

COMMONWEALTH OF PENNSYLVANIA



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September 29, 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 please find the Office of Consumer Advocate's Exceptions to the Recommended Decision in the above-referenced proceeding.

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

Respectfully submitted,

/s/ Erin L. Gannon

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Enclosures

cc: Honorable Jeffrey A. Watson
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Certificate of Service

226093

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

Dated this 29th day of September 2016.

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226095

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS OF THE OFFICE
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DATED: September 29, 2016

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I. INTRODUCTION

On August 23, 2016, the Office of Administrative Law Judge issued the Initial Decision of Administrative Law Judge Jeffrey A. Watson addressing the Formal Complaints filed by the Office of Consumer Advocate (OCA) against Hidden Valley Utility Services, L.P. (HVUS or the Company) regarding its water and wastewater services. The ALJ concluded that HVUS is providing inadequate water and wastewater service to its customers. As a result, the ALJ recommended, *inter alia*, that HVUS implement numerous improvements to its systems, conform its bills to Commission regulations, submit an engineering report regarding the quality of its water and the maintenance of its wastewater system, provide 60-day status reports demonstrating compliance with the ALJ's order, and remain current on all utility bills. I.D. at 38-43.

The OCA submits that although the ALJ correctly found HVUS's service to be inadequate, several additional measures must be taken to ensure that HVUS makes the required improvements to its service. The OCA maintains that the approach outlined in its Main and Reply Briefs is appropriate in this case, including: the OCA's proposed schedule and specific steps for HVUS to make repairs to its water and wastewater systems; a rate reduction or usage allowance to create an incentive to provide adequate service in a timely manner; and the requirement that HVUS be acquired by another capable utility in the event that it fails to comply with the stated requirements. The OCA submits, however, that if the Commission accepts the ALJ's approach in the Initial Decision, clarifications and additional measures should be included to ensure that the Company provides adequate service going forward. As discussed below, the Company has had numerous opportunities to comply with the Commission's Order from over a decade ago. The Company's continuing inadequate service and failure to comply with the 2005 Settlement suggests that clear requirements and consequences for continued violations are

necessary in this case. The Commission must enforce strict guidelines to reflect the severity of the Company's violations and to ensure compliance in the future.

Therefore, pursuant to 52 Pa. Code § 5.533, the OCA files the following exceptions for the Commission's consideration.

II. EXCEPTIONS

OCA Exception No. 1: A Rate Reduction or Usage Allowance is Appropriate in this Case to Recognize Inadequate Service and Provide a Compliance Incentive. I.D. at 28-36; OCA M.B. at 41-45; OCA R.B. at 15-17.

Although the ALJ correctly found that the Company is providing inadequate water and wastewater service, the Initial Decision rejected the OCA's recommendation that volumetric rates for both water and wastewater service should be reduced by 50% to reflect the ongoing failure to provide adequate service. I.D. at 28-35; OCA M.B. at 41-45; OCA R.B. at 15-17. For the reasons discussed below, a rate reduction or, in the alternative, a usage allowance, is appropriate in this case in order to recognize that HVUS continues to provide inadequate service, and to create a valuable incentive for the Company to make all necessary repairs in a timely manner.

A. A Rate Reduction or Usage Allowance is Consistent with the Goal of Improving Service Quality.

In his Initial Decision, the ALJ stated that "OCA's recommendation that the Commission impose a 50% reduction in the Company's rates is contrary to OCA's expressed desire to see service improvements at Hidden Valley." I.D. at 30. In fact, the OCA's proposed rate reduction is not only consistent with the goal of improving service quality, but is also a necessary incentive to encourage compliance that is consistent with the Public Utility Code. HVUS has had more than 10 years since the 2005 Settlement to make necessary repairs to provide adequate service. I.D. at 12-15; OCA M.B. at 17-19; OCA R.B. at 5-7. The Company has failed to make these improvements and customers continue to pay full rates for inadequate service. HVUS also chose to make substantial distributions to a single partner during this time, rather than using those funds to make improvements to the system. Tr. 359, 363-64; OCA M.B. at 35-36; OCA R.B. at

14-15. As such, the OCA's recommendations are appropriate and necessary to ensure that permanent fixes are made to HVUS's system.

As the OCA discussed in detail in its Main Brief and Reply Brief, ratepayers should not be required to provide funds to a utility so that the utility may, at some future time, provide adequate service. OCA M.B. at 41-45; OCA R.B. at 15-17. 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). Pennsylvania case law also 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.” Pa. P.U.C. v. Pennsylvania Gas and Water Co., 61 Pa. PUC 409, 416, 74 PUR4th 238, 245 (1986) (PG&W 1986) (emphasis added); see also OCA M.B. at 10. Thus, under the Code it is the utility which has the obligation to make all improvements which may be necessary to provide adequate service. It is only after these improvements are providing service that the ratepayers have the obligation to pay for those improvements and rates that reflect adequate service.

The OCA's rate reduction recommendation is not punitive, but rather is a tool to ensure that improvements are completed in a timely manner so that customers will finally receive adequate service. OCA M.B. at 44-45. Until such time, rates should reflect that service is not adequate. The Company has failed to uphold its part of the bargain since the 2005 Settlement went into effect; as such, the OCA's recommendations are necessary to ensure that customers do not have to wait another decade to receive adequate service.

B. The Longstanding Nature of the Service Quality Issues Justifies a Rate Reduction in this Proceeding.

The Initial Decision also stated that “[t]he allegations set forth in the complaint and the facts established at the hearing of this matter do not rise to the level where a rate reduction would be justified.” I.D. at 31. In discussing the applicable case law, the Initial Decision does not acknowledge the fact that this is not the Company’s first opportunity to make necessary repairs. For example, the ALJ stated that “[e]ven where the Commission has found violations of Section 1501, it has declined to impose penalties or refunds prior to giving the utility an opportunity to improve service.” I.D. at 38; citing Kessler v. Shickshinny Water Co., 1987 Pa. PUC LEXIS 237, 64 Pa. PUC 290 (1987). Reliance on this proposition in this case ignores the fact that the Company has already had an opportunity to improve service as part of the 2005 Settlement. I.D. at 12-15; OCA M.B. at 17-19; OCA R.B. at 5-7. Additionally, although the Company has complied with some of the terms of the 2005 Settlement, the Initial Decision acknowledged that HVUS has not complied with the most significant terms of the settlement, including submission of a report assessing the need for a treatment plant to remove iron and manganese, and implementing a permanent solution to the iron and manganese problem. R.D. at 7-8. HVUS had its opportunity to make improvements and repairs and failed to do so; as such, an incentive such as a rate reduction is justified at this point in time.

Similarly, the ALJ points to some of the cases cited in the OCA’s briefs and concludes that the water quality problems here do not rise to the level of severity experienced in other cases where refunds or penalties were awarded. I.D. at 31-35. The ALJ distinguished between denying a rate increase and mandating a rate reduction outside of a rate request proceeding. I.D. at 31-35. The key difference, according to the ALJ, is that denial of a rate increase allows a company to operate as it did prior to the proceeding, but a rate reduction depletes a company’s

ability to address service inadequacies: “[I]t is inappropriate for a regulator to expect improvements in service while, at the same time, depriving the utility of the resources to make improvements.” I.D. at 33. Whereas in other cases, companies have been denied rate increases on the premise that they needed to improve their services under their current revenue formulas, the ALJ maintained that here, the Company is making promises to remedy less serious service quality issues without asking for more money. Moreover, the ALJ acknowledged that because the Company is not requesting a rate increase, it should still be able to charge the rates it has been charging in order to ensure that its systems run properly. I.D. at 31. Through this interpretation, the ALJ has failed to weigh the significance of the Company’s several other opportunities, spanning from 2005 to 2016, to fix its service quality deficiencies. More importantly, because rates must reflect the quality of service, service inadequacies must be reflected through reduced rates—a measure the Commission may take through its authority under the Public Utility Code. See Barasch v. PUC, 533 A. 2d 1108, 1111 (Pa. Commw. Ct. 1987) (“This Court does not fail to recognize that the reasonableness of rates is an administrative question for the Commission, as it is a matter peculiarly within the Commission’s ‘flexible limit of judgment.’”).

The ALJ’s interpretation of the case law suggests that the only appropriate time to evaluate rates charged by a company would be when a base rate case is filed. However, as the OCA contends, the Commission has discretion under Section 1301 to assess the reasonableness of a rate at any time. OCA M.B. at 11; 66 Pa. C.S. § 1301. In, York Tel. & Tel. Co. v. PUC for example, the Commission evaluated the service of a telecommunications company outside the context of a rate proceeding to find that the company had failed to follow Commission orders, failed to fix what it had promised to do, and failed to provide adequate service. For those

reasons, the Commission instituted a penalty against the company that was upheld by the Superior Court:

The complaint of the Commission has been, not that the Company has accomplished little, but that it has not done more. It has refused to recognize any authority in the Commission to regulate its affairs under the police power of the State delegated to it in the Public Utility Law. Cf. *Relief Electric L.H. & P. Co.'s Petition*, 63 Pa. Superior Ct. 1, 8; *Foltz v. Public Service Com.*, 73 Pa. Superior Ct. 24; *Shirk v. Lancaster City*, 313 Pa. 158, 165, 169 A. 557. In accordance with § 907 of the Act, 66 PS § 1347, the Company was obliged to comply with the Commission's regulatory orders. And as a corollary to its power to regulate, § 902 of the Public Utility Law, 66 PS § 1342, gave the Commission "full power and authority", and imposed upon it the duty, to enforce its orders.

York Tel. & Tel. Co. v. PUC, 121 A.2d 605, 181 Pa. Super. 11 (Pa. Super. Ct. 1956). This case is instructive procedurally, rather than substantively because the substance differs from the legal issues in this proceeding in two key ways. First, the OCA is not advocating for a rate reduction as a penalty, but rather as the appropriate remedy to reflect longstanding inadequate service. Second, the OCA is arguing for a rate reduction under Section 1501, rather than under the PUC's enforcement powers relating to penalties. Still, York Tel. Co. illustrates the breadth of the PUC's authority to regulate rates outside of a Company's rate increase filing. Just like the utility in York Tel. Co., HVUS has failed to defer to Commission authority regarding compliance with regulations and the 2005 settlement. It should not be given a third opportunity to disregard the requirements of the Public Utility Code and Commission regulations.

More importantly, a rate reduction would protect consumers from having to continue to pay for inadequate and unreasonable service. If the rates are allowed to remain the same, the Company could easily fall into a similar pattern of empty promises and failed improvement initiatives, only to be brought back to the Commission for a hearing at a later date.

Moreover, customers will continue to be subjected to poor water quality while paying rates that presume adequate service. The Initial Decision correctly recognized that HVUS is

providing inadequate water and wastewater service. I.D. at 19, 21.¹ The Company's failure to provide adequate service has clearly had a significant impact on customers, both financially and in their ability to rely on the water service for basic household purposes. However, even if the water quality problems here are not as extreme as in other cases discussed by the ALJ, the distinguishing factor here is the extraordinary length of time that HVUS has been providing inadequate service to its customers. As discussed in the OCA's Main Brief, the 2005 Settlement was the result of a 2004 Application proceeding. OCA M.B. at 17-18. At that time, customer testimony indicated that customers had *already* endured water quality problems for many years. OCA M.B. at 18. An additional eleven years have now passed since the 2005 Settlement, and yet the iron and manganese problems persist. The OCA submits that the longstanding nature of the water quality problems in Hidden Valley do, in fact, rise to a level that would justify a rate reduction or usage allowance as the OCA has proposed.

C. The Lack of a Recent Rate Increase is Not a Valid Reason for Denying a Rate Reduction.

The Company also argued that it was trying to improve service quality while not obtaining any rate increase since rates were set in the 2005 Settlement, and as such it should not be subject to a rate reduction. See I.D. at 36. Filing for rate increases when necessary to provide adequate service is part of being financially and managerially fit to operate a utility. If the

¹ Customers that attended the Public Input Hearings on June 25, 2015 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. 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. 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. 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.

Company had made capital improvements to the system that it was seeking to include in rates, then the Commission would have looked at the impact those expenditures had on the quality of service at the customers' taps and determined whether the rate increase should have been granted. During this time, the Company made some capital improvements but did not invest in the significant capital improvements that are necessary to address the iron and manganese problem and to provide adequate service to customers. Thus, the absence of rate filings, especially without making the necessary capital improvements, is not dispositive of whether there should be a rate reduction.

Additionally, 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 Company's distribution system. OCA M.B. at 35-36. As such, any argument rewarding the Company for failing to seek a necessary rate increase is not persuasive.

D. A Rate Reduction or Usage Allowance is a Compliance Tool, Not a Punitive Measure.

In requesting relief in these proceedings, the OCA provided a number of options that would both encourage the Company to make timely repairs and would recognize that customers have been paying for inadequate service for many years. OCA M.B. at 41-45. As the ALJ discussed, the OCA recommended a 50% rate reduction in volumetric rates for both water and wastewater service. I.D. at 29; OCA M.B. at 41. The OCA also made specific recommendations that would allow full rates to be phased back in as the Company completes the required improvements. OCA M.B. at 42. In fact, half of the rate reduction would be eliminated once HVUS complies with the 2005 Settlement. Id. The Company has had over a decade to comply

with these requirements, and the OCA's proposed rate reduction was recommended as a way to incentivize timely compliance rather than to act as any sort of penalty.

The OCA submits that a 50% rate reduction is appropriate under the circumstances of this case. The Commission may also choose to institute a rate reduction of less than 50%. For example, the Commission may determine that a 25% rate reduction is appropriate. A calculation for a 25% reduction is included in the OCA's Main Brief on page 43. Given that HVUS has not made required improvements since the 2005 Settlement, the OCA submits that a compliance tool is necessary in this case, and the Commission has discretion to shape the requirements that it deems necessary to render HVUS's water and wastewater service adequate.

In the alternative, the OCA recommended that a usage allowance be implemented to account for water that is unusable by customers, including the water used by customers simply to flush their pipes. OCA St. 1S at 17-18. Specifically, the OCA suggested an allowance of 2,000 gallons be provided to each customer. OCA M.B. at 42. This value of this allowance equates to \$12.00 per quarter for water and \$27.00 per quarter for wastewater, and the usage would be included in the **current** customer charge. 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. As with the proposed rate reduction, the usage allowance would be phased out as the Company complies with various requirements. A usage allowance would also not be a punitive measure, but would be directly related to and in recognition of the water that customers must run to flush the pipes in their homes due to poor water quality. See I.D. at 19. The usage allowance is another compliance mechanism that the Commission can consider to have the Company remedy the inadequate water and wastewater service.

It should be noted that the OCA did not propose civil penalties or refunds but rather only proposed either a rate reduction or usage allowance which would create an incentive for the Company to make improvements and would be phased out as the necessary improvements are made. These mechanisms are intended as compliance tools that will encourage the HVUS to provide adequate water and wastewater service in a timely manner.

OCA Exception No. 2: The OCA’s Framework Will Provide Timely and Certain Relief for Chronic Inadequate Service. I.D. at 28; OCA M.B. at 46-51; OCA R.B. at 15-17.

The ALJ correctly determined that HVUS is not providing adequate water and wastewater service and facilities. I.D. at 19, 21. Resolving all of the issues will require numerous and varied actions by the Company. The OCA set forth its recommended steps and timetable in a 5-page chart in its Main Brief, which reflect the combined testimony of its accounting and engineering experts. OCA M.B. at 46-51, App. B, at 7-10; 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. 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. Id.

It is also critical that the outcome of this proceeding provide certain and timely relief, given the decades over which the iron and manganese issues, in particular, have extended, and the Company’s failure to fully comply with the Commission’s prior Order. Accordingly, the OCA also recommended deadlines and quarterly status reports. OCA M.B. at 50-52; OCA St. 1S at 18-19 – Water; OCA St 1S at 14 – Wastewater; OCA St. 2S at 16, 18 – Water. If two consecutive reports indicate that HVUS 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. Id. Specifically, the application to transfer should be filed within 30 days of the filing date of the second status report. 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).

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.

The ALJ adopted most of the OCA's recommended required actions but adopted a different framework for their implementation. I.D. at 39-43. The ALJ required the Company to provide 60-day status reports and a final, detailed status report with the Commission, verified by its engineer, outlining the details of what has and has not been completed. *Id.* at 42. The ALJ did not provide any remedy if the interim status reports show failure to comply or make good-faith progress. Instead, the ALJ directed the OCA to "investigate the quality of the water as well as of the water and wastewater services being received by Respondent's customers or request that this matter be referred to the Bureau of Technical Utility Services [TUS]." At that point, if the water quality as reported by the OCA or TUS is not adequate or reasonable, an evidentiary hearing will be scheduled "forthwith." I.D. at 42-43. As such, if HVUS fails to comply, it would be at least another year, or more, until another hearing is held and an unknown amount of time before any relief is granted to the customers – even though the ALJ has already determined that water and wastewater service are inadequate.

Another concern with the ALJ's framework is that it provides that an evidentiary hearing will be scheduled if the OCA or TUS report by November 1, 2017 that, *inter alia*, the water quality is not adequate. I.D. at 42 (Ordering Paragraph No. 18). It is unlikely, however, that the treatment plant will be in service by that time. This raises questions about how long the proceeding should remain open and whether a third hearing should be scheduled after the treatment plant is online. With regard to the second hearing, safeguards are necessary to ensure the hearing expedites a permanent resolution. The OCA makes specific recommendations in OCA Exception No. 4, *infra*.

These complications could be avoided if the OCA's recommendations are adopted. The OCA submits, therefore, that the Commission should direct immediate rate relief until service is adequate, order compliance with the OCA's steps and timetable to improve service, require 60-day or quarterly status reports and provide a timely remedy for non-compliance –voluntary or Commission-ordered transfer of the water and wastewater utilities to another capable public utility.

OCA Exception No. 3: The ALJ's Recommended Ordering Paragraphs Should be Clarified to Ensure that All Needed Water and Wastewater System Improvements Are Made. I.D. at 38-43; OCA M.B. at 25-29; OCA R.B. at 3-9.

As discussed in the prior exceptions, the OCA respectfully requests that the Commission adopt the OCA's recommended schedule for improvements, provide quarterly updates to the OCA and interested parties in order to monitor compliance, and institute a reduction in rates until adequate service is restored. In the event, however, that the Commission adopts the ALJ's framework for improvements, the OCA submits that the following clarifications should be made to the ALJ's proposed ordering paragraphs.

Ordering Paragraph Nos. 4 and 7 require HVUS to obtain a written report from a Pennsylvania licensed water and wastewater engineer concerning the adequacy of its water and wastewater systems. I.D. at 39-40. The OCA submits that the engineer should be a consultant, or non-Company engineer. This clarification is consistent with the OCA's recommendations and the testimony of its engineering witness, Terry Fought. OCA St. 2S (wastewater) at 3-4. It is also consistent with the testimony of HVUS President, Jim Kettler, who stated that the Company entered into a contract with an independent consulting engineering firm, CME Engineering, to examine the iron and manganese, sequestration and alternatives to sequestration. Tr. 364-66; HVUS St. 1-R at 26, 30, 35. Mr. Kettler also agreed that "consulting engineers" should prepare an inspection report on necessary repairs and replacement to improve the wastewater facilities. HVUS St. 1-R at 35-36. Accordingly, the OCA submits that it should be clarified that the engineering reports must be obtained from an independent or third-party, Pennsylvania licensed water and wastewater engineer.

Ordering Paragraph No. 4 states that the water system report should address the adequacy of HVUS's water source. I.D. at 39. The OCA submits that the report should also address

alternative sources of supply. This is consistent with the recommendation of OCA witness Fought that “The study should compare the costs of treating the existing well water for iron and manganese removal to the costs of providing water from alternative sources such as Quemahoning River water.” OCA St. 2S (water) at 12. There is unrefuted testimony that Mr. Kettler and representatives of the Pennsylvania Department of Environmental Protection, Jefferson Township Borough Council, the Jefferson Township Water Authority, Somerset County Commissioners, Somerset County and Seven Springs Resort have met multiple times regarding the use of the Quemahoning River as an alternative water source. Tr. at 153-54, 158-59. Further, the Company has already agreed to have an engineering study performed that includes cost analysis of an alternative source of supply. HVUS R.B. at 4; HVUS St. 1-R at 25-26. Mr. Kettler stated:

[t]he concern about the iron and manganese levels of Well # 2 has created the need to identify an alternatives to this water source. The options being considered by the Company are either a treatment plant for the main source, or a new source altogether.

HVUS St. 1-R at 25-26. For each of these reasons, the OCA requests that the Commission Order specify that the report address the cost-effectiveness of using alternative sources of supply, including the Quemahoning River.

Ordering Paragraph No. 7 specifies certain items that should be included in the wastewater system engineering report but omits two important items. First, the report should include a survey of the lagoon at Treatment Plant No. 2 to establish its current capacity and establish the timeframe for removal of sediment. HVUS St. 1-R at 35. The Company’s witness, Mr. Kettler, testified that this survey is necessary because “the lagoon’s capacity timeframes as originally designed are not correct, and should be adjusted.” Id. Mr. Kettler also stated that the Company has scheduled the survey. Id. The OCA’s engineering witness supported the survey

and specified that it be performed by a consulting engineer rather than by Company personnel. OCA St. 2S (wastewater) at 3. Second, the engineering report should include confirmation of the draining, inspection, repair and repainting of Tank 1 (side 1) tanks. OCA St. 2S (wastewater) at 3, 5. The Company's witness stated that this work was scheduled to be completed in summer of 2016. HVUS St. 1-R at 34. The OCA submits, therefore, that Ordering Paragraph No. 7 should be adopted with these two additions.

Ordering Paragraph No. 14 imposes a general compliance requirement. It states:

That consistent with the terms of this order, that Hidden Valley Utility Services, L.P. shall comply in all other respects with its tariff filed with the Commission, as well as all laws, rules, regulations and orders of the Commission, as they relate to providing adequate and reasonable water and wastewater services to its customers. Any modifications in the practices of Hidden Valley Utility Services, L.P. in order to comply with this provision shall be implemented within ninety days of the date of the final Commission Order entered in this proceeding.

I.D. at 42. The OCA established that HVUS is not in compliance with two regulations, which address meter testing and annual pressure surveys. Section 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. 52 Pa. Code § 65.8(b); OCA St. 2 at 15. HVUS has agreed to develop a schedule to replace meters. HVUS St. 1-R at 30. OCA witness Fought specified that the Company's significant failure to comply with a Commission regulation should be addressed within a definite time period and recommended that the schedule to replace and/or test the meters should result in compliance by December 31, 2017. OCA St. 2S (water) at 13-14. 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. at 14. Mr. Kettler has indicated that the Company will begin conducting pressure surveys consistent with Commission regulations. HVUS St. 1-R at 30. Given that a record was developed regarding the Company's non-

compliance and intended prospective compliance with these two regulations, the OCA submits that HVUS should be specifically directed to comply. The OCA recommends that the Commission adopt the following language:

The engineering report will include a schedule to replace and/or test the meters in accordance with Section 65.8(b) that results in compliance by December 31, 2017.

HVUS will implement the replacement and testing schedule.

HVUS will take and record a pressure survey in compliance with Section 65.6(d) before the end of 2016 and at least once per year going forward.

If the pressure surveys show that customers are receiving inadequate water pressure, the Company should install booster pumping stations to provide water at adequate pressures to the affected customers.

OCA R.B., App. A at 8; OCA St. 2 (water) at 18, 21; OCA St. 2S (water) at 14-15.

Ordering Paragraph No. 18 states that, if needed, an evidentiary hearing will be scheduled for purposes of addressing, *inter alia*, “the adequacy of the existing water distribution system.” I.D. at 42. The record shows, however, that the service issues relate to all aspects of the system – supply, treatment, storage and distribution. OCA St. 2 (water) Rev. at 10-11, 13, 19-21; HVUS St. 1-R at 30-32. The OCA submits, therefore, that the Order should clarify that the hearing will address the adequacy of the existing “water system” rather than the “water distribution system.”

OCA witness Fought recommended three additional requirements needed to ensure that the water provided to customers is treated as effectively as possible. These requirements are not included in the ALJ’s Ordering Paragraphs. First, while the engineering report is performed and implemented, customers will continue to receive water from the Company’s wells (No. 1 and No. 2). If Well No. 1 fails, customers will be served from Well No. 2. Iron and manganese levels in Well No. 2 are even higher than in Well No. 1. Mr. Fought explained:

Well #2 is the only backup source for Well #1. DEP did not approve sequestration as a suitable treatment for Well #2 water. The concentration of iron and manganese in Well #2 is too high for treatment by sequestration. This would be true even if the system did not experience periods of lower flow. Removal of iron and manganese is the only way to effectively treat Well #2.

OCA St. 2S (water) at 11. In 2012-2013, there was an eight month period when customers were served exclusively from Well No. 2 after the pump for Well No. 1 failed.² Id. Thus, until a permanent solution to the iron and manganese problems is in place, HVUS should have a spare pump and motor available for Well No. 1 within 72 hours. Id. This safeguard will help to avoid or minimize use of Well No. 2.

Second, the OCA and HVUS agree that if, after the engineering report is submitted, the chosen means to address iron and manganese is treatment of water from Well No. 1 and Well No. 2, HVUS will install instrumentation to control the on/off cycle of Well No. 2. HVUS St. 1-R at 25-26 (“If a treatment plant is deemed to be the best solution, then Well # 2 will need the appropriate instrumentation for the pumps”); OCA St. 2 (water) Rev. at 11. OCA witness Fought explained the need for the instrumentation, discussing the problems that have occurred without instrumentation:

The pump in Well No. 2 continued to run when not needed and spilled water on the pump house floor. In addition to the wear and tear on the pump and wasted electrical cost for operating the pump when not needed, the Company received a NPDES violation for discharging chlorinated water to a nearby stream via the well house floor drain.

OCA St. 2 (water) Rev. at 11.

² The Company blamed the lengthy delay on ski season at Hidden Valley. Mr. Kettler stated: the difficulty of reaching the Well #1 site during the ski season was impracticable, as it would create a significant impact on the tubing operations. Well #1 was brought back on line as soon as practical after the ski season.

HVUS St. 1-R at 25.

Third, HVUS should be required to maintain an operable, installed second high lift pump. OCA St. 2 (water) Rev. at 12. Mr. Fought explained the importance of this requirement to the continuous supply of water:

[T]he Company operated the system at least 7½ months without a backup High Lift pump. The backup pump was missing during my May 1, 2014 inspection. In the Company's response to OCA Set III-8, the Company indicated that the High Lift pump would be installed by January 15, 2015. During that period, if the operating High Lift pump failed and was not replaced, the Storage Tank would empty within a few days, leaving customers without water.

Id. The Company states that, at the time, it decided to take the risk because it had the ability to get a replacement on short notice. HVUS St. 1-R at 26. HVUS did not respond to the OCA's recommendation that it be required to maintain a backup, installed second high lift pump going forward. Rather than risk water outages, the OCA submits that its recommendation should be adopted by the Commission.

In summary, the OCA recommends that the underlined changes should be made to the Ordering Paragraphs:

Ordering Paragraph 4: That Hidden Valley Utility Services, L.P. shall obtain and file with the Commission a written report from an independent or third-party Pennsylvania licensed water and wastewater engineer concerning the adequacy of its water distribution system and water source; and said report shall contain recommendations and a cost analysis to correct any found deficiencies including a remedy to eliminate the rust or brown-colored water provided to customers in order to ensure that customers shall receive adequate service from the improved water facilities, and with said report, to include an evaluation and proposed remedy to reassess the need, size and cost of the treatment plant to permanently solve the problems caused by iron and manganese, as well as alternative sources of water supply such as the Quemahoning River, within 90 days from the date of the final Commission Order entered in this proceeding. In addition to estimating costs, the study will include an implementation schedule for completion of the design, repairs or improvements, obtaining permits, obtaining bids, awarding contracts, and completion of construction/start of operation. Additionally, the engineering report will include a schedule to replace and/or test customer meters

in accordance with Section 65.8(b) that results in compliance by December 31, 2017. HVUS will implement the replacement and testing schedule.

Ordering Paragraph 7: That Hidden Valley Utility Services, L.P. shall obtain and file with the Commission a written report from an independent or third-party Pennsylvania licensed water and wastewater engineer concerning the adequacy of its wastewater system; and the report shall contain recommendations and a cost analysis to identify whether or not the pumping stations are equipped and operating properly, whether an adequate and appropriate type and number of pumps and alarms are being utilized and maintained in operating conditions, and identify any deficiencies, repairs, maintenance, replacements or improvements and recommendations to ensure that reasonable and adequate wastewater services are being provided to its customers. The engineer shall inspect all wastewater facilities, tanks and equipment and prepare a report of its findings. The report shall confirm that the wastewater treatment plant and equipment is installed, properly maintained and operable. If this is not the case, then the engineer shall include a schedule for making all repairs, replacements and/or maintenance and to correct any found deficiencies recommend any maintenance or improvements in the report. The report shall include a survey of the lagoon at Treatment Plant No. 2 to estimate the current capacity and provide a timeframe for removal of sediment. The report shall also confirm the draining, inspection, repair, and repainting of Tank 1 (side 1). The report shall also include an evaluation and proposed remedy to ensure that Hidden Valley Utility Services, L.P. is providing adequate and reasonable wastewater services to its customers. Hidden Valley Utility Services, L.P. shall obtain said report within 90 days from the date of the final Commission Order entered in this proceeding.

Ordering Paragraph 18: That on or before November 1, 2017 or within sixty days after receipt of a written report of all completed rehabilitative measures from the Company and its engineer, Office of Consumer Advocate shall investigate the quality of the water as well as of the water and wastewater services being received by Respondent's customers or request that this matter be referred to the Bureau of Technical Utility Services. If the recommended repairs, modifications, rehabilitative and maintenance procedures have not been accomplished with the time frame structured herein, or if the water quality as reported by the Office of Technical Utility Services or Office of Consumer Advocate is not adequate and reasonable, an evidentiary hearing shall forthwith be scheduled by the Office of Administrative Law Judge for purposes of addressing one or more of the following issues: the adequacy of the water ~~distribution~~ system, the adequacy of the wastewater system, the quality of the water, the appropriateness of penalties to be imposed against Respondent, the appropriateness of ratepayer refunds, and any

other issue relative to these ordering paragraphs. The Commission shall retain jurisdiction for that purpose.

New Ordering Paragraph 1: HVUS shall take and record a pressure survey in compliance with Section 65.6(d) before the end of 2016 and at least once per year going forward. If the pressure surveys show that customers are receiving inadequate water pressure, the Company shall install booster pumping stations to provide water at adequate water pressures to the affected customers.

New Ordering Paragraph 2: Until a permanent solution to the iron and manganese problem is in place, HVUS shall have a spare pump and motor available for Well No. 1 within 72 hours.

New Ordering Paragraph 3: After the engineering report is submitted, if the chosen means to address iron and manganese is treatment of water from Well No. 1 and Well No. 2, HVUS shall install instrumentation to control the on/off cycle of Well No. 2.

New Ordering Paragraph 4: HVUS shall maintain an operable, installed second high lift pump.

The OCA submits that these clarifications are necessary to align the ordering paragraphs with the evidentiary record and to ensure that all needed water and wastewater system improvements are made. In addition, the clarifications will facilitate compliance by the Company and monitoring by the Commission and parties.

OCA Exception No. 4: The ALJ's Recommended Hearing on Continued Inadequate Service Must Provide Certain and Timely Relief. I.D. at 42-43; OCA M.B. at 51-52; OCA R.B. at 16-17.

The ALJ recommends that the evidentiary hearing provided for in Ordering Paragraph No. 18 will be held after the deadline for the engineering report and a responsive report by the OCA or TUS, which is due by November 1, 2017, and that the hearing will address penalties, refunds and all issues relative to the ordering paragraphs. I.D. at 42. Ordering Paragraph No. 18 states that:

If the recommended repairs, modifications, rehabilitative and maintenance procedures have not been accomplished with [sic] the time frame structured herein, or if the water quality as reported by the Office of Technical Utility Services or Office of Consumer Advocate is not adequate and reasonable an evidentiary hearing shall forthwith be scheduled by the Office of Administrative Law Judge for purposes of addressing one or more of the following issues: the adequacy of the water distribution system, the adequacy of the wastewater system, the quality of the water, the appropriateness of penalties to be imposed against Respondent, the appropriateness of ratepayer refunds, and any other issue relative to these ordering paragraphs.

Id. As discussed in Exception No. 2, the OCA recommends that the Commission adopt the OCA's framework to permanently and timely improve service. This includes rate relief, status reports, specific improvements and deadlines, and a timely remedy for non-compliance. If the Commission adopts the ALJ's proposal to schedule a second hearing regarding the adequacy of service, the OCA submits that two important safeguards are necessary. Specifically, the utility must carry the burden of proving that service and facilities are no longer inadequate and the hearing must address the requirements of Section 529.

The ALJ determined that the OCA has already carried its burden of establishing that water and wastewater service is inadequate. I.D. at 19, 21, 37-38. Therefore, if the Commission orders a further evidentiary hearing, the OCA asks the Commission to find that the burden of

proof at such hearing will be on HVUS. This is consistent with Section 315 of the Public Utility Code, which provides that the burden belongs on the utility when the Commission initiates proceedings regarding service or facilities. 66 Pa. C.S. § 315(c). Section 315(c) states:

In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, the burden of proof to show that the service and facilities involved are adequate, efficient, safe, and reasonable shall be upon the public utility.

Id.

Finally, although the ALJ determined that HVUS is not providing adequate water and wastewater service, the ALJ directed no immediate relief for customers. See OCA Exception No. 1, *supra*. Under the framework adopted by the ALJ, it is unknown when or what form relief will take following the post-November 2017 hearing. Customers have already waited more than 10 years for the Company to resolve iron and manganese problems and replace under-sized distribution lines. I.D. at 7-8 (Finding of Fact No. 13(a)-(c)), 13-15. To minimize additional delay, if the Commission adopts the ALJ's recommended approach, the Commission should require that the post-November 2017 hearing address the evidence required by Section 529 of the Public Utility Code so the Commission may order acquisition of HVUS by a viable utility if necessary. 66 Pa. C.S. § 529(a). Specifically, as recommended by the OCA, the Company will have the burden of showing that its service and facilities are adequate. In addition, the presiding officer will hear evidence on the other requirements of Section 529(a). As discussed throughout the OCA's briefs and exceptions, the outcome of this proceeding must provide certain and timely relief. If HVUS will not or cannot expeditiously make the needed improvements, the initiation of a Section 529 proceeding should not wait until a *third* hearing. In the interest of efficiency, the post-November 2017 hearing should serve that purpose. To that end, the OCA respectfully

requests that the Commission initiate a Section 529 investigation as part of its order and direct that the second evidentiary hearing address the requirements of Section 529(a).

OCA Exception No. 5: HVUS Should be Required to Work With the OCA to Revise Customer Bills to Comply with Commission Regulations. I.D. at 22-23; OCA M.B. at 31-32; OCA R.B. at 9-10.

In the Initial Decision, the ALJ correctly acknowledged that “OCA has established that HVUS’ bills do not comply with all Commission regulations.” I.D. at 23. The OCA submits, however, that the Ordering Paragraphs should be modified to ensure that the Company’s bills are brought into compliance and that the OCA is able to provide meaningful feedback on the updated billing format.

Ordering Paragraph 10 requires HVUS to “modify its billing practices to ensure that all customer bills are fully compliant with all Commission rules, regulations and orders, within ninety days of the date of the final Commission Order entered in this proceeding.” I.D. at 41. Additionally, Ordering Paragraph 11 requires that “a copy of the revised bill form shall be provided to the Office of Consumer Advocate within ninety days of the date of the final Commission Order entered in this proceeding.” Id. Taken together, these provisions do not provide the OCA with an opportunity to review the Company’s revised billing format in advance of the compliance deadline, and thus does not give the OCA an opportunity to review and provide input on the bill revisions. The Company has already agreed to work with the OCA to “issue bills that are more customer friendly and fully compliant with all Commission regulations.” HVUS M.B. at 17; I.D. at 23. Requiring that the Company give the OCA an opportunity to review the revised bill in advance will allow the OCA to ensure that the information is clearly presented and that it is easy for a customer to understand their water usage and how their bill was calculated based on the information included in the bill. See OCA M.B. at 31-32; OCA R.B. at 9-10. As such, the Ordering Paragraphs should be modified to require the Company to work with the OCA to develop an acceptable billing format in advance of the ninety day compliance deadline.

OCA Exception No. 6: Further Measures Must be Implemented to Ensure that HVUS Remains Current on Both its Electric and Telephone Bills, Thereby Complying with Section 1501 of the Public Utility Code. I.D. at 24-28; OCA M.B. at 41-45; OCA R.B. at 36-37.

In response to the Company's demonstrated failure to timely pay its electric and telephone bills, the ALJ directed HVUS to "pay all electric and telephone bills in a timely manner to ensure adequate and reasonable service to its customers." I.D. at 41 (Ordering ¶ 13). The OCA also recommended additional relief that was not addressed in the Initial Decision, which will help to ensure compliance with this directive. The OCA respectfully requests that the Commission include these oversight mechanisms in its Order.

With regard to payment of electric bills, the OCA recommended that the Company be directed to execute appropriate authorization forms permitting its electric provider (Pennsylvania Electric Company, or Penelec) to continue providing monthly billing and payment information for all HVUS accounts to the OCA until June 10, 2018. While the Initial Decision requires the Company to provide 60-day status reports regarding its compliance with, *inter alia*, bill payments, this remedy is not sufficient. First, the Company signed a settlement in September 2014 committing to stay current on payment of all electric bills but began missing payments within six months of this agreement. Having monthly payment information will allow the OCA to timely respond to late payments before they escalate into a termination notice and put the utility's ability to provide continuous water and wastewater service at risk. OCA M.B. at 36-37; OCA R.B. at 13-14. Second, the relief being afforded in the companion Emergency Petition case only provides for monthly reports until the Order is entered in this proceeding. In order to avoid a gap in reporting, the Order in this case should require the Company to authorize Penelec to continue monthly reporting. Third, the requested relief imposes minimal burden on the Company. It requires only that HVUS execute written authorization for Penelec to release its

account information to the OCA. The requested relief also depends on a monthly report from Penelec; however, the OCA submits that having TUS and the OCA monitor HVUS's payments provides a reciprocal benefit to Penelec, to the extent it encourages timely payment by HVUS.

With regard to payment of telephone bills, the OCA also recommended that HVUS be required to provide annual updates to its response to OCA-V-6. The referenced interrogatory requested copies of the Company's bills for phone service at (814)-443-0825 (the non-emergency phone number listed on HVUS bills) in 2014 and 2015. At the time the Company responded to the interrogatory, 14 of 18 Verizon bills included late payment charges for the period of January 2014 to June 2015. OCA St. 1S at 11; OCA St. 1SR at 4. Having annual updates to OCA-V-6 will allow the OCA to verify the information provided in the Company's status reports regarding timely payment of phone bills.

Electricity is vital for the Company's ability to provide water and wastewater service, and HVUS has continued to incur late payment charges despite entering a settlement agreement in 2014 that requires timely payment. OCA M.B. at 36-37; OCA St. 1 at 9; OCA St. 1S at 10. Likewise, it is necessary for HVUS to maintain phone service at the numbers listed on bills so customers are able to reliably contact the Company. Furthermore, even if a rate reduction were imposed, the Company's financial data suggests that the Company would have no difficulty paying its utility bills. This is primarily because HVUS's financial issues do not stem from a lack of funds, but rather from allocating a large portion of its Free Cash Flow as capital distributions to its partners. OCA St. 1S at 19-20. The OCA requests that its exception should be granted and the additional requirements should be placed on HVUS to provide authorization for continuing Penelec reports until June 2018 and to provide annual copies of phone bills.

OCA Exception No. 7: HVUS Should Be Required to Confer with the Hidden Valley Foundation in Setting Dates for Semi-Annual Customer Meetings.
R.D. at 39; OCA M.B. at 33.

The Initial Decision requires the Company to “hold and conduct semi-annual customer meetings, to be held at least every six months, with the first meeting to be held on or before May 1, 2017.” R.D. at 39. The OCA agrees that the customer meetings are an important component of the 2005 Settlement and that semi-annual customer meetings should be held as required until the improvements contained in the 2005 Settlement have been satisfied. OCA M.B. at 33. The OCA submits, however, that specific dates for customer meetings should be considered in order to ensure that the meetings are well-attended and are useful to both the Company and its customers.

HVUS Witness Kettler testified that the Company discontinued the semi-annual meetings due to a “lack of participation by the customers.” HVUS St. 3-R at 3. Because Hidden Valley is a resort community and most customers are not full-time residents, the timing of the customer meetings should be carefully considered so that meetings can be scheduled at times when as many customers as possible are in the area and would be able attend the meetings. In its Main Brief, the OCA recommended that the Company should be required to confer with the Hidden Valley Foundation (Foundation), the Hidden Valley homeowners’ association, regarding dates that may result in higher attendance and thus increased communication with its customers. OCA M.B. at 33. For example, the Foundation holds its Annual Meeting in November each year.³ Indeed, the Company has stated in its Reply Brief that it “commits to hold a customer meeting on the same weekend as the annual meeting of the Homeowners Association. [A] second meeting would take place approximately six (6) months later to discuss status of service improvement

³ See www.hvftoday.com, Event Calendar. The Foundation’s 2016 Annual Meeting is scheduled for Saturday, November 19, 2016.

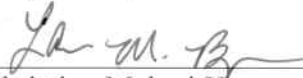
projects.” HVUS R.B. at 4. The Initial Decision should be clarified in order to reflect this commitment on the part of HVUS.

The OCA agrees that HVUS remains obligated by Commission Order to hold semi-annual meetings, until the conditions of the 2005 Settlement are satisfied. The OCA submits that language should be added to the Initial Decision to include the requirement that HVUS shall confer with the Foundation regarding specific dates for customer meetings that may result in higher customer attendance.

III. CONCLUSION

For the foregoing reasons, the OCA respectfully excepts to the portions of Administrative Law Judge Jeffrey A. Watson's Initial Decision as discussed above. The OCA submits that a rate reduction or usage allowance, as well as the other additions and clarifications to the Ordering Paragraphs discussed above, are necessary in order to ensure that HVUS complies with Commission regulations and provides adequate water and wastewater service in the future.

Respectfully Submitted,



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DATED: September 29, 2016

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