

COMMONWEALTH OF PENNSYLVANIA



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January 20, 2016

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Tanya J. McCloskey, Acting Consumer Advocate
v.
Hidden Valley Utility Services, L.P. – Water and Wastewater
Docket Nos. C-2014-2447138
C-2014-2447169

Dear Secretary Chiavetta:

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

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lauren M. Burge".

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Attachment

cc: Honorable Jeffrey A. Watson
Certificate of Service

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CERTIFICATE OF SERVICE

Re: Tanya J. McCloskey, Acting Consumer Advocate

v.

Hidden Valley Utility Services, L.P. - Water
Docket No. C-2014-2447138

Tanya J. McCloskey, Acting Consumer Advocate

v.

Hidden Valley Utility Services, L.P. - Wastewater
Docket No. C-2014-2447169

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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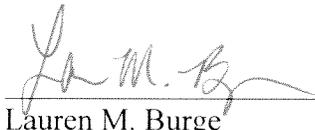
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Tanya J. McCloskey, Acting Consumer Advocate :
:
v. : Docket Nos. C-2014-2447138
:
Hidden Valley Utility Services, L.P. – :
Water and Wastewater : C-2014-2447169
:

MAIN BRIEF
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I. INTRODUCTION

The Office of Consumer Advocate (OCA) hereby submits this Main Brief regarding the complaints filed by the OCA against Hidden Valley Utility Services (HVUS or the Company).

The OCA filed these complaints due to the inadequate water and wastewater service that HVUS provides to its customers in the Hidden Valley community. The water provided by HVUS is not suitable for household purposes and thus violates Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501. The wastewater system is also in need of repair and the Company's failure to maintain and make necessary improvements to its collection and treatment facilities is a violation of Section 1501. In conjunction with these technical failings, the water and wastewater systems are not being operated in a financially or managerially fit manner - the Company's bill content and presentation is poor, its annual reports are untimely and inaccurate and it is chronically late paying its own utility bills. As described below, the OCA submits that in order to correct these longstanding issues, the Public Utility Commission (PUC or Commission) should order the Company to: (1) make improvements to its water and wastewater systems and management practices pursuant to the detailed schedules below; (2) provide quarterly updates to the OCA and interested parties in order to monitor compliance; and (3) institute a reduction in rates until adequate service is provided. If the Company is unable or unwilling to make the necessary improvements, the Commission should order the Company to transfer its systems to an entity that is able to provide adequate service. In 2005, the Commission gave the Company ten years to improve service. The Company did not resolve the service issues in that timeframe. Now, the evidence presented in this proceeding provides the opportunity for the Commission to require urgently needed improvements to either be made expeditiously or for another entity to take over. The outcome of this proceeding must provide certain and timely relief to HVUS customers.

A. Background

Hidden Valley Utility Services provides water and wastewater service to approximately 1,168 customers in Hidden Valley, Somerset County. Hidden Valley is a resort community with consumers, including part-time and full-time residents and Hidden Valley Resort (Resort).

HVUS operated the water and wastewater systems without Certificates of Public Convenience as a de facto utility until a customer complaint was filed in 2002.¹ In February 2004, HVUS submitted applications to the Commission seeking approval to begin to offer, render, furnish or supply water and wastewater service to the public in Hidden Valley, Pennsylvania. The OCA and a number of other parties (collectively, Joint Petitioners) filed protests in those proceedings, due in part to quality of service issues. After lengthy negotiations, a settlement agreement (2005 Settlement) (ALJ Exh. 2) was reached which required HVUS to make a variety of improvements to its water and wastewater systems that would address long-term problems including brown or rust-colored water, low water pressure, and high levels of unaccounted-for water, all of which existed at the time that the Company's applications were filed.

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

In April 2008, HVUS filed an application to transfer the water and wastewater systems to an affiliate of the Buncher Company, as part of Buncher's acquisition of the Hidden Valley Resort.² In an Order entered on June 4, 2010, the Commission granted a request to withdraw the

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

² Joint Application of Hidden Valley Public Utility Services, LLC and Hidden Valley Utility Services, L.P., Docket Nos. A-2008-2039498, A-2008-2039504, A-2008-2039518 and A-2008-2039521, Order

application to transfer after the agreement to sell the water and wastewater systems was not finalized.³ The Commission noted in its Order that some requirements of the 2005 Settlement had not yet been fulfilled, and expressed particular concern as to the level of unaccounted-for water reported by HVUS.⁴ Since then, customers have continued to contact HVUS, the OCA, the Pennsylvania Department of Environmental Protection (DEP), the Public Utility Commission, and the Hidden Valley Foundation to report concerns regarding the quality of service provided by the Company.

On February 14, 2014, the Hidden Valley Foundation (HVF or the Foundation), the homeowners' association in Hidden Valley and a party to the 2005 Settlement Agreement, sent a letter to HVUS seeking to obtain information regarding the status of upgrades required in the 2005 Settlement Agreement and the Company's financial health, as well as expressing concern about the lack of system maintenance and other quality of service issues experienced by customers. The Foundation also sent a follow-up letter on May 13, 2014 requesting a response. The Company did not provide any written response to these letters.

On May 28, 2014, HVUS received shut-off notices for two of its accounts with Pennsylvania Electric Company (Penelec). On June 3, 2014 the OCA filed a Petition for the Issuance of an Emergency Order Against Hidden Valley Utility Services (Emergency Petition), docketed at P-2014-2424858. In the Emergency Petition, the OCA asked the Commission to issue an emergency order requiring HVUS to pay all current and overdue electric bills, remain

(Sept. 11, 2008) (2008 Order). Ownership of the Hidden Valley Resort was transferred to the Buncher Company in 2007. In 2013, the Hidden Valley Resort was purchased from Buncher by neighboring Seven Springs Resort. Tr. 266.

³ March 22, 2010 letter requesting withdrawal of the joint applications of Hidden Valley Public Utility Services, LLC and Hidden Valley Utility Services, LP, docketed at A-2008-2039498, A-2008-2039504, A-2008-2039518 and A-2008-2039521, regarding the sale/purchase of the water and wastewater utility assets and the provision of utility service in Hidden Valley, Jefferson Township, Somerset County, PA, Order (June 4, 2010) (2010 Order).

⁴ Id. at 3-4.

current on its electric bills, and allow the OCA to access its current and historical billing and payment information. The parties filed a proposed settlement agreement on September 26, 2014, which addressed the matters raised in the OCA's Petition. Pursuant to the agreement, which was approved by Order entered on May 5, 2015, Penelec continues to provide the Company's billing and payment history to the OCA.

B. Procedural History

In addition to the Emergency Petition, the OCA filed Formal Complaints against HVUS on October 9, 2014. Based on information provided by customers and the OCA's preliminary investigations, which were detailed in the affidavits attached to the complaints, the OCA averred in its complaints that HVUS is failing to provide "adequate, efficient, safe, and reasonable service and facilities" pursuant to 66 Pa. C.S. § 1501.

HVUS filed Answers to the OCA's complaints on October 29, 2014. The proceedings were assigned to Administrative Law Judge (ALJ) Jeffrey A. Watson, and a Prehearing Conference was held on May 4, 2015. The OCA served thirteen (13) sets of interrogatories on HVUS and engaged in informal discovery.

Public input hearings were held on June 25, 2015 at 12:30pm and 7:00pm at Hidden Valley Resort. In total, over 110 people attended these hearings and 32 individuals testified, including 29 residential customers, two individuals from Seven Springs Resort, and one individual testifying on behalf of a parent who is a customer. Tr. 35-36, 162, 165-166, 236. On July 8, 2015, the OCA filed the Direct Testimony of Ashley E. Everette⁵ (OCA St. 1 – Water and

⁵ Ms. Everette is a Regulatory Analyst employed by the OCA since 2012. She received a Master's degree in Business Administration and a Bachelor's degree in Economics both from the University of Illinois. She has testified in numerous proceedings before the Commission with a primary specialty in accounting and finance issues. Ms. Everette's qualifications are attached as Appendix A to OCA Statement 1.

Wastewater) and Terry L. Fought⁶ (OCA St. 2 – Water and Wastewater). Robert J. Kollar and Kellie A. Kuhleman also submitted testimony regarding the Company’s financial state and requested to intervene as parties. ALJ Watson granted this request in an Order dated September 8, 2015.

The Company filed the Rebuttal Testimony of James Kettler, President of HVUS (HVUS St. 1-R) on September 2, 2015, as well as additional Rebuttal to Mr. Kollar’s testimony on October 20, 2015 (HVUS St. 2-R). On November 3, 2015, the OCA filed the Surrebuttal Testimony of Ashley E. Everette (OCA St. 1S – Water and Wastewater) and Terry L. Fought (OCA St. 2S – Water and Wastewater).⁷ Mr. Kollar also filed Surrebuttal Testimony on November 3, 2015. HVUS filed written rejoinder on November 10, 2015 (HVUS St. 3-R). The OCA filed the Surrejoinder Testimony of Ashley E. Everette (OCA St. 1SR – Water and Wastewater) and Terry L. Fought (OCA St. 2SR – Water) on November 16, 2015. Hearings were held in Pittsburgh on November 17, 2015, where two additional customers and a representative of the Resort presented oral testimony and all witnesses were subject to cross-examination.

C. Burden of Proof

As the Complainant in this case, the OCA bears the burden of proving by a preponderance of the evidence that Hidden Valley Utility Services provides inadequate water and wastewater service to its customers. 66 Pa. C.S. § 332(a); see also North American Coal

⁶ Mr. Fought has been a licensed engineer in Pennsylvania since 1975, is licensed in New Jersey and Virginia (inactive) and has been a consulting engineer since 1983. He received his Bachelor of Civil Engineering from Cleveland State University. He has been involved in the design, construction and operation of water and wastewater facilities for over 40 years. He has also served as a consultant to the OCA for water and wastewater rate cases, complaint proceedings, investigations, and applications since 1984. Mr. Fought’s background and qualifications are attached as Appendix A to OCA Statement 2.

⁷ References herein to OCA testimony refer to testimony filed in the Water docket (Docket No. C-2014-2447138) unless otherwise specified.

Corp. v. Commonwealth of Pa., 2 Pa. Commw. 469, 279 A.2d 356 (1971). A party meets its burden of proof by a preponderance of the evidence when it presents evidence that “fairly outweighs the probative value of any proof offered against the claim.” Se-Ling Hosiery v. Margulies, 364 Pa. 45, 48-49, 70 A.2d 854, 856 (1950) (Se-Ling). The Supreme Court further illustrated the principle as weighing evidence on scales:

If we visualize evidence as something weighed in an ordinary balance scales and if the evidence plaintiff offers in support of his claim is so much more weighty in probative value than the evidence offered in opposition to it that it tips the scales on the side of the plaintiff, the latter has proved his claim by the fair weight of the evidence.

Id. at 856.

The OCA submits that it has demonstrated by a preponderance of the evidence that the water and wastewater services provided by HVUS are inadequate and unreasonable in violation of Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501. The testimony provided by HVUS customers describes, with near uniformity, their experiences with inadequate service and their inability to use the water for everyday household purposes. In addition, the OCA’s expert witness, Terry L. Fought, a consulting engineer, found that the condition of the water and wastewater facilities were consistent with customers’ service experiences. The OCA also presented the Direct Testimony of Ashley Everette, a regulatory analyst, regarding financial and managerial deficiencies undermining the Company’s quality of service and viability. Both OCA experts identified failures to comply with Commission regulations and a prior Commission Order.

As discussed fully below, the probative value of the evidence offered by the OCA outweighs the evidence provided by HVUS. The OCA submits that it has met its burden of

proving by a preponderance of the evidence that HVUS is providing inadequate service in violation of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501.

II. SUMMARY OF THE ARGUMENT

The OCA has sustained its burden of proving that Hidden Valley Utility Services is failing to provide adequate, efficient, safe and reasonable service and facilities to its customers, as required by Section 1501 of the Public Utility Code. As discussed in detail below, the OCA has demonstrated by a preponderance of the evidence that the quality of service provided by HVUS is inadequate due to water discoloration caused by high levels of iron and manganese in the source water, as well as the use of an ineffective water treatment method. Because of the poor water quality, the water is unsuitable for basic household purposes: drinking, cooking, bathing, laundering and cleaning. The OCA has also shown that the water and wastewater facilities require a variety of improvements and maintenance, but HVUS has been unable or unwilling to make necessary improvements. In addition, the OCA has demonstrated that the Company lacks the financial and managerial fitness to operate its water and wastewater utilities in a manner that provides adequate service to customers.

For these reasons, the OCA submits that the Formal Complaints should be sustained, and HVUS should be directed to: (1) make improvements to its water and wastewater systems and management practices pursuant to the detailed schedules below; (2) provide quarterly updates to the OCA in order to monitor compliance; and (3) institute a reduction in rates until adequate service is restored. If the Company is unable or unwilling to make the necessary improvements, the Commission should order the Company to transfer its systems to an entity that is able to provide adequate service.

III. ARGUMENT

A. Quality of Service Legal Background

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

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

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

The Commission’s standard for determining that water service is safe and adequate for purposes of 66 Pa. C.S. § 1501 was set forth in Pa. P.U.C. v. Pennsylvania Gas and Water Co., which states that “every customer is entitled to water that is fit for the basic, domestic purposes (e.g. cooking, drinking, washing and bathing).” 61 Pa. PUC 409, 416, 74 PUR4th 238, 245 (1986) (PG&W 1986); see also Pa. P.U.C. v. Pennsylvania-American Water Co., 71 Pa. PUC 210, 218-19 (1989). The Commission defines basic household purposes as including “drinking, washing, bathing and cooking.” Pa. P.U.C. v. National Utilities, Inc., 87 Pa. PUC 1, 5 (1997).

Water does not need to be a public health risk in order to be unsuitable for all domestic purposes. Pa. P.U.C. v. Lake Latonka Water Co., 71 Pa. PUC 507, 522 (1989) (holding that a utility provides inadequate water even when the water “has non-health, aesthetic quality problems”); see Kessler v. Shickshinny Water Co., 64 Pa. PUC 290, 296-97 (1987) (holding that

ground debris in pipes resulting in “dirty, smelly water which was unsatisfactory for virtually every purpose except toilet flushing” violated 66 Pa. C.S. §1501). In Ashbaugh v. Fitz Henry Water Co., 51 Pa. PUC 287 (1977), the Commission held that water was inadequate despite being safe to drink. 51 Pa. PUC at 291. Customers of Fitz Henry testified to the discoloration of their water and produced filters with sediment. Id. at 288. Testing by the Pennsylvania Department of Environmental Resources determined that, although the water was somewhat acidic, it was mostly within the recommended public health limits for drinking water that were in place at the time. Id. at 289. However, the Commission ruled that the water was inadequate because of the water’s “unpleasant taste, sediment, and unsuitability for laundry purposes” and held that the utility had violated its statutory obligation. Id. at 291.

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

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

61 Pa. PUC at 416. These statements were made in the context of a base rate increase case, but the description of “adequate and reasonable service” is no less applicable in this complaint proceeding.

Regarding the quality of wastewater service, when customers pay their monthly wastewater bill, they are paying for the collection and the discharge of the sewage, cleaning it

and disposing of the waste material, as well as the labor and the equipment to maintain and operate the sewer plant. The Commission has stated that:

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

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

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

obligation to set rates which reflect service inadequacies and to order the utility to take the necessary actions to effect improvements in service quality.

B. Water

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

The water quality issues in Hidden Valley are primarily due to a lack of adequate treatment for the iron and manganese, which occur at high levels in the well water used to serve customers. OCA St. 2 at 2. As OCA witness Terry L. Fought explained:

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

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

OCA St. 2 at 3. Iron and manganese affect the color and flavor of water and food, and can stain laundry, dishes, and porcelain fixtures. Iron precipitates can cause damage when they build up in water mains and service lines, water heaters, and tanks, and may shorten the useful lives of appliances, such as washing machines, dishwashers, and water heaters. Id.

The Company currently treats the water using a process called “sequestration,” which “does not remove iron and manganese but treats the water with chemicals such as phosphate compounds that sequester the iron and manganese particles to prevent oxidation, precipitation and subsequent water quality problems (turbidity, color, staining, etc.)” OCA St. 2 at 4. However, sequestration has not been an effective treatment method for this system and problems with iron and manganese remain. OCA witness Fought testified that this is because “the effectiveness of sequestration diminishes with time . . . in as little as four days, iron and manganese can settle out of the water.” OCA St. 2 at 10. Because Hidden Valley has many part-time residents that only draw water from the system on weekends or holidays, water sits in the

mains for longer periods of time than would be expected in a typical system. Id. As a result, iron and manganese often precipitate. Additionally, heavy demands on weekends or holidays may stir up sediment that has precipitated in the storage tanks, causing additional iron and manganese to enter the distribution system. OCA St. 2 at 10-11.

The testimony of numerous HVUS customers confirms that sequestration is not effectively treating the water, and demonstrates that the water that the Company provides is not suitable for household purposes. The thirty-two individuals that testified at the June 25, 2015 Public Input Hearings complained of intermittent brown or rust colored water. OCA St. 2 at 8; OCA St. 2S at 9. Many do not drink the water due to the water quality issues. Tr. at 58, 70, 76, 78, 108, 127, 194, 224. This requires homeowners to purchase bottled water for consumption. Tr. 45, 58, 71, 102, 149, 194, 212. A number of residents also will not cook with the water, or will only cook with the water if it is boiled first. Tr. 58, 91, 108, 127, 194, 224, 234. Some homeowners also expressed concerns about bathing (Tr. 58, 72, 152) or washing dishes (Tr. 100, 108) with the water. Customer Roberta Sinclair testified that “[w]e would never drink the water, not even brush our teeth with it. We don’t cook with it, we don’t make coffee with it, we don’t wash the dishes except on the sanitize setting, which is three times as long as the regular setting.” Tr. 108. Customer Roger Zelt also testified that the brown water “has led to ruined clothing and embarrassment with our guests. It has led to being unable to drink the water or cook with it.” Tr. 224.

Many HVUS customers have experienced stained or ruined clothes or sheets when they have done laundry. Tr. 54, 63, 98, 129, 183, 186, 198, 224. As a result, many customers do not do laundry or will only do a limited amount of laundry in Hidden Valley. Tr. 54, 58, 70, 78, 83, 91, 100, 149, 198, 211, 222, 234. Customer Doug Brown explained that “I don’t own too many

white shirts. . . The water stains them when they are being washed, and if you don't catch it, it destroys the shirt." Tr. 255-56. This includes Hidden Valley Resort's hotel, which is unable to do laundry on-site, but instead trucks laundry to Seven Springs Resort to be washed. As David Runco, hotel general manager for Seven Springs, testified, "[n]o linens, sheets, bedspreads, towels, shower curtains or table cloths are laundered on site. The water causes a discoloration to the linen." Tr. 211-212.

Hidden Valley residents testified broadly that the poor water quality damages appliances and fixtures, requiring those items to be replaced more frequently than would normally be expected. This included replacements of water heaters (Tr. 46, 50, 54, 59, 69, 115, 130, 149, 161, 179, 183, 185, 190, 213, 215, 230, 234, 290), washing machines (Tr. 50, 149, 199), dishwashers (Tr. 59, 70, 129), garbage disposals (Tr. 59, 149), faucets (Tr. 50, 149, 190), and toilets (Tr. 50, 70, 149, 183, 215, 234, 291). Many residents also experience rust-colored staining on fixtures. Tr. 45, 58, 70, 79, 207-208, 212. Marie Pfab, a HVUS customer, testified that since purchasing her home in Hidden Valley, she "replaced the hot water tank. I totally redid my kitchen, but that's all the appliances and things that have water. I've done a bathroom. They all had to be replaced. I could not keep using the same things because of the rust content." Tr. 70.

Mr. James Kettler, President of HVUS, recognized that there are water quality issues (see, e.g., HVUS St. 1-R at 8, 10, 23-25), but generally pointed to the intermittent use of the system as the cause, rather than any failure to act on the part of the Company. Id. at 23-25. He stated:

The problem is not the iron and manganese, it is the way the system is being utilized. Flows are 50% less than engineered and at times, water is sitting in the distribution system too long per the design of the sequestration process.

HVUS St. 1-R at 23.

Mr. Kettler also argued that customers' frequent replacement of water fixtures, installation of water filtration systems, and purchase of bottled water are not caused by high iron and manganese, but are a voluntary choice made by customers who are susceptible to trends and good marketing. HVUS St. 1-R at 10-11. For example, Mr. Kettler states that appliances and fixtures are being replaced as part of general cosmetic upgrades and renovations, not due to any damage caused by iron and manganese in the water. HVUS St. 1-R at 10. This is contrary to the testimony of numerous consumers who testified that these items had to be replaced more often than would normally be expected due to increased wear and tear from the poor water quality. See, e.g. Tr. 45, 58, 70, 79, 207-208, 212 (staining of fixtures); Tr. 50, 70, 149, 183, 215, 234 (replaced toilets); Tr. 50, 149, 190, 291 (replaced faucets); Tr. 46, 50, 54, 59, 69, 115, 130, 149, 161, 179, 183, 185, 190, 213, 215, 230, 234, 290 (replaced water heater); Tr. 50, 149, 199 (replaced washing machine); Tr. 59, 70, 129 (replaced dishwasher); Tr. 59, 149 (replaced garbage disposal).

Mr. Kettler also testified that “[t]here is plenty of evidence of hot water heaters at Hidden Valley lasting long beyond their expected life span,” but did not cite any such evidence. HVUS St. 1-R at 11; OCA St. 2S at 15. He added that any early failure of water heaters could be due to a defect in the appliance or customer misuse. Id. In fact, there is voluminous consumer testimony that water heaters must be replaced more often than usual due to sludge buildup or other damage due to improperly treated iron and manganese. Tr. 46, 50, 54, 59, 69, 115, 130, 149, 161, 179, 183, 185, 190, 213, 215, 230, 234, 290. Damage to appliances such as water heaters is expected with the levels of iron and manganese precipitates in Hidden Valley's water. See OCA St. 2 at 3, OCA St. 2S at 15. The volume of customer complaints on this issue

indicates that it is not merely coincidence that many water heaters are failing early, but rather these failures are due to the high levels of iron and manganese in the water provided by HVUS.

To help mitigate the brown or rust colored water that enters their homes, many Hidden Valley homeowners have installed filtration systems. Tr. 50-51, 55, 64, 83, 90, 101, 126, 199, 218, 225, 229. Some of these homeowners testified that they have to replace the filters frequently as they quickly become heavily soiled due to the levels of iron and manganese in the water. Tr. 51, 55, 56, 102-103, 129, 218, 225, 229. In his Rebuttal testimony, Mr. Kettler dismissed these home filtration system issues because water filters are “big business. . . A certain segment of the market prefers filtered water for perceived health benefits versus tap water.” HVUS St. 1-R at 8. Additionally, he stated that “[t]here is no evidence that there is a high percentage of homes with filtering systems within the HVUS service area.” *Id.* at 9. However, as OCA witness Everette testified, 15 of 32 customers who testified at the June 2015 public input hearing stated that they used some form of filtration for their water. OCA St. 1S at 12; OCA St. 1 at 11. None of these customers testified that the filtration system was installed for “perceived health benefits,” as Mr. Kettler opined. OCA St. 1S at 12. Rather, customers testified that filters were installed because of problems with iron and manganese in the water. OCA St. 2S at 15. In fact, during a 2004 public input hearing in the Application proceeding, counsel for HVUS specifically encouraged customers to install home filtration systems for the purpose of reducing the amount of brown or tea-colored water in their homes.⁸ OCA St. 1S at 13; 2004 PIH Tr. at 72-74.

⁸ In the Matter of: Application of Hidden Valley Utility Services, LP – Water; Application of Hidden Valley Utility Services, LP – Wastewater, for Approval to Offer, Render, Furnish, or Supply Water and Wastewater Services to the Public in Hidden Valley, PA (Docket Nos. A-210117 and A-230101) (2004 Application).

Some customers also experience low water pressure (Tr. 45, 50, 58, 72, 91, 99, 160, 212), as well as outages associated with main breaks. Tr. 54-55, 83, 99, 120. In the Joint Petition for Settlement of Separate Water and Wastewater Application Proceedings (2005 Settlement) (ALJ Exh. 2), the Company agreed that “[w]ithin ten (10) years of the Effective Date, the Company will replace all mains smaller than 6-inch with 6-inch or larger pipe . . .” 2005 Settlement, ¶ A.16. OCA witness Fought noted that 1,500 feet of 3-inch line to the “Heights” neighborhood, as well as 1,000 feet of 2-inch line to the “Valley View” neighborhood in Hidden Valley have not been replaced as of the 10 year deadline, which fell in July 2015. OCA St. 2 at 15. Replacing these lines with 6-inch pipe would increase pressure to homes in those neighborhoods, as well as improve fire protection. *Id.*; Tr. 299-300. It would also allow main flushing to more effectively remove pipe sediment, thus improving water quality in these areas. OCA St. 2 at 15. Currently, however, customers in these areas continue to experience low pressure in their homes. Mr. Kettler states that the instant complaint proceedings have delayed the completion of these projects. HVUS St. 1-R at 28. However, the Company had over 9 years between the effective date of the 2005 Settlement and the OCA filing these complaints in October 2014 to replace the mains, but failed to do so. OCA St. 2S at 13.

For these reasons, the record in this case clearly establishes that the water provided by HVUS is not suitable for all household purposes. HVUS has failed to properly treat its water, resulting in water that is not usable for basic purposes such as drinking, cooking, bathing, or washing clothes, and which damages appliances and fixtures. Therefore, HVUS is failing to provide “adequate, efficient, safe, and reasonable service” as required by Section 1501.

2. HVUS’s Water Quality Issues Are Longstanding.

The water quality problems in Hidden Valley are longstanding. As discussed above, a public input hearing was held on October 7, 2004 in the HVUS service territory during the

Application proceeding. The 2004 testimony addressed many of the same quality of service issues raised in the current proceedings, including customers' ability to drink, cook, shower, and launder clothes, as well as the effect on appliances and fixtures. The testimony also shows that, even in 2004, the customers had *already* endured water quality problems for many years.⁹ See ALJ Exh. 3 (2004 Public Input Hearing Transcript) - 2004 PIH Tr. 95, 100, 104, 122 (staining); 2004 PIH Tr. 110 (replaced toilets and faucets); 2004 PIH Tr. 97, 120 (replaced water heater); 2004 PIH Tr. 92, 117, 135 (ruined or stained laundry); 2004 PIH Tr. 96 (purchase bottled water); 2004 PIH Tr. 95-96, 100, 117 (will not do laundry or limited laundry); 2004 PIH Tr. 96, 118 (will not drink tap water); 2004 PIH Tr. 117 (will not bathe with water); 2004 PIH Tr. 90, 118, 122 (low water pressure or outages); 2004 PIH Tr. 100, 104, 113, 121, 135 (installed filtration system); 2004 PIH Tr. 102, 104, 109, 113 (must change filters frequently). As discussed above, the Company acknowledged the water quality problems and even encouraged homeowners to install filtration systems to help address the problem. OCA St. 1S at 13; 2004 PIH Tr. at 72-74.

Many of the same issues raised in the current proceedings were intended to be resolved by the 2005 Settlement. For example, Paragraph C.20 of the 2005 Settlement (ALJ Exh.2) required that:

With its next rate filing, but in no case later than two (2) years from the Effective Date, the Company will submit a report to FUS and all parties reassessing the need, size and cost of treatment plant to permanently solve the problems caused by the levels of iron and manganese in its water.

More than 10 years have passed, yet the iron and manganese problems continue and the Company has never prepared the report required by the 2005 Settlement. See Tr. 381. OCA witness Fought testified that, “[b]ased on my review of the DEP’s files, the only procedure that the Company

⁹ The water and wastewater system were operated without Certificates of Public Convenience until a customer filed a complaint in 2002. See Boyter and Pa. Office of Trial Staff v. Hidden Valley Resort, L.P., Docket Nos. C-20028823 and C-20039320, Order (Nov. 14, 2003).

used to address iron and manganese problems was sequestration. It is apparent the sequestration that has been used by the Company since 2006 has not permanently solved the problems caused by iron and manganese.” OCA St. 2 at 9. Mr. Kettler and Mr. Fought seem to agree that sequestration can be an effective treatment method in theory, but that it does not work well for this particular system due to the intermittent use of water. HVUS St. 1-R at 20-25; OCA St. 2S at 4. However, Mr. Kettler also testified that “[t]he problem is not the iron and manganese, it is the way the system is being utilized.” HVUS St. 1-R at 23. The fact remains that the system has always served a resort community with intermittent usage, and sequestration has not solved the water quality problems. The way the system is utilized will not change, given the nature of the resort community; rather, a more appropriate treatment method needs to be employed that will work for this system and level of usage. Paragraph C.20 of the 2005 Settlement required that HVUS find a solution that would “permanently solve the problems caused by the levels of iron and manganese in its water,” but the problems persist 10 years later.

As discussed previously, Paragraph A.16 of the 2005 Settlement (ALJ Exh. 2) required that “within 10 years of the Effective Date, the Company will replace all mains smaller than 6-inch with 6-inch or larger pipe,” with a few exceptions. The Company had a decade to complete these projects, and the fact that the complaint cases were filed in the last months before the deadline does not absolve HVUS of its responsibility to make the mandated repairs. See OCA St. 2S at 13. The consumer testimony and the current state of the system demonstrate that customers have endured the same water quality problems at issue in this proceeding for well over 10 years, and that a permanent solution that will provide adequate service to customers going forward must be determined and implemented without further delay.

3. Residential Customers Experience a Significant Financial Impact Due to Poor Water Quality.

The lack of adequate water service has a significant financial impact on customers of Hidden Valley Utility Services. Customers incur costs ranging from expenses associated with flushing brown water to lost rental income on their properties. These expenses provide additional evidence that HVUS is failing to provide adequate, efficient, safe and reasonable service to its customers.

As discussed above, many customers purchase bottled water for drinking and cooking in order to avoid consuming the brown water. Tr. 45, 58, 71, 102, 149, 194, 212. It is also common for customers to find it necessary to install filtration systems in their homes to reduce the impact of discolored water. Tr. 50-51, 55, 64, 83, 90, 101, 126, 199, 218, 225, 229. Many of these customers also testified that they have to change the filters more frequently than recommended by the manufacturer because they quickly become saturated with brown sediment. Tr. 51, 55-56, 102-103, 129, 218, 225, 229. The bottled water, home filtration systems and the frequent replacement of the filters create costs for HVUS customers. Customer Gayla Vandebosche testified that “[t]o eke out a little bit more pressure, we go ahead and replace that six-month filter every week or two, which, you know, it adds expense.” Tr. 103. Another customer, Timothy King, testified that he has two whole-house filters that he replaces monthly and which cost \$10 each. This adds up to \$240 per year; Mr. King estimated that he has spent approximately \$5,000 on filters in the 20 years he has owned the property. Tr. 218. He stated that, “[t]hat’s a lot of money. That’s a lot of money, and I still have dirty water.” Id. Other customers testified that their filters cost \$50 each, so to replace them monthly costs \$600 per year. Tr. 199; OCA St. 1 at 12. As customer Michelle Fiola explained, “[y]ou are talking about buying packs of filters over the years, and that kind of stuff adds up.” Tr. 199.

Several customers testified at the public input hearing and at the evidentiary hearing that the Company has advised them to run the water in a bathtub for one to two hours to clear the lines when there is an issue with brown water. Tr. 179, 206, 224. Customer Doug Brown testified that when he sees brown water in his home, he has to “immediately shut it off. I go downstairs and hook up the hose to the outside and run the water outside onto the ground until it’s clear.” Tr. 256. Mr. Brown’s flushing process now takes five to ten minutes since the line to his home was recently replaced; he previously had to run the water for “hours” to get it to run clear. Id. When customers have to run their water for long periods of time, they incur charges for both the flushed brown water and for disposal of that water into the wastewater collection system. OCA witness Everette calculated that:

If the bathtub used 2.5 gallons per minute, running the bathtub for 1 to 2 hours would use 150 to 300 gallons of water. Because sewer bills are based on water usage, customers not only pay for the discolored water they have to flush out, but they also pay an extremely high sewer rate for water usage.

OCA St. 1 at 10. HVUS charges \$15.60 per 1,000 gallons for sewer usage, which is the highest rate charged by a Pennsylvania wastewater utility. Id.

Many customers testified that they have experienced stained or ruined laundry due to the brown water, and to prevent this many of them transport some or all of their laundry elsewhere to be washed. Tr. 54, 58, 63, 70, 78, 83, 91, 98, 100, 129, 149, 183, 186, 198, 211, 222, 224, 234, 255-56. This is not only inconvenient, but it is also costly to transport laundry and to replace stained or ruined clothes, sheets, towels, and other household items.

Several customers testified that they needed to install booster pumps to improve water pressure to their homes. These customers have to pay for the pump itself, as well as the electricity to operate the pump. OCA St. 1 at 12.

Customers also incur significant costs when they have to replace appliances and fixtures more frequently than would normally be expected due to damage from sediment in the water. Many customers reported that they had to frequently replace water heaters, often due to a buildup of sediment. Tr. 46, 50, 54, 59, 69, 115, 130, 149, 161, 179, 183, 185, 190, 213, 215, 230, 234, 290. Several customers testified that they have had three hot water heaters in an 11 to 15 year period. Tr. 185, 190, 215. One customer provided a copy of a \$700 bill to replace her hot water heater after only five years. Tr. 179-180. Other customers replaced washing machines (Tr. 50, 149, 199), dishwashers (Tr. 59, 70, 129), and garbage disposals (Tr. 59, 140) due to damage from the high levels of iron and manganese. Customers also reported having to replace fixtures such as toilets, sinks and faucets due to staining and pitting from the water. Tr. 45, 58, 70, 79, 207-208, 212 (staining); Tr. 50, 70, 149, 183, 215, 234 (toilets); Tr. 50, 149, 190 (faucets). Customer Alice Johnston testified that she had to “replace the inner metallic functional portions of the toilets in our home, and the way we found out we had to replace them is that brown goo explodes out, stains the tile, stains the wall, and the toilets don’t function anymore.” Tr. 291. These appliances are costly to repair and replace, and the water quality causes them to fail significantly earlier than would otherwise occur.

Because Hidden Valley is a resort community, many customers may wish to rent out their homes. However, a number of customers testified that they are unable to put their home on the rental market specifically due to the poor water quality. See Tr. 51, 59, 71. One customer testified that “I don’t rent only because of [the water quality] problem. I don’t want somebody to come back to me and say, you know, I had a problem with the water, and you’re responsible. I don’t want to be responsible for anything like that.” Tr. 59. Another homeowner testified that “I would like to rent my home as well, or possibly get some other unit and have it rented, but again,

the water holds you back. It's a necessity for life.” Tr. 71. OCA witness Everette found that typical rental rates for short-term accommodations near Hidden Valley range from \$121 to \$425 per night. OCA St. 1 at 15. As such, customers who cannot rent their homes due to poor water quality incur a significant opportunity cost. Id.

Mr. Kettler attempts to rebut these claims by arguing that some customers simply prefer to filter their water or install updated fixtures or appliances. HVUS St. 1-R at 8-12. However, the customer testimony on the financial impact of poor water quality is clear about why customers filter their water or install updated fixtures or appliances; it is a necessity to address problems created by iron and manganese in the water and can create significant expenses for homeowners. OCA witness Fought also testified that the consumer testimony is consistent with the types of issues that would be expected with the high levels of iron and manganese present in the water in Hidden Valley. OCA St. 2 at 9. The poor quality of service clearly has a financial impact on HVUS customers, and further indicates that HVUS is failing to provide adequate, efficient, safe and reasonable service.

4. Hidden Valley Resort Experiences a Significant Financial Impact Due To Poor Water Quality.

The poor quality of service provided by HVUS also has a negative financial impact on Hidden Valley Resort. The Resort operates a variety of facilities including a ski lodge, hotel, restaurants, and a golf course. The high levels of iron and manganese in the water as well as problems with water pressure have diminished the quality of service that the Resort is able to provide to its guests and has caused the Resort to incur costs that would not exist but for the poor quality of service provided by HVUS. See OCA St. 1 at 15-16.

At the Public Input Hearing, Seven Springs Mountain Resort's hotel general manager, David Runco, testified that “[a]s a result of that poor quality of water we receive from the

Hidden Valley Utility Services, the resort's 80-room hotel has been unable to provide the legendary guest experience for the guests that come into the [hotel]." Tr. 211. Mr. Runco testified to a variety of problems at the hotel due to water quality, including: poor water pressure; clogged shower heads; discoloration of toilet bowls, bathtubs and sinks; the need to provide bottled water for guest consumption; transporting and washing laundry off-site to prevent staining; relocating guests to different rooms; providing refunds to guests due to brown water complaints; hot water tank failures; and additional housekeeping and maintenance tasks due to water tank failures. Tr. 211-14. Mr. Runco explained that these issues affect the quality of the facilities and guest rooms and harm the quality of service provided to guests. Id.

Jeff Coulter, the Executive Director of Administration at Seven Springs, also testified at the evidentiary hearing to the impact of poor water quality on the operations at Hidden Valley. The Resort has installed filtration systems in the hotel and restaurant to remove sediment from the water. Tr. 268-69. Hotel guests have complained about the brown water and the Resort has had to issue refunds, which Mr. Coulter estimated at several thousand dollars over the last two years. Tr. 269-70, 283-84. Mr. Coulter testified that fixtures and appliances have to be replaced more often at Hidden Valley than at Seven Springs. Tr. 276-77. The Resort also feels it has no choice but to truck laundry to Seven Springs to be washed, which can be both inconvenient and costly, particularly due to labor and transportation expenses. Tr. 270-72. Mr. Coulter also testified that in December 2014, a water line broke and the Resort felt it was necessary to pay to have the line repaired itself to ensure that the repair was done quickly, rather than waiting for the Company to make the repair. Tr. 274-75. This repair cost approximately \$2,400. Tr. 278.

The effects of poor water quality harm the Resort financially by causing it to incur these additional costs that it would not incur if adequate and reasonable service was provided. These

issues damage the Resort's reputation and make it less likely that guests will return, and may depress the rates that can be charged for the hotel's services. OCA St. 1 at 15. It is also costly for the Resort to repair hotel rooms and replace fixtures and appliances due to water quality issues. OCA St. 1 at 15-16. As such, the Resort experiences negative financial consequences due to the poor quality of service provided by the Company.

5. HVUS Should Be Required to Make a Variety of Necessary Improvements to Its Water System.

OCA witness Fought testified that a number of improvements to HVUS' water system are needed, including basic maintenance, backup systems, and either water treatment (to remove rather than sequester iron and manganese) or identification of an alternative water source. OCA St. 2S at 17-18. A detailed schedule containing actions that HVUS should be required to take and specific deadlines for each action is included below in Section III.E.3. The OCA submits that HVUS should be required to make these necessary improvements to its water system.

As discussed above, the evidence in this case is clear that significant water quality problems due to iron and manganese exist such that the water provided by HVUS is unfit for basic domestic purposes. In order to correct this, OCA witness Fought recommended that HVUS "authorize an engineering consultant experienced in water treatment to perform a study comparing the installation of [a] treatment plant to remove iron and manganese from the existing sources of supply (Well #1 and Well #2) with obtaining an alternative source of supply including Quemahoning River water." OCA St. 2S at 17. This study would include a cost estimate as well as an implementation schedule for design, permitting, award of contracts, construction, and start of operation, and the study should be provided to the OCA, the Foundation, and the Commission's Bureau of Technical Utility Services (TUS). Id. Mr. Kettler testified at the evidentiary hearing that that the Company has retained CME Engineering to study alternatives to

sequestration and that a study was being conducted as of the time of the evidentiary hearing. Tr. 364-67. HVUS should be required to move forward expeditiously to implement the chosen solution which will eliminate the iron and manganese problems. OCA St. 2S at 17.

HVUS must also be required to appropriately maintain its equipment and have backup pumps available for use in the event of a failure. After the pump for Well #1 was hit by lightning, Well #1 was inoperable. OCA St. 2S at 13. Although Mr. Kettler claims the pump was replaced within four (4) months (HVUS St. 1-R at 25), reports submitted to DEP by HVUS indicate that no water was withdrawn from Well #1 from September 2012 to June 2013. OCA St. 2S at 13; Exh. TLF-8W. As Mr. Fought explained, “[s]ince Well #1 provides the only water than can be permitted by DEP to be sequestered, the Company should be prepared to place Well #1 back in operation within seventy-two hours of any pump failure.” OCA St. 2S at 13. In order to achieve this, HVUS should be required to have a spare pump and motor available to quickly replace a pump if necessary. OCA St. 2S at 17. The Company should also maintain an operable, installed high lift pump as a backup, and install instrumentation to control the on/off cycle for Well #2. Id.

Additionally, as a basic maintenance activity, HVUS should be required to paint the exterior of its storage tank. OCA St. 2S at 17. Mr. Kettler seemed to agree that the tank should be painted, and testified that an assessment of the timeline and costs for painting the tank would be included in an engineering study that HVUS would undertake, as recommended by the OCA. HVUS St. 1-R at 26. HVUS should be required to complete the painting project in a timely manner and properly maintain the tank going forward.

HVUS must also complete the main replacements that were required in Paragraph A.16 of the 2005 Settlement. This requires replacement of 1,500 feet of 3-inch line to the Heights

neighborhood with 6-inch line, as well either replacing 1,000 feet of 2-inch line to the Valley View neighborhood with 6-inch line or connecting Valley View to the new 6-inch line serving the Heights. OCA St. 2S at 17. Both of these replacements were required by the 2005 Settlement, and will also help improve water quality and pressure to these areas. Mr. Kettler has indicated that line replacements for Valley View and the Heights are planned beginning in April 2016. HVUS St. 1-R at 28. As such, the Company should be required to complete these projects expeditiously.

In order to comply with Commission regulations, HVUS must also implement proper meter and pressure testing procedures. 52 Pa. Code § 65.8(b) requires that all meters be tested within 20 years, but HVUS is currently only testing one-third of the meters on this schedule. OCA St. 2S at 15. HVUS has agreed to develop a schedule to replace meters (HVUS St. 1-R at 30); the Company should be required to create and implement a schedule to test all meters by the end of 2017. Id. Additionally, 52 Pa. Code § 65.6(d) requires the Company to perform annual pressure surveys of its system, but HVUS has failed to do so for the years 2011 through 2014. Id. Mr. Kettler has indicated that the Company will begin conducting pressure surveys consistent with Commission regulations. HVUS St. 1-R at 30. The Company should be required to perform these surveys and provide annual reports to the Commission going forward. OCA St. 2S at 18.

Finally, in order to ensure that the Company is complying with all requirements that result from these complaint proceedings, HVUS must be required to submit quarterly status reports to all interested parties until the chosen improvements are placed into service and the iron and manganese is successfully removed from the water supply. OCA St. 2S at 18.

C. Wastewater

In addition to the water quality issues, the OCA has identified ongoing maintenance and quality of service issues in HVUS's wastewater treatment system. Problems identified with the wastewater system included pumping stations lacking backup pumps and working alarms to prevent sewage overflow (OCA St. 2 at 3 - Wastewater), a rusty tank and the lack of a duplicate blower at Treatment Plant No. 1 (OCA St. 2 at 6 – Wastewater), and the lack of proper sludge removal from Treatment Plant No. 1. OCA St. 2 at 8-9 – Wastewater. OCA witness Fought recommended that the Company take a number of steps to improve the operation and maintenance of its wastewater system, including: installing operable backup pumps and alarm systems at each pumping station; following best practices for sludge removal at the Treatment Plant; and retaining a consulting engineer to inspect and prepare a report on the pumping stations and treatment plants, to recommend proper maintenance and replacement of tankage and other equipment, and to prepare a schedule for necessary repairs and replacements. OCA St. 2 at 9-10 – Wastewater.

In his Rebuttal testimony, HVUS witness Kettler testified that many of the maintenance issues identified by Mr. Fought had recently been remedied. Mr. Kettler testified that all pumping stations and alarms would be in working order by the end of September 2015, the blowers in the equalization tanks and the backup blower were operational, the comminutor was working properly. HVUS St. 1-R at 32-35. Mr. Kettler testified at the evidentiary hearing that half of the tank at Treatment Plant No. 1 (the “left side”) had been “drained, reviewed, serviced, painted” as of October 2015. Tr. 368-69. The other half is scheduled to be painted in the spring of 2016. Id. Mr. Kettler also agreed with Mr. Fought's recommendation that a consulting engineer inspect the wastewater facilities and prepare a report regarding the current status and

necessary repairs or replacements to improve the facilities. HVUS St. 1-R at 35; HVUS St. 3-R at 9.

It appears that the OCA and HVUS generally agree that that a consulting engineer should inspect the Company's wastewater plant, prepare a report identifying equipment or facilities that need to be maintained or replaced, and confirm that the reported repairs have in fact been completed. OCA witness Fought recommended a timeline for completion of the report and implementation of its recommendations. OCA St. 2S at 5 – Wastewater. The OCA submits that this schedule, which is included below, should be adopted and that HVUS should be required to complete the assessment and repairs to its wastewater system within the prescribed timeframes.

D. Financial and Managerial Fitness

In addition to providing inadequate water and wastewater service, HVUS has also demonstrated that it is unable or unwilling to manage the Company's finances and operations in a manner that will allow it to provide adequate service to customers.

As discussed above, the Public Utility Code places on the utility the specific obligation to provide adequate service. The Code provides:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.

66 Pa. C.S. § 1501 (emphasis added). Thus, under the Code it is the utility which has the obligation to make all improvements which may be necessary to provide such service.

In addition to maintaining adequate service and facilities, Sections 501(a), 1103 and 1501 of the Public Utility Code impose an ongoing responsibility on certificated public utilities to maintain managerial, technical and financial fitness. 66 Pa. C.S. §§ 501(a), 1103, 1501; Re Mobilfone of Northeastern Pa., Inc., 54 Pa. PUC 521, 523 (1980); Western Pennsylvania Water

Co. v. Pa. P.U.C., 10 Pa. Commw. 533, 311 A.2d 370 (1973) (a certificate of public convenience is a privilege which the holder accepts subject to the Commission's statutory power to modify or revoke the certificate for legal cause); Paradise v. Pa. P.U.C., 184 Pa. Super. Ct. 8, 132 A.2d 754 (1957) (a certificate of public convenience may be revoked for due cause); see also 66 Pa. C.S. § 703(g) (the Commission is empowered to rescind a previous order); Day v. Public Serv. Comm'n, 312 Pa. 381, 167 A. 565 (1933) (“The conclusion is inevitable that the power to rescind an order entails the authority to revoke a certificate”).

In the context of water utilities, the Commission defines a “viable system” as “one which is self-sustaining and has the commitment and financial, managerial and technical capabilities to reliably meet Public Utility Commission and [DEP] requirements on a long-term basis.” Policy Statement Re: Small Drinking Water System Viability and Memorandum of Understanding between Department of Environmental Resources and Pennsylvania Public Utility Commission, 52 Pa. Code § 69.701.

When taken together, these standards demonstrate that the utility’s fitness to manage its system and its finances bear on its ability to provide adequate, efficient, safe and reasonable service. Financial and managerial fitness are also relevant to the determination of just and reasonable rates, whether a utility is viable in the long-term, and whether a certificate of public convenience should continue to be held by the public utility. The facts discussed below indicate that HVUS’s ownership is not financially and managerially fit. The water service provided by the Company is not suitable for all household purposes and significant maintenance or replacements are needed to improve the water and wastewater systems. In order to remedy the inadequate service, the OCA submits that HVUS should be required to take specific steps to make permanent improvements to its water and wastewater services. If the Company is unable

or unwilling to make the necessary improvements, the OCA submits that ownership of HVUS should be transferred to another entity that is capable of providing adequate service.

1. HVUS Fails to Provide Adequate Customer Service.

The Company's customer service is deficient in a number of areas, including inadequate billing practices, failure to hold required customer meetings, and a failure to provide meaningful and permanent fixes to customer complaints. These inadequacies show a lack of fitness to manage the utility in a manner that provides adequate service to its customers.

a. The Company's Billing Practices Do Not Comply with Commission Regulations.

HVUS's bills do not comply with all Commission regulations. First, the bill does not state that a rate schedule, an explanation of how to verify the accuracy of the bill, and an explanation of various charges are available for inspection at the Company's local business office, as required by 52 Pa. Code § 56.15(12). OCA St. 1S at 3. The bill also does not designate the applicable rate schedule, as required by 52 Pa. Code § 56.15(13). OCA St. 1S at 4.

The bills provided to customers by HVUS are also vague, less than informative, and do not provide all information required by Commission regulations. As OCA witness Everette explained, it may be difficult for a customer to understand their water usage and how their bill was calculated based on the information included in the bill. OCA St. 1 at 2-5; OCA St. 1S at 1-3. The bill displays water usage in hundreds of gallons, but the units are not stated on the bill. OCA St. 1S at 2. Additionally, in calculating the bill, the Company simply drops the last two digits of usage (i.e., usage of 6,624 gallons would be billed as 6,600 gallons). OCA St. 1S at 3. This information is not presented in a way that is clear and useful for a customer trying to understand their bill.

HVUS witness Kettler has agreed that these required items are missing from the bills (HVUS St. 1-R at 3-4) and testified that “the Company is planning to make improvements to its bill in order to bring them into compliance with Commission regulations . . . [and] wants to issue bills that are more customer friendly.” HVUS St. 3-R at 2. As such, the Company should be required to work with the OCA to re-design its bills in a manner that complies with all applicable Commission regulations and is easily understandable by the customer.

OCA witness Everette identified additional changes that HVUS should be required to make in order to bring its bills into compliance with Commission regulations. OCA St. 1S at 21. HVUS should immediately begin including the following information on customer bills: (1) a statement that the applicable rate schedule, an explanation of how to verify the accuracy of a bill, and an explanation of the various charges is available for inspection at the local HVUS office and (2) a designation of the applicable rate schedule as denoted in the officially filed tariff. Id. The Company must also immediately specify on customer bills whether usage is listed in hundreds or thousands of gallons, unless its current billing vendor is unable to accommodate this, in which case HVUS must include this information immediately after retaining a new billing vendor. Id. If customer meters are able to provide exact gallons of usage, the Company must immediately begin reflecting this information on bills as soon as a new billing vendor is retained. Id. HVUS must immediately begin communicating proactively with customers in the event that low pressure or outages extend beyond the noticed time period. Id. Additionally, in order to ensure compliance, the Company must provide a copy of an actual customer bill to the OCA and TUS within 30 days of retaining a new billing vendor or making any changes to the bill provided to customers. Id. OCA witness Everette’s detailed billing recommendations are included below in Section V.B regarding Remedies.

b. HVUS Does Not Hold Required Semi-Annual Customer Meetings.

The Company has also failed to hold regular customer meetings as required by the 2005 Settlement. The 2005 Settlement required that HVUS hold semi-annual customer meetings until the requirements of Paragraph A.16 have been met. OCA St. 1 at 5. Because all of the line replacements required by Paragraph A.16 have not been completed (OCA St. 2 at 15), HVUS continues to be obligated to hold these semi-annual meetings. Mr. Kettler testified that these meetings were discontinued due to a “lack of participation by the customers.” HVUS St. 3-R at 3. The Company should confer with the Foundation regarding dates that may result in higher attendance and thus increased communication with its customers because HVUS is still obligated by Commission Order to hold semi-annual meetings, until the conditions of the 2005 Settlement are satisfied.

c. HVUS Fails to Provide Permanent Solutions to Customer Complaints.

At the public input hearing, many customers testified to their frustrations involving contacting the Company to complain about water quality issues. Numerous customers testified that they contact Glenn Fodor, an HVUS employee, directly whenever there is a problem. Tr. 56, 99, 111, 123-124, 184, 190, 196, 219, 225. However, while their comments indicate that Mr. Fodor is well liked and appreciated for his attempts to alleviate the water quality issues, he does not have the necessary resources to make any lasting improvements to the system. As John Newport, HVUS customer and president of the Hidden Valley Foundation, explained:

[B]e careful not to mistake our homeowners’ expressions of gratitude for Glenn’s efforts with any notion that Glenn has been able to remediate the many problems with the utility service that we get from HVUS. We all know he tries hard, but there are obstacles that he faces almost endlessly. We also know from homeowners that they often give up on further complaining . . . There are times, unfortunately, that Glenn just doesn’t have the ability to provide the services that we expect and have come to expect, but have been disappointed all too often.

Tr. 172. Some homeowners testified that they instead contact the Foundation when there is a problem. Tr. 71, 103, 180, 186, 206, 216. Others testified that they have simply given up on complaining to the Company about poor water quality. Tr. 61-62, 67, 71, 92, 181. One customer who no longer makes an effort to complain about the water service explained that “[w]e just accepted that that was the Hidden Valley way.” Tr. 80. Thus, although many customers speak highly of certain employees on a personal level, this does not change the fact that the Company has been unable or unwilling to make repairs that will provide lasting relief to customers dealing with poor water quality.

2. HVUS Fails to Submit Accurate Reports and Comply with Deadlines.

The Company’s inability or unwillingness to file required reports in a timely manner and with complete and accurate information is further indication that the Company is not managerially fit.

As OCA witness Everette and Intervenor Robert Kollar noted, there are numerous discrepancies in the Annual Reports that HVUS has filed with the Commission in recent years. OCA St. 1 at 6; Kollar St. 1 at 2. Ms. Everette testified that “[i]n reviewing HVUS’ water and wastewater Annual Reports from 2008 to 2012, I noted at least 65 inconsistencies in the reports.” OCA St. 1S at 8. The reports have included numerous inaccuracies and omissions, as well as discrepancies regarding utility plant in service and depreciation expense. OCA St. 1 at 6; OCA St. 1S at 8. HVUS witness Kettler stated in his Rebuttal testimony that he had retained a consultant to identify issues and make corrections to previous Annual Reports. HVUS St. 1-R at 5. However, Mr. Kettler testified at the evidentiary hearing that HVUS had retained Paul Herbert of Gannett Fleming, but Mr. Herbert did not assist in preparing the 2014 Annual Report and was not under contract to review or correct any past Annual Reports. Tr. 360-362. The

OCA recommends that the Company be required to file Annual Reports with information that is correct, going forward, and to file corrected reports for prior years in a timely manner.

Additionally, the Company filed its 2014 Annual Reports more than six months after the filing deadline. The reports were due on April 30, 2015, but were not filed until November 4, 2015.¹⁰ ALJ Exh. 4; ALJ Exh. 5; OCA St.1S at 9. Without timely and accurate reports, it is difficult for the Commission and interested parties to monitor the Company, its financial position, and any investments in the system. OCA St. 1 at 7. As OCA witness Everette explained, the “[f]ailure to timely submit Annual Reports and the fact that there are discrepancies from year-to-year and even within the same year’s report indicate that the Company lacks the managerial fitness that is necessary for the provision of safe and adequate service.” OCA St. 1 at 7.

The information contained in HVUS’s Annual Reports also raises concerns about the Company’s financial viability. OCA witness Everette testified that HVUS experienced losses in six out of seven years for the 2007 through 2013 time period. OCA St. 1 at 7. Mr. Kollar, who is an experienced Certified Public Accountant, also reviewed HVUS’s Annual Reports and determined that “HVUS is financially insolvent and lacks the necessary capital to meet its future obligations.” Kollar St. 1 at 5. Mr. Kettler testified that the Company’s financial position is due to the fact that “actual revenues have not met projections established in the original rate case figures from 2005,” (HVUS St. 1-R at 6) and that “revenues from rates are not sufficient to meet increasing expenses.” HVUS St. 1-R at 7. However, as Ms. Everette pointed out, the Company has had adequate Free Cash Flow in recent years but has chosen to distribute this money as capital distributions to the HVUS partners rather than making the required improvements to the

¹⁰ Mr. Kettler testified that HVUS received an extension of time to file its Annual Reports (HVUS St. 1-R at 5), however, there is no documentation of any extension granted by the Commission. OCA St. 1S at 9. Even if an extension was granted, extensions are usually no more than 30 to 60 days. Id.

Company's distribution system. OCA St. 1S at 19-20. The HVUS partners include only Mr. Kettler with a 99% stake in the Company, and Kettler Brothers of Hidden Valley with a 1% stake. Tr. 363-64. Mr. Kettler testified that he personally received all of the capital distribution.¹¹ Tr. 359, 363-64. For these reasons, the management of the Company's finances raises significant concerns about the Company's financial and managerial fitness to make the substantial improvements and changes necessary to provide service that complies with statutory and regulatory requirements.

3. HVUS Regularly Fails to Pay Bills On Time.

As discussed above, the OCA and HVUS reached a settlement agreement in the matter of OCA's Petition for Issuance of an Emergency Order regarding the Company's unpaid electric bills. As part of the settlement, the Company agreed to make timely payments of its electric bills in the future. HVUS witness Kettler stated that "[s]ince the submittal of the settlement . . . the Company has not made any late payments." HVUS St. 1-R at 7. This statement is not accurate. In March 2015, six months after the settlement was filed, HVUS incurred three late payment charges. OCA St. 1 at 9. An additional late payment charge was incurred in September 2015. OCA St. 1S at 10. Mr. Kettler indicated that the late electric payments were due to a change in billing cycles. HVUS St. 3-R at 4. However, the billing records provided by Penelec do not indicate any change or shift in billing cycles. OCA St. 1SR at 3-4.

As OCA witness Everette explained, "[t]he Company's repeated failure to pay electric bills on-time is very concerning because the Company cannot provide service without electricity. If HVUS were to have its electric service terminated, both water and wastewater service to customers would be jeopardized." OCA St. 1S at 10. The Company was threatened with shutoff

¹¹ Ninety-nine percent of the \$630,264 distributed in the 2009 to 2014 period is more than \$620,000. OCA St. 1S at 20.

of electric service for non-payment at least once, which prompted the Emergency Petition by the OCA. OCA St. 1S at 10. Electricity is vital for the Company's ability to provide water and wastewater service, and HVUS has continued to incur late payment charges despite a recent settlement agreement requiring timely payment.

The Company has also regularly incurred late payment charges for telephone service at the non-emergency phone number listed on HVUS customers' bills. OCA St. 1S at 11. It is necessary for HVUS to maintain telephone service so customers are able to reliably contact the Company. Mr. Kettler explained that late payments on phone bills were due to a switch from paper billing to online billing. HVUS St. 3-R at 4. The OCA's review indicates that 13 of 18 Verizon bills included late payment charges; the first 17 bills include a payment coupon to pay the bill by mail, and the 18th bill included information about paying by check. OCA St. 1SR at 4. These consistently late payments do not indicate a one-time error due to a switch in payment methods. As such, the record does not support the reasons provided by Mr. Kettler for recent missed payments.

More generally, the Company's inability to timely pay its utility bills indicates that the Company is not financially and managerially fit. Payment of electric and phone bills are basic necessities for running a utility. Additionally, when considered with other failures to properly manage and maintain the systems as discussed above, HVUS's behavior "establish[es] a pattern of inattention indicating that the Company lacks managerial fitness to provide adequate service." OCA St. 1 at 10.

E. Remedy

For the reasons discussed above, HVUS is not providing "adequate, efficient, safe, and reasonable service" and is, therefore, in violation of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501. The water service provided by the Company is not suitable for all household

purposes and significant maintenance or replacements are needed to improve the water and wastewater systems. In order to remedy the inadequate service, the OCA submits that HVUS should be required to take specific steps to make permanent improvements to its water and wastewater services. Until the improvements are fully implemented and in order to reflect the inadequate service that customers currently receive, the OCA submits that customers' rates should be reduced by 50%, or in the alternative, that customers should be provided a usage allowance. These rate reductions can be lifted as the Company implements the required improvements. Finally, if the Company is unable or unwilling to make the necessary improvements, the OCA submits that ownership of HVUS should be transferred to another entity that is capable of providing adequate service.

1. The Commission Has the Authority to Require a Utility to Take Steps Necessary to Provide Adequate Service.

As discussed above, the Public Utility Code places on the utility the specific obligation to provide adequate service. The Code provides:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.

66 Pa. C.S. § 1501. Thus, under the Code it is the utility which has the obligation to make all improvements which may be necessary to provide such service. It is only after these improvements are in place that the ratepayers have the obligation to pay for those improvements. Until such time, and as long as service remains inadequate, HVUS's customers should not be required to pay the rates which might be appropriate if service were adequate.

Section 501 of the Public Utility Code provides plenary authority to the Commission to carry out and enforce the Public Utility Code and any rules, regulations, orders, or other

requirements. 66 Pa. C.S. § 501. Additionally, Section 523 of the Public Utility Code, 66 Pa. C.S. § 523, requires the Commission to “consider ... the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates . . .” In exchange for customers paying rates for utility service, a public utility is obligated to provide safe, adequate and reasonable service. PG&W 1986, 61 Pa. PUC at 415-16; 66 Pa. C.S. § 1501. The Commission “has the necessary authority, pursuant to its statutory authority to determine the justness and reasonableness of proposed rates, to refuse to consider a rate increase by a utility which has seriously failed to provide adequate service.” PG&W 1986, 1986 Pa. PUC LEXIS 113, *30. In the 1988 case of Pa. P.U.C. v. Pennsylvania Gas & Water Co., the Commission cited to judicial precedent that “a utility is not guaranteed rate increases necessary for a return on its property; it is only entitled to rates sufficient to earn a fair return if it provides adequate service” and found that this regulatory bargain has been codified in Section 1501 of the Public Utility Code. 68 Pa. PUC 191 (1988) (PG&W 1988); 66 Pa. C.S. § 1501.

The linkage between the setting of just and reasonable rates and the quality of service is well-established in case law. In Market Street Railway Co. v. Railroad Commission of California, 324 U.S. 548 (1945), the Supreme Court indicated that the legal standards which protect utility investors from the confiscation of their property do not take precedence over the utility’s obligation to provide safe, adequate and reasonable service. More recently, in 2010, the Commission denied a proposed rate increase requested by Clean Treatment Sewer Company (CTSC). Pa. P.U.C. v. Clean Treatment Sewer Co., Docket No. R-2009-2121928 (Order entered April 22, 2010). The Commission found that CTSC had mismanaged its system, that CTSC was not taking necessary steps “to correct current inadequate and unreasonable service and facilities and to avoid future problems, despite a number of warning signs.” Slip op. at 16-17. The

Commission found that CTSC's management "appears to be unable or unwilling to act to the benefit of ratepayers." Slip op. at 17.

Moreover, a series of Pennsylvania cases have held that until the quality of service improved, it would be permissible for the effective rates to provide a return that is less than the utility would otherwise receive:

The making of repairs and improvements to meet the duty to render reasonable and adequate service is not necessarily dependent on the profit which may reasonably be expected therefore; in proper cases such repairs and improvements may be ordered though the immediate result thereof would be a financial loss to the utility.

Colonial Products Co. v. Pa. P.U.C., 188 Pa. Super. 163, 172-73; 146 A.2d 657, 663 (1959); see also National Util. Inc. v. Pa. P.U.C., 709 A.2d 972, 977-80 (Pa. Commw. 1998) (NUI 1998) (holding that the Fifth and Fourteenth Amendments to the U.S. Constitution are not violated when a public utility is denied an increase in rates when it fails to provide adequate service to the public, even if the result is a rate of return less than it would otherwise be entitled to receive).

In the past, the Commission has also ordered utilities to take whatever specific actions it deems necessary to affect upgrades in service. See, e.g. Bell v. Cowanshannock Water Co., 49 Pa. PUC 238 (1975) (engineer's report required to inform PUC of actions needed to resolve complaints of discolored, excessively chlorinated, unpalatable water unsatisfactory for drinking and domestic purposes) and Investigation Upon Commission Motion For The Purpose Of Ascertaining Whether There Is An Inadequacy Of Service Of Nokomis Water Co., 43 Pa. PUC 276 (1967) (Utility required to submit engineer's report with recommendations and estimates to remedy water quality and low pressure complaints).

As HVUS has been unable or unwilling to address these long-standing quality of service issues, it has failed to uphold its responsibility of maintaining adequate, efficient, safe and

reasonable service and facilities as is required under Section 1501 of the Public Utility Code. The OCA submits that because the evidence in this case shows that the utility is not providing safe and adequate service, the applicable constitutional and legal standards establish this Commission's authority and obligation to set rates which reflect that inadequacy and to order the utility to take the necessary actions to effect improvements in service quality.

2. HVUS Should Receive a Rate Reduction Until Adequate Service Is Provided.

Having established the Commission's authority to require rate reductions where service is inadequate, the OCA submits that the Company's rates should be reduced in order to reflect the inadequate service that is currently provided to customers. As discussed in detail above, customers – including homeowners and the Resort – incur significant costs associated with the poor quality of water service. These costs range from additional expenses to purchase bottled water and filters, to replacing appliances and fixtures or an inability to rent the home. Customers must pay for both the water that is used when they have to flush brown water from their lines, as well as for the disposal of the wastewater. OCA St. 1 at 17. Customers pay full rates with the assumption that in return, the Company will provide adequate service. Because adequate service is not being provided, rates should be reduced accordingly until the necessary improvements are put in place.

The OCA submits that volumetric rates for both water and wastewater should be reduced by 50% to reflect the ongoing failure to provide adequate service. OCA St. 1 at 17-18. As OCA witness Everette explained:

Even with this reduction, customers would pay \$11.29 per thousand gallons (\$3.49 per thousand gallons of water and \$7.80 per thousand gallons for wastewater) for water that is not suitable for many household purposes, and for water that in some cases is used only to flush out brown or dirty water and runs straight to the wastewater treatment plant.

OCA St. 1 at 18. The rate reduction would then be phased out as the Company complied with certain requirements. Once HVUS completes the steps required by Paragraphs A.16 and C.22 in the 2005 Settlement, the Company may file verifications and tariffs, effective on thirty days' notice, with the Commission in order to eliminate half of the rate reduction. OCA St. 1 at 18-19. The remaining half of the rate reduction may be eliminated once HVUS has complied with OCA's recommendations, including: (1) addressing issues related to securing an alternative water supply or installing a treatment plant, and conducting maintenance or replacements on the storage tank and distribution system to improve the water quality of service; (2) making necessary improvements to the wastewater treatment plant, pumping facilities, and other maintenance, and (3) making all other recommended improvements outlined in Section V.B below. See OCA St. 1S at 21-24 (water); OCA St. 1S at 16-19 (wastewater); OCA St. 2S at 17-18 (water); OCA St. 2S at 5 (wastewater); OCA St. 1 at 19. Thus, after HVUS has complied with the OCA's recommendations and fulfilled the requirements of the 2005 Settlement, usage rates will be restored to their current levels. OCA St. 1 at 20.

In the alternative, the OCA recommends that a usage allowance of 2,000 gallons be provided to each customer. OCA St. 1 at 18. This equates to \$12.00 per quarter for water and \$27.00 per quarter for wastewater, and would be included in the customer charges. Id. As OCA witness Everette testified, "[t]his would allow customers to flush out brown water without being charged the water and sewer rates for water they are unable to use for normal household purposes." Id. The usage allowance would be phased out as the Company complies with various requirements in the same manner proposed above for a rate reduction. OCA St. 1 at 18-19.

The OCA was not able to calculate the precise current revenue impact of the water and wastewater rate reductions until the Company filed its 2014 Annual Report. OCA St. 1S at 24.

Based upon that report, the current revenue impact is:

	Water Revenues	Wastewater Revenues	Total
Residential	\$125,855	\$249,121	\$374,976
Commercial	\$15,886	\$47,451	\$63,337
Public Fire	\$6,324	--	\$6,324
Total	\$148,065	\$296,572	\$444,637

Source: 2014 Annual Reports (ALJ Exh. 4 and 5) – Schedule 401

If the current rates are reduced by half, the revenues would be as follows:

	Half of Current Water Revenues	Half of Current Wastewater Revenues	Half of Current Total
Residential	\$62,928	\$124,561	\$187,488
Commercial	\$7,943	\$23,726	\$31,669
Public Fire	\$3,162	--	\$3,162
Total	\$74,033	\$148,286	\$222,319

If half of the rate reduction were removed in order to reflect completed improvements such that rates were 75% of full rates, the revenues would be as follows:

	$\frac{3}{4}$ of Current Water Revenues	$\frac{3}{4}$ of Current Wastewater Revenues	$\frac{3}{4}$ of Current Total
Residential	\$94,391	\$186,841	\$281,232
Commercial	\$11,915	\$35,588	\$47,503
Public Fire	\$4,743	--	\$4,743
Total	\$111,049	\$222,429	\$333,478

In addition to the rate reduction recommended as a result of these complaint proceedings, it is the OCA's position that no rate increase should be granted unless and until the quality of service problems are remedied. While the rate reductions are in place, in the event the Company files for and is awarded any type of rate increase in the future, however, the reductions recommended in this testimony should still apply as long as the Company is providing inadequate service, by reflecting the current revenue impact of a 50% or 25% reduction, whichever is applicable, as a reduction to the final revenue allowance amount adopted by the Commission.

The Company is opposed to any rate reduction, and argued that “[a] rate reduction of any kind is punitive and would cripple HVUS’s ability to complete any of the numerous system improvements the Company is already implementing and is planning to complete.” HVUS St. 1-R at 19-20. Mr. Kettler also stated that a rate reduction would result in “a severe deterioration of service for the Company’s customers.” HVUS St. 1-R at 20. However, the Company is already providing poor quality of service and has failed to make necessary improvements to its system even though it has been receiving full rates during the ten years since the 2005 Settlement was approved. As discussed above, Pennsylvania law provides that “customers are entitled to adequate and reasonable service *at the time they are paying their bills*, not some optimistic point in the future.” PG&W 1986, 61 Pa. PUC at 416 (emphasis added). OCA witness Everette observed that “[a]llowing HVUS to receive full rate revenue while providing inadequate service effectively shifts the costs from the utility to the customers, who are forced to bear the costs of ‘band-aid solutions’ to their water problems.” OCA St. 1S at 16. Thus, a rate reduction would appropriately recognize the inadequate quality of service that customers are currently receiving

while also providing an incentive for the Company to timely implement the required improvements to its water and wastewater systems.

This incentive is appropriate and necessary because HVUS has already failed to comply with one Commission Order intended to improve the quality of service. The presiding Administrative Law Judge in the Company's initial application proceeding had this to say about the 2005 Settlement:

Under the auspices of an experienced and extremely capable Mediator, the parties were able to settle serious, complex issues concerning system improvements, water pressure and water quality, reporting and regulatory oversight, information sharing, creating a repair call center, filing an affiliated interest agreement, extending customer monthly payment periods, establishing service rates, granting refunds for uncertificated service, and maintaining rate stability. One may glean somewhat of an understanding of the depth of sentiment that people nurtured about these questions by observing that while only twelve people testified at the public input session, more than a hundred people overflowed the hearing room at Hidden Valley on October 7, 2004. This settlement addresses the concerns these people expressed during this public input session. No doubt exists that full litigation would have entailed many days of hearings and perhaps years of appeals before this utility and its customers could have experienced any semblance of relief — let alone a decision satisfactory to anyone.

Application of Hidden Valley Utility Services, L.P., Docket Nos. A-210117 and A-230101, R.D. at 18 (May 16, 2005). Unfortunately, ten years later, the customers are still enduring inadequate service. The outcome of this proceeding must provide certain and timely relief. Giving the Company a financial incentive to take action will ensure that it does.

3. HVUS Should Be Required to Make Specific Improvements in Order to Provide Adequate Service.

As discussed above, a number of improvements are necessary in both the water and wastewater systems, as well as to the Company's customer service and financial and managerial practices. The OCA submits that HVUS should be ordered to accomplish the following tasks in the indicated timeframe. These steps will ensure that: the Company appropriately manages its

system and finances; that the longstanding iron and manganese problems are addressed in a timely manner; and that deficiencies in the water and wastewater systems are corrected so that the Company will be able to provide adequate service to its customers going forward. See OCA St. 1S at 21-24 – Water; OCA St. 1S at 16-19 – Wastewater; OCA St. 2S at 17-18 – Water; and OCA St. 2S at 5 – Wastewater.

General Requirements	
Customer Service	
Requirement	Implementation Schedule
In compliance with 52 Pa. Code § 56.15(12), the customer bill will provide a statement that a rate schedule, an explanation of how to verify the accuracy of a bill and an explanation of the various charges is available for inspection in HVUS' local business office	Immediately.
In compliance with 52 Pa. Code § 56.15(13), the customer bill will provide a designation of the applicable rate schedule as denoted in the officially filed tariff.	Immediately.
The customer bills will specify if usage is in hundreds or thousands of gallons.	Immediately, if the current billing vendor can accommodate this information. If the vendor cannot, this change will be implemented when a new billing vendor is retained.
The Company will instruct its billing vendor to modify its billing to reflect each gallon of usage for customers whose meters provide this information.	As soon as a new billing vendor is retained.
The Company will provide a copy of an actual customer bill to the OCA and TUS.	Within thirty days of when: <ul style="list-style-type: none"> • The Company retains a new billing vendor. • The Company makes any changes to the bill provided to customers.
HVUS will pro-actively communicate with customers who notify the Company about low pressure or outages that extend beyond the noticed time period.	Immediately.

Meetings with Customers	
Requirement	Implementation Schedule
The Company will comply with paragraph 37 of the 2005 Settlement, which requires the Company to hold semi-annual meetings until the conditions under Paragraph 16 have been met. Consistent with the requirements of the Settlement of the 2005 case, the Company will coordinate the meetings.	The semi-annual meetings should be held each spring and fall, effective immediately, consistent with the 2005 Settlement.

Annual Reports	
Requirement	Implementation Schedule
HVUS will make reasonable efforts to file correct information in its Annual Report and address discrepancies identified in past reports with regard to utility plant in service and depreciation expense.	Immediately.
Requests for extension of the Annual Report deadline will be made in writing and copied to the OCA and HVF.	The request will be made by April 30 in the year in which it is needed.

Late Payments	
Requirement	Implementation Schedule
The Company will pay its electric bills on time.	Monthly.
HVUS will execute appropriate authorization forms which permit Pennsylvania Electric Company to continue providing monthly billing and payment information for all HVUS accounts until June 10, 2018.	Immediately.
The Company will pay its telephone bills on time.	Monthly.
The Company will provide annual updates to its response to OCA-V-6 by providing copies of bills for telephone service at the non-emergency number listed on the bill.	Beginning January 1, 2016

Rate Reductions	
Requirement	Implementation Schedule
<p>The Company will file a tariff reducing all currently-effective water and wastewater base rates (fixed and volumetric) by 50%.</p> <p><u>Water (50% Reduction)</u> Reduction to Quarterly Customer Charge: \$6.00 Resulting Quarterly Customer Charge: \$6.00</p> <p>Reduction to Rate per 1,000 Gallons: \$3.48 Resulting Rate per 1,000 Gallons: \$3.49</p> <p><u>Wastewater (50% Reduction)</u> Reduction to Quarterly Customer Charge: \$13.50 Resulting Quarterly Customer Charge: \$13.50</p> <p>Reduction to Rate per 1,000 Gallons: \$7.80 Resulting Rate per 1,000 Gallons: \$7.80</p>	<p>One day following entry of a Commission Order in this proceeding.</p>
<p>The Company will file a tariff eliminating half of the decrease, i.e. 25%, to all currently-effective water and wastewater base rates (fixed and volumetric). At current rates, this is a reduction to \$9.00 per quarter and \$5.23 per thousand gallons (water) and \$20.25 per quarter and \$11.70 per thousand gallons (wastewater).</p> <p><u>Water (25% Reduction)</u> Reduction to Quarterly Customer Charge: \$3.00 Resulting Quarterly Customer Charge: \$9.00</p> <p>Reduction to Rate per 1,000 Gallons: \$1.74 Resulting Rate per 1,000 Gallons: \$5.23</p> <p><u>Wastewater (25% Reduction)</u> Reduction to Quarterly Customer Charge: \$6.75 Resulting Quarterly Customer Charge: \$20.25</p> <p>Reduction to Rate per 1,000 Gallons: \$3.90 Resulting Rate per 1,000 Gallons: \$11.70</p>	<p>When HVUS files a verification that the Company is in compliance with all provisions of the 2005 Settlement Agreement.</p>
<p>The Company will file a tariff eliminating all of the decrease to all currently-effective water and wastewater base rates (fixed and volumetric).</p>	<p>When HVUS files a verification that the Company is in compliance with all recommendations adopted by the Commission in this proceeding.</p>

Rate Reductions	
<p>In each water and wastewater general rate case filed until HVUS has filed a verification in this docket that the Company has complied with all recommendations adopted by the Commission in this proceeding, the current revenue impact of the water and wastewater rate reductions - at either 50% or 25%, respectively - should be reflected as a reduction to the final revenue allowance amount adopted by the Commission.</p> <p>Note: The precise annual revenue impact of the rate reductions cannot be calculated until the 2014 Annual Reports are filed. See the previous discussion about the inaccuracies of past annual reports.</p>	<p>Immediately.</p>

Water Requirements	
Iron and Manganese Removal	
Requirement	Implementation Schedule
<p>HVUS will authorize an engineering consultant experienced in water treatment to perform a study comparing the installation of treatment plant to remove iron and manganese from the existing sources of supply (Well #1 and Well #2) with obtaining an alternative source of supply including Quemahoning River water. In addition to estimating costs, the study will include an implementation schedule for completion of design, obtaining permits, obtaining bids, awarding contracts, and completion of construction/start of operation.</p>	<p>Within 30 days of the Order.</p>
<p>HVUS will provide the study to the OCA, HVF and TUS.</p>	<p>Within 90 days after authorization.</p>
<p>HVUS will authorize its engineer to start designing and obtaining permits for the chosen action.</p>	<p>Within 60 days after completion of the engineering study.</p>
<p>HVUS will obtain contractor bids for the selected improvements and provide them to the OCA and HVF for comment.</p>	<p>Within 60 days after receiving all permits.</p>
<p>HVUS will award contracts to place into service the selected improvements for eliminating the iron and manganese problems.</p>	<p>Within 60 days after receiving contractor bids.</p>
Water Treatment and Storage	
Requirement	Implementation Schedule
<p>HVUS will have a spare pump and motor available for Well #1 in order to replace the pump in Well #1 within 72 hours when necessary.</p>	<p>Immediately.</p>

HVUS will maintain an operable, installed second high lift pump.	Immediately.
If the chosen means to address iron and manganese is treatment of Well #1 and Well #2 water, HVUS will install instrumentation to control the on/off cycle of Well #2.	Within 90 days of completion of the engineering report.
HVUS will paint the exterior of the storage tank.	Within 10 months of the Order.
Water Distribution	
Requirement	Implementation Schedule
HVUS will replace 1,500 ft. of 3-inch line to the Heights with 6-inch line.	Complete by December 31, 2016.
HVUS will replace 1,000 ft. of 2-inch line to Valley View with 6-inch line or connect Valley View to the new 6-inch line serving the Heights.	Complete by December 31, 2016.
Commission Regulations	
Requirement	Implementation Schedule
HVUS will submit a schedule to replace and/or test the meters in accordance with Section 65.8(b) that results in compliance by December 31, 2017.	Within 45 days of the Order.
HVUS will implement the replacement and testing schedule.	Immediately.
HVUS will take and record a pressure survey in compliance with 52 Pa Code § 65.6(d).	Before the end of 2015 and at least once per year going forward.
Reporting	
Requirement	Implementation Schedule
HVUS will file a status report with the Commission at this docket, copied to OCA, HVF and TUS, addressing its compliance with each recommendation.	Every 90 days after the Order until HVUS has placed into service the selected improvements for removing iron and manganese from the water supply.

Wastewater Requirements	
Pumping Stations	
Requirement	Implementation Schedule
The Company will file a report from its consulting engineer stating whether all the pumping stations are equipped with two pumps and alarms in operating conditions, with copies to the OCA, HVF and TUS.	Within 30 days of the Order.
If the report identifies deficiencies, HVUS should make the necessary repairs and replacements.	Within 30 days after receiving the report.
HVUS will file confirmation with the Commission, copied to the OCA, HVF, and TUS indicating that all the pumping stations are equipped with two pumps and alarms in operating conditions.	

Treatment Plant	
Requirement	Implementation Schedule
HVUS will file confirmation with the Commission, copied to OCA, HVF and TUS that it has completed draining, inspection, repair and repainting of Plant No. 1 side 1 tanks.	By October 1, 2016.
HVUS will direct its consulting engineer to inspect both Treatment Plants in regard to proper maintenance and replacement of the tankage and equipment, and prepare a report of its findings.	Within 30 days of the Order.
The engineering report will be filed with the Commission and copied to the OCA, HVF and TUS. The report should confirm that all the wastewater treatment plant equipment is installed and operable. If this is not the case, then the Company should include a schedule for making all repairs/replacements identified in the report.	Within 120 days of the Order.
An engineering report will be filed with the Commission and copied to OCA, HVF and TUS confirming completion of the sediment removal survey for lagoon at Plant No. 2.	Within 90 days of the Order.

4. If HVUS is Unable or Unwilling to Make Necessary Improvements, the Water and Wastewater Systems Should Be Transferred to Another Capable Entity.

If the Company is unable or unwilling to make the necessary improvements to the system, the OCA submits that HVUS should be required to transfer ownership to another entity that is able to make the improvements and operate the utility in a manner that provides adequate, efficient, safe and reasonable service to customers.

The Company previously attempted to transfer ownership to another entity in 2008. 2008 Order; OCA St. 1S at 18. In that proceeding, both HVUS and the Commission noted that the transfer to another entity would be in the public interest. Id. In a September 12, 2008 Order, the Commission stated that “the record provides substantial evidence of affirmative public benefit from the transfer of ownership to a better financially positioned/operationally efficient organization.” 2008 Order at 6-7. In a June 2010 Order approving the withdrawal, the

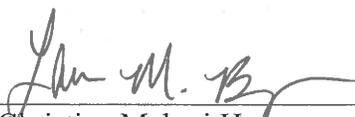
Commission noted that “the compliance issues [with the 2005 Settlement] still remain and must be addressed.” 2010 Order at 4.

The OCA’s recommendations detailed above require that the Company provide quarterly status reports that allow the OCA, the Commission, and other interested parties to monitor HVUS’s progress toward making the required improvements. The OCA submits that if two consecutive reports indicate that the Company has failed to comply with any deadlines or other requirements, then the Company should be required to file an application to transfer the water and wastewater systems to an entity capable of providing adequate service to customers. OCA St. 1S at 18-19. The application to transfer should be filed within 30 days of the filing date of the second status report. Id. at 19. If the utility fails to meet that deadline, the Commission should immediately open a Section 529 investigation to accomplish the transfer. 66 Pa. C.S. § 529(a). Given that HVUS has had a decade to implement many of these improvements and that customers have continued to pay full rates without adequate service, the OCA submits that this timeline is reasonable and will allow for urgently needed improvements to either be made expeditiously or for another entity to take over. As discussed with regard to the need for financial incentives, the outcome of this proceeding must provide certain and timely relief.

IV. CONCLUSION

For the reasons set forth above, the Office of Consumer Advocate respectfully submits that it has proven by a preponderance of the evidence that Hidden Valley Utility Services is failing to provide adequate water and wastewater service in violation of 66 Pa. C.S. § 1501. As such, the OCA submits that in order to correct these longstanding issues, the Public Utility Commission should order the Company to: (1) make improvements to its water and wastewater systems and management practices pursuant to the detailed schedules herein; (2) provide quarterly updates to the OCA and interested parties in order to monitor compliance; and (3) institute a reduction in rates until adequate service is restored. If the Company is unable or unwilling to make the necessary improvements, the OCA submits that the Commission should order the Company to transfer its systems to an entity that is able to provide adequate service.

Respectfully Submitted,



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Dated: January 20, 2016

Appendix A
OCA List of Documents

OCA - Sponsored Testimony, Appendices and Exhibits

The following OCA Testimony and Exhibits were admitted into the record at the Evidentiary Hearing on November 17, 2015.

Water:

Direct Testimony of Ashley E. Everette, OCA Statement 1
Appendix A - Background and Qualifications of Ashley E. Everette
Exhibits – AEE-1W (Bill1), AEE-2W (Bills for Customers A, B, and C)

Surrebuttal Testimony of Ashley E. Everette, OCA Statement 1S
Exhibits - AEE-3W and AEE 4W

Surrejoinder Testimony of Ashley E. Everette, OCA Statement 1SR

Direct Testimony of Terry L. Fought, OCA Statement 2
OCA Appendix A - Background and Qualifications of Terry L. Fought, P.E.
OCA Exhibits – TLF-1W (DEP records), TLF-2W (Customer Complaint Log), and
TLF 3-W (UFW calculations)

Surrebuttal Testimony of Terry L. Fought, OCA Statement 2S
OCA Exhibits TLF-4W – TFL-10W

Surrejoinder Testimony of Terry L. Fought, OCA Statement 2SR

Wastewater:

Direct Testimony of Ashley E. Everette, OCA Statement 1
Appendix A - Background and Qualifications of Ashley E. Everette
Exhibits – AEE-1WW (Bill1), AEE-2WW (Bills for Customers A, B, and C)

Surrebuttal Testimony of Ashley E. Everette, OCA Statement 1S
Exhibits - AEE-3WW and AEE 4WW

Surrejoinder Testimony of Ashley E. Everette, OCA Statement 1SR

Direct Testimony of Terry L. Fought, OCA Statement 2
OCA Appendix A - Background and Qualifications of Terry L. Fought, P.E.
OCA Exhibits – TLF-1WW (Inspection Reports), and TLF-2WW (Rusty Tankage)

Surrebuttal Testimony of Terry L. Fought, OCA Statement 2S
OCA Exhibits TLF-3WW

Appendix B
Proposed Findings of Fact,
Proposed Conclusions of Law,
and Proposed Ordering Paragraphs

Proposed Findings of Fact

1. The water provided by HVUS is not suitable for basic household purposes, including drinking, cooking, bathing, laundering and cleaning. OCA St. 2S at 8-10.
2. HVUS lacks the financial and managerial fitness to operate its water and wastewater utilities in a manner that provides adequate service to customers. OCA St. 1 at 9-10.
3. HVUS's water and wastewater facilities require a variety of improvements to plant and operations. OCA St. 2S at 17-18 (Water); OCA St. 2S at 5 (Wastewater).
4. The water provided by HVUS contains high levels of iron and manganese, which occur in the well water used to serve customers. OCA St. 2 at 2.
5. HVUS customers receive intermittent brown or rust colored water. OCA St. 2 at 8; OCA St. 2S at 9.
6. Iron and manganese affect the color and flavor of water and food, and can stain laundry, dishes, and porcelain fixtures. OCA St. 2 at 3.
7. Iron precipitates can cause damage when they build up in water mains and service lines, water heaters, and tanks, and may shorten the useful lives of appliances, such as washing machines, dishwashers, and water heaters. OCA St. 2 at 3.
8. The water quality problems described in customer testimony is consistent with improperly treated iron and manganese. OCA St. 2 at 9.
9. Sequestration is not an effective treatment method for this particular system due to design of the system and the patterns of flow. OCA St. 2 at 10; OCA St. 2S at 4.
10. HVUS has not replaced 1,500 feet of 3-inch line to the "Heights" neighborhood, as well as 1,000 feet of 2-inch line to the "Valley View" neighborhood in Hidden Valley, which was required to be completed by July 2015. 2005 Settlement (ALJ Exh. 2), Paragraph A.16; OCA St. 2 at 15.
11. HVUS has not complied with Paragraph C.20 of the 2005 Settlement, which required that "With its next rate filing, but in no case later than two (2) years from the Effective Date, the Company will submit a report to FUS and all parties reassessing the need, size and cost of treatment plant to permanently solve the problems caused by iron and manganese." HVUS has not submitted the required report, and has not solved the iron and manganese problem. 2005 Settlement (ALJ Exh. 2), Paragraph C.20; OCA St. 2 at 9; OCA St. 2S at 8; Tr. 381.
12. Many HVUS customers do not drink the water due to the water quality issues. Tr. at 58, 70, 76, 78, 108, 127, 194, 224.

13. Many HVUS customers purchase bottled water for consumption due to the water quality issues. Tr. 45, 58, 71, 102, 149, 194, 212.
14. Some HVUS customers will not cook with the water, or will only cook with the water if it is boiled first due to water quality issues. Tr. 58, 91, 108, 127, 194, 224, 234.
15. Many HVUS customers do not do laundry or will only do a limited amount of laundry in Hidden Valley due to staining caused by iron and manganese in the water. Tr. 54, 58, 70, 78, 83, 91, 100, 149, 198, 211, 222, 234.
16. Hidden Valley Resort trucks laundry to Seven Springs Resort to be washed due to water quality issues. Tr. 211-12, 270-72.
17. Some HVUS customers are concerned about bathing with the water due to water quality issues. Tr. 58, 72, 152.
18. Some HVUS customers are concerned about washing dishes with the water due to water quality issues. Tr. 100, 108.
19. HVUS customers replace water heaters more frequently than would normally be expected due to damage from iron and manganese in the water. OCA St. 2 at 3; OCA St. 2S at 15; Tr. 46, 50, 54, 59, 69, 115, 130, 149, 161, 179, 183, 185, 190, 213, 215, 230, 234, 290.
20. HVUS customers replace washing machines more frequently than would normally be expected due to damage from iron and manganese in the water. Tr. 50, 149, 199.
21. HVUS customers replace dishwashers more frequently than would normally be expected due to damage from iron and manganese in the water. Tr. 59, 70, 129.
22. HVUS customers replace garbage disposals more frequently than would normally be expected due to damage from iron and manganese in the water. Tr. 59, 149.
23. HVUS customers replace faucets more frequently than would normally be expected due to damage from iron and manganese in the water. Tr. 50, 149, 190, 291.
24. HVUS customers replace toilets more frequently than would normally be expected due to damage from iron and manganese in the water. Tr. 50, 70, 149, 183, 215, 234, 291.
25. Many HVUS customers experience staining of fixtures due to high levels of iron and manganese in the water. Tr. 45, 58, 70, 79, 207-208, 212.
26. Some HVUS customers experience low water pressure Tr. 45, 50, 58, 72, 91, 99, 160, 212.

27. Many HVUS customers have installed filtration systems in order to mitigate the high levels of iron and manganese in the water. OCA St. 2S at 15; Tr. 50-51, 55, 64, 83, 90, 101, 126, 199, 218, 225, 229.
28. Many HVUS customers have to replace filters in home filtration systems frequently as they quickly become heavily soiled due to the levels of iron and manganese in the water. Tr. 51, 55, 56, 102-103, 129, 218, 225, 229.
29. HVUS customers incur costs due to the poor quality of water service, including costs due to: flushing brown water; lost rental income; replacing stained laundry; transporting laundry; installing home filtration systems; replacing appliances and fixtures; installing booster pumps; and purchasing bottled water and replacement filters. OCA St. 1 at 10-15.
30. Hidden Valley Resort incurs costs due to poor quality of water service. OCA St. 1 at 15-16.
31. Hidden Valley Resort has installed filtration systems in the hotel and restaurant to remove sediment from the water. Tr. 268-69.
32. Guests at Hidden Valley Resort's hotel have complained about the brown water and the Resort has issued refunds totaling several thousand dollars over the last two years. Tr. 269-70, 283-84.
33. In December 2014, Hidden Valley Resort spent approximately \$2,400 to have a broken water line repaired to ensure that the repair was done quickly, rather than waiting for HVUS to make the repair. Tr. 274-75, 278.
34. The poor water quality damages Hidden Valley Resort's reputation and make it less likely that guests will return, and may depress the rates that can be charged for the hotel's services. OCA St. 1 at 15.
35. Fixtures and appliances have to be replaced more often at Hidden Valley Resort than at Seven Springs Resort due to iron and manganese in the water. Tr. 276-77.
36. The water quality problems in Hidden Valley are longstanding and have existed for well over a decade. ALJ Exh. 3.
37. HVUS has not provided proper operation and maintenance of its wastewater pumping and treatment facilities. OCA St. 2 at 9 (Wastewater).
38. At least one wastewater pumping station has operated without a backup pump and at least two of the stations have no working alarms. OCA St. 2S at 2 (Wastewater); HVUS St. 1-R at 2-3.

39. Treatment Plant 1 has rusty tankage that needs to be repainted and a blower that was missing for more than a year. OCA St. 2 at 9 (Wastewater); OCA Exhibit TLF-2WW.
40. HVUS's customer bill does not state that a rate schedule, an explanation of how to verify the accuracy of the bill, and an explanation of various charges are available for inspection at the Company's local business office. OCA St. 1S at 3.
41. HVUS's customer bill does not designate the applicable rate schedule. OCA St. 1S at 4.
42. HVUS's customer bills are vague and do not provide all information required by Commission regulations. OCA St. 1 at 2-5; OCA St. 1S at 1-3.
43. HVUS has failed to hold semi-annual customer meetings as required by the 2005 Settlement. OCA St. 1 at 5.
44. There are numerous discrepancies in the Company's Annual Reports to the Commission. OCA St. 1 at 6; OCA St. 1S at 8; Kollar St. 1 at 2.
45. HVUS experienced losses in six out of seven years for the 2007 through 2013 time period. OCA St. 1 at 7.
46. HVUS chose to distribute its Free Cash Flow as capital distributions to the HVUS partners rather than making the required improvements to the Company's distribution system. OCA St. 1S at 19-20.
47. The HVUS partners include only Mr. Kettler with a 99% stake in the Company, and Kettler Brothers of Hidden Valley with a 1% stake. Tr. 363-64.
48. Mr. Kettler personally received all of the Company's recent capital distribution. Tr. 359, 363-64.
49. HVUS's 2014 Annual Reports were due on April 30, 2015, but were not filed until November 4, 2015. ALJ Exh. 4; ALJ Exh. 5; OCA St.1S at 9.
50. HVUS regularly fails to pay its electric bills on time. OCA St. 1 at 9; OCA St. 1S at 10; OCA St. 1SR at 3-4.
51. HVUS regularly incurs late payment charges for telephone service at the non-emergency phone number listed on HVUS customers' bills. OCA St. 1S at 11; OCA St. 1SR at 4.
52. Timely and accurate Annual Reports are necessary for the Commission and interested parties to monitor the Company, its financial position, and any investments in the system. OCA St. 1 at 7.

Proposed Conclusions of Law

1. As the Complainant in this case, the OCA bears the burden of proving by a preponderance of the evidence that Hidden Valley Utility Services provides inadequate water and wastewater service to its customers. 66 Pa. C.S. § 332(a); see also North American Coal Corp. v. Commonwealth of Pa., 2 Pa. Commw. 469, 279 A.2d 356 (1971).
2. The OCA has met its burden of proving by a preponderance of the evidence that HVUS is failing to provide “adequate, efficient, safe, and reasonable service and facilities” for its water and wastewater systems in violation of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501.
3. The water provided by HVUS is not suitable for basic household purposes, and as such HVUS is failing to provide “adequate, efficient, safe, and reasonable service” in violation of 66 Pa. C.S. § 1501. See Pa. P.U.C. v. Pennsylvania Gas and Water Co., 61 Pa. PUC 409, 416, 74 PUR4th 238, 245 (1986); Pa. P.U.C. v. Pennsylvania-American Water Co., 71 Pa. PUC 210, 218-19 (1989); Pa. P.U.C. v. National Utilities, Inc., 87 Pa. PUC 1, 5 (1997).
4. HVUS has failed to properly maintain and operate its wastewater system, which constitutes a failure to provide adequate wastewater service. 66 Pa. C.S. § 1501.
5. HVUS’s customer bills do not comply with all Commission regulations. 52 Pa. Code § 56.15(12), (13).
6. HVUS’s meter testing schedule does not comply with Commission regulations. 52 Pa. Code § 65.8(b).
7. HVUS’s failure to conduct annual pressure surveys of its system from 2011-2014 violates Commission regulations. 52 Pa. Code § 65.(d).
8. HVUS is obligated to remedy any deficiencies in its system to ensure that its customers receive “adequate, efficient, safe, and reasonable service.” 66 Pa. C.S. § 501, 1501.
9. The Commission has the authority to require HVUS to take steps necessary to provide adequate service. 66 Pa. C.S. § 501, 1501.
10. HVUS has failed to maintain managerial, technical and financial fitness as required by the Public Utility Code. 66 Pa. C.S. §§ 501(a), 1103, 1501
11. In exchange for customers paying rates for utility service, HVUS is obligated to provide safe, adequate and reasonable service. 66 Pa. C.S. §§ 523, 1501.

12. The Commission has the authority and obligation to set rates which reflect inadequate service. 66 Pa. C.S. §§ 501, 523, 1501.

Proposed Ordering Paragraphs

IT IS ORDERED:

1. That HVUS's volumetric rates for both water and wastewater services shall be reduced by 50%. Within five business days of entry of this Order, the Company will file a tariff effective on one day's notice, reflecting the following rates for service:

Water Quarterly Customer Charge: \$6.00

Water Rate per 1,000 Gallons: \$3.49

Wastewater Quarterly Customer Charge: \$13.50

Wastewater Rate per 1,000 Gallons: \$7.80

2. That upon completing the steps required by Paragraphs A.16 and C.22 in the 2005 Settlement (ALJ Exh. 2), HVUS may file verifications and tariffs, effective on thirty days' notice, with the Commission in order to eliminate half of the rate reduction, consistent with Appendix A to this Order.
3. That upon completing the actions required in Ordering Paragraph 5, HVUS may eliminate the remaining half of the rate reduction by filing verifications and tariffs, effective on thirty days' notice
4. That in each water and wastewater general rate case filed until HVUS has filed a verification in this docket that the Company has complied with all recommendations adopted by the Commission in this proceeding, the current revenue impact of the water and wastewater rate reductions - at either 50% or 25%, respectively - will be reflected as a reduction to the final revenue allowance amount adopted by the Commission, consistent with Appendix B to this Order.
5. That HVUS shall make the following improvements within the specified timeframes:

General Requirements	
Customer Service	
Requirement	Implementation Schedule
In compliance with 52 Pa. Code § 56.15(12), the customer bill will provide a statement that a rate schedule, an explanation of how to verify the accuracy of a bill and an explanation of the various charges is available for inspection in HVUS' local business office	Immediately.
In compliance with 52 Pa. Code § 56.15(13), the customer bill will provide a designation of the applicable rate schedule as denoted in the officially filed tariff.	Immediately.
The customer bills will specify if usage is in hundreds or thousands of gallons.	Immediately, if the current billing vendor can accommodate this information. If the vendor cannot, this change will be implemented when a new billing vendor is retained.
The Company will instruct its billing vendor to modify its billing to reflect each gallon of usage for customers whose meters provide this information.	As soon as a new billing vendor is retained.
The Company will provide a copy of an actual customer bill to the OCA and TUS.	Within thirty days of when: <ul style="list-style-type: none"> • The Company retains a new billing vendor. • The Company makes any changes to the bill provided to customers.
HVUS will pro-actively communicate with customers who notify the Company about low pressure or outages that extend beyond the noticed time period.	Immediately.
Meetings with Customers	
Requirement	Implementation Schedule
The Company will comply with paragraph 37 of the 2005 Settlement, which requires the Company to hold semi-annual meetings until the conditions under Paragraph 16 have been met. Consistent with the requirements of the Settlement of the 2005 case, the Company will coordinate the meetings.	The semi-annual meetings should be held each spring and fall, effective immediately, consistent with the 2005 Settlement.

Annual Reports	
Requirement	Implementation Schedule
HVUS will make reasonable efforts to file correct information in its Annual Report and address discrepancies identified in past reports with regard to utility plant in service and depreciation expense.	Immediately.
Requests for extension of the Annual Report deadline will be made in writing and copied to the OCA and HVF.	The request will be made by April 30 in the year in which it is needed.
Late Payments	
Requirement	Implementation Schedule
The Company will pay its electric bills on time.	Monthly.
HVUS will execute appropriate authorization forms which permit Pennsylvania Electric Company to continue providing monthly billing and payment information for all HVUS accounts until June 10, 2018.	Immediately.
The Company will pay its telephone bills on time.	Monthly.
The Company will provide annual updates to its response to OCA-V-6 by providing copies of bills for telephone service at the non-emergency number listed on the bill.	Beginning January 1, 2016

Water Requirements	
Iron and Manganese Removal	
Requirement	Implementation Schedule
HVUS will authorize an engineering consultant experienced in water treatment to perform a study comparing the installation of treatment plant to remove iron and manganese from the existing sources of supply (Well #1 and Well #2) with obtaining an alternative source of supply including Quemahoning River water. In addition to estimating costs, the study will include an implementation schedule for completion of design, obtaining permits, obtaining bids, awarding contracts, and completion of construction/start of operation.	Within 30 days of the Order.

HVUS will provide the study to the OCA, HVF and TUS.	Within 90 days after authorization.
HVUS will authorize its engineer to start designing and obtaining permits for the chosen action.	Within 60 days after completion of the engineering study.
HVUS will obtain contractor bids for the selected improvements and provide them to the OCA and HVF for comment.	Within 60 days after receiving all permits.
HVUS will award contracts to place into service the selected improvements for eliminating the iron and manganese problems.	Within 60 days after receiving contractor bids.
Water Treatment and Storage	
Requirement	Implementation Schedule
HVUS will have a spare pump and motor available for Well #1 in order to replace the pump in Well #1 within 72 hours when necessary.	Immediately.
HVUS will maintain an operable, installed second high lift pump.	Immediately.
If the chosen means to address iron and manganese is treatment of Well #1 and Well #2 water, HVUS will install instrumentation to control the on/off cycle of Well #2.	Within 90 days of completion of the engineering report.
HVUS will paint the exterior of the storage tank.	Within 10 months of the Order.
Water Distribution	
Requirement	Implementation Schedule
HVUS will replace 1,500 ft. of 3-inch line to the Heights with 6-inch line.	Complete by December 31, 2016.
HVUS will replace 1,000 ft. of 2-inch line to Valley View with 6-inch line or connect Valley View to the new 6-inch line serving the Heights.	Complete by December 31, 2016.
Commission Regulations	
Requirement	Implementation Schedule
HVUS will submit a schedule to replace and/or test the meters in accordance with Section 65.8(b) that results in compliance by December 31, 2017.	Within 45 days of the Order.
HVUS will implement the replacement and testing schedule.	Immediately.
HVUS will take and record a pressure survey in compliance with 52 Pa Code § 65.6(d).	Before the end of 2015 and at least once per year going forward.
Reporting	
Requirement	Implementation Schedule

<p>HVUS will file a status report with the Commission at this docket, copied to OCA, HVF and TUS, addressing its compliance with each recommendation.</p>	<p>Every 90 days after the Order until HVUS has placed into service the selected improvements for removing iron and manganese from the water supply.</p>
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Wastewater Requirements	
Pumping Stations	
Requirement	Implementation Schedule
<p>The Company will file a report from its consulting engineer stating whether all the pumping stations are equipped with two pumps and alarms in operating conditions, with copies to the OCA, HVF and TUS.</p>	<p>Within 30 days of the Order.</p>
<p>If the report identifies deficiencies, HVUS should make the necessary repairs and replacements.</p>	<p>Within 30 days after receiving the report.</p>
<p>HVUS will file confirmation with the Commission, copied to the OCA, HVF, and TUS indicating that all the pumping stations are equipped with two pumps and alarms in operating conditions.</p>	
Treatment Plant	
Requirement	Implementation Schedule
<p>HVUS will file confirmation with the Commission, copied to OCA, HVF and TUS that it has completed draining, inspection, repair and repainting of Plant No. 1 side 1 tanks.</p>	<p>By October 1, 2016.</p>
<p>HVUS will direct its consulting engineer to inspect both Treatment Plants in regard to proper maintenance and replacement of the tankage and equipment, and prepare a report of its findings.</p>	<p>Within 30 days of the Order.</p>
<p>The engineering report will be filed with the Commission and copied to the OCA, HVF and TUS. The report should confirm that all the wastewater treatment plant equipment is installed and operable. If this is not the case, then the Company should include a schedule for making all repairs/replacements identified in the report.</p>	<p>Within 120 days of the Order.</p>
<p>An engineering report will be filed with the Commission and copied to OCA, HVF and TUS confirming completion of the sediment removal survey for lagoon at Plant No. 2.</p>	<p>Within 90 days of the Order.</p>

- That HVUS shall provide quarterly status reports to the Commission, the OCA and Hidden Valley Foundation indicating actions taken toward compliance with the requirements in Ordering Paragraph 5, until all such actions are completed.

7. That, if two consecutive quarterly reports indicate that HVUS has failed to comply with any deadlines or other requirements, then HVUS shall file an application to transfer the water and wastewater systems to another entity capable of providing adequate service. The application to transfer shall be filed within 30 days of the filing date of the second status report.

8. If the utility fails to meet that deadline, the Commission will immediately open a Section 529 investigation to accomplish the transfer. 66 Pa. C.S. § 529(a).

Appendix A to Commission Order

The Company will file a tariff eliminating half of the decrease, *i.e.* 25%, to all currently-effective water and wastewater base rates (fixed and volumetric). At current rates, this is a reduction to \$9.00 per quarter and \$5.23 per thousand gallons (water) and \$20.25 per quarter and \$11.70 per thousand gallons (wastewater).

Water (25% Reduction)

Reduction to Quarterly Customer Charge: \$3.00

Resulting Quarterly Customer Charge: \$9.00

Reduction to Rate per 1,000 Gallons: \$1.74

Resulting Rate per 1,000 Gallons: \$5.23

Wastewater (25% Reduction)

Reduction to Quarterly Customer Charge: \$6.75

Resulting Quarterly Customer Charge: \$20.25

Reduction to Rate per 1,000 Gallons: \$3.90

Resulting Rate per 1,000 Gallons: \$11.70

Appendix B to Commission Order

The current revenue impact is:

	Water Revenues	Wastewater Revenues	Total
Residential	\$125,855	\$249,121	\$374,976
Commercial	\$15,886	\$47,451	\$63,337
Public Fire	\$6,324	--	\$6,324
Total	\$148,065	\$296,572	\$444,637

Source: 2014 Annual Reports (ALJ Exh. 4 and 5) – Schedule 401

If the current rates are reduced by half, the revenues would be as follows:

	Half of Current Water Revenues	Half of Current Wastewater Revenues	Half of Current Total
Residential	\$62,928	\$124,561	\$187,488
Commercial	\$7,943	\$23,726	\$31,669
Public Fire	\$3,162	--	\$3,162
Total	\$74,033	\$148,286	\$222,319

If half of the rate reduction is removed in order to reflect completed improvements such that rates are 75% of full rates, the revenues would be as follows:

	$\frac{3}{4}$ of Current Water Revenues	$\frac{3}{4}$ of Current Wastewater Revenues	$\frac{3}{4}$ of Current Total
Residential	\$94,391	\$186,841	\$281,232
Commercial	\$11,915	\$35,588	\$47,503
Public Fire	\$4,743	--	\$4,743
Total	\$111,049	\$222,429	\$333,478