the Company’s obligation to comply with Section 1501 in exchange for the ability to charge Commission‑made rates. OCA M.B. at 18, 24, 34, 49.

1. **The Foundation’s Position**

The Foundation joined the OCA in opposing the Non-Unanimous Settlement. Like the OCA, the Foundation contended that the Commission should deny HVUS’s request for increases to its water and wastewater service rates because the Company continues to provide inadequate, unsafe, and unreasonable service, which runs contrary to a public utility’s obligations under Section 1501 of the Code. The Foundation echoed the OCA in highlighting the testimony of HVUS’s customers as to the wide range of problems they have experienced with the Company’s water service. The Foundation emphasized that although the water has been deemed technically safe for drinking, it is undrinkable for practical purposes and is not suitable for other basic household purposes because of the continued presence of high levels of impurities. Further, the Foundation pointed out that HVUS has failed to meet its burden of proving that its rates are just and reasonable under Section 1301 of the Code. The Foundation noted that a series of cases in Pennsylvania have held that, until the quality of service improved, it would be impermissible for a utility’s effective rates to provide a return that might be considered to be confiscatory. The Foundation stressed that because HVUS has failed to resolve its adequacy of service issues that were raised in the 2004 Applications proceedings, the *McCloskey* proceedings, and again in the instant case, the Commission is obligated to set rates which reflect such inadequacy of service. The Foundation insisted that ratepayers should not be required to provide funds to a utility so that the utility may at some future time provide adequate service. Instead, the Foundation contended that only after improvements are made to ensure such service is provided should the ratepayers then have the obligation to pay for these improvements. Foundation M.B. at 4-11.

#### ALJs’ Recommendation

Similar to their analysis of the Non-Unanimous Settlement, *supra,* the ALJs found the OCA’s arguments to be persuasive. According to the ALJs, the Commission is empowered to deny a request for an increase in rates, in whole or in part, and because the circumstances in this proceeding closely follow the *McCloskey Orders* and are unusual, they necessitate disallowing some of the requested rate increases. The ALJs emphasized that HVUS had over thirteen years to correct the issues with its water and wastewater service but refused to correct them. R.D. at 33.

The ALJs stated that they were not persuaded by the Company’s testimony that a significant amount of money is needed to make the improvements required by the *McCloskey Orders*. The ALJs disagreed with the Company’s attempt to blame the Commission for its failure to meet its responsibilities as a certificated utility, which includes its obligation to provide quality service. The ALJs further rejected the Company’s attempt to evoke arguments that its due process rights will be adversely affected or that the facts in this case somehow present a “Catch-22” for the Company. According to the ALJs, if there is a “Catch-22” in this situation, it was felt by the utility’s customers and not by the utility because the customers have suffered and endured brown, murky water that, though potable, should not be forced upon any customer for thirteen years. The ALJs stated that they were not convinced by the Company’s arguments in support of the proposed rate increases, especially, because HVUS’s customers who currently pay, on average, $345.60 annually, must now pay $508.44 annually, for the same brown, murky water that is unfit for household use and for wastewater service that is very poor. Further, the ALJs emphasized the record evidence that indicates the Company is not well managed and that the Company’s annual reports continue to be untrustworthy. R.D. at 33

Notwithstanding the above, the ALJs also found persuasive the assertions of I&E in the Settlement that HVUS needs additional revenue to comply with the totality of the requirements in the *McCloskey Orders*. The ALJs acknowledged that while denying the requested increases in their entirety might appease some Parties in this proceeding, the goal of the Commission must be to do what is generally best for the public and specifically for the customers. The ALJs concluded that the Commission must ensure that HVUS has the needed revenue to make the repairs directed in the *McCloskey Orders.* As such, the ALJs recommended that the Company’s rate increase requests be granted, in part, and denied, in part. According to the ALJs, the requested increases should be granted, in part, consistent with their recommendation regarding the Non‑Unanimous Settlement, outlined, *supra.* However, the ALJs concluded that the rate increases should be denied, in part, by not allowing the Company to earn a return on equity until all mandated improvements are made and the Commission has verified that the improvements have been made. R.D*.* at 33-34.

#### Exceptions and Replies

1. **HVUS’s Exception No. 1**

In its Exception No. 1, HVUS disagrees with the ALJs’ recommendation which modified the Settlement rates by allowing the initial increase of $82,227 for Wastewater Supplement No.1 but disallowed the second step increase to $145,842, in the phased-in wastewater rates. The Company argues the Commission should reject the ALJs’ recommendation because it is in error and approve the entire wastewater rate increase proposed in the Settlement. In the alternative, the Company also proposes that a different trigger be used for the second step of the wastewater rate increase. HVUS Exc. at 8-10.

First, HVUS argues the ALJs erred in reducing the Company’s wastewater rate increase based on the Company’s inadequate water service. According to the Company, the ALJs explained the reason for their modification of the Settlement as follows:

This modification is in the public interest and justified because Hidden Valley failed for over thirteen years to provide adequate water and wastewater services. As of the closing date in this proceeding, Hidden Valley continues to provide inadequate service with water that is unfit for household purposes and which no person should be forced to drink.

HVUS Exc*.* at 10 (citing R.D. at 49-50). In disagreeing with the ALJs, the Company avers that even though the cases were consolidated in this proceeding for the purpose of hearing and adjudication, the wastewater system is different from the water system. HVUS contends it is not seeking to allocate any of the costs of operating its wastewater system to its water customers as allowed by 66 Pa. C.S. §1311(c), and that the revenue requirement for the wastewater system should be established based on the costs and revenues of operating the wastewater system and not on the costs and revenues of operating the water system. In the same vein, HVUS reasons that the amount of rate relief for the wastewater system should be based on the quality of wastewater service rendered, not the quality of water service rendered. To this end, HVUS argues, to the extent that the ALJs are recommending a reduction of the wastewater rates based on the quality of the Company’s water service, the ALJs are wrong and the Commission should reject the ALJs’ modification and approve the revenue requirement in the Settlement, as filed. HVUS Exc. at 10-11.

Secondly, the Company argues the ALJs’ decision to modify the Settlement is not supported by evidence in the record. According to the Company, although the Commission found in the *McCloskey Orders* that HVUS is not providing reasonable and adequate wastewater service, not every violation of Section 1501 merits a reduction in a utility’s request for rate relief. HVUS contends the Commission has held that this remedy is only warranted where the Commission finds serious deficiencies in the utility’s service. *Id.* at 11 (citing *Pa. Pub. Util. Comm’n v. Pennsylvania Gas & Water Co.,* 1986 Pa. PUC LEXIS 113 (Order entered April 25, 1986) at \*30 *(PG&W 1986)*; *Pa. Pub. Util. Comm’n v. National Utilities, Inc..,* 1997 Pa. PUC LEXIS 1000 (Order entered January 16, 1997) at \*9 and \*15). The Company argues that the reasons offered by the ALJs to support their decision to modify the Settlement are more relevant to the water system. Therefore, HVUS contends the Company’s wastewater rate relief should not be further reduced based on the quality of its water system. HVUS Exc. at 11.

HVUS also argues that the *July 2005 Order,* which required several improvements in the Company’s water system, did not require any improvements in the wastewater system and that the finding of inadequate wastewater service only came to light during the *McCloskey* proceedings. Therefore, HVUS avers that the ALJs’ statement that the wastewater system has provided inadequate service for an extended period and that the Company refused to make the necessary improvements, is not supported by the record evidence. HVUS Exc*.* at 12. In addition, the Company contends the *January 2018 McCloskey Order* was based on the record in a hearing held in November 2015 and so the Company’s wastewater rate relief should not be further reduced in 2019 based on a stale record. From the Company’s point of view, the *January 2018 McCloskey Order* failed to acknowledge the several improvements the Company has made to its wastewater system since November 2015. *Id.* (citing HVUS M.B. at 31; HVUS St. 4-R (Wastewater)). For instance, according to HVUS, its witness, Mr. Kettler, testified that in 2016, the Company replaced the pump at the North Summit Lagoon, installed four liquid chlorine pumps and replaced the flow charge, and installed a new pressure transducer and pump controller for the equalization tank. HVUS Exc. at 12, (citing HVUS St. 1-R (Wastewater) at 9). HVUS concludes that based on the testimonies in the instant proceeding and the record it produced in the *McCloskey* proceedings regarding its wastewater system, there is no support for the ALJs’ determination that the Company’s wastewater service is so egregious to warrant a further reduction in rates. HVUS Exc. at 12-14.

Next, HVUS contends that the improvements mandated by the Commission in the *McCloskey* Orders were intended to result in reasonable and adequate wastewater service, and so completion of these improvements should be considered an appropriate trigger for the second-step increase in the phased-in increase in the Settlement. HVUS Exc. at 14. HVUS disagrees with the ALJs’ distinction of the completion of the improvements from the provision of reasonable and adequate wastewater service in their Recommended Decision. According to the Company, the ALJs stated:

While the presiding officers agree with [I&E]’s assertions in support of the Partial Settlement for water revenue, the presiding officers do not agree with [I&E] about the need for a two-tier process to implement a revenue increase that results in a 47.9% increase in wastewater rates and permits Hidden Valley to obtain an unknown return on equity. As of the date the hearing record closed in this proceeding, Hidden Valley had not implemented the totality of the wastewater improvements mandated by the Commission to be done. Once those improvements have been made – and verified as having been made – then Hidden Valley may be able to justify the second step increase. However, the presiding officers disagree with Hidden Valley and BIE. ***If Hidden Valley wants to realize the second step increase in wastewater revenue, then Hidden Valley needs to provide quality wastewater services.***

*Id.* at 14-15 (citing R.D. at 50) (emphasis in original). From the Company’s point of view, the distinction made by the ALJs is in error because clearly the Commission intended to mandate the Company to complete improvements that would result in the provision of reasonable and adequate wastewater service when it directed in Ordering Paragraph No. 11 of the *May 2018 McCloskey Order* “[t]hat Hidden Valley Utility Services, L.P., shall comply with all recommendations from the engineer with regard to wastewater services in order to ensure that customers shall receive adequate and reasonable wastewater service, on or before January 31, 2019.” HVUS Exc. at 15 (citing *May 2018 McCloskey Order* at 29). According to HVUS, the agreed-upon Settlement rates by the Joint Petitioners were intended to incentivize the Company to complete the improvements required by the *McCloskey Orders,* as quickly as possible, even if they were not completed by the January 31, 2019 deadline. HVUS further argues that considering the Commission will not enter its final Order in this case until well after January 31, 2019, there would be no need for a two-step increase if the Parties intended to permit HVUS to implement the second-step increase on January 31, 2019. HVUS Exc. at 15-16.

Finally, HVUS avers that if the Commission agrees with the ALJs and decides to modify the Settlement, rather than eliminate the second step of the wastewater increase, the Commission should use Ordering Paragraph No. 20 of the *May 2018 McCloskey Order* to determine when the Company may implement the second step of the wastewater rate increase.[[20]](#footnote-21) In other words, HVUS contends the Commission should modify the event that triggers that rate increase based on the quality of wastewater service, as suggested by the ALJs. According to the Company, on January 31, 2019, it submitted its Engineer’s Report and verification (also attached to its Exceptions as Attachment A) indicating that several items in the wastewater Engineer’s Report were not yet complete. The Company acknowledged that as a general rule, new evidence should not be appended to Exceptions, but that the Commission could take judicial notice of its own records indicating the previously filed Engineer’s Report. HVUS Exc. at 16-17.

Furthermore, the Company contends that pursuant to Ordering Paragraph No. 20 of the *May 2018 McCloskey Order,* after March 31, 2019, upon TUS’s determination that HVUS is in fact providing reasonable and adequate wastewater service, the Commission should permit the Company to implement the second step of the wastewater increase at that time. Similarly, the Company states that if an evidentiary hearing is required and the ALJ ultimately concludes that HVUS is providing reasonable and adequate wastewater service, the Company should be permitted to implement the second step of the wastewater increase at that time. HVUS believes this approach is consistent with Sections 523 and 526 of the Code which give the Commission discretion to disapprove a rate increase request, in whole or in part, based on the quality of service. HVUS concludes that when it is found to be providing reasonable and adequate wastewater service, these sections provide no basis for a reduction of the Company’s wastewater rates. Therefore, HVUS requests that if TUS or the ALJ find that the Company is providing reasonable and adequate wastewater service, the Commission should permit the Company to implement the second step of its wastewater rate increases at that time. HVUS Exc. at 17.

1. **I&E’s Exception No. 1**

In its Exception No.1, I&E also contends the ALJs improperly modified the Settlement by rejecting the second-step increase of the proposed phased-in wastewater rates. First, I&E emphasizes the fact that the Commission encourages settlement and requests that the Settlement not be disturbed because it is preferable to the results that would have been achieved if the issues in this proceeding were to be fully litigated. I&E posits it did not enter into the Settlement lightly given the complexity of the service issues and the impact of the service issues on the Company’s customers. I&E avers that it strongly 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 the issues, preparing multiple rounds of testimony, attending two public input hearings, and engaging in lengthy settlement discussions. And that in all of these efforts and in reaching the Settlement rates, it focused on how best to reflect the service concerns experienced by the Company’s customers while also recognizing that HVUS had not increased its rates for approximately thirteen years. I&E Exc. at 4-5.

I&E avers that while it weighed the ability of the Company to recover reasonable expenses, plant, and taxes, but not to allow recovery of any return on equity given that the Commission found violation of Section 1501 for both water and wastewater services provided by the Company in the *McCloskey* proceedings, it believed that for settlement purposes, it was important to differentiate between the Company’s water and wastewater services. Specifically, I&E argues that most of the testimonies of the Company’s customers detailing service concerns overwhelmingly point to inadequate water service and not wastewater service. I&E further avers that while the Settlement is not intended to undermine the Commission’s finding in the *January 2018 McCloskey Order* and the *May 2018 McCloskey Order* that HVUS is currently providing inadequate wastewater service, it also recognizes the fact that the second step in the Settlement can only be implemented upon the Company’s compliance with the requirements of the *McCloskey Orders*. I&E Exc*.* at 5-6.

Additionally, I&E states that per the wastewater Engineer’s Report filed by HVUS on April 19, 2018, the total cost needed to address the wastewater deficiencies is approximately $228,000.[[21]](#footnote-22) I&E Exc*.* at 6-7 (citing I&E Exh. 3, Sch. 2 at 4-8, 53). According to I&E, pursuant to the Settlement, the second phase of the wastewater rate increase from $82,227 to $145,842, will not be implemented until all of the recommendations in the Engineer’s Report have been completed, which the engineer estimated will take approximately two years to complete. Finally, I&E avers that consistent with the Commission’s policy encouraging settlement, it engaged in good faith settlement negotiations to determine if a full or partial settlement of the contested issues was possible. I&E therefore believes the Non-Unanimous Settlement is in the public interest and should not be modified because it fully addressed the concerns of the Joint Petitioners. I&E Exc. at 7-8.

Next, I&E argues the Settlement rates are just and reasonable because the primary revenue requirement recommendation in the Settlement was based on a revenue increase that did not allow the Company to earn a return on equity due to the ongoing service issues with the Company. I&E Exc*.* at 8. For instance, I&E’s primary recommended water revenue requirement was $65,544 and the primary wastewater revenue requirement was $82,236. According to I&E, in the event that the Commission rejects its primary recommendation of 0.00% cost of equity, it conducted a traditional rate of return analysis which resulted in a recommended revenue increase of $111,119 for water service, and a $145,807 increase for wastewater service. *Id.* at 8-9 (citing I&E St.1-SR (Water) at 3-4; I&E St.1-SR (Wastewater) at 3-4). I&E avers that although this is a black box settlement, the agreed upon revenue requirements for water service in the amount of $65,557, and the initial increase of $82,227 for wastewater service, including the subsequent increase to $145,824 when improvements are made, are supported by the primary and secondary litigation positions contained in its testimony. I&E Exc. at 9.

Specifically, I&E contends that for the water service, the position it advanced in its testimony is essentially what was agreed upon in the Settlement. According to I&E, in its testimony, it recommended a 0.00% return on equity resulting in a revenue increase of $65,544, and the agreed-upon Settlement increase for water services of $65,557, is very closely aligned to its proposed revenue requirement. From I&E’s perspective, the unusual step of not including a return on equity in the Settlement for the Company’s water service is justified, considering the well documented and longstanding history of service concerns for the water service provided by the Company. I&E Exc*.* at 10 (citing I&E St. 1-SR). Similarly, I&E argues that for HVUS’s wastewater service, the first step of the increase of $82,227 in the Settlement mirrors I&E’s primary wastewater revenue requirement of $82,236 which allowed a 0.00% return on equity due to the Company’s failure to comply with Section 1501 of the Code. I&E further avers that the proposed second step increase to $145,842 for wastewater service once the engineer’s recommendations are completed in compliance with the *McCloskey Orders,* also mirrors the traditional rate of return analysis that it conducted in its testimony. I&E Exc. at 10 (citing I&E St. 1-SR (Wastewater) at 3).

According to I&E, its analysis determined that if HVUS had been providing adequate and reasonable wastewater service, it would have recommended a 9.13% cost rate of common equity, resulting in a wastewater increase of $145,807. I&E asserts that the proposed phased-in rates for wastewater service in the Settlement is appropriate for two reasons. First, while the record contains overwhelming evidence of ongoing inadequate water service, there are no similar customer concerns regarding wastewater service. I&E argues that while the Recommended Decision highlighted that the record is beset with compelling testimonies of negative impacts of the Company’s inadequate water service including, but not limited to, brown or rusty water that customers cannot drink and causing damaged clothing, permanent stains on bathroom and kitchen fixtures, etc., no such testimonies were provided against the wastewater service by the customers. I&E avers that while it is in no way indicating that HVUS is currently providing adequate and reasonable wastewater service, the record shows that HVUS customers are not as significantly impacted by the Company’s wastewater service as they are by the water service. I&E Exc. at 10-11 (citing R.D. at 6-17). Secondly, I&E clarifies that the second step of the increase in the phased-in rates will not become effective until HVUS has complied with the extensive requirements in the *McCloskey Orders*. This means that, under the Settlement, HVUS will not be permitted to earn a return on equity until the Company has made significant improvements to its wastewater system. Therefore, I&E requests that the Commission reject the ALJs modification and approve the Settlement, as filed, including the second step of the phased-in rates for wastewater service provided by the Company. I&E Exc. at 11.

1. **OCA’s Replies to HVUS’s and I&E’s Exceptions No. 1**

In its Replies, the OCA avers the ALJs properly rejected the second step increase in the phased-in rates for Wastewater Supplement No. 1 in their Recommended Decision. According to the OCA, not only is there substantial evidence in the record to reject the second step increase, there is also enough evidence to reject the entire rate increase request filed by the Company. The OCA avers that the completion of the Commission’s directives in the *McCloskey Orders* by the Company does not automatically equate to a determination that service is safe, adequate and reliable. OCA R. Exc. at 3 (citing *January 2018 McCloskey Order* at 31-32). The OCA disputes the Company’s argument that the ALJs’ decision to reject the second step increase is based on their finding of inadequate water service by the Company. Rather, the OCA argues the ALJs’ decision was based on the evidence developed in the instant proceeding regarding the Company’s wastewater service and in the *McCloskey* proceedings, in which the Commission found inadequate wastewater service. The OCA argues that similar to the water system, the Company’s wastewater system is also in need of repair and the Company’s failure to maintain and to make the necessary improvements to its collection and treatment facilities is a violation of Section 1501 of the Code. OCA R. Exc. at 4.

Additionally, the OCA references the evidence it presented against the Company’s wastewater service in the *McCloskey* proceedings including inadequate maintenance and replacement, sewage odors and sewage overflows, financial and managerial issues such as inadequate financial resources, inadequate management of utility revenue, inadequate reporting and billing, and inadequate customer service and complaint handling. OCA R. Exc. at 4*.* According to the OCA, the Commission’s finding of inadequate wastewater service in the *McCloskey Orders* were based on the above identified problems which also impact the wastewater system. *Id.* (citing *January 2018 McCloskey Order* at 50). Specifically, the OCA argues that in the *January 2018 McCloskey Order*, the Commission adopted ALJ Watson’s finding in the Recommended Decision in which he stated that “[a]s of the date of 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.” The OCA restates that essentially, the Company failed to provide safe, adequate, and reasonable wastewater service, in violation of Section 1501. OCA R. Exc. at 4-5 (citing 66 Pa. C.S. § 1501).

The OCA further points out that the *January 2018 McCloskey Order* required an Engineer’s Report for the wastewater system within ninety days mandating, *inter alia,* a report on back up pumps and alarms, inspection of all wastewater facilities, tanks and equipment, and a report of the findings. OCA R. Exc. at 4-5 (citing *January 2018 McCloskey Order* at 62-63). The OCA argues the Commission further required, *inter alia,* modifications to the billing system to comply with Commission rules, corrected information in the Company’s annual reports, and a status report every sixty days. OCA R. Exc. at 5 (citing *January 2018 McCloskey Order* at 63-65). The OCA also points out the Commission’s emphasis in the *January 2018 McCloskey Order,* to institute an investigation under Section 529 of the Code, 66 Pa. C.S. § 529, if necessary. From the OCA’s point of view, the Commission envisioned that HVUS may not meet the deadline to comply with the engineer’s recommendations and that even if it did, such compliance may not result in safe and adequate wastewater service. OCA R. Exc. at 5-6.

Furthermore, in addition to providing a description of the Company’s wastewater system based on its inspection and the responses to questions by the OCA’s witness Mr. Fought in the *McCloskey* proceedings, the OCA reiterates that HVUS continues to improperly operate and equip its wastewater treatment and pumping. According to the OCA, the Company’s improper maintenance of its pumping stations could result in sewage back up into customer homes and buildings. Further, the OCA points out that the Engineer’s Report required by the *January 2018 McCloskey Order* identified deficiencies, made recommendations, estimated costs, and prioritized recommended repairs and replacements to the Company’s wastewater pumping and treatment facilities. The OCA restates that the Engineer’s Report identified seventy-five projects that needed to be completed by the Company. The OCA emphasizes that, as of July 27, 2018, only eight projects were completed while sixty-four projects had not yet commenced. Based on the above, the OCA does not believe the Company will be able to comply with the completion of these projects by January 31, 2019. OCA R. Exc. at 6-9

Additionally, the OCA disagrees with the Company’s argument that there has not been any incident of raw sewage causing contamination in its wastewater system. According to the OCA, “that does not mean that the Company acted appropriately. It had not equipped all stations with back-up pumps and operating alarms. All of the pumping stations should have primary back-up pumps installed and in operating condition, together with an alarm that properly activates.” OCA R. Exc. at 8*.* (citing OCA St. 3S (Wastewater) at 2). The OCA argues that a review of the January 31, 2019 Status Report the Company submitted along with its Exceptions shows that the Company has not completed all the recommendations in the Engineer’s Report. According to the OCA, this affirms that the Company continues to provide inadequate wastewater service. OCA R. Exc. at 9.

The OCA asserts the Company’s request that the ALJs’ modification to the Settlement rate be reversed is not supported by evidence in the record and that the Company’s request for the second step increase in the Settlement be approved, is also without merit because the issues regarding the Company’s wastewater system identified in the *McCloskey Orders* still remains. Specifically, the OCA agrees with the ALJs’ opinion that complying with the recommendations will not, on its own, equate to safe, adequate, and reliable service. From the OCA’s perspective, the Commission did not assume that wastewater service would meet the requirements of Section 1501 solely because the Company completes the recommendations in the Engineer’s Report. Rather, the OCA reasons that the Commission required an inspection and possibly a hearing, after HVUS meets the recommendations. The OCA points out that the *May 2018 McCloskey Order* provides for a possible Section 529 Proceeding, if HVUS does not meet all of the recommendations. OCA R. Exc*.* at 9-10 (citing *May 2018 McCloskey Order* at 33).

Finally, the OCA responds to the Company’s alternative request that if the Commission decides to modify the Settlement, then the triggering event for the second step increase should be dependent on the result of the TUS report rather than the date that HVUS completes the recommendations in the Engineer’s Report. According to the OCA, since the *January 2018 McCloskey Order* makes a provision for the possibility of a hearing following the issuance of the TUS report, it would be illogical to increase rates, as proposed by the Company while proceeding to a hearing, as set forth in Ordering Paragraph No. 20 of the *May 2018 McCloskey Order*. The OCA reiterates its belief that the Company is not entitled to any rate increase while it continues to provide inadequate service. OCA R. Exc. at 10-11.

1. **The Foundation’s Replies to HVUS’s and I&E’s Exceptions No. 1**

Similar to the OCA, the Foundation restates its opposition to any increase to the Company’s water and wastewater rates unless and until HVUS is found to be capable of providing adequate service. However, the Foundation also supports the ALJs’ modification of the phased-in rates for Wastewater Supplement No. 1. From the Foundation’s perspective, HVUS has failed to comply with the Commission’s directives in the *McCloskey Orders* and is in direct violation of Ordering Paragraph No. 11 of the *May 2018 McCloskey Order* because the Company continues to provide inadequate wastewater service after January 31, 2019.[[22]](#footnote-23) Foundation R. Exc. at 3-4.

Disputing the Company’s and I&E’s arguments that the ALJs’ basis of modifying the wastewater Settlement rate is due to the inadequate water supply, the Foundation argues there is substantial evidence in the record to support the ALJs’ decision. Specifically, the Foundation avers the ALJs clearly stated that:

***As of the date the hearing record closed in this proceeding, Hidden Valley had not implemented the totality of the wastewater improvements mandated by the Commission to be done.*** Once those improvements have been made – and verified as having been made – then Hidden Valley may be able to justify the second step increase. However, the presiding officers disagree with Hidden Valley and [I&E]. ***If Hidden Valley wants to realize the second step increase in wastewater revenue, then Hidden Valley needs to provide quality wastewater services.***

Foundation at R. Exc. 4 (citing R.D. at 50) (emphasis in original). The Foundation emphasizes the Company’s failure to comply with the directives in the *July 2005 Order* and the *McCloskey Orders* and does not see any justification for granting a rate increase to HVUS until it complies with all the directives in these Orders. Foundation at R. Exc. at 5.

Finally, the Foundation disagrees with both HVUS’s and I&E’s argument that the Settlement is reasonable and is in the public interest. According to the Foundation, similar to the OCA, it refused to be a party to the Settlement because it does not believe the Settlement is reasonable and in the best interest of the public for the following reasons:

1. Under the Non-Unanimous Settlement, the Company’s customers would face substantial increase (46.6% for water rates and 28% for Phase 1 of the wastewater rates and an additional 49.7% for Phase 2 of the wastewater rates).
2. The rates that are paid today by the Company’s customers and have been paid by the customers since 2005, were set to reflect adequate water and wastewater service which the customers ***never*** received at any time during this period.
3. The Settlement rates are premised on customers receiving adequate service, which, as the record clearly indicates, they are not receiving and will not receive in future years and beyond.

Foundation R. Exc. at 5.

1. **OCA’s Exception Nos. 1 & 2 and HVUS’s and I&E’s Replies**

In its first Exception, the OCA remains of the opinion that the inadequate water and wastewater service provided by HVUS supports the disallowance of the entire rate increase that HVUS and I&E agreed to in the Non-Unanimous Settlement. OCA Exc. at 3. Citing to *PG&W 1986*, the OCA maintains that under the Code, ratemaking requires that a utility provide adequate service and that a utility is entitled to a rate increase only after making actual improvements to its service. The OCA notes that in *PG&W 1986*, the Commission found that PG&W failed to demonstrate that it was providing adequate service and denied PG&W’s rate increase request in its entirety. OCA Exc. at 3-4 (citing *PG&W 1986* at 426-27). Further, the OCA submits that in reviewing PG&W’s next base rate increase request in *Pa. PUC. v. Pa. Gas & Water Co.,* 68 Pa. P.U.C. 191, 1988 Pa. PUC LEXIS 457 (Sept. 30, 1988) (*PG&W 1988*), the Commission found that PG&W did not demonstrate any service improvements such that PG&W’s ratepayers were receiving adequate service and again denied PG&W’s rate request increase in its entirety. OCA Exc. at 4‑5 (citing *PG&W 1988* at 421).

Applying the above to the instant case, the OCA submits that the ALJs erroneously concluded that HVUS needs additional revenue in order to comply with the requirements set forth in the *McCloskey Orders.* According to the OCA, the current rates that the HVUS customers are paying are based on a legal presumption that they are receiving safe, adequate and reliable water and wastewater service. As such, the OCA reasons that given the ALJs’ finding that HVUS is not providing adequate service, there is no basis for granting HVUS an increase to its water or wastewater rates. OCA Exc. at 3-4.

The OCA opines that there is no evidence that the additional revenue amounts recommended by the ALJs will be used to comply with the *McCloskey Orders*. The OCA emphasizes that the instant rate case utilizes a 2017 HTY, and as such, HVUS’s requested rate relief is devoid of any expenses or capital projects related to improving the service HVUS provides to its customers as directed in the *McCloskey Orders*. Further, the OCA argues that there is no evidence that HVUS has sought and secured funding or that it will be able to secure funding in the future to make the improvements. OCA Exc. at 4-7. The OCA points out that in the *January 2019 McCloskey Order,* the Commission recognized this and stated that a Section 529 Proceeding, in which it would investigate whether a mandatory takeover would be appropriate, would be recommended if HVUS did not comply with the deadlines set forth in the *January 2018 McCloskey Order* and the *May 2018 McCloskey Order.* OCA Exc. at 6-7 (citing *January 2019 McCloskey Order* at 31).

In its Second Exception, the OCA points out that although the resulting rate of return is not provided with the Non-Unanimous Settlement, the resulting revenue increases are higher than the revenue increases indicated by I&E’s primary litigation position wherein it advocated for a 0.00% return on equity. The OCA elaborates that in its testimony, I&E’s recommended revenue increases using a 0.00% return on equity were $57,753 for water and $69,175 for wastewater. As such, the OCA argues that because the Non‑Unanimous Settlement allows for increases greater than these amounts, it appears that the revenue requirements provide HVUS with a positive return on equity. OCA Exc. at 7, n.4 (citing I&E St. No. 1 (Water) at 3 and I&E St. No. 1 (Wastewater) at 3). However, the OCA contends that even if the revenue requirement results in no return on equity, the Code requires that the utility invest in the capital needed to provide adequate service and then receive rates that reflect the utility’s used and useful, prudent investments before receiving rate increases related to the investments. Citing to *PG&W 1986* and *PG&W 1988*, the OCA restates its position that this will ensure that the rates are not increased while service is inadequate and that the utility will actually make the investments and improve service before receiving additional revenues. According to the OCA, to do otherwise would be in conflict with the Code. Therefore, the OCA maintains its position that there is no support for HVUS to increase its rates when it is not providing adequate service. OCA Exc. at 7-10.

In its Reply to the OCA’s Exceptions, HVUS argues that the Non-Unanimous Settlement represents a significant decrease to HVUS’s original request for rate relief for both its water and wastewater services. Therefore, HVUS frames the issue in this proceeding to be whether HVUS’s request for rate relief should be reduced further beyond the reduction agreed upon in the Settlement, based on the Company’s quality of service. HVUS restates its position that Sections 523 and 526 of the Code give the Commission discretion over whether to deny a utility’s rate increase, in whole or in part, based on the quality of service. According to HVUS, this is analogous to when the Commission considers a variety of factors when deciding the amount (if any) of a civil penalty to assess on a utility for violating the Code, a Commission regulation or order pursuant to 52 Pa. Code § 69.1201, *supra.* HVUS R. Exc. at 3-4.

Namely, HVUS argues that the Commission should consider the following factors and standards when determining whether to deny a rate increase, in whole or in part, based on the utility’s quality of service: (1) the seriousness of the deficiency; (2) the seriousness of the consequences for customers; (3) the Company’s compliance history; (4) the Company’s efforts to address the conduct at issue and prevent similar conduct in the future; (5) consequences of the Commission’s Decision; (6) the Constitutional rights of the utility; (7) the need for deterrence; (8) consistency with prior Commission decisions; and (9) other relevant factors. HVUS submits that, on balance, when applied to the instant case, these factors and standards demonstrate that the Commission should not further reduce the Company’s rate relief. HVUS restates its position that the Non‑Unanimous Settlement appropriately balances the interests of customers and the Company by reducing the water and wastewater rate increases, appropriately reflecting the Commission’s findings and enforcement mechanisms in the *M**cCloskey Orders,* while also permitting the Company to cover the cost of providing service. HVUS reemphasizes that the Settlement appropriately differentiates between the rates that can be charged for water service as compared to wastewater service, based on the quality of each type of service being provided. HVUS states that once the Company complies with the *M**cCloskey Orders’* requirements for the wastewater system, the Non-Unanimous Settlement presumes that the Company will be providing reasonable and adequate service in compliance with the Code. Therefore, HVUS submits that there is no basis under Section 523 and 526 of the Code to further reduce the Company’s requested water and wastewater increases beyond the reductions agreed upon in the Non-Unanimous Settlement. Moreover, HVUS contends that a complete denial of rate relief would virtually ensure that its customers would receive no improvement in service for the foreseeable future. HVUS R. Exc. at 3-19.

Additionally, HVUS claims that the OCA has erroneously relied on *PG&W 1986* and *PG&W 1988* to support a faulty premise that the Commission is required to deny HVUS any increase in rates. Rather, HVUS contends that the Commission has applied Sections 523 and 526 of the Code in many decisions since the release of its Order in *PG&W 1988,* which reinforces that the Commission considers a variety of factors and standards when deciding whether to decrease a utility’s request for rate relief. Further, HVUS submits that in *PG&W 1986* and *PG&W 1988,* the Commission denied a rate increase to a large company that had the financial means to make the necessary improvements in service without a rate increase. In contrast, HVUS argues that it is a small company that consistently generates a negative net operating income available for return. As such, HVUS maintains that a complete denial of rate relief will not allow the Company to even cover the costs of providing service. Accordingly, HVUS submits that the Commission should deny the OCA’s Exceptions and its related request to apply only the Commission’s decisions in *PG&W 1986* and *PG&W 1988* to the instant proceeding. HVUS R. Exc. at 3‑4.

In its Replies to Exceptions, I&E contends that the OCA has incorrectly argued that because the revenue requirements agreed to in the Non-Unanimous Settlement are higher than those set forth in I&E’s litigated position, the Settlement affords the Company a positive return on equity. More specifically, I&E claims that the OCA has erroneously cited to the original position I&E proffered in its Direct Testimony rather than the updated position I&E presented in its Surrebuttal Testimony. I&E clarifies that it continued to recommend a 0.00% return on equity in its Surrebuttal Testimony, but that its overall revenue requirement recommendation increased because I&E removed some of its prior expense adjustments. I&E submits that although the Non‑Unanimous Settlement is a “black box” settlement that does not specify a return on equity, the agreed upon Settlement increases of $65,557 for water and $82,227 for wastewater that the ALJs approved in the RD achieve the goal of a 0.00% return on equity. Further, I&E reiterates that these amounts are closely aligned with I&E’s pre‑settlement recommendation of $65,544 for water and $82,263 for wastewater, as set forth in its Surrebuttal Testimony. I&E R. Exc. at 2-5.

1. **Mr. Kollar’s Exceptions and HVUS’s Replies**

In his first Exception, Mr. Kollar takes issue with Ordering Paragraph Nos. 4 and 5 of the Recommended Decision.[[23]](#footnote-24) These Ordering paragraphs state, as follows:

4. That, upon entry of a final 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.

5. That, upon entry of a final Commission Order in this proceeding, Hidden Valley Utility Services, L.P.- Wastewater, 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.

Mr. Kollar Exc. at 2-4.

Mr. Kollar argues that given the Commission’s findings in the *McCloskey Orders* and the ALJs’ findings in the instant case that HVUS continues to provide inadequate water and wastewater service, it is difficult to understand why the ALJs recommended that HVUS receive *any* increase to either its water or its wastewater rates. According to Mr. Kollar, this recommendation is akin to rewarding the Company for thirteen years of refusing to address the significant water and wastewater issues facing its customers. Mr. Kollar points out that the ALJs’ ruling contains no requirement for the Commission to monitor how the additional revenues will be utilized by HVUS once enacted. Mr. Kollar also alleges that given the Company’s track record, it is highly probable that the revenue increase granted to the Company will be utilized solely by HVUS to retire indebtedness or to pay additional distributions to the Company’s owners rather than to address the water and wastewater quality issues. Therefore, Mr. Kollar submits that any recommended increase to the Company’s water or wastewater rates should be denied and postponed until the final outcome of the hearing procedures described in the *January 2019 McCloskey Order.* Alternatively, Mr. Kollar contends that if the Commission decides to implement the recommended rate increases, then controls and periodic monitoring must be implemented to ensure that the additional revenues are used for operations and to address the long-term water and wastewater issues. More specifically, Mr. Kollar recommends that an independent receiver should be appointed to take over all financial activities of the Company and that HVUS must be directed to file monthly financial reports with the Commission to verify that it is not making any distributions to its owners or making payments on related party indebtedness. Mr. Kollar Exc. at 3-6.

In its Replies to Mr. Kollar’s Exceptions, HVUS points out that although Mr. Kollar claims to be a *pro se* complainant, he is a member of the Board of the Foundation, which is represented by counsel in this proceeding and that the Foundation has referenced some of Mr. Kollar’s positions in its own Exceptions. According to HVUS, Mr. Kollar’s Exceptions are explicitly based on his own opinions and operations, and not on the law or the evidence in the record. HVUS further notes that although Mr. Kollar was included on the full service list in these proceedings, he chose not to participate until filing his Exceptions. HVUS reasons that while Mr. Kollar has a right to file Exceptions, he does not have the right to introduce new issues into this proceeding in his Exceptions. Therefore, HVUS submits that any issues not raised in testimony or briefs before the ALJ are waived, and the Commission should not consider any of the new issues raised by Mr. Kollar including, but not limited to, his requests for: the appointment of a receiver, the prohibition of any payments to HVUS’s owners, and the imposition of special reporting requirements. HVUS R. Exc. at 20-21.

1. **The Foundation’s Exceptions and HVUS’s Replies**

In its Exceptions,[[24]](#footnote-25) the Foundation takes issue with the ALJs’ recommendation that the Company’s water division be permitted to increase its annual revenues by $65,557 and that its wastewater division be permitted to increase its annual revenues by $82,227. By extension, the Foundation objects to the ALJs’ recommendation that the Non-Unanimous Settlement be approved, with modification, and to their recommendation that HVUS be authorized to file tariffs, tariff supplements, or tariff revisions that will produce revenues not in excess of those outlined in the Non‑Unanimous Settlement. Foundation Exc. at 7‑8, 9.

The Foundation submits that the ALJs erred in finding that the Non‑Unanimous Settlement represents a fair, just, lawful, and reasonable resolution of this proceeding. The Foundation asserts that the rates produced by the Non-Unanimous Settlement are not in the public interest. The Foundation reasons that requiring customers of HVUS to pay more for the Company’s inadequate service does not provide any guarantee that HVUS will use the additional revenues to make the necessary repairs and improvements that were required in the *McCloskey Orders.* Moreover, the Foundation argues that the Company should be prohibited from receiving any rate increases until it can demonstrate that it is able to provide adequate, safe, and reasonable water and wastewater service to its customers. However, the Foundation is of the opinion that it is unlikely that HVUS will be able to meet this requirement for the foreseeable future. The Foundation points out that in our *January 2019 McCloskey Order,* we reiterated our view that HVUS’s continued delay in complying with the deadlines outlined in the *McCloskey Orders* was possibly indicative of HVUS’s inability to operate and to provide reasonable and adequate service such that it might be appropriate to proceed to a Section 529 Proceeding. Therefore, the Foundation mirrors the argument of the OCA that the Commission should proceed with a Section 529 Proceeding and should exercise its discretion to completely deny any increase due to inadequate service pursuant to Section 526 of the Code. Foundation Exc. at 4-7.

In its Replies to Exceptions, HVUS submits that to the extent the Foundation’s Exceptions take issue with the fact that the ALJs recommended that the Company receive *any* rate relief, the Commission should deny such Exceptions for the same reasons HVUS set forth in its Replies to the Exceptions of the OCA. Additionally, HVUS points out that the Foundation has attempted to raise other issues in its Exceptions. Namely, HVUS contends that the Foundation’s argument that the Commission should commence a Section 529 Proceeding was not within the scope of the two issues preserved for litigation in the Joint Stipulation in this proceeding. HVUS argues that it is imperative that the Commission enforce the Joint Stipulation and refuse to consider the additional issues raised in the Foundation’s Exceptions. Alternatively, HVUS submits that if the Commission considers the issues raised by the Foundation, the Commission should reject the relief requested by the Foundation. According to HVUS, an order of the Commission directing its prosecutor to institute a Section 529 Proceeding would be an unconstitutional commingling of adjudicatory and prosecutory functions, as outlined in *Lyness v. State Board of Medicine,* 529 Pa. 535 (1992). Further, HVUS reasons that a Commission order directing the commencement of a Section 529 proceeding would violate the Company’s due process rights. HVUS R. Exc. at 19-20.

#### Disposition

On consideration of the positions of the Parties, we reject the arguments of the OCA, Mr. Kollar, and the Foundation that the ALJs erred in recommending that HVUS be granted rate relief. Section 523(a) of the Code provides, as follows:

The commission shall consider, in addition to all other relevant evidence of record, the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates under this title. On the basis of the commission’s consideration of such evidence, it shall give effect to this section by making such adjustments to specific components of the utility’s claimed cost of service as it may determine to be proper and appropriate. Any adjustment made under this section shall be made on the basis of specific findings upon evidence of record, which findings shall be set forth explicitly, together with their underlying rationale, in the final order of the commission.

Additionally, Section 526(a) of the Code states:

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

Therefore, as the ALJ and HVUS noted, the Commission has the discretion to reduce a utility’s rate request, in part, or in whole, based on the quality of service it is providing to its customers.

We are cognizant of the Company’s failure to provide reasonable and adequate service since at least 2005. Namely, we formally determined in the *McCloskey* proceedings that HVUS provides unreasonable service and have clearly stated that failure by the Company to improve its service by a date certain could result in the commence-ment of a Section 529 Proceeding and the takeover and transfer of ownership of the Company to a competent utility. In short, the current quality of service being rendered by HVUS has not changed since we found it inadequate in our *January 2018 McCloskey Order.* As noted above, during the public input hearings in this proceeding, customers of HVUS testified as to the Company’s ongoing inadequate service. Specifically, these customers testified that they are not able to use water for basic household purposes, including drinking, cooking, washing, and bathing. The frustration of these customers is understandable, and we agree that the Company’s ongoing service issues warrant a rejection of its requested increase, in part.

Nonetheless, the record indicates that the Company has not raised rates since 2005 and is not presently covering its costs of providing service. As such, we agree with the ALJs that I&E provided persuasive evidence that HVUS is currently operating at a loss and that there is a need for the Company to receive some additional revenue to cover the cost of service maintenance and to make the mandatory improvements, as directed in the *McCloskey Orders.* The Non-Unanimous Settlement substantially reduces the amount of HVUS’s originally requested rate increase and denies the Company the opportunity to earn a return on equity, resulting in only a modest rate increase. We note that in prior cases before this Commission, we have permitted a company modest rate relief even though the company was not providing reasonable and adequate service. In such cases, we recognized that the utility must provide service to customers and must incur expenses to provide that service. For example, in *Pennsylvania Public Utility Commission, et al. v Delaware Sewer Company*, Docket No. R-2014-2452705 (Order entered July 30, 2015) (*Delaware Sewer*), we stated as follows:

[Delaware Sewer Company] is not providing adequate service, has not presented plans to address the service issues raised in this proceeding, and has not sought funds to make necessary changes. Moreover, other than including a claim for [Cash Working Capital], the Company has not claimed any rate base or debt. Therefore, we shall provide sufficient revenue to cover reasonable expenses, addressed, *supra*, and allow a modest operating income.

*Delaware Sewer* at 36.

At the same time, however, we also reject the arguments of HVUS and I&E that the ALJs erred by modifying the Non-Unanimous Settlement to eliminate the second step increase to the Company’s wastewater rates, designed to produce an additional $63,537 in annual revenues. According to HVUS, the ALJs reduced the Company’s requested increase to its wastewater rates based on the Company’s inadequate water service. However, although HVUS is correct that its wastewater system is different from its water system, we find ample evidence in the record to demonstrate that the Company is also providing inadequate wastewater service. For example, as the OCA pointed out, HVUS has failed to complete, or even to commence, many of the projects identified in the Engineer’s Report. As such, the Company has not yet properly equipped all of its wastewater pumping and treatment facilities. Because the Company still, *inter alia,* currently does not operate all of its pumping stations with backup pumps and operating alarms, we agree with the OCA that HVUS continues to run the risk of having sewage contaminate customer homes and buildings. Further, we concur with the ALJ and the OCA that even after HVUS complies with the recommendations set forth in the Engineer’s Report, this will not, on its own, equate to the Company rendering safe, adequate and reliable wastewater service. Accordingly, we cannot, at this time, grant the Company an additional increase to its wastewater revenues that will provide an unknown return on equity and an increase in revenues beyond that which is necessary to cover its current operating costs. For this reason, the request of HVUS and I&E that we overturn the ALJs’ recommended modification to the Non-Unanimous Settlement is denied.

In light of the above, we shall adopt the ALJs’ recommendation that the Non-Unanimous Settlement be modified by reducing the total wastewater revenue requirement set forth therein. This will result in an approved increase of $65,557 to the Company’s water revenues and an increase of $82,227 to the Company’s wastewater revenues, on an annual basis.[[25]](#footnote-26) All Exceptions to the contrary are denied.

1. **Independent Financial Audit**

#### Positions of the Parties

1. **HVUS’s Position**

HVUS noted that at the public input hearing, Mr. Kollar testified that he believed the fourteen corrected annual reports filed by the Company in compliance with the *McCloskey Orders* contained errors. I&E’s witness Mr. Zalesky concurred with Mr. Kollar’s observation and recommended that an independent financial audit and management efficiency audit be conducted to bring transparency and accuracy to the Company’s accounting statements. HVUS M.B. at 50 (citing Tr. at 167-170; I&E St. 1 (Water) at 13-15; I&E St. 1-SR (Water) at 17-22; I&E St. 1 (Wastewater) at 11-13; I&E St. 1-R (Wastewater) at 15-20).

HVUS contended that while it is not opposed to I&E’s independent financial audit recommendation, the Company should be given the management discretion to select the auditor. HVUS stated that it should be allowed to issue a request for proposal and to enter into a contract with the lowest possible bidder. HVUS argued that like any other contract for professional services, the Company’s management should have the discretion to hire the person or firm with whom it is most comfortable. HVUS M.B. at 45.

Furthermore, HVUS argued the results of the audit would be proprietary and so the Company should be allowed to keep the results confidential. The Company believes it should be required to notify the Commission and the Parties to this proceeding that the audit has been completed but should not be required to share the results of the audit with the parties. Finally, the Company argued the audit should be financed by ratepayers and requested that the Commission allow HVUS to submit a claim in its next base rate case for the costs of the audit. HVUS M.B. at 45-46.

Consequently, the HVUS states that the Settlement includes a provision to address the annual reports and the independent audit. The Settlement provides that HVUS will submit corrected annual reports for the years 2015 to 2018. According HVUS, the Settlement includes the provision that, to ensure that these annual reports are in fact correct, they are to be prepared or reviewed by a rate consultant prior to submission to the Commission. HVUS M.B*.* at 50. In addition, the Joint Petitioners agreed that for the annual reports submitted to the Commission during the period 2019 to 2023, or until the Company’s next rate case, whichever is earlier, HVUS is to have its annual reports prepared or reviewed by a rate consultant. *Id.*

1. **I&E’s Position**

I&E stated that given the potential inaccuracies that continue to exist in HVUS’s annual reports filed with the Commission in compliance with the *McCloskey Orders*, the term in the Non-Unanimous Settlement relating to this issue appropriately requires the Company to file annual reports from 2015 and beyond and for the annual reports to be prepared or reviewed by a rate consultant. I&E believes this Settlement term is in the public interest as it will help the Company to adequately comply with the *McCloskey Orders* and ensure that accurate information is being provided to the Commission. I&E M.B. at 17-18; I&E R.B. at 5-6.

1. **OCA’s Position**

The OCA stated that it is not opposed to an audit conducted by an independent auditor. However, the OCA argued that the conditions HVUS outlined would render an audit meaningless. More specifically, the OCA explained that although HVUS claimed that it would select the auditor and that the audit findings would be proprietary, there is no support for this approach in the Code. In the OCA’s view, it would be inappropriate for an audit to be considered proprietary given the requirement under Section 523 of the Code that the Commission is to consider the efficiency and effectiveness of a utility’s management. OCA M.B. at 47; OCA R.B. at 26-27.

Additionally, the OCA supported the provision of the Non-Unanimous Settlement that would require HVUS to correct any existing annual reports on file with the Commission and to have a consultant review the reports. However, the OCA stressed that its support of this provision should not be construed as to mean that it supports any revenue requirement increase in this proceeding. OCA M.B. at 50.

1. **The Foundation’s Position**

The Foundation argued that HVUS is unable to prove that its rates are just and reasonable, in part, because the financial information used to calculate such rates is unreliable at best and completely dubious at worst. According to the Foundation, HVUS has consistently filed inaccurate annual reports with the Commission and has shown no ability to remedy this, as illustrated by the errors in its recently-filed “corrected” annual reports filed in response to the *January* *2018 McCloskey Order*. Foundation M.B. at 5. The Foundation also noted the testimony of I&E’s witness Mr. Zalesky that the Company’s annual reports contain numerous errors that call into question the accuracy of the company’s financial position. *Id.* at 11-12 (citing I&E St. 1 (Water) at 13-15, St 1-SR (Water) at 17-22, St 1 (Wastewater) at 11-13, and 1-SR (Wastewater) at 15-20). Additionally, the Foundation noted the testimony of HVUS’s own witness Mr. Kettler, who prepares the Company’s financial reports, that, *inter alia,* he is not an accountant and has not received any training as an accountant, that he has not reviewed or corrected the revised annual reports that still contain errors and inaccuracies, and that he does not know whether his transcribing errors have resulted in differences of “dollars or tens of thousands of dollars or hundreds.” Therefore, the Foundation submitted that the need for the Commission to order an independent audit of HVUS is abundantly clear to all Parties in this matter. Foundation M.B. at 12-13 (citing Tr. at 276-80).

The Foundation noted the record evidence that the Company has never been profitable, has an outstanding loan of $750,000 on which it has paid no interest, and that it has paid Mr. Kettler $857,849 in distributions through 2017. As such, the Foundation submitted that an independent financial audit by a neutral third-party with no prior connection to the Company or Mr. Kettler is paramount in fairly evaluating the financial position of the Company. Foundation M.B. at 13.

#### ALJs’ Recommendation

The ALJs supported the refiling of the Company’s reviewed and corrected annual reports. According to the ALJs, the Company’s agreement to refile corrected annual reports using the services of a rate consultant will provide the customers and the Commission with some reassurance and also provide a means by which the Company’s improvements can be verified. The ALJs also agreed with the Foundation’s lack of confidence in the Company’s ability to timely refile the corrected annual reports. The ALJs stressed the Foundation’s argument that it took HVUS a long time to provide accurate reports, especially, given the fact that the Company previously submitted corrected reports. The ALJs acknowledged the Foundation’s averment that there is little confidence in the accuracy of the financial numbers provided by HVUS in this proceeding. Based on the above, the ALJs recommended that the Company obtain a financial audit for the annual reports for the years 2015 to 2018 from an outside independent financial accounting firm or office which has not previously provided auditing services to HVUS. R.D. at 51-52.

#### Exceptions and Replies

**a. HVUS Exception No. 2 and the Foundation’s Replies**

In its Exception No. 2, HVUS takes issue with the deadline the ALJs set for the Company to complete an independent financial audit for the years 2015 to 2018. Specifically, HVUS objects to Ordering Paragraph Nos. 7 and 9 of the Recommended Decision, which state 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. These annual reports will be prepared or reviewed by a rate consultant prior to submission to the Commission.

9. That, within 120 days after the entry of the Commission’s final order in this proceeding, 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. 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. The Company shall submit the independent financial audit to the Commission’s Secretary’s Bureau and the Commission’s Bureau of Technical Utility Services.

R.D. at 57. According to HVUS, the ALJs erred by establishing an unreasonably short deadline for completion of the audit. HVUS claims that the 120-day deadline recommended by the ALJs is shorter than the deadline recommended by any of the Parties to this proceeding. Further, HVUS points out that the ALJs provided no basis for why they shortened the deadline. HVUS Exc. at 18-19.

HVUS acknowledges the need to cause the audit to be completed in a timely manner and stresses that it is not opposed to the recommendation that the audit be conducted by an outside independent accounting firm that has not previously provided auditing services to the Company. However, HVUS submits that the process of identifying and retaining a satisfactory firm takes time. HVUS points out that a final Commission Order in the instant proceeding will likely not be issued until February or March when many accounting firms are busy preparing tax returns. Additionally, HVUS contends that the 120-day deadline is unreasonably short, given that the Company must select a new auditor who will need to prepare an audit of three years of data and will need to complete an audit report within this time period. HVUS asserts that the Commission should not deny the Company its due process by requiring a deadline that the Company cannot meet. As such, HVUS requests that the Commission modify the ALJs’ recommendation and establish a deadline for completion of the audit report of twelve months after the entry date of the Commission’s final Order in this proceeding. *Id.* at 19‑20.

Finally, HVUS clarifies that it is not specifically opposed to the ALJs’ recommendation that the Settlement be modified to shorten the time period for filing the corrected annual reports for the years 2015 to 2018 from six months to ninety days. Rather, the Company submits, as it has presented throughout this proceeding, that while it is not opposed to the independent financial audit, it should be given the option to prepare the financial audit after the submission of its corrected annual reports, rather than be required to prepare both simultaneously. HVUS Exc. at 19.

In its Replies to the Company’s Exception No. 2, the Foundation agrees with the ALJs’ recommendation. According to the Foundation, given the Company’s prior actions and propensity of not complying with deadlines, there is no basis for the Commission to extend the deadline for filing the audited reports beyond the 120 days recommended by the ALJs. The Foundation asserts that the Commission should deny the Company’s request for extension of time to file the reports by applying the same rationale as it did in its denial of HVUS’s request in the *January 2019 McCloskey Order*. The Foundation believes any failure to comply with the ALJs’ recommendation is a clear indication of the Company’s lack of competency to operate and of its inability to provide reasonable and adequate service. The Foundation is of the opinion that if the Commission extends the deadline after strictly enforcing the deadlines in the *McCloskey Orders*, it would send the wrong message to the Company that its delay tactics are acceptable. Foundation R. Exc. at 5-6.

**b. Mr. Kollar’s Exceptions and HVUS’s Replies**

In his second Exception, Mr. Kollar finds fault with Ordering Paragraph No. 7 of the Recommended Decision, *supra,* and Ordering Paragraph No. 8 of the Recommended Decision, which states 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 or reviewed by a rate consultant prior to submission to the Commission.

R.D. at 58. According to Mr. Kollar, HVUS has filed inaccurate reports for many years. Mr. Kollar claims that the requirement to utilize a rate consultant will not solve the problem of inaccurate annual financial reports. As such, Mr. Kollar submits that the above ordering paragraphs should be modified to require HVUS to use the services of 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. Mr. Kollar Exc. at 6-7.

In his third Exception, Mr. Kollar makes suggested edits to Ordering Paragraph No. 9, *supra.* Mr. Kollar claims that although the requirement for an independent audit of the Company’s financial statements is an important step, the above ordering paragraph should be amended to enhance the effectiveness of this step. More specifically, Mr. Kollar claims that the following should be added to Ordering Paragraph No. 9: (1) that a CPA firm should conduct the independent financial audit; (2) that HVUS provide the Commission with notice, which will be posted to the docket for this case, once it selects an auditing firm and has estimated a timeline for completion; (3) that the complete audit report and accompanying financial statements be filed with the Commission’s Secretary’s Bureau and TUS and posted at this docket; (4) that within sixty days of receiving the audited financial statements, TUS shall provide a report to the Commission indicating its receipt and review of the audited financial statements and shall include a list of any concerns it has regarding the financial viability of HVUS; and (5) that the audit requirement remain in effect until all requirements of the *McCloskey Orders* are met. Mr. Kollar Exc. at 7-9.

HVUS did not reply specifically to Mr. Kollar’s Exception Nos. 2 and 3.

**c. The Foundation’s Exceptions** **and HVUS’s Replies**

In its Exception Nos. 4, 9, and 10, the Foundation takes issue with the ALJs’ recommendation that HVUS be ordered to file corrected annual reports from 2015 to 2018 that are prepared by or reviewed by a rate consultant. The Foundation is of the same opinion as Mr. Kollar that such annual reports should be prepared by or reviewed by a CPA. Therefore, the Foundation argues that Ordering Paragraph Nos. 7 and 8 of the Recommended Decision, *supra,* should be modified to state 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.

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.

In support of its position, the Foundation states that it adopts the reasoning Mr. Kollar set forth in his Exceptions regarding the modifications to Ordering Paragraph Nos. 7 and 8. Foundation Exc. at 8, 9-10.

Similarly, in its Exception Nos. 5 and 11, the Foundation takes issue with the ALJs’ recommendation that an independent financial audit of HVUS’s records should be conducted by an outside independent financial accounting firm. The Foundation insists that the independent financial audit should be conducted by a CPA firm. As such, the Foundation argues that Ordering Paragraph No. 9 of the Recommended Decision, *supra,* should be modified to state as follows:

9 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 an 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.

In support of its position, the Foundation states that it adopts the reasoning Mr. Kollar set forth in his Exceptions regarding the modification to Ordering Paragraph No. 9. Foundation Exc. at 8, 10-11.

In its Replies to the Foundation’s Exceptions, HVUS argues that to the extent such Exceptions adopt the positions Mr. Kollar set forth in his Exceptions, the Foundation’s Exceptions must be denied for the reasons HVUS outlined in response to Mr. Kollar’s Exceptions. HVUS R. Exc. at 20.

#### Disposition

As the ALJs and all Parties to this proceeding agreed, given the Company’s ongoing issues with filing inaccurate financial information, it would be in the public interest for HVUS to file corrected annual reports and to obtain an independent financial audit. However, we are not persuaded by the assertion of HVUS that the deadline set forth by the ALJs for the Company to complete the independent financial audit is unreasonable. Although the Company contends that many accounting firms are presently busy preparing tax returns, the entry date of this Opinion and Order will be in late March 2019. Therefore, HVUS will have 120 days from the entry of this Opinion and Order, or until late July 2019, to cause the audit to be conducted and completed. The end point of this time period will be several months after the end of the tax season in mid-April. Similarly, we find no merit in the Company’s contention that the ALJs erred in modifying the time period set forth in the Non-Unanimous Settlement for the Company to file corrected annual reports for the years 2015 to 2018, such that the Company must file corrected annual reports simultaneously with the completion of the independent financial audit. As the Foundation pointed out, in our *January 2019 McCloskey Order,* we reiterated our position that further delays in complying with the deadlines set forth in the *McCloskey* proceedings would be viewed as possibly indicative of the Company’s lack of competency to operate. *January 2019 McCloskey Order* at 31. Our same reasoning applies here in rejecting HVUS’s request for a longer period of time to file corrected annual reports. Therefore, we shall deny the Company’s Exception No. 2.

At the same time, however, we decline to grant the Exceptions of Mr. Kollar or the Foundation. It is axiomatic that this Commission base its decisions on the evidence in the record, and we are prohibited from looking beyond the record for evidence not previously supplied to support a desired finding of fact or conclusion of law. 52 Pa. Code § 5.431. As HVUS noted in its Replies to Mr. Kollar’s Exception No. 1, *supra,* the requests of Mr. Kollar and the Foundation that, *inter alia,* the Commission direct HVUS to employ the services of a CPA and to file special reports were not raised by any party in the record developed in this proceeding and constitute extra record evidence. Moreover, Mr. Kollar and the Foundation have not shown good cause for the introduction of such extra record information. Accordingly, such Exceptions must be denied.

Based on the foregoing, we shall adopt the ALJs’ recommendation and shall modify the Non-Unanimous Settlement by directing HVUS to, within ninety (90) days of the entry date of this Opinion and Order, file with the Secretary’s Bureau and TUS corrected annual reports for the years 2015 to 2018 that are prepared by or reviewed by a rate consultant prior to submission to the Commission. Additionally, we shall adopt the ALJs’ recommendation that, within one hundred and twenty (120) days of the entry of this Opinion and Order, the Company 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 any services to HVUS. We shall direct HVUS to file this completed independent audit with the Secretary’s Bureau and TUS.

# XI. Conclusion

Based on our review of the record and the positions of the Parties, we shall: (1) deny the Exceptions filed by HVUS, the OCA, I&E, the Foundation, and Mr. Kollar; (2) adopt the Recommended Decision of ALJs Hoyer and Dunderdale; and (3) approve the Joint Petition for approval of a Non-Unanimous Settlement, with modification; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by Hidden Valley Utility Services, L.P. – Water and Hidden Valley Utility Services, L.P. – Wastewater, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and Robert Kollar, on February 4, 2019, and by Hidden Valley Foundation, on February 5, 2019, are denied, consistent with this Opinion and Order.

1. That the Recommended Decision of Administrative Law Judges Mark A. Hoyer and Katrina L. Dunderdale, issued on January 25, 2019, is adopted, consistent with this Opinion and Order.
2. That the Joint Petition for Approval of a Non-Unanimous Settlement filed by Hidden Valley Utility Services, L.P. – Water and Hidden Valley Utility Services, L.P. – Wastewater and by the Commission’s Bureau of Investigation and Enforcement is adopted, as modified, consistent with this Opinion and Order.
3. That Hidden Valley Utility Services, L.P. – Water, shall not place into effect the rules, rates and regulations contained in Supplement No. 1 to Tariff Water-Pa. P.U.C. No. 1.

1. That Hidden Valley Utility Services, L.P. – Wastewater, shall not place into effect the rules, rates and regulations contained in Supplement No. 1 to Tariff Wastewater-Pa. P.U.C. No. 1.

6. That Hidden Valley Utility Services, L.P. – Water is authorized to file water tariffs, tariff supplements or tariff revisions containing rates, rules and regulations to produce annual revenues not in excess of $206,112, which is an increase over present revenues of $65,557, consistent with this Opinion and Order.

7. That Hidden Valley Utility Services, L.P. – Wastewater is authorized to file wastewater tariffs, tariff supplements or tariff revisions containing rates, rules and regulations, to produce annual revenues not in excess of $375,866, which is an increase over present revenues of $82,227, consistent with this Opinion and Order.

8. That said tariffs or tariff supplements may be filed on at least one (1) day’s notice, to become effective for service rendered on and after the date of entry of this Opinion and Order.

9. That, within ninety (90) days after the date of entry of this Opinion and Order in this proceeding, Hidden Valley Utility Services, L.P shall file with the Commission’s Secretary’s Bureau and the Commission’s Bureau of Technical Utility Services corrected annual reports for the years 2015-2018. These annual reports shall be prepared or reviewed by a rate consultant prior to submission to the Commission.

10. That, during the years 2019-2023 or until its next rate case, whichever is earlier, Hidden Valley Utility Services, L.P. shall have its annual reports prepared or reviewed by a rate consultant prior to submission to the Commission.

11. That, within one hundred twenty (120) days after the date of entry of this Opinion and Order, 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. Upon completion of the independent financial audit, Hidden Valley Utility Services, L.P. 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. Hidden Valley Utility Services, L.P. shall file the independent financial audit with the Commission’s Secretary’s Bureau and the Commission’s Bureau of Technical Utility Services.

12. That, within ninety (90) days after the date of entry of this Opinion and Order, Hidden Valley Utility Services, L.P. shall file with the Secretary’s Bureau and the Bureau of Technical Utility Services corrections of the numerical errors in Appendix A to the Joint Petition for Approval of a Non-Unanimous Settlement concerning consumption over or under 30,000 as well as the Private Fire customers at Column D, rows 20 and 21; Column K, rows 20 and 21; Columns F and M, row 57 for Water 2018 and for Sewer 2017-2018; and Columns D and K, rows 22 and 23 for Sewer 2017 Phase II.

13. That the following Formal Complaints filed against Hidden Valley Utility Services, L.P. – Water are, hereby, dismissed:

Office of Consumer Advocate C-2018-3001841

Hidden Valley Foundation, Inc. C-2018-3003528

Robert J. Kollar C-2018-3003370

Gerry and Melissa Pindroh C-2018-3001787

Debra J. Simpson C-2018-3002179

Tom and Shelley Conroy C-2018-3002198

John Cupps C-2018-3002468

David Oster C-2018-3002470

Toni Gorenc C-2018-3002480

David Brodland C-2018-3002485

Robert and Katherine Bair C-2018-3002587

Jerome and Barbary Cypher C-2018-3002671

Jon and Nina Lewis C-2018-3002701

Celeste Emrick C-2018-3003020

14. That the following Formal Complaints filed against Hidden Valley Utility Services, L.P. – Wastewater are, hereby, dismissed:

Office of Consumer Advocate C-2018-3001843

Hidden Valley Foundation, Inc. C-2018-3003529

Robert J. Kollar C-2018-3003372

Tom and Shelley Conroy C-2018-3002200

John Cupps C-2018-3002459

David Oster C-2018-3002475

Toni Gorenc C-2018-3002481

David Brodland C-2018-3002487

Jerome and Barbara Cypher C-2018-3002683

Jon and Nina Lewis C-2018-3002698

15. That, upon Commission approval of the tariff or tariff supplement filed by Hidden Valley Utility Services, L.P. – Water in compliance with this Opinion and Order, the investigation at Docket No. R-2018-3001306 shall be marked closed.

16. That, upon Commission approval of the tariff or tariff supplement filed by Hidden Valley Utility Services, L.P. – Wastewater in compliance with this Opinion and Order, the investigation at Docket No. R-2018-3001307 shall be marked closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 14, 2019

ORDER ENTERED: March 29, 2019

**APPENDIX A**

**Pennsylvania Public Utility Commission**

**v.**

**Hidden Valley Utility Services, L.P. ‑ Water**

**Docket No. R-2018-3001306**

**Pennsylvania Public Utility Commission**

**v.**

**Hidden Valley Utility Services, L.P. ‑ Wastewater**

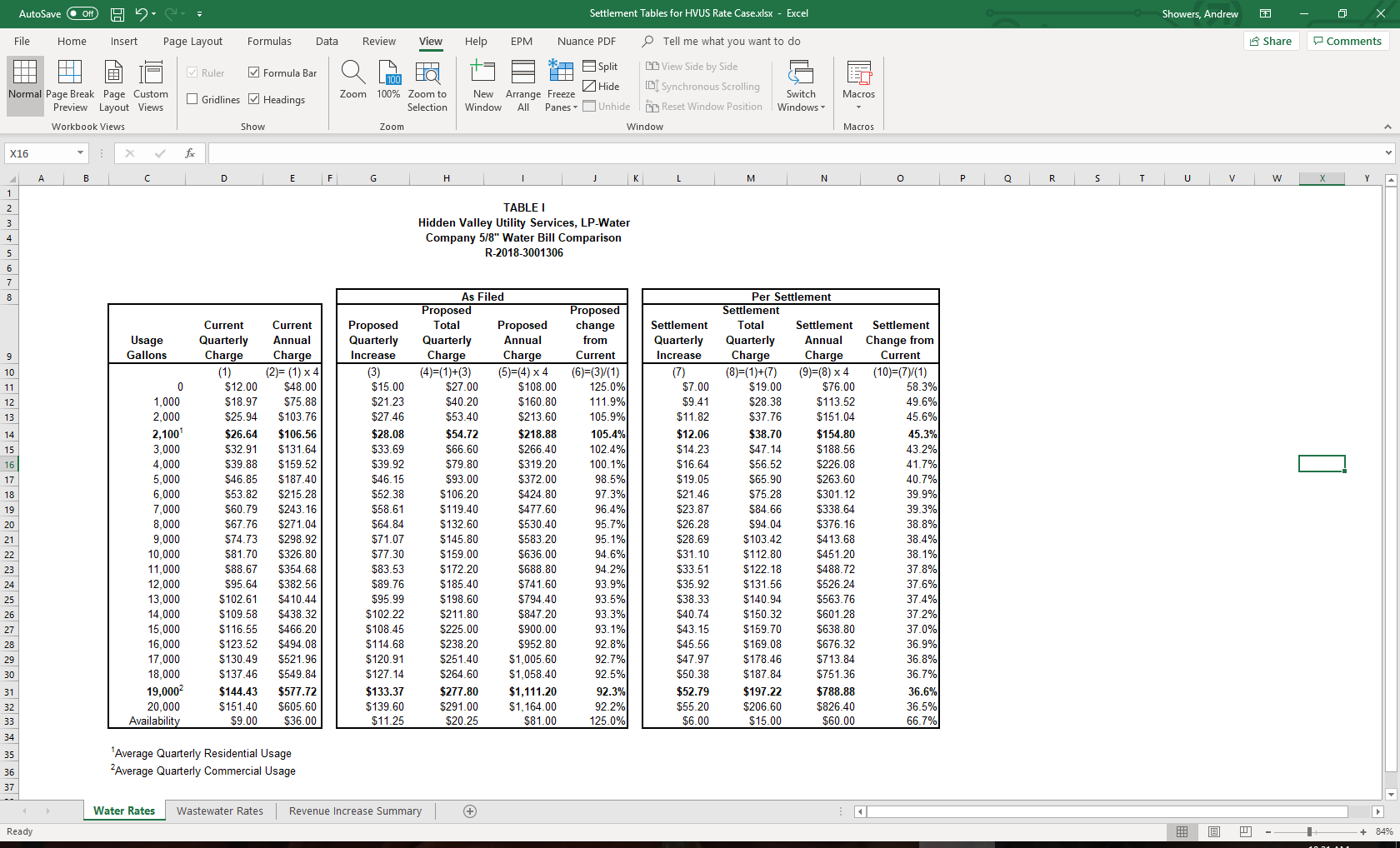
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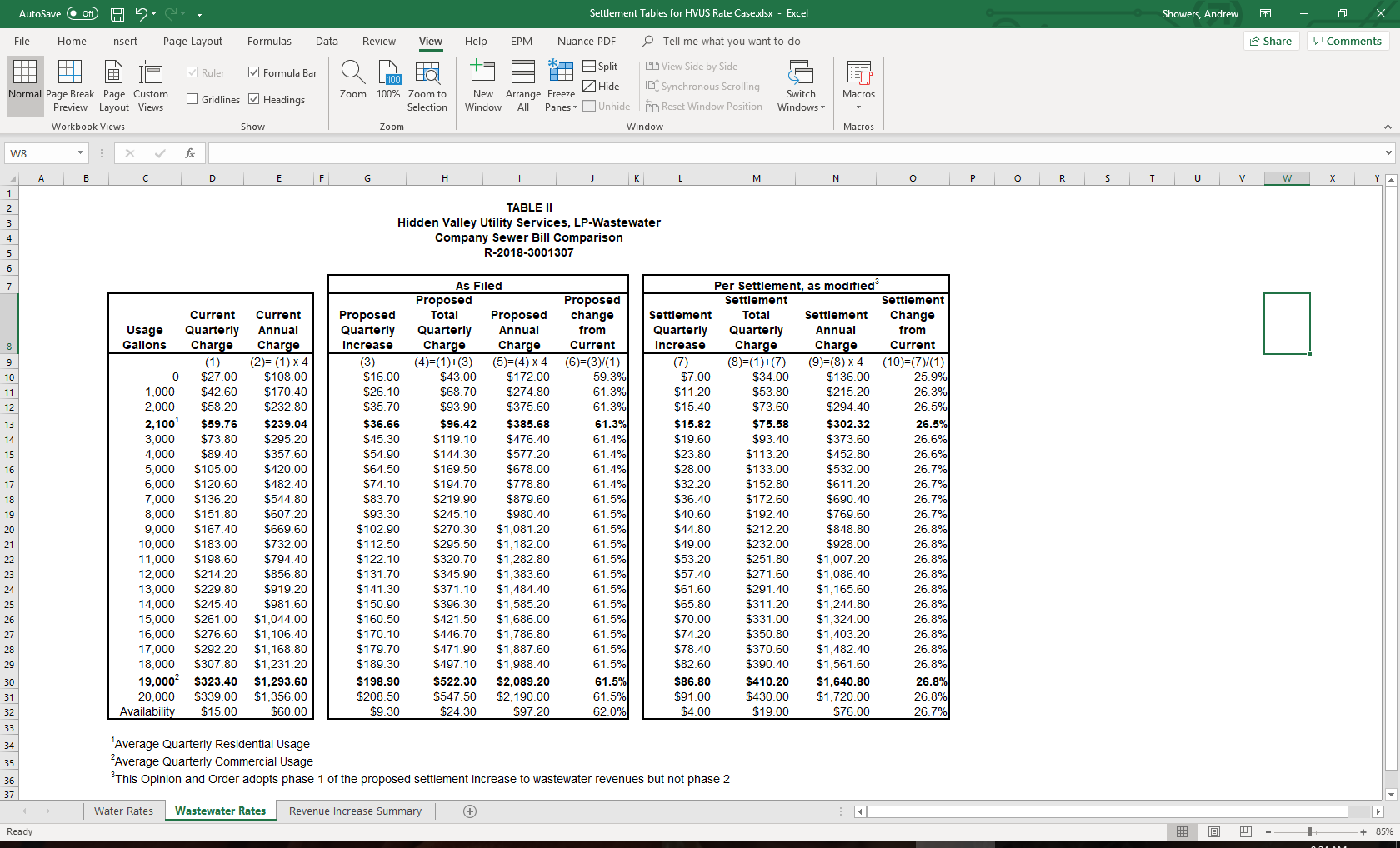
**Settlement Rates and Revenues, as modified**

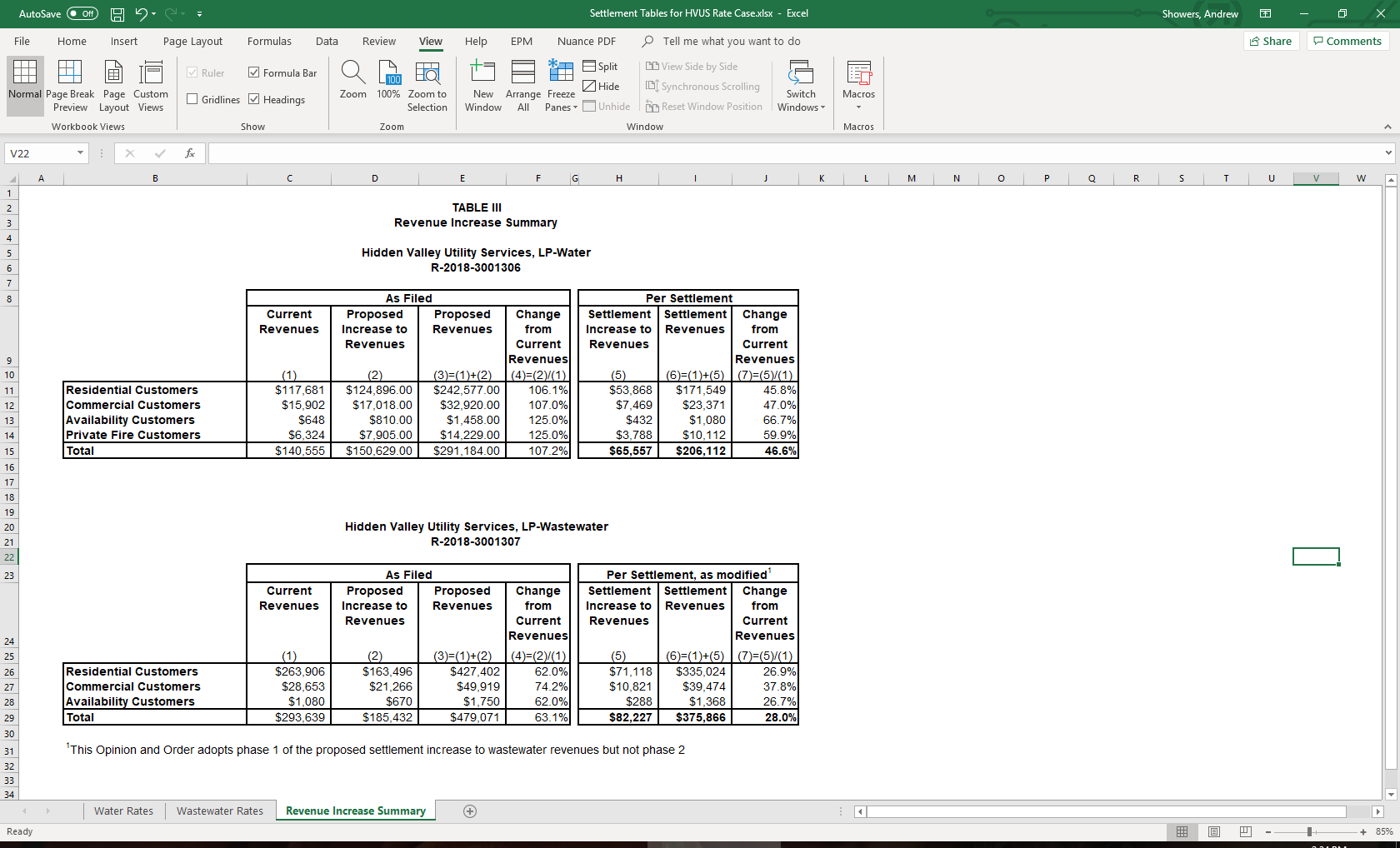
**Table I Water Rates**

**Table II Wastewater Rates**

**Table III Revenue Increase Summary**







1. The Hidden Valley Foundation, Inc. is a non-profit corporation established in 1984 to provide maintenance and recreational services associated with the operation of the Hidden Valley homeowner community. It is a master homeowners’ association, also managing four condominium associations, all located within the Hidden Valley resort. The property totals approximately 1,700 acres with single family homes, towns house and condominium units throughout. HVUS Exhibit JMK-1 (Water), Affiliations Attachment of James M. Kettler. [↑](#footnote-ref-2)
2. The *January 2018 McCloskey Order* addressed both the water and wastewater cases. As noted below, following issuance of the *January 2018 McCloskey Order*, the Company filed a Petition for Clarification, Reconsideration and Amendment (Petition). The Commission entered an Opinion and Order addressing the Petition on May 3, 2018 *(May 2018 McCloskey Order)*. Next, pursuant to a Petition for Amendment filed by the Company following issuance of the *May 2018 McCloskey Order*, the Commission entered another Opinion and Order on January 17, 2019 *(January 2019 McCloskey Order).* For the purpose of this document, the *January 2018 McCloskey Order,* the *May 2018 McCloskey Order,* and the *January 2019 McCloskey Order* will be collectively referred to as the *McCloskey Orders* and the proceedings for these matters will be referred to as the *McCloskey* proceedings. [↑](#footnote-ref-3)
3. The Parties agreed to a shortened period for filing Exceptions and Replies. Therefore, the Recommended Decision required the Parties to file their Exceptions by February 5, 2019, and Replies by February 8, 2019. [↑](#footnote-ref-4)
4. HVUS’s limited partnership consists of two partners: James M. Kettler who owns a 99% ownership interest; and the Kettler Brothers of Hidden Valley which owns a 1% ownership interest. HVUS M.B. at 4. [↑](#footnote-ref-5)
5. Pursuant to the *July 2005 Order*, a residential customer using 5,000 gallons per quarter would pay $116.55 for water service and $261.00 per quarter for wastewater service. [↑](#footnote-ref-6)
6. For a summary of the Initial Decision in that proceeding, see pages 9 to 19 of the *January 2018 McCloskey Order.* [↑](#footnote-ref-7)
7. For a summary of the recommended adjustments to the Initial Decision ordering paragraphs, see pages 31-39 of the *January 2018 McCloskey Order*. [↑](#footnote-ref-8)
8. The *January 2018 McCloskey Order* contained errors in the numbering of the Ordering Paragraphs beginning on page 67. Ordering Paragraph No. 22 on page 67 should be numbered Ordering Paragraph No. 23 and the remaining paragraph numbers should be corrected accordingly. Therefore, we restated the Ordering Paragraphs in the *May 2018 McCloskey Order* to correct this error. [↑](#footnote-ref-9)
9. Ordering Paragraph No. 3(a) of the Initial Decision provided that HVUS shall replace 1,500 feet of three-inch line to the Heights neighborhood and 1,000 feet of two-inch line to the Valley View neighborhood in Hidden Valley. [↑](#footnote-ref-10)
10. However, the Commission denied HVUS Exception No. 1 to the extent that it attempted to limit the topics of the public meetings to the line replacement work to be completed. *January 2018 McCloskey Order* at 48. [↑](#footnote-ref-11)
11. We also held that the Commission’s discretion is informed by our enabling legislation under 66 Pa. Code § 3301, our policy statement under 52 Pa. Code § 69.1201, and long-standing case law that not only reflects our regulatory policy but also affirms our statutory discretion. *Pa. PUC v. HIKO Energy*, LLC, Docket Nos. P-2015-2519419 and C-2014-2431410 (Order entered January 28, 2016) at 22. [↑](#footnote-ref-12)
12. The Company asserts that it initially attempted to file a status report with the Commission, through a filing dated March 19, 2018, but that the wrong docket numbers were listed on the document. [↑](#footnote-ref-13)
13. However, the Company indicated that it was reviewing the corrected annual reports submitted in compliance with Ordering Paragraph No. 14 and will file further revised reports, if necessary. The Company argued that even if those reports contain inadvertent errors, the Company’s filing of fourteen revised annual reports by the required deadlines demonstrates a good faith effort to comply with the Commission’s Order. Second Petition at 7. [↑](#footnote-ref-14)
14. On February 19, 2019, the Company filed a petition for review of the *January 2019 McCloskey Order* with the Commonwealth Court. *Hidden Valley Utility Services, L.P. v. Pa. PUC*, 187 C.D. 2019 (Pa. Cmwlth., filed February 19, 2019). [↑](#footnote-ref-15)
15. Based on this increase, an average residential water customer’s rates would increase by $12.06 per quarter or $4.02 per month. [↑](#footnote-ref-16)
16. Based on this increase, an average residential wastewater customer’s rates would increase by $15.82 per quarter or $5.27 per month. [↑](#footnote-ref-17)
17. Based on this increase, an average residential wastewater customer’s rates would increase to $28.65 per quarter or $9.95 per month. [↑](#footnote-ref-18)
18. Citing, *UGI Corp. v. Pa. Pub. Util. Comm’n,* 410 A.2d 923 (Pa. Cmwlth. 1980); *Pa. Power Company v. Pa. Pub. Util. Comm’n,* 561 A.2d 43, 47 (Pa. Cmwlth. 1989). [↑](#footnote-ref-19)
19. The ALJs also attached to the Recommended Decision, as “Appendix A," a chart outlining the impacts of the current rates, the as-filed rates, and the Settlement rates. [↑](#footnote-ref-20)
20. Ordering Paragraph Nos. 19 and 20 of the *May 2018 McCloskey Order* state:

    19. That on or before January 31, 2019, or as soon as all repairs, modifications and improvements have been made, as ordered herein, Hidden Valley Utility Services, L.P., shall file a final detailed status report with the Secretary of the Commission, along with a verification from its engineer outlining the details of what has and has not been completed, and provide copies to the Office of Consumer Advocate and to the Commission’s Bureau of Technical Utility Services, in writing, at the time of filing, identifying in detail the extent of compliance and any incomplete matters as ordered herein. If any matters ordered herein have not been completed, Hidden Valley Utility Services, L.P., and its engineer shall state in said report, in detail, the reasons for the same.

    20. That on or before March 31, 2019, or within sixty (60) days after receipt of a written report of all completed rehabilitative measures from Hidden Valley Utility Services, L.P. and its engineer, the Bureau of Technical Utility Services shall investigate the quality of the water as well as of the water and wastewater services being received by Hidden Valley Utility Services, L.P.’s customers. ***If the recommended repairs, modifications, rehabilitative and maintenance procedures have not been accomplished within the time frame structured herein, or if the water quality or water and wastewater service as reported by the Bureau of Technical Utility Services is not adequate and reasonable,*** an evidentiary hearing shall forthwith be scheduled by the Office of Administrative Law Judge for purposes of addressing one or more of the following issues: the adequacy of the water system, the adequacy of the wastewater system, the quality of the water, the appropriateness of penalties to be imposed against Hidden Valley Utility Services, L.P., the appropriateness of ratepayer refunds, and any other issue relative to these ordering paragraphs. The burden of proof in the evidentiary hearing as to these issues shall be upon Hidden Valley Utility Services, L.P. The Commission shall retain jurisdiction for that purpose.

    *May 2018 McCloskey Order* at 31-32 (emphasis added). [↑](#footnote-ref-21)
21. The Engineer Report estimated the maintenance and repair costs as follows: (1) Sewage Treatment Plant No. 1 - $104,250; (2) Sewage Treatment Plant No. 2 - $51,900; (3) Spray field, Snowmaking and Storage Lagoon - $13,000, Pump Stations - $58,750. I&E Exh. 3, Sch. 2 at 53. [↑](#footnote-ref-22)
22. Ordering Paragraph No. 11 of the *May 2018 McCloskey Order* states:

    That Hidden Valley Utility Services, L.P., shall comply with all recommendations from the engineer with regard to wastewater services in order to ensure that customers shall receive adequate and reasonable wastewater service, on or before ***January 31, 2019.*** [↑](#footnote-ref-23)
23. R.D. at 57-58. [↑](#footnote-ref-24)
24. The Foundation’s Exception Nos. 1-3 and 6-8 discuss its objection to the ALJs’ recommendations regarding the revenue requirement and rate design as set forth in the Non-Unanimous Settlement. The Foundation outlined its arguments in its Exception No. 1 and referenced these arguments in Exception Nos. 2-3 and 6-8. [↑](#footnote-ref-25)
25. Appendix A is attached to this Opinion and Order and shows a listing and comparison of the various rates as proposed and as settled, as modified by the Recommended Decision and adopted in this Opinion and Order. [↑](#footnote-ref-26)