



May 25, 2023

VIA E-FILING

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor – Filing Room
Harrisburg, PA 17120

**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**

Joint Petition for Approval of Unanimous Settlement of All Issues

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Joint Petition for Approval of Unanimous Settlement of All Issues in the above-referenced matters.

Copies are being served as shown on the attached Certificate of Service.

Please contact me if you have any questions regarding this filing. Thank you.

Sincerely,

COZEN O'CONNOR

By: Jonathan P. Nase

JPN:kmg
Enclosure

cc: Hon. Katrina L. Dunderdale
Nick Miskanic, Legal Assistant to ALJ Dunderdale
Per Certificate of Service
James Kettler

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tanya J. McCloskey, Acting Consumer Advocate	:	
	:	
	:	Docket No. C-2014-2447138
v.	:	
	:	
Hidden Valley Utility Services, L.P. – Water	:	
	:	
and	:	
	:	
Tanya J. McCloskey, Acting Consumer Advocate	:	
	:	
	:	Docket No. C-2014-2447169
v.	:	
	:	
Hidden Valley Utility Services, L.P. – Wastewater	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Approval of Unanimous Settlement of All Issues** upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL:

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Consultant for
Office of Consumer Advocate

DATED: May 25, 2023



Jonathan P. Nase, Esquire
Counsel for *Hidden Valley Utility Services, L.P.*

the Honorable Administrative Law Judge Katrina L. Dunderdale (the “ALJ”) recommend approval of, and the Commission approve, this Settlement without modification.

In support of the Settlement, the Joint Petitioners state the following:

II. BACKGROUND

1. On October 9, 2014, Tanya J. McCloskey, the then-Acting Consumer Advocate, filed a Formal Complaint against HVUS regarding water service at Docket No. C-2014-2447138 and a Formal Complaint regarding wastewater service at Docket No. C-2014-2447169. The Commission consolidated these Complaints for hearing and adjudication.

2. On October 29, 2014, HVUS filed Answers to both Complaints.

3. Public input hearings were held on June 25, 2015 at Hidden Valley Resort in Hidden Valley, Pennsylvania.

4. On July 10, 2015, Mr. Kollar and Ms. Kuhleman Petitioned to Intervene in the Complaint proceedings.

5. An evidentiary hearing was conducted on November 17, 2015.

6. Administrative Law Judge Jeffrey A. Watson issued an Initial Decision on September 9, 2016 sustaining both the water and the wastewater Complaints and ordering HVUS to complete certain tasks by specific deadlines.

7. HVUS, the OCA, Mr. Kollar and Ms. Kuhleman filed Exceptions and Replies to Exceptions.

8. On January 18, 2018, the Commission issued an Opinion and Order (the “January 2018 Order”) granting the Exceptions of all Parties, in part and denying the Exceptions of all Parties, in part, and adopting the Initial Decision as modified.

9. On February 5, 2018, HVUS filed a Petition for Clarification, Reconsideration and Amendment (“Petition for Reconsideration”).

10. On February 12, 2018, the OCA, Mr. Kollar and Ms. Kuhleman filed Answers to the Petition for Reconsideration.

11. On May 3, 2018, the Commission issued an Opinion and Order (the “May 2018 Order”) granting the Petition for Reconsideration, in part, denying it, in part, and modifying the January 2018 Order. Among other things, the May 2018 Order:

a. Required HVUS to obtain a report from a licensed engineer concerning the adequacy of its water system, including recommendations to eliminate the rust or brown-colored water provided to residents. HVUS was required to comply with those recommendations within one year from the date of the engineer’s report.

b. Required HVUS to obtain a report from a licensed engineer concerning the adequacy of its wastewater system, including recommendations to ensure that reasonable and adequate wastewater services are being provided to customers. HVUS was required to comply with those recommendations by January 31, 2019.

c. Required HVUS to file status reports every 60 days, advising the Commission of its progress in completing the tasks required by the May 2018 Order.

d. Required HVUS to file a final status report with the Commission on or before January 31, 2019, or as soon as all repairs, modifications and improvements required by the May 2018 Order were complete.

e. Required the Commission’s Bureau of Technical Utility Services, on or before March 31, 2019, or within 60 days after receipt of a written report from HVUS that it had completed all required rehabilitative measures, to investigate the quality of the water and wastewater services being received by HVUS customers. If the repairs required by the Order were not timely completed, or if the water or wastewater service was not adequate and reasonable, an evidentiary hearing was to be held by an administrative law judge to consider possible penalties and customer refunds. A separate proceeding was to be held pursuant to 66 Pa. C.S. § 529 (“Power of commission to order acquisition of small water and sewer utilities”).

12. On April 18, 2018, HVUS filed a report from a licensed engineer concerning the adequacy of its water system.

13. Also on April 18, 2018, HVUS filed a report from a licensed engineer concerning the adequacy of its wastewater system.

14. On October 18, 2018, HVUS filed a Petition for an Amendment of the Opinion and Order Entered May 3, 2018 (“Petition for Amendment”). HVUS stated that the engineer’s report concerning the adequacy of its water system contained four options for eliminating the rust or brown-colored water provided to residents. The engineer’s report estimated that implementing any of these options would exceed one year. HVUS requested that the Commission modify the one-year deadline for implementing the recommendations in the engineer’s water report.

15. On October 29, 2018, the OCA, Mr. Kollar and Ms. Kuhleman filed Answers opposing the Petition for Amendment. The OCA requested that the Commission go forward with the process established in the May 2018 Order, *i.e.*, an evidentiary hearing to consider possible penalties and customer refunds, and an investigation under Section 529.

16. On January 17, 2019, the Commission issued an Opinion and Order denying the Petition for Amendment (the “January 2019 Order”).

17. On January 31, 2019, HVUS filed a status report from its engineer regarding the status of all rehabilitative measures for the wastewater system.

18. On February 19, 2019, HVUS filed a Petition for Review with the Commonwealth Court of Pennsylvania (the “Commonwealth Court”), seeking review of the January 2019 Order.

19. On February 27, 2019, HVUS was served with a Complaint filed by Sharon Howard-Frieri at Docket No. C-2019-3008093. HVUS filed an Answer and New Matter to this Complaint on March 19, 2019.

20. On April 2, 2019, the Commission moved to quash HVUS’s appeal on the grounds that the January 2019 Order was not a final order of the Commission.

21. In a Memorandum Opinion dated May 15, 2019, the Commonwealth Court quashed HVUS’s appeal and remanded the case to the Commission for a hearing regarding the sufficiency

of: (a) the one-year deadline in the May 2018 Order, and (b) HVUS's engineer's report regarding the water system.

22. On June 4, 2019, HVUS filed a motion asking that Ms. Howard-Frieri's Complaint be held in abeyance until it could be consolidated with these proceedings because they presented related questions of fact and law. The ALJ ordered the parties to confer and file a status report by December 31, 2019.

23. On November 20, 2019, the OCA wrote to the Commission asking that the remand proceedings directed by the Commonwealth Court be commenced. In addition, pursuant to the May 2018 Order, the OCA's letter notified the Commission that HVUS had failed to comply with certain timeframes in that Order.

24. On November 21, 2019, counsel for the Hidden Valley Foundation, Inc., withdrew her appearance. Hidden Valley Foundation, Inc. has not appeared in any subsequent proceedings in this matter.

25. In its December 31, 2019 status report to the presiding officer in Docket No. C-2019-3008093, HVUS noted that the proceedings in the instant matters were expected to begin soon. HVUS requested that Ms. Howard-Frieri's Complaint continue to be held in abeyance until it could be consolidated with the OCA's Complaints.

26. On February 14, 2020, HVUS filed an engineer's report indicating that all rehabilitative measures required for the wastewater system had been completed.

27. The remand proceedings from the Commonwealth Court were assigned to the ALJ.

28. On February 25, 2020, counsel for I&E entered her appearance.

29. In her Prehearing Conference Order dated February 7, 2020, the ALJ tentatively identified the issues on remand as including:

a. The propriety of the recommendations, proposed time schedules and financing plans for the recommendations contained in the engineer's report of Hidden Valley Utility Services from April 18, 2019;

b. The sufficiency of the report of the engineer of Hidden Valley Utility Services from April 18, 2019;

c. The sufficiency of the previously ordered one-year compliance deadline;

d. Whether the Commission should grant the request of Hidden Valley Utility Services to extend the compliance deadlines proposed in the engineer's report from April 18, 2019; and

e. Whether the formal complaint proceeding of Sharon Howard-Frieri v. Hidden Valley Utility Services, L.P., docketed at Docket No. C-2019-3008093, should be consolidated into these proceedings.

30. A prehearing conference was held on February 25, 2020. At the Prehearing Conference, the ALJ ordered Ms. Howard-Frieri's Complaint to be consolidated with the OCA's Complaints.

31. Based on the OCA's letter of November 20, 2019, the ALJ's Prehearing Conference Order, dated March 11, 2020, directed I&E to contact the Secretary's Bureau to commence a proceeding against HVUS pursuant to 66 Pa. C.S. § 529.

32. On March 9, 2020, the Pennsylvania Department of Environmental Protection ("DEP") issued a public water supply permit authorizing the construction of a water treatment plant to eliminate the rust or brown-colored water that HVUS provided to residents.

33. On May 20, 2020, an evidentiary hearing was held regarding the issues stated in the ALJ's Prehearing Conference Order.

34. HVUS and the OCA filed Briefs and Reply Briefs. The record was subsequently closed.

35. The ALJ's Sixth Post-Hearing Order, issued on February 17, 2021, reopened the record. The Seventh, Eighth and Ninth Post-Hearing Orders admitted additional evidence into the record. This evidence included: (a) a Certificate of Use and Occupancy from Jefferson Township, Somerset County, (b) a DEP public water supply permit authorizing the operation of the water

treatment plant that HVUS installed to eliminate the rust or brown-colored water provided to residents, and (c) a notice to HVUS's customers that the water system's lines would be flushed within two weeks after the water treatment plant became operational.

36. The Tenth Post-Hearing Order scheduled a telephonic status conference in this proceeding, which was held on March 30, 2023.

37. At the telephonic status conference, the Parties advised the ALJ that they were in settlement discussions and requested additional time to pursue those negotiations.

38. By e-mail dated April 18, 2023, the Parties notified the ALJ that they had reached a settlement in principle to settle these matters, in their entirety.

39. A further telephonic status conference was held on April 25, 2023.

40. The Joint Petitioners filed a Joint Stipulation for the Admission of Additional Evidence on May 19, 2023.

III. SETTLEMENT TERMS

A. Independent Audit

41. HVUS shall cause to be conducted an independent audit of its financial statements, prepared in accordance with Generally Accepted Accounting Principles, from 2020 through 2022 by an outside, independent Certified Public Accounting firm which has not previously provided any services to HVUS. Within 120 days of the entry of an Order approving this settlement, or the deadline established in the rate proceedings at Docket Nos. R-2018-3001306 and R-2018-3001307, whichever is earlier, HVUS will file this completed independent audit with the Secretary's Bureau and the Bureau of Technical Utility Services in the docket of this proceeding and Docket Nos. R-2018-3001306 and R-2018-3001307, and serve a copy on the parties to the

complaint proceedings. HVUS will also notify all parties to the rate case proceeding that the audit has been filed, will provide information as to where it can be found on the PUC's website, and will offer to provide a copy to any rate case party who requests it.

42. Relevant to the foregoing provision, Ordering Paragraph 11 at Docket Nos. R-2018-3001306 and R-2018-3001307 provides:

That, within one hundred twenty (120) days after the date of entry of this Opinion and Order in this proceeding, Hidden Valley Utility Services, L.P. shall cause to be conducted an independent financial audit of its records from 2015 through 2018 by an outside independent financial accounting firm or office which has not previously provided auditing services to Hidden Valley Utility Services, L.P. Upon completion of the independent financial audit, Hidden Valley Utility Services, L.P. shall file a notice at this docket number and serve a copy of said notice on all Parties to this proceeding stating that the independent financial audit has been completed. Hidden Valley Utility Services, L.P. shall file the independent financial audit with the Commission's Secretary's Bureau and the Commission's Bureau of Technical Utility Services.

43. The Parties agree that the information provided by an audit of HVUS's 2015 through 2018 records would be less useful than an audit of its most recent records for the period 2020 through 2022 provided for in this settlement and, as such, the Parties will not oppose a request by HVUS for the Commission to amend that Order to provide:

HVUS shall cause to be conducted an independent audit of its financial statements, prepared in accordance with Generally Accepted Accounting Principles, from 2020 through 2022 by an outside, independent Certified Public Accounting firm which has not previously provided any services to HVUS. Within 120 days of the entry of an Amended Order in this proceeding or the deadline established in the complaint proceeding at Docket Nos. C-2014-2447138 or C-2014-2447169, whichever is earlier, HVUS will file this completed independent audit with the Secretary's Bureau and the Bureau of Technical Utility Services in the docket of this proceeding and the complaint proceeding, and serve a copy on the parties to the complaint proceeding. HVUS will also notify all parties to this proceeding that the audit has been filed, will provide information as to where it can be found on the PUC's website, and will offer to provide a copy to any rate case party who requests it.

B. Section 529 proceeding

44. Ordering Paragraph 1 of the Prehearing Order issued March 11, 2020 provides:

That, pursuant to the request from the Office of Consumer Advocate on November 20, 2019, the Bureau of Investigation and Enforcement shall notify the Commission's Secretary's Bureau to initiate a separate proceeding against Hidden Valley Utility Services, L.P. (both the water and wastewater divisions), pursuant to the provisions in 66 Pa.C.S.A. § 529, *et seq.*, and as outlined under Ordering Paragraph No. 26 of the Commission's Order dated May 3, 2018.

45. Ordering Paragraph 26 of the May 3, 2018 Order provides:

That in the event Hidden Valley Utility Services, L.P., fails to comply with any of the time deadlines directed in these Ordering Paragraphs, the Office of Consumer Advocate shall notify the Secretary of the Commission and the Director of the Commission's Bureau of Investigation and Enforcement within thirty days of the missed deadline.

46. The Parties agree and recommend that no Section 529 proceeding should be initiated regarding compliance with the time deadlines directed by the May 3, 2018 Order.

C. Water System

47. Paragraph 6 of the May 3, 2018 Order provides:

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 ninety (90) days from the date of entry of this Opinion and Order 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 April 30, 2019. Hidden Valley Utility Services, L.P., will implement the replacement and testing schedule.

48. Paragraph 8 of the May 3, 2018 Order provides:

That, within one (1) year [from] the date of the engineer's report, Hidden Valley Utility Services, L.P., shall comply with all recommendations from the engineer in order (1) to correct any identified 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 (2) to reassess the need, size and cost of treatment plant to permanently solve the problems caused by iron and manganese.

49. The Parties agree that an engineer's report and implementation schedule and a meter testing and/or replacement schedule were filed on April 18, 2018. The Parties also agree that, as of July 1, 2021, HVUS had constructed and put in service a water treatment plant to address the rust or brown-colored water provided to customers. The Parties agree and recommend that no further action should be taken regarding Paragraphs 6 and 8 of the May 3, 2018 Order.

D. Wastewater System

50. An engineer's verification is attached as **Appendix A**, which states that the condition of the wastewater system has been maintained since the Engineer's Final Report and Verification of Repairs to the Wastewater System filed on February 14, 2020 such that the 2020 Wastewater Report continues to accurately reflect the condition of the wastewater system.

E. Closing of the Case

51. The Parties agree and recommend that upon adoption of the settlement terms, herein, these Complaint proceedings should be closed and no further action should be taken regarding the deadlines in the May 3, 2018 Order.

F. Continuing Obligations of HVUS

52. As a compliance filing, HVUS will file a copy of its customer complaint logs for 2023, 2024, 2025 and 2026, respectively, within three months of the end of those calendar years, in this docket. Those customer complaint logs will state whether the Company's investigation of each "dirty water," stained fixtures, or stained laundry complaint indicated that the "dirty water" or staining was caused by flushing, a main break, or some other cause.

53. HVUS will have the iron/manganese sediment removed from the standpipe storage tank by October 1, 2024. HVUS will notify the Commission and the parties to this proceeding within 30 days after the iron/manganese has been removed from the standpipe storage tank.

54. HVUS will have a Pennsylvania-licensed consulting engineer perform the following tasks regarding its water system, and will make a filing with the Commission, copied to the parties to this proceeding, when each task is completed:

a. Advise HVUS regarding flushing procedures to utilize going forward, including the volume of water from the automatic blow-off valves, especially flushing procedures to address any future iron/manganese complaints.

b. Provide a letter when the engineer believes that the iron/manganese sediment has been adequately removed from the distribution system to prevent normal operations from causing iron/manganese complaints.

55. For each calendar year, HVUS will file a report regarding HVUS's operation and maintenance activities for all of its water system facilities (*e.g.*, proactive leak detection or replacement of mains or meters, exercising valves and changes in operation of the water treatment plant). The report will be filed in this docket, within three months of the end of the applicable calendar year. This requirement will end on the later of the filing of a report for 2026 or when all of the foregoing Continuing Obligations have been met.

56. If requested by the Hidden Valley Foundation's Board of Directors, HVUS will meet with representatives of the Hidden Valley Foundation's Board of Directors, virtually or in-person, at least once per calendar year, from 2023 through December 31, 2033. Nothing in this settlement shall prevent HVUS from meeting with the Hidden Valley Foundation's Board of Directors, by mutual agreement, after December 31, 2033.

F. Stipulation to Admit Additional Evidence into the Record

57. On May 19, 2023, the Joint Petitioners filed a Joint Stipulation for the Admission of Additional Evidence asking that the documents attached thereto (which were exchanged during informal discovery) be admitted into the record.

58. Attached as **Appendices B through D** are Joint Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs. In addition, attached as **Appendices E through H** are Statements in Support of Settlement of HVUS, the OCA, I&E, and Mr. Kollar, setting forth the bases upon which that Party believes the Settlement to be in the public interest. Ms. Howard-Frieri joins in/supports the Statement in Support submitted by Mr. Kollar.

G. Standard Settlement Conditions

59. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five (5) business days after the entry of an Order modifying the Settlement. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

60. This Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceeding. If the Commission does not approve the Settlement without modification, and the proceeding continues, the Joint Petitioners reserve their respective procedural rights, including the right to present additional testimony and to conduct full cross-examination, briefing and argument. The Settlement is made without any admission against, or prejudice to, any position which any

Petitioner may adopt in the event of any subsequent litigation of this proceeding, or in any other proceeding.

61. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Petitioner's position with respect to any issues raised in this proceeding. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

62. If the ALJ recommends approval of the Settlement without modification, the Joint Petitioners will waive their rights to file Exceptions.

IV. REQUEST FOR RELIEF

Wherefore, Hidden Valley Utility Services, L.P., the Office of Consumer Advocate, the Bureau of Investigation and Enforcement, Robert J. Kollar, Kellie A. Kuhleman and Sharon Howard-Frieri, respectfully request:

(a) That the Honorable Administrative Law Judge Katrina L. Dunderdale recommend approval of, and the Commission approve, this Settlement as submitted, including all terms and conditions thereof, without modification.

(b) That HVUS be directed to cause to be conducted an independent audit of its financial statements, prepared in accordance with Generally Accepted Accounting Principles, from 2020 through 2022 by an outside, independent Certified Public Accounting firm which has not previously provided any services to HVUS. Within 120 days of the entry of an Order approving this settlement, or the deadline established in the rate proceedings at Docket Nos. R-2018-3001306 and R-2018-3001307, whichever is earlier, HVUS will file this completed independent audit with the Secretary's Bureau and the Bureau of Technical Utility Services in the docket of this

proceeding and Docket Nos. R-2018-3001306 and R-2018-3001307, and serve a copy on the parties to the complaint proceedings. HVUS will also notify all parties to the rate case proceeding that the audit has been filed, will provide information as to where it can be found on the PUC's website, and will offer to provide a copy to any rate case party who requests it.

(c) That the Joint Stipulation for the Admission of Additional Evidence, filed on May 19, 2023, be approved;

(d) That no proceedings be instituted against HVUS, pursuant to 66 Pa. C.S. § 529, due to any alleged non-compliance with the time deadlines established in the May 2018 Order.

(e) That no further action be taken regarding Paragraphs 6 and 8 of the May 2018 Order.

(f) That HVUS be directed to file the following, as compliance filings:

1. HVUS will file a copy of its customer complaint logs for 2023, 2024, 2025 and 2026, respectively, within three months of the end of those calendar years, in this docket. Those customer complaint logs will state whether the Company's investigation of each "dirty water," stained fixtures, or stained laundry complaint indicated that the "dirty water" or staining was caused by flushing, a main break, or some other cause.

2. HVUS will notify the Commission and the parties to this proceeding within 30 days after the iron/manganese has been removed from the standpipe storage tank. HVUS will have the iron/manganese sediment removed from the standpipe storage tank by October 1, 2024.

3. HVUS will file the following with the Commission, copied to the parties to this proceeding, when each task is completed:

a. Notice that a Pennsylvania-licensed consulting engineer has advised HVUS regarding flushing procedures to utilize going forward, including the volume of water from the automatic blow-off valves, especially flushing procedures to address any future iron/manganese complaints.

b. A letter from a Pennsylvania-licensed consulting engineer stating the engineer believes that the iron/manganese sediment has been adequately removed from the distribution system to prevent normal operations from causing iron/manganese complaints.

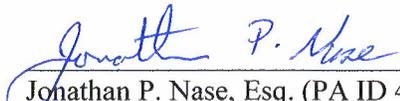
4. For each calendar year, HVUS will file a report regarding HVUS's operation and maintenance activities for all of its water system facilities (e.g, proactive leak detection or replacement of mains or meters, exercising valves, changes in operation of the water treatment plant). The report will be filed in this docket, within three months of the end of the applicable calendar year. This requirement will end on the later of the filing of a report for 2026 or when all of the foregoing Continuing Obligations have been met.

(g) That, if requested by the Hidden Valley Foundation's Board of Directors, HVUS will meet with representatives of the Hidden Valley Foundation's Board of Directors, virtually or in-person, at least once per calendar year, from 2023 through December 31, 2033. Nothing in this settlement shall prevent HVUS from meeting with the Hidden Valley Foundation's Board of Directors, by mutual agreement, after December 31, 2033.

(h) That the Complaints at C-2014-2447138, C-2014-2447169 and C-2019-3008093 be closed, with no further action taken against HVUS regarding the deadlines in the May 3, 2018 Order.

[Signatures appear on next page.]

Respectfully submitted,


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/s/ Sharon Howard-Frieri
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Respectfully submitted,

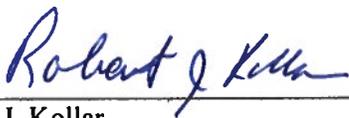
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Respectfully submitted,



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Counsel for *Bureau of Investigation and Enforcement*

APPENDIX A

Engineer's Verification Regarding Wastewater System

Engineer's Verification

I, Bradley R. Stinebiser, P.E., hereby states:

1. I am the same Bradley R. Stinebiser, P. E., who signed the "Hidden Valley Utility Services Addendum No. 2 to Sanitary Sewer System Facilities Study as of February 11, 2020."

2. The condition of the wastewater system has been maintained since the above-referenced Addendum No. 2 was completed on February 11, 2020. Equipment is being replaced as deficiencies arise and required maintenance activities are being conducted. The System remains fully operational. The licensed system operator submits required reports to the Pennsylvania Department of Environmental Protection ("DEP"). Based on discussions with the licensed system operator, the wastewater system has not received any Notices of Violation after my report of February 11, 2020. Based on monthly Discharge Monitoring Reports (the 2 page summary) prepared by the licensed system operator for submission to the DEP, the wastewater system has not had any effluent limit violations during 2023. With the understanding that system maintenance and repairs are an ongoing activity, Addendum No. 2 continues to reflect the condition of the wastewater system.

The facts set forth above are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date:

05/24/2023

By:



Bradley R. Stinebiser, P. E.

APPENDIX B

Joint Proposed Findings of Fact

Joint Proposed Findings of Fact

I. Parties

1. HVUS is a certificated public utility, providing water and wastewater service in a resort community in Hidden Valley, Pennsylvania. HVUS St. 3.

2. The OCA is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

3. I&E serves as the Commission's prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Code and Commission Regulations and Orders. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered Aug. 11, 2011).

4. Mr. Kollar is a water and wastewater customer of HVUS. He intervened in the OCA's Complaint proceedings. Recommended Decision of Administrative Law Judge Jeffrey A. Watson, Finding of Fact 6.

5. Ms. Kuhleman is a water and wastewater customer of HVUS. She intervened in the OCA's Complaint proceedings. Recommended Decision of Administrative Law Judge Jeffrey A. Watson, Finding of Fact 6.

6. Ms. Howard-Frieri is a water and wastewater customer of HVUS. She filed a complaint against HVUS at Docket No. C-2019-3008093, alleging deficiencies in her water service. Her complaint was consolidated with C-2014-2447138 and C-2014-2447169.

II. Background

7. The Commission found that HVUS failed to provide reasonable and adequate water and wastewater service to customers, and ordered it to complete certain remedial measures within specified time frame. January 2018 Order pp. 23, 61-68; May 2018 Order pp. 26-34.

8. In HVUS's rate cases at R-2018-3001306 and R-2018-3001307 (the "2019 Rate Cases"), the Commission ordered HVUS to conduct an independent audit of its records from 2015 through 2018. The audit was to be completed within 120 days of the date the Commission's Order was entered (*i.e.*, by July 29, 2019).

III. HVUS's Efforts to Comply with the May 2018 Order

A. Wastewater System

8. The May 2018 Order required HVUS to obtain and file with the Commission a written report from a third party Pennsylvania licensed water/wastewater engineer concerning the adequacy of its wastewater system, which was required to contain recommendations to ensure that HVUS is providing reasonable and adequate wastewater services to its customers. May 2018 Order pp. 27-28.

9. HVUS filed an engineer's report with the Commission on April 18, 2018, and served copies on the parties to the case at the time, and the Bureau of Technical Utility Services. HVUS Post-Hearing Exhibit 4.

10. The May 2018 Order required HVUS to comply with the recommendations from the engineer's report regarding the wastewater system by January 31, 2019. May 2018 Order p. 29.

11. On January 31, 2019, HVUS filed a verified report from its engineer, indicating the rehabilitative measures that had been taken to that time regarding HVUS's wastewater system.

The report also identified rehabilitative measures that were incomplete. HVUS's Post-Hearing Exhibit 4.

12. On February 11, 2020, HVUS filed a verified report from its engineer indicating that all rehabilitative measures for the wastewater system had either been completed or had been determined to be unnecessary. HVUS's Post-Hearing Exhibit 4.

13. Appendix A to the Settlement is a verified statement from the same third party engineer who submitted the 2018, 2019 and 2020 reports concerning the wastewater system. This verified statement indicates that the wastewater system has been maintained since February 2020, so that the February report continues to accurately reflect the condition of the wastewater system. Appendix A.

14. The Joint Stipulation for the Admission of Additional Evidence ("Joint Stipulation"), which was filed on May 19, 2023, includes at Attachment 3 HVUS's customer complaint logs for 2021 and 2022. Those logs include two complaints regarding HVUS's wastewater system. One complaint involved a sewer backup caused by a broken service line and the other involved a sewer backup caused by a blocked service line.

B. Water System

15. The May 2018 Order required HVUS to obtain and file with the Commission a written report from a third party Pennsylvania licensed water/wastewater engineer concerning the adequacy of its water system. This report was to "contain recommendations and a cost analysis to correct any found deficiencies including a remedy to eliminate the ruse or brown-colored water provided to customers" 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." The report was also to include an implementation schedule. Finally, the engineer's report was to include a schedule to

replace and/or test customer meters in compliance with 52 Pa. Code § 65.8(b). May 2018 Order pp. 26-27.

16. On April 18, 2018, HVUS filed two reports from third party engineers regarding HVUS's water system. Copies were provided to TUS and the parties to this proceeding at that time. HVUS Exhibit JFL-2. The April 2018 Engineer's Report evaluated four options for eliminating the rust or brown-colored water provided to customers. Two options involved the construction of a water treatment plant and two options involved the construction of an interconnection to an alternative source of water supply. HVUS Exhibit JFL-2. The April 2018 Engineer's Report did not make a recommendation to the Company as to which option should be implemented. HVUS St. 1 p. 5.

17. The April 2018 Engineer's Report included cost estimates for each of the four options and implementation schedules for three of the options (the fourth option was much more expensive than the other three, so HVUS management did not pursue that option). HVUS Exhibit JFL-2; HVUS St. 2 pp. 9-10; HVUS St. 2-R p. 2; HVUS St. 3 p. 11. The OCA challenged the estimated implementation schedule for the water treatment plant option. OCA St. 1 at 4, 9-14. Two later engineering reports (January 2019 and February 2020) provided different time estimates for construction. HVUS Exh. BRS-2 at 5, Att. 4 at 3; OCA Exh. TLF-5.

18. HVUS purchased a water treatment plant to address the iron and manganese in its water. HVUS applied for a Public Water Supply Permit from DEP on November 27, 2019. HVUS St. 2 p. 27. In February 2020, HVUS filed a revised application for that water treatment plant. Exhibit TLF-4. On March 9, 2020, the Pennsylvania Department of Environmental Protection ("DEP") issued a public water supply permit authorizing the construction of the water treatment plant. HVUS Post-Hearing Exhibit 4.

19. HVUS subsequently obtained a minor land development approval from Somerset County and a building permit for the water treatment plant. HVUS then constructed the water treatment plant. A certificate of occupancy was issued by Jefferson Township, Somerset County, on May 28, 2021, and DEP issued a water supply permit authorizing the operation of the water treatment plant on June 17, 2021. The water treatment plant became operational on June 17, 2021 and HVUS flushed the water lines in its system between June 28, 2021 and July 2, 2021. HVUS Post-Hearing Exhibits 4 and 6-8.

20. The Stipulation includes quarterly laboratory test reports concerning HVUS's raw water (Attachment 2) and treated water (Attachment 1) since the water treatment plant became operational. These reports indicate that the iron in HVUS's raw water was as high as 1.13 mg/L during 2021-2022, but the iron in HVUS's treated water was no higher than .11 mg/L during that period. Similarly, those reports indicate that the manganese in HVUS's raw water was as high as .112 mg/L during 2021-2022, but the manganese in its treated water was consistently lower than .01 mg/L during that period.

21. Customers' complaints about the problems caused by iron and manganese continued into 2021. OCA St. 1 at 3; OCA Exh. TLF-1; Stipulation Attachment 3; January 2018 Order pp. 11-12; 2019 Rate Cases Order pp. 26-27. HVUS's customer complaint logs indicate that, after the water treatment plant became operational on June 17, 2021, HVUS received no customer complaints alleging dirty water during the remainder of 2021. HVUS received seven complaints of dirty water in January 2022, and received no additional complaints of dirty water during the remainder of 2022.

C. Other Requirements of the May 2018 Order

22. The May 2018 Order required HVUS to file status reports with the Commission every sixty days, indicating its progress in completing all of the rehabilitative measures directed by that Order. Copies were to be served on the parties and the Bureau of Technical Utility Services. HVUS has consistently filed the required status reports with the Commission every sixty days for the past five years, and has served the Parties with copies. HVUS has served a copy on the ALJ since March 2020. HVUS Post-Hearing Exhibit 4.

23. Among other things, the status reports indicate that:

a. HVUS revised its customer bills, after receiving input from OCA and the Commission's Bureau of Consumer Services.

b. HVUS has consistently paid its electric and telephone bills timely.

c. HVUS has generally complied with the requirement that it meet with customers every six months, either by meeting with customers virtually or in person, or by meeting with the Board of Directors (or the Water Committee of the Board of Directors) of the Hidden Valley Foundation, Inc.

IV. HVUS's Efforts to Comply with the Requirements of the 2019 Rate Cases

24. On July 9, 2019, HVUS filed a Motion to Extend the Time Period for Completing an Independent Financial Audit (the "Motion"). This Motion sought an additional sixty days to complete the financial audit of the years 2015-2018, which was ordered in the 2019 Rate Cases.

25. The OCA and the Hidden Valley Foundation, Inc. filed answers opposing the Motion.

26. By Opinion and Order entered on August 29, 2019, the Commission denied HVUS's Motion to Extend the Time Period for Completing an Independent Financial Audit.

27. HVUS has not yet filed the independent financial audit for 2015-2018.

APPENDIX C

Joint Proposed Conclusions of Law

Joint Proposed Conclusions of Law

(a) The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. § 701; 66 703(g); *Hidden Valley Utility Services, L.P. v. Pa. Pub. Util. Comm'n*, 187 C.D. 2019 (May 15, 2019).

(b) The Commission has the authority to require a public utility to take steps necessary to provide adequate water and wastewater service. 66 Pa. C.S. §§ 501, 1501.

(c) The Commission may amend any order made by it, following notice and opportunity to be heard. 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572(d).

(d) The Parties to this proceeding had notice of, and an opportunity to be heard on, the Petition of Hidden Valley Utility Services, L.P. for an Amendment of the Opinion and Order Entered May 3, 2018.

(e) A petition to amend a final Commission Order may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *Application of Susquehanna Valley Limousine, Inc.*, Docket Nos. A-2013-2395502 and A-00110765 (Order entered November 13, 2014) p. 4.

(f) When considering a Petition to Amend a Commission Order, the Commission considers the standards established in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982). While a petitioner may raise any matter designed to convince the Commission to amend or rescind a prior order, the Commission primarily considers new and novel arguments, issues or matters that appear to have been overlooked or not addressed previously, and evidence that did not exist or was not previously available to the parties despite the exercise of due diligence.

(g) As the party seeking affirmative relief from the Commission on its Petition to Amend, HVUS bears the burden of proof. 66 Pa. C.S. § 332(a).

(h) HVUS met its burden of raising new and novel issues, issues or matters that appear to have been overlooked or not previously addressed, and introducing evidence that did not exist at the time the record in this matter closed on June 8, 2016.

(i) Commission policy promotes settlements. *See* 52 Pa. Code § 5.231.

(j) A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401.

(k) In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

(l) The Settlement and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification.

(m) The Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

(n) The Settlement is supported by substantial evidence in the record.

APPENDIX D

Joint Proposed Ordering Paragraphs

Joint Proposed Ordering Paragraphs

(a) That the Honorable Administrative Law Judge Katrina L. Dunderdale recommend approval of, and the Commission approve, this Settlement as submitted, including all terms and conditions thereof, without modification.

(b) That HVUS be directed to cause to be conducted an independent audit of its financial statements, prepared in accordance with Generally Accepted Accounting Principles, from 2020 through 2022 by an outside, independent Certified Public Accounting firm which has not previously provided any services to HVUS. Within 120 days of the entry of an Order approving this settlement, or the deadline established in the rate proceedings at Docket Nos. R-2018-3001306 and R-2018-3001307, whichever is earlier, HVUS will file this completed independent audit with the Secretary's Bureau and the Bureau of Technical Utility Services in the docket of this proceeding and Docket Nos. R-2018-3001306 and R-2018-3001307, and serve a copy on the parties to the complaint proceedings. HVUS will also notify all parties to the rate case proceeding that the audit has been filed, will provide information as to where it can be found on the PUC's website, and will offer to provide a copy to any rate case party who requests it.

(c) That no proceedings be instituted against HVUS, pursuant to 66 Pa. C.S. § 529, due to any alleged non-compliance with the time deadlines established in the May 2018 Order.

(d) That no further action be taken regarding Paragraphs 6 and 8 of the May 2018 Order.

(e) That HVUS be directed to file the following, as compliance filings:

1. HVUS will file a copy of its customer complaint logs for 2023, 2024, 2025 and 2026, respectively, within three months of the end of those calendar years, in this docket. Those customer complaint logs will state whether the Company's investigation of each "dirty

water,” stained fixtures, or stained laundry complaint indicated that the “dirty water” or staining was caused by flushing, a main break, or some other cause.

2. HVUS will notify the Commission and the parties to this proceeding within 30 days after the iron/manganese has been removed from the standpipe storage tank. HVUS will have the iron/manganese sediment removed from the standpipe storage tank by October 1, 2024.

3. HVUS will file the following with the Commission, copied to the parties to this proceeding, when each task is completed:

a. Notice that a Pennsylvania-licensed consulting engineer has advised HVUS regarding flushing procedures to utilize going forward, including the volume of water from the automatic blow-off valves, especially flushing procedures to address any future iron/manganese complaints.

b. A letter from a Pennsylvania-licensed consulting engineer stating the engineer believes that the iron/manganese sediment has been adequately removed from the distribution system to prevent normal operations from causing iron/manganese complaints.

4. For each calendar year, HVUS will file a report regarding HVUS’s operation and maintenance activities for all of its water system facilities (e.g, proactive leak detection or replacement of mains or meters, exercising valves, changes in operation of the water treatment plant). The report will be filed in this docket, within three months of the end of the applicable calendar year. This requirement will end on the later of the filing of a report for 2026 or when all of the foregoing Continuing Obligations have been met.

(f) That, if requested by the Hidden Valley Foundation’s Board of Directors, HVUS will meet with representatives of the Hidden Valley Foundation’s Board of Directors, virtually or in-person, at least once per calendar year, from 2023 through December 31, 2033. Nothing in this

settlement shall prevent HVUS from meeting with the Hidden Valley Foundation's Board of Directors, by mutual agreement, after December 31, 2033.

(g) That the Complaints at C-2014-2447138, C-2014-2447169 and C-2019-3008093 will be closed, with no further action taken against HVUS regarding the deadlines in the May 3, 2018 Order.

APPENDIX E

**Statement in Support of
Hidden Valley Utility Services, L.P.**

Katrina L. Dunderdale (the “ALJ”) recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification.

I. INTRODUCTION

The instant Settlement would resolve years of litigation. As described in Section II of the Settlement, these proceedings began when the OCA filed complaints against HVUS in 2014 (the “OCA Complaints”), alleging deficiencies in HVUS’s water and wastewater service. The Commission issued an Opinion and Order sustaining the OCA Complaints on January 18, 2018 (the “January 2018 Order”). After HVUS filed a Petition for Clarification, Reconsideration and Amendment, the Commission issued another Opinion and Order on May 3, 2018 (the “May 2018 Order”). Both the January 2018 Order and the May 2018 Order required HVUS to complete extensive rehabilitative measures to its water and wastewater systems by specific deadlines.

On October 18, 2018, HVUS asked the Commission to amend the May 2018 Order to modify one of the deadlines for improving the water system (the requirement that HVUS eliminate the rust or brown-colored water provided to customers within one year of receiving an engineer’s report on the water system). The Commission denied that request in an Opinion and Order dated January 17, 2019 (the “2019 Order”). HVUS appealed the 2019 Order to the Commonwealth Court of Pennsylvania (the “Commonwealth Court”), which quashed the appeal and remanded the case to the Commission for a hearing on several discrete issues.

The instant Settlement would do more than just resolve the discrete issues remanded by the Commonwealth Court; the instant Settlement would resolve all issues in the OCA Complaints, allowing them to be closed after almost a decade of litigation. In addition, the instant Settlement would resolve another formal complaint, which was filed by Sharon Howard-Frieri (a water

customer of HVUS) (the “Howard-Frieri Complaint”). The Howard-Frieri Complaint was consolidated with the OCA Complaints because it also alleged deficiencies in HVUS’s water service. Finally, as discussed further herein, the instant Settlement would avoid several potentially lengthy and expensive Commission proceedings in the future involving the Joint Petitioners.

II. LEGAL STANDARD

Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. York Water Co.*, Docket No. R-400049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm’n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST

The settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners. HVUS respectfully submits that the Settlement is in the public interest, and should be approved, because it: (1) avoids potentially substantial additional litigation costs for the Joint Petitioners (as well as the associated administrative expenses for the Commission); (2) admits additional evidence into the record addressing critical issues in these proceedings; (3) provides for additional documentation of the repairs and improvements that HVUS made to its wastewater system; (4) provides for the completion of a meaningful financial audit of HVUS; (5) contains improved reporting requirements for HVUS; and (6) ensures that customer representatives

continue to have the opportunity to meet with HVUS management for the next ten years. This Statement in Support discusses each of these points in turn.

A. Avoidance of Additional Litigation and Administrative Expense

The issues presently before the ALJ are the discrete issues remanded to the Commission by the Commonwealth Court, including whether to grant HVUS’s request to modify the deadline for eliminating the rust or brown-colored water provided to customers. In the absence of the Settlement:

(1) The ALJ would need to issue a decision on these discrete issues, and the Commission would need to issue a decision on these discrete issues (which could be appealed).

(2) HVUS would need to submit a detailed final status report with the Commission, along with a verification from its engineer, detailing what has and has not been completed. May 2018 Order ¶ 19.

(3) The Bureau of Technical Utility Services (“TUS”) would need to investigate HVUS’s water and wastewater systems. May 2018 Order ¶ 20.

(4) If TUS would find that the recommended rehabilitative measures were not completed, or were not completed within the timeframes specified in the May 2018 Order, or that HVUS’s water quality or water or wastewater service is not adequate and reasonable, a proceeding would be held before an administrative law judge regarding the appropriateness of penalties or refunds. This proceeding would require a trial, Commission review, and possibly appellate review. May 2018 Order ¶ 20.

(5) In addition, if the penalty proceeding discussed in paragraph (4) above would be initiated, a separate proceeding would be initiated pursuant to 66 Pa. C.S. § 529 (“Power of commission to order acquisition of small water and sewer utilities”). May 2018 Order ¶ 21. This proceeding would require a trial before an administrative law judge, Commission review, and possibly appellate review. May 2018 Order ¶¶ 20 and 21.

By resolving all of the issues in the OCA’s Complaint and the Howard-Frieri Complaint, the Settlement allows the Petitioners and the Commission to avoid all of the above proceedings – and their associated litigation and administrative expenses. Paragraph 49 of the Settlement asks that the Commission take no further action regarding Paragraphs 6 and 8 of the May 2018 Order (*i.e.*, the discrete issues presently before the ALJ, including the sufficiency of the one-year deadline to eliminate the rust or brown-colored water provided to customers). Paragraph 51 of the

Settlement asks the Commission to close the OCA's Complaint and the Howard-Frieri Complaint without further action regarding the deadlines in the May 2018 Order. By approving the Settlement, the ALJ and the Commission would allow the OCA's Complaint and the Howard-Frieri Complaint to be closed with minimal additional expense to the Joint Petitioners and the Commission.

Significantly, in November 2019, the OCA wrote to the Commission, alleging that HVUS had failed to comply with certain timeframes in the May 2018 Order. As a result, the ALJ's Prehearing Conference Order dated March 11, 2020, directed I&E to contact the Secretary's Bureau to commence a proceeding against HVUS pursuant to 66 Pa. C.S. § 529. In Paragraph 46 of the Settlement, the Joint Petitioners recommend that no Section 529 proceeding be initiated against HVUS regarding compliance with the time deadlines directed by the May 3, 2018 Order.

Finally, the Settlement avoids additional litigation and administrative expense by mitigating the risk of litigation relating to HVUS's 2018 water and wastewater rate cases, Docket Nos. R-2018-3001306 and R-2018-3001307 (the "Rate Cases"). In the Rate Cases, HVUS was ordered to complete an independent financial audit of its records for the years 2015-2018. That audit has not yet been completed. As discussed further below, the Settlement provides for the updating of this audit requirement. In addition, HVUS will petition the Commission to modify the Order in the Rate Cases to conform to the agreed-to audit requirement in the Settlement ¶¶ 40-42. These provisions reduce the likelihood of litigation over HVUS's compliance with the Commission's Order in the Rate Cases.

In short, the Settlement is in the public interest because it avoids the potential for considerable additional litigation and administrative expenses by completely resolving several existing cases and avoiding the risk of several additional proceedings. This result will benefit the

Joint Petitioners, the Commission, and all ratepayers who pay assessments to finance the Commission and the OCA. It will also benefit the ratepayers of HVUS, who ultimately pay the brunt of HVUS's legal fees. Customers already worry about the impending increase in HVUS's rates when the rehabilitative measures required by the May 2018 Order are included in rates. If the Settlement is approved, that rate increase would not be exacerbated by the legal fees from several additional potentially lengthy and expensive proceedings.

B. Admission of Additional Evidence

The crux of the OCA's water complaint was the rust or brown-colored water that HVUS provided to customers in 2014. When the trial in these remand proceedings was conducted on May 20, 2020, HVUS had not yet completed the construction of its water treatment plant. Additional evidence was subsequently admitted into the record demonstrating that the water treatment plant had become operational and that the water system's distribution lines were flushed shortly after the plant became operational. Settlement ¶ 35.

HVUS respectfully submits that the Commission can take official notice of its own files, including the engineer's reports, status reports, and other documents filed by HVUS during the period 2018-2023. Those reports, together with the evidence introduced into the record since this case was remanded by the Commonwealth Court, indicate that HVUS has taken numerous, significant steps to comply with the January 2018 Order and the May 2018 Order. Nevertheless, there was a gap in the record: there was no evidence demonstrating that the water treatment plant has effectively remedied the rust or brown-colored water that HVUS previously provided to customers.

The Settlement is in the public interest because it includes a provision that fills this evidentiary gap. In Paragraph 57 of the Settlement, the Joint Petitioners agreed to submit a Joint

Stipulation for the Admission of Additional Evidence (“Stipulation”). This Stipulation was submitted to the ALJ on May 19, 2023. The additional evidence submitted into the record includes laboratory reports demonstrating that HVUS’s water treatment plant removes the vast majority of the iron and manganese from HVUS’s raw water (the iron and manganese cause the rust or brown-colored water provided to customers).

The Pennsylvania Department of Environmental Protection (“DEP”) has established the maximum contaminant level (“MCL”) for iron as 0.3 mg/l, HVUS St. 1, Exhibit JFL-2, p. 16, whereas the additional evidence demonstrates that the iron in HVUS’s finished water during 2021-2022 was never higher than 0.11 mg/l. Similarly, DEP has established the MCL for manganese as 0.05 mg/l, whereas the additional evidence demonstrates that the manganese in HVUS’s finished water during 2021-2022 was consistently less than .01 mg/l. Stipulation, Attachment 1.

The additional evidence also includes HVUS’s complaint logs for 2021-2022. These complaint logs show that HVUS received no customer complaints about its water after the water treatment plant was completed through the end of 2022, except for seven complaints received during January 2022. Stipulation, Attachment 3.

By agreeing to stipulate to the admission of additional evidence, the Joint Petitioners have given the Commission evidence critical for finding that HVUS has implemented the rehabilitative measures necessary to address the rust or brown-colored water provided to customers. This provision in the Settlement is an important reason for finding that the Settlement is in the public interest. HVUS submits that this evidence helps demonstrate that HVUS is now providing reasonable and adequate water service to customers, allowing these proceedings to be closed without further litigation. In contrast, additional litigation over whether HVUS implemented those

remedial measures *within the time frames specified in the May 2018 Order* would not be in the public interest.

C. Further Documentation Regarding the Improvements to HVUS's Wastewater System

The Settlement is in the public interest because it includes two provisions that give the Commission additional evidence regarding the improvements to HVUS's wastewater system – and the impact of those improvements on HVUS's wastewater service to customers.

On April 18, 2018, HVUS submitted a report from a licensed engineer regarding HVUS's wastewater system. HVUS Statement 1, Exhibit JFL-2. This report listed recommended actions to address deficiencies in the wastewater system and the estimated cost to address each item. On January 31, 2019, HVUS filed a detailed status report from its engineer describing the status of all recommended actions listed in the April 2018 report. On February 14, 2020, HVUS filed an engineer's report stating that all recommended actions outlined in the April 2018 report had either been completed or had been determined to be unnecessary.

The Settlement includes as **Appendix A** a verification from the same engineer who filed the above-described 2018, 2019 and 2020 reports regarding the wastewater system. This verification states that the condition of the wastewater system has been maintained since the completion of the February 2020 report. Equipment is being replaced as deficiencies arise and required maintenance activities are being conducted. With the understanding that system maintenance and repairs are an ongoing activity, the February 2020 report continues to accurately reflect the condition of the wastewater system.

Additionally, as discussed above, the Settlement provides for the submission of a Stipulation for the Submission of Additional Evidence. The additional documents to be admitted into the record include HVUS's customer complaint logs for 2021-2022, which include only two

complaints about the wastewater system. After investigation, both of those complaints involved problems with the customer's service line, rather than with HVUS's service or facilities.

The Settlement is in the public interest because it gives the Commission additional information about the improvements that have been made to HVUS's wastewater system since the May 2018 Order. HVUS submits that this evidence helps demonstrate that HVUS has implemented the necessary remedial measures and is now providing reasonable and adequate wastewater service to customers, allowing these proceedings to be closed without further litigation. In contrast, additional litigation over whether HVUS implemented those remedial measures *within the time frames specified in the May 2018 Order* would not be in the public interest.

D. Post-Closing Obligations of HVUS

Although the Settlement asks the Commission to close these proceedings, the Settlement requires HVUS to make certain post-closing compliance filings. These compliance filings are in the public interest for several reasons.

The Settlement requires HVUS to notify the Commission within 30 days after removing the iron and manganese from HVUS's standpipe storage tank. Settlement ¶ 53. During the litigation, OCA witness Fought testified that "customers will continue to experience problems [from iron and manganese] until existing iron and manganese sediment is removed from the 250,000-[gallon] standpipe storage tank and distribution system water mains and service lines." OCA Statement 1 p. 5. The service lines were flushed shortly after the water treatment plant became operational. HVUS Post-Hearing Exhibit 8. The Settlement would result in HVUS flushing the standpipe storage tank by October 1, 2024, resulting in improved water quality to customers. This result is clearly in the public interest. By requiring HVUS to notify the Commission when this task is completed, the Settlement allows the Commission to ensure that this important task is completed in a timely manner.

Similarly, other provisions in the Settlement promote the public interest by permitting the Commission to monitor HVUS's future performance, ensuring that the Company continues to provide reasonable and adequate water and wastewater service after these proceedings are closed. Paragraph 52 of the Settlement requires HVUS to file a copy of its customer complaint logs for calendar years 2023-2026 with the Commission.¹ Paragraph 55 of the Settlement requires HVUS to file a report regarding its operation and maintenance activities for the water system during each calendar year through at least 2026. Finally, Paragraph 54a. of the Settlement requires HVUS to notify the Commission that the Company has obtained advice from its consulting engineer regarding flushing procedures to utilize in the future. This advice should enable the Company to reduce the number of complaints it receives about dirty water in the future. This advice may also help HVUS reduce non-revenue water in the future. Reducing non-revenue water would be in the public interest because it would help improve the efficiency of HVUS's operations.

E. Performance of a Meaningful Financial Audit

Paragraph 11 of the Commission's order in the Rate Cases states:

That, within one hundred twenty (120) days after the date of entry of this Opinion and Order in this proceeding, Hidden Valley Utility Services, L.P. shall cause to be conducted an independent financial audit of its records from 2015 through 2018 by an outside independent financial accounting firm or office which has not previously provided auditing services to Hidden Valley Utility Services, L.P. Upon completion of the independent financial audit, Hidden Valley Utility Services, L.P. shall file a notice at this docket number and serve a copy of said notice on all Parties to this proceeding stating that the independent financial audit has been completed. Hidden Valley Utility Services, L.P. shall file the independent financial audit with the Commission's Secretary's Bureau and the Commission's Bureau of Technical Utility Services.

HVUS has not yet completed this financial audit.

¹ The Settlement is in the public interest in that these compliance filings are for a limited duration, rather than continuing in perpetuity. This avoids the expense of preparing, filing, and reviewing documents when there is no longer a need to file them.

The Joint Petitioners agree that the information provided by an audit of HVUS's records for 2015-2018 would be less useful than an audit of HVUS's records for the period 2020 through 2022. Settlement ¶ 43. Consequently, the Settlement provides that HVUS will conduct an independent audit of its financial statements for the years 2020 through 2022. The completed audit will be served on each of the Joint Petitioners. In addition, it will be filed with TUS and with the Secretary's Bureau (at this docket number and at the docket number for the Rate Cases). Settlement ¶ 41.

The Settlement's requirement for a financial audit of the period 2020-2022 is in the public interest because the audit will provide customers and the Commission with a better understanding of the financial position of the Company. This result is particularly important since four years have passed since the Commission entered its order in the Rate Cases.

HVUS will also petition the Commission to amend the Order in the Rate Cases to conform to the Settlement in these proceedings. The other Joint Petitioners will not oppose HVUS's petition to amend. This provision in the Settlement is in the public interest because it would eliminate the need for HVUS spend money on a financial audit of its records for the period 2015-2018, which would be of limited value. Instead, HVUS would only be required to complete one financial audit, which would provide more useful information because it is more recent information.

F. Improved Reporting Requirements

Paragraph 17 of the May 2018 Order requires HVUS to submit a status report to the Commission every sixty days. In many cases, this requirement resulted in a waste of money because no significant developments occurred between status reports. The Settlement is in the public interest because it would replace the requirement for HVUS to file a status report every

sixty days with a requirement that HVUS notify the Commission of certain significant developments.

The Settlement requires HVUS to file: complaint logs for 2023-2026, an annual report of the operation and maintenance activities for the water system during 2023-2026, and a notice when the iron and manganese sediment have been removed from the standpipe storage tank. Settlement ¶¶ 52-55. This information is useful for the Commission and the Joint Petitioners. By requiring HVUS to make these compliance filings, the Settlement is in the public interest because it allows the Commission to monitor the performance of HVUS in the future – even after these proceedings have been closed.

G. Ensuring that Customer Representatives Can Meet with HVUS Management

Paragraph 5b of the May 2018 Order requires HVUS management to meet with customers at least once every six months. Many customers attended the first several meetings after the Commission issued the May 2018 Order. Over time, attendance at these meetings decreased – particularly after the water treatment plant was completed.

During the Covid-19 Pandemic, HVUS met with customers virtually, sometimes in conjunction with virtual meetings of the Hidden Valley Foundation, Inc. (the “Foundation”), which is comprised of the homeowners in the resort community served by HVUS. Nevertheless, during the last several years, HVUS management met regularly with the Board of Directors (the “Board”) of the Foundation at meetings open to all members of the Foundation. HVUS management also met regularly with the Water Subcommittee of the Board. HVUS gratefully acknowledges the Board’s efforts to inform customers of significant developments – especially developments regarding the construction of the water treatment plant – through the Foundation’s Facebook page and other Foundation communications.

The Board is interested in continuing the dialogue with HVUS. Since the Foundation is not a public utility, however, the Commission lacks authority to direct the Board and HVUS to meet on a regular basis. In the Settlement, HVUS agrees to meet with representatives of the Board (virtually or in person) at least once per calendar year from 2023 through 2033, if the Board desires such a meeting. Nothing in the Settlement prevents HVUS from meeting with the Board, by mutual agreement, after 2033. Settlement ¶ 56.

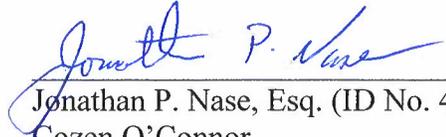
This provision of the Settlement is in the public interest because it ensures that communication between HVUS and the Foundation's Board will continue for at least the next decade – if the Board so desires. These meetings are a helpful tool for HVUS to communicate with its customers because most Foundation members are water and wastewater customers of HVUS. These meetings are particularly helpful because they allow for an exchange of information between customers and the utility, in contrast to bill inserts and other means of communication that only allow the utility to provide information to its customers. These meetings inform HVUS of additional improvements that customers would like HVUS to make in the future. This result is in the public interest.

IV. CONCLUSION

WHEREFORE, Hidden Valley Utility Services, L.P., respectfully requests that the Honorable Administrative Law Judge Katrina L. Dunderdale recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification, and enter an order consistent with the Settlement.

[Signature appears on next page.]

Respectfully submitted,

A handwritten signature in blue ink that reads "Jonathan P. Nase". The signature is written in a cursive style with a large initial "J".

Jonathan P. Nase, Esq. (ID No. 44003)

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Date: May 25, 2023

Counsel for *Hidden Valley Utility Services, L.P.*

APPENDIX F

Statement in Support of

Office of Consumer Advocate

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Tanya J. McCloskey, Acting Consumer Advocate : C-2014-2447138
: :
v. : :
: :
Hidden Valley Utility Services, L.P. - Water :

Tanya J. McCloskey, Acting Consumer Advocate : C-2014-2447169
: :
v. : :
: :
Hidden Valley Utility Services, L.P. - Wastewater :

OCA STATEMENT IN SUPPORT OF JOINT PETITION FOR
APPROVAL OF UNANIMOUS SETTLEMENT OF ALL ISSUES

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of Unanimous Settlement of All Issues (Settlement) respectfully requests that the terms and conditions of the Settlement be approved by the Pennsylvania Public Utility Commission (PUC or Commission). This request is based upon the OCA’s conclusion that the proposed Settlement is in the interest of the customers of Hidden Valley Utility Services, Inc. (HVUS or Company) and in the interest of the public as a whole.

I. INTRODUCTION AND BACKGROUND

These complaint proceedings were initiated by Formal Complaints filed by the OCA in October 2014, in which the OCA averred that HVUS was failing to provide “adequate, efficient, safe, and reasonable service and facilities” pursuant to 66 Pa. C.S. § 1501. The most recent Commission Order in this proceeding was entered on January 17, 2019. The OCA incorporates by

reference the extensive discussion of the background of this proceeding as set forth therein and supplemented by Paragraphs 1-39 of the Settlement. The most recent phase of this proceeding centered on compliance deadlines from 2019. Throughout this nearly 10-year proceeding, however, the OCA's focus has been to get necessary improvements made as soon as possible so that customers receive adequate water and wastewater service.

A significant milestone was achieved in June 2021. The water treatment plant became operational on June 17, 2021 and HVUS flushed the water lines in its system between June 28, 2021 and July 2, 2021. HVUS Post-Hearing Exhs. 4-8. Based on water tests and customer complaints since that time, the treatment appears to be addressing the iron and manganese in the water and problems caused by it. Settlement, App. B; Joint Stipulation for the Admission of Additional Evidence (Stipulation), Att. 3 (HVUS's customer complaint log for 2021 and 2022).

The parties, including the pro se complainants, participated in extensive discussions to reach an agreement on terms to resolve the remaining issues regarding the time deadlines directed by the May 3, 2018 Order in this proceeding. In conjunction with the Stipulation filed on May 19, 2023, this Settlement proposes to complete the factual record before the Commission and conclude all matters in this docket, and also proposes a path for concluding an outstanding compliance matter from the Company's 2019 base rate case.

II. TERMS OF SETTLEMENT

A. Independent Audit

Paragraphs 41 through 43 of the Settlement require HVUS to comply with an outstanding requirement to have conducted and completed an independent audit of the Company's financial statements by July 29, 2019. *Pa. PUC v. Hidden Valley Util. Servs., L.P.*, R-2018-3001306, R-2018-3001307, Order at 88-89 (Mar. 29, 2019) (*March 2019 Rate Order*); *Pa. PUC v. Hidden*

Valley Util. Servs., L.P., R-2018-3001306, R-2018-3001307, Order at 9-10 (Aug. 29, 2019) (*August 2019 Rate Order*) (denying Company’s motion to extend deadline). The reasoning supporting the directive to require an audit in 2019 remains applicable today. As stated by the Presiding Officers in the 2019 rate proceedings:

Hidden Valley’s agreement to re-file corrected annual reports using the services of a rate consultant will provide the customers and the Commission with some reassurance and a means by which Hidden Valley’s improvements can be verified. However, the Foundation’s argument is persuasive – given the length of time Hidden Valley failed to provide correct reports, the fact that Hidden Valley already submitted corrected reports once, and because there is little confidence in the financial numbers Hidden Valley provided in this proceeding, Hidden Valley should be required to obtain a financial audit for 2015 through 2018 from an outside independent financial accounting firm or office which has not previously provided auditing services to Hidden Valley.

Pa. PUC v. Hidden Valley Util. Servs., L.P., R-2018-3001306, R-2018-3001307, R.D. at 51-52 (Jan. 25, 2019). The Commission reached the same conclusion:

As the ALJs and all Parties to this proceeding agreed, given the Company’s ongoing issues with filing inaccurate financial information, it would be in the public interest for HVUS to file corrected annual reports and to obtain an independent financial audit.

March 2019 Rate Order at 88. The record in this proceeding shows continuing errors in HVUS’s reporting of loan amounts and accrued interest, which makes the financial information in the Company’s Annual Reports unreliable. OCA Late-Filed Exh. 1 (HVUS Response to OCA on the Record Data Request 1.b). Further, HVUS has stated its intent to file a base rate case to recover its “considerable investment” in the water treatment plant “as soon as possible.” HVUS St. 3R at 2-3. Having audited financial statements will help to ensure that accurate information is provided to the Commission for the purpose of reviewing the Company’s claims in the anticipated, upcoming rate case filing.

As the *2019 Rate Orders* directed the audit should be conducted on the Company’s 2015-2018 financial statements, the parties to the Settlement in this proceeding propose that the audit

will be conducted on the 2020-2022 financial statements based on their agreement that, given the passage of time, the information provided by an audit of the Company's most recent records will be more useful. Settlement ¶¶ 41, 43. The parties also agreed to slight changes to the original ordering paragraph from the *March 2019 Rate Order* to specify that (1) the audit will be "prepared in accordance with Generally Accepted Accounting Principles" and (2) the firm is a "Certified Public Accounting firm." The parties also agreed that notice would be provided to all parties to the complaint proceedings and the rate proceedings and by what method. Settlement ¶ 41-43. These changes provide certainty and clarity about the audit to be conducted, for the benefit of the Company as well as the Commission and parties who will be reviewing HVUS's financial statements in the next rate case, and to help ensure that when the audit is conducted – more than four years after the original deadline – it meets expectations.

B. Section 529 proceeding

Settlement Paragraphs 44 through 46 recognize that prior orders direct that if HVUS fails to comply with any of the deadlines imposed by the Commission in this proceeding, an investigation under Section 529 of the Public Utility Code, 66 Pa. C.S. § 529, should be initiated. The OCA discussed in its briefs filed in 2019 that the purpose of the deadlines was to get relief to customers as soon as possible – by requiring aggressive action by HVUS to solve the iron and manganese problem and setting a date certain when hearing procedures, including a Section 529 investigation, would commence. OCA M.B. at 25-26. Now that the Company has constructed a water treatment plant and made the additional commitments to help ensure adequate water quality discussed below, the purpose for initiating a Section 529 proceeding regarding compliance with the time deadlines directed by the May 2018 Order no longer exists. That is reflected in the OCA's agreement to Settlement Paragraphs 46 and 51.

C. Water System

Settlement Paragraphs 47 through 49 reflect the parties' agreement that no further action should be taken regarding the Commission's requirements that HVUS obtain *inter alia* a report evaluating the need, size and cost of a treatment plant and a schedule for putting it in service (Paragraph 6) and the 2019 deadline for correcting identified deficiencies and providing water that is not rust or brown-colored (Paragraph 8). *See also* Settlement ¶ 51. Five years later and after HVUS has put a treatment plant into service, both provisions are moot. As discussed above and in the OCA's briefs, the purpose of the deadlines was to get relief to customers as soon as possible. That purpose is no longer served by taking further action to enforce the provisions of the May 2018 Order.

D. Wastewater System

In the May 2018 Order, the Commission directed HVUS to "obtain a report from a licensed engineer concerning the adequacy of its wastewater system, including recommendations to ensure that reasonable and adequate wastewater services are being provided to customers." May 2018 Order at 27. On February 14, 2020, HVUS filed an engineer's report indicating that all rehabilitative measures required for the wastewater system had been completed. OCA Exh. TLF-4. As the Settlement proposes to close the docket for these proceedings, which also addressed wastewater service, the Settlement also serves to update the record regarding the condition of HVUS's wastewater system. Settlement ¶¶ 50, 51. Appendix A to the Settlement is a verification by an engineer that the condition of the wastewater system has been maintained since 2020 such

that the report filed in 2020 continues to accurately reflect the condition of the wastewater system.¹ In conjunction with the other terms and conditions of settlement, this information supports closing the wastewater complaint proceeding and taking no further action regarding the deadlines in the May 2018 Order.

E. Continuing Obligations of HVUS

Paragraph 52 of the Settlement requires the Company to annually file copies of its customer complaint logs with the Commission through 2026, five years after the water treatment plant to remove iron and manganese became operational. HVUS Post-Hearing Exhs. 4-8. This information will help the Commission and interested parties to monitor the adequacy of the water service provided to customers. The record shows that complaints about problems caused by iron and manganese dropped markedly after June 2021 in response to treatment. Stipulation, Att. 3. The OCA's engineering witness has explained, however, that iron and manganese sediment remains in the distribution system and storage tank. OCA St. 1 at 5; OCA St. 1S at 8. Thus, customers will continue to experience problems until existing iron and manganese sediment is removed.² *Id.*; Tr. 574, 580 (Fought). The requirement that the complaint logs specify what the Company's investigation of the complaint indicated caused the complaint will assist the Commission and parties to identify whether and what changes are needed so that customers receive adequate and reasonable water service.

¹ The report states that the wastewater system has not received any Notices of Violation after the engineer's last report on the wastewater system in February 11, 2020. Further, according to records submitted by the system's certified operator to the Department of Environmental Protection, the wastewater system has not had any effluent limit violations during 2023. Settlement, App. A.

² The impact of precipitated iron and manganese in the storage tank and distribution system on water quality was also addressed in the record underlying the *January 2018 Order*, supporting the Commission's requirement in Ordering Paragraph 6 that the engineer's report and recommendations address the distribution system as well as the water source. 2015 OCA St. 2-Water at 10; 2015 HVUS St. 1R at 22; *see also* 2015 OCA Exh. TLF-11 (DEP Letter to HVUS dated Nov. 14, 2005).

Paragraphs 53 through 56 of the Settlement are also directed to ensuring adequate and reasonable service. Specifically, Settlement Paragraph 53 requires HVUS to have the precipitated iron and manganese removed from the bottom of the standpipe storage tank.³ OCA and HVUS witnesses agreed that removing the sediment from the storage tank will help to clear iron and manganese from the distribution system. HVUS St. 2R at 5; Tr. 521 (Kettler); Tr. 573-74 (Fought); OCA St. 1S at 8. Confidential Attachment 5 to the Stipulation contains a June 2021 report updating the record regarding the storage tank.

Settlement Paragraph 54 addresses the other component for clearing iron and manganese from the distribution system – flushing the water mains by opening fire hydrants and blow-off valves. This provision adopts the OCA’s recommendation that the Company’s consulting engineer provide a flushing plan and that the Company follow that plan. OCA witness Fought stated:

In a previous case, the Company’s engineer prepared a flushing plan to remove the sediment from the distribution system. Since then, the Company has made changes to the distribution system and the flushing plan should be reviewed and updated as necessary. It may be necessary to flush the system more than once to remove the sediment. If the sediment cannot be adequately removed in all the lines by flushing, it may be necessary to insert a “pig” in some of the lines to remove the sediment.

OCA St. 1S at 2-3.

Further, HVUS will make a filing when its engineer believes that the iron/manganese sediment has been adequately removed from the distribution system to prevent normal operations from causing iron/manganese complaints. This will help the Commission and parties, in conjunction with the customer complaint logs, to monitor the adequacy of water service being provided to customers from the improved water facilities. To the same end, Settlement Paragraph 55 requires the Company to file a report regarding its operation and maintenance activities for all

³ The sediment is removed by a diver vacuuming it out. OCA St. 1 at 5; Tr. 521 (Kettler).

of its water system facilities. This annual report requirement will continue until all of the other compliance requirements are met. The OCA notes that these and the other compliance reports required by the Settlement will replace the 60-day status reports that HVUS has been filing since 2018 pursuant to the January and May 2018 Orders in this proceeding. *See, e.g.*, HVUS Post-Hearing Exh. 4. As discussed above and as reflected in Settlement Paragraph 49, the parties agree that no further action should be taken with regard to the compliance deadlines in the May 2018 Order. Consistent with that, the OCA also submits that replacing the 60-day reports related to that Order with annual and action-specific reporting is appropriate.

The January and May 2018 Orders also required HVUS to meet semi-annually with customers, with that obligation ending “upon the filing of a status report by the Company and its engineer, and a report from the OCA and [Technical Utility Services] evidencing completion of all the requirements and the closing of the proceeding.” May 2018 Order at 14. Settlement Paragraph 56 proposes to continue that mandate through 2033, with the modification that the meetings will be annual (rather than semi-annual) and will be held upon request by the Hidden Valley Foundation’s Board of Directors. After 2023, meetings could continue by mutual agreement. Since 2018, those meetings have served the important purpose of keeping customers apprised of the condition of the water and wastewater systems and, more recently, of the progress in constructing the water treatment plant. The OCA supports their continuation, which allows that if there is no customer interest in the meetings, they are not required.

III. CONCLUSION

The OCA believes that, taken as a whole, the commitments contained in the Joint Petition for Full Settlement and proposed, comprehensive resolution of these proceedings are in the public interest and that, for the foregoing reasons, the OCA respectfully requests that the Commission approve the Settlement without modification.

Respectfully Submitted,



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Dated: May 25, 2023

APPENDIX G

**Statement in Support of
the Bureau of Investigation and Enforcement**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tanya J. McCloskey, Acting Consumer Advocate	:	
	:	
v.	:	Docket No. C-2014-2447138
	:	
Hidden Valley Utility Services, L.P. – Water	:	
	:	
	:	
	:	
Tanya J. McCloskey, Acting Consumer Advocate	:	
	:	
v.	:	Docket No. C-2014-2447169
	:	
	:	
Hidden Valley Utility Services, L.P. - Water	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF
JOINT PETITION FOR SETTLEMENT**

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

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, Pennsylvania 17120

Dated: May 24, 2023

TO ADMINISTRATIVE LAW JUDGE KATRINA L. DUNDERDALE:

I. INTRODUCTION

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Deputy Chief Prosecutor, Allison C. Kaster, hereby respectfully submits that the terms and conditions of the Joint Settlement Petition (“Joint Petition” or “Settlement”) in this proceeding are in the public interest and represent a fair, just, and reasonable balance of the interests of Hidden Valley Utility Services, L.P. (Water and Wastewater) (“HVUS”) and its customers. To that end, HVUS, I&E, the Office of Consumer Advocate (“OCA”), Robert J. Kollar, Kellie A. Kuhleman and Sharon Howard-Frieri (collectively, the “Joint Petitioners”) hereby join in this Joint Petition and I&E respectfully requests that the Honorable Administrative Law Judge Katrina L. Dunderdale (the “ALJ”) recommend approval of this Joint Petition without modification.

II. BACKGROUND

The protracted procedural history of this proceeding spans almost nine years and is set forth in detail in the Joint Petition, which I&E herein adopts and incorporates. In abbreviated fashion, the OCA filed Formal Complaints on October 9, 2014, averring that HVUS was failing to provide its water and wastewater customers “adequate, efficient, safe, and reasonable service and facilities” pursuant to Section 1501 of the Public Utility Code. On September 9, 2016, an Initial Decision sustained the OCA Complaints and ordered HVUS to complete tasks by specific deadlines to improve the quality of water and wastewater service provided to its customers. The Commission issued an Order on January 18, 2018 (“January 2018 Order”), which adopted the Initial Decision as modified in its Order. HVUS filed a Petition for Reconsideration, which was granted by Order entered May 3, 2018 (“May 2018

Order”) and modified the January 2018 Order. Of particular note, the May 2018 Order required HVUS to obtain a report from a licensed engineer concerning the adequacy of its water system, including recommendations to eliminate the rust or brown-colored water provided to residents. HVUS was required to comply with those recommendations within one year from the date of the engineer’s report. With respect to the wastewater system, the May 2018 Order required HVUS to obtain a report from a licensed engineer concerning the adequacy of its wastewater system, including recommendations to ensure that reasonable and adequate wastewater services are being provided to customers. Pursuant to the May 2018 Order, HVUS was required to comply with those wastewater recommendations by January 31, 2019.

HVUS filed a Petition for Amendment of the May 2018 Order asking the Commission to modify the one-year deadline to eliminate the rust or brown-colored water provided to customers because its engineer’s report estimated that it would take at least four years to implement any of the options to eliminate the brown-colored water. The Commission denied this request by order entered January 17, 2019 (“January 2019 Order”).

HVUS filed a Petition for Review with the Commonwealth Court of Pennsylvania, seeking review of the January 2019 Order. The Commission moved to quash the appeal on the grounds that the January 2019 Order was not a final order of the Commission. The Commonwealth Court quashed HVUS’s appeal and remanded to the Commission the sufficiency of the one-year deadline and the engineer’s report regarding the water system. The remand proceedings were assigned to ALJ Dunderdale and a Prehearing Conference was held on February 25, 2020, with evidentiary hearings held on May 20, 2020 and Briefs and Reply Briefs filed by HVUS and OCA.

The ALJ reopened the record in the Sixth Post-Hearing Order on February 17, 2021, with additional evidence admitted into the record in the Seventh, Eighth and Ninth Post-Hearing Orders. A telephonic status conference was held on March 30, 2023, at which time the parties advised the ALJ that settlement discussions were ongoing and requested additional time to continue negotiations. The ALJ was notified that a settlement in principle had been reached on all issues by email dated April 18, 2023. A further telephonic status conference occurred on April 25, 2023 and the Settlement with all appendices and statements in support due on May 24, 2023.

III. SETTLEMENT TERMS

A. General Benefit of Settlement

I&E's charge is to represent the public interest, which involves balancing the interests of HVUS, its ratepayers, and the regulated community as a whole. Despite the challenges and complexity of these complaint proceedings, I&E avers that HVUS's ongoing efforts to comply with the Commission's January and May 2018 Orders to improve its water and wastewater service combined with continued settlement discussions resulting in the commitments made in the Joint Petition have culminated in a Settlement that is in the public interest. I&E notes that the Settlement was achieved by a difficult balance of many competing interests. For the reasons I&E will explain more fully below, I&E respectfully requests that the ALJ recommend, and the Commission approve, the terms and conditions contained in the Settlement without modification.

It is the policy of the Commission to encourage settlements.¹ The Commission issued

¹ 52 Pa. Code § 5.231.

the following policy statement that articulates general settlement guidelines and procedures for major rate cases:

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402—69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases.²

Although this is not a base rate proceeding, the above-referenced policy statement highlights the importance of settlement in Commission proceedings. The OCA's Formal Complaints were filed nearly nine years ago and, since that time, the parties engaged in formal and informal discovery, preparation of testimony, and ongoing settlement discussions. Operationally, HVUS completed significant upgrades to its water and wastewater systems, including constructing a new water treatment plant to remedy the brown-colored water. The signatories to the Settlement represent different interests and all actively participated in and vigorously represented their respective positions during the course of the settlement process. As such, I&E represents that the Settlement satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding.

B. Independent Audit (Joint Petition ¶¶ 41-43)

Pursuant to the Settlement, HVUS is required to conduct an independent audit of its financial statements by an independent Certified Public Accounting firm for the years 2020

² 52 Pa. Code § 69.401.

through 2022. This term relates to the Order in the HVUS 2018 base rate proceedings that required HVUS to conduct an independent financial audit of its records from 2015 through 2018.³ This issue was raised because there were concerns about the accuracy of the Annual Reports that HVUS filed with the Commission; therefore, the goal of the financial audit was to bring transparency and accuracy to the accounting statements. In its Order, the Commission recognized the value of this recommendation and stated that “given the Company’s ongoing issues with filing inaccurate financial information, it would be in the public interest for HVUS to file corrected annual reports and to obtain an independent financial audit.”⁴ HVUS sought to extend the time to comply with the audit, which was ultimately denied. To date, HVUS has not complied with the Commission order requiring the independent financial audit for the years 2015-2018. The Settlement addresses this outstanding issue as HVUS has agreed to perform an independent financial audit for the more recent three-year period of 2020-2022, which is appropriate given that the original 2015-2018 period is now stale. This Settlement term is in the public interest as obligates HVUS to comply with the Commission’s Order but updates the three-year period, which will provide the Commission more accurate information of its current financial picture.

C. Section 529 Proceeding (Joint Petition ¶¶ 44-46)

The May 2018 Orders directed HVUS to undertake substantial measures to remediate its water and wastewater systems and required that these tasks be completed with specific time-frames. The Order further required the OCA to notify the Commission and I&E if

³ *Pa. PUC v. Hidden Valley Utility Services, L.P.- Water & Wastewater*, Docket Nos. R-2018-3001306, R-2018-3001307, pp. 78-89 (Order entered March 29, 2019).

⁴ *Pa. PUC v. Hidden Valley Utility Services, L.P.- Water & Wastewater*, Docket Nos. R-2018-3001306, R-2018-3001307, p. 88 (Order entered March 29, 2019).

HVUS failed to comply with any of the specified deadlines and directed that a separate Section 529 proceeding be initiated if the deadlines were missed. The deadlines and potential implementation of a Section 529 investigation were necessary to ensure that HVUS complied with the Commission's directives in the May 2018 Order to resolve the service issues in a timely manner. Since the issuance of that 2018 order, HVUS has performed significant work on the water and wastewater systems, including the construction of a new water treatment plant and implementing the recommendations made by the engineer to improve the wastewater system. Due to these improvements and the ongoing commitments made in this Settlement, the Parties agree that the Complaint proceedings should be closed and no further action should be taken regarding the deadlines in the May 2018 Order.⁵ Therefore, the parties likewise agree that no Section 529 proceeding should be initiated concerning compliance with the May 2018 Order.

D. Water System (Joint Petition ¶¶ 47-49)

The Commission's January 2018 Order, which was further clarified in its May 2018 Order, mandated that HVUS take concrete steps to improve its water service. Specifically, it directed HVUS to use an independent water engineer to review its distribution system and make a recommendation to eliminate the brown or rust-colored water. The engineer's report was due April 2018 and was required to include an evaluation and remedy to reassess the need, size, and cost of the treatment plant to permanently solve the problems caused by iron and manganese. The Commission's Orders further directed HVUS to comply with all recommendations from the engineer by April 2019 to correct any identified deficiencies

⁵ Joint Petition ¶ 51.

including a remedy to eliminate the rust-colored water provided to customers and to reassess the need, size, and cost of treatment plant to permanently solve the problems caused by iron and manganese.

In compliance with the January 2018 Order, HVUS submitted the engineer's report on April 18, 2018, which provided four possible solutions to resolve the ongoing iron and manganese issues. HVUS elected to install a water treatment plant, including a pre-chlorination chemical feed system; ray water tank; raw water pumps; greensand filtration system; and a backwash holding tank.⁶ As indicated in HVUS Post Hearing Exhibit 7, an operating permit for the water treatment plant was issued by the Pennsylvania Department of Environmental Protection and the new water treatment plant was placed into service July 2021.

It appears that new water treatment plant is addressing the brown or rust-colored water provided to customers as directed in the Commission's January and May 2018 Orders. First, the 2021-2022 quarterly lab tests show that the iron in HVUS's raw water was as high as 1.13 mg/L but the iron in the treated water was no higher than .11 mg/L.⁷ Similarly, the manganese levels were significantly lower in the treated water during this same period, ranging as high as .112 mg/L in HVUS's raw water but the levels were consistently lower than .01 mg/L in its treated water.⁸ Second, a review of the customer complaint long demonstrates that complaints of discolored water have decreased since the new water treatment plant became operational in June 2021. Specifically, HVUS received no

⁶ HVUS Post-Hearing Exhibit 7.

⁷ Joint Stipulation for the Admission of Additional Evidence, Attachments 1-2.

⁸ Joint Stipulation for the Admission of Additional Evidence, Attachments 1-2.

complaints of brown water in June through December of 2021 after the plant began treating water, it received seven complaints of brown-colored water in January 2022 but no additional complaints for the remainder of 2022.⁹ The evidence shows that the new water treatment plant is treating raw water; therefore, the Parties recommend that no further action should be taken regarding Paragraphs 6 and 8 of the May 3, 2018 Order.

E. Wastewater System (Joint Petition ¶ 50)

The Commission's January and May 2018 Orders required HVUS to file a wastewater report by April 18, 2018 and comply with all recommendations in the engineer's report by January 31, 2019. HVUS filed its wastewater report on the designated date and, on January 31, 2019, the engineer filed a status report indicating the tasks that were completed, tasks that were removed and the reason for removing each task, and tasks that remained outstanding. In February 2020, HVUS filed a status report stating that all the remaining items on the engineer's report had been completed.¹⁰ Additionally, Appendix A to Settlement states that the condition of the wastewater system has been maintained since the Engineer's Final Report and Verification of Repairs to the Wastewater System filed in February 2020; therefore, the 2020 Wastewater Report continues to accurately reflect the condition of the wastewater system. Appendix B to the Settlement includes the HVUS 2021 and 2022 customer complaint log that includes only two wastewater complaints from customers, both resulting from broken or blocked service lines. Given that HVUS has complied with the recommendations contained in the engineer's report and that customers have not reported

⁹ Joint Stipulation for the Admission of Additional Evidence, Attachment 3.

¹⁰ HVUS Post-Hearing Exhibit 4.

significant wastewater issues, I&E maintains that HVUS is providing adequate and reasonable wastewater service to its customers.

F. Continuing Obligations (Joint Petition ¶¶ 52-56)

Paragraphs 52 and 53 require ongoing maintenance of the system to ensure the elimination of the brown or rust-colored water. Specifically, these terms require removing the existing iron and manganese sediment from the storage tank and distribution system to address any future iron/manganese complaints. OCA raised this concern because the construction of the new water treatment plant will remove the iron/manganese from the raw water, but will not remedy the existing iron and manganese sediment in storage tanks, water mains and service lines.¹¹ The Settlement addresses these concerns by requiring HVUS to remove the sediment from the storage tank by October 1, 2024 and hiring an engineer to advise HVUS of flushing procedures to utilize going forward. These Settlement terms ensure that the brown or rust-colored water will be remedied because existing iron and manganese sediment will be removed from the storage tank and distribution system.

Paragraph 55 requires HVUS to meet with representatives of the Hidden Valley Foundation's Board of Directors, if requested, at least once per calendar year for the following ten years. HVUS has been conducting semi-annual meetings with customers pursuant to the January and May 2018 Orders. In addition to the customer meetings, the most recent 60-day status report states that HVUS management met with a subcommittee of the Foundation's Board of Directors every other week from October 2020 to June 2021 regarding the status of the water treatment plant.¹² Information regarding the progress of the

¹¹ OCA St. 1, p. 5.

¹² HVUS 60-Day Status Report (May 15, 2023), p. 9.

plant was then relayed to the community through the Foundation's Facebook page. The Foundation's ability to continue these conversations between its Board of Directors and HVUS management over the next decade is important to ensure that the lines of communication between the Board's leadership, HVUS management, and customers remain open in the years to come.

IV. CONCLUSION

The Commission's Bureau of Investigation and Enforcement represents that it supports the Joint Petition for Settlement as being in the public interest and respectfully requests that Administrative Law Judge Katrina Dunderdale recommend, and the Commission approve, the terms and conditions contained in the Settlement without modification.

Respectfully submitted,



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

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, Pennsylvania 17120

Dated: May 24, 2023

APPENDIX H

Statement in Support of

Robert J. Kollar

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

Hidden Valley Utility Services, LP

Docket Nos. C-2014-2447138 and C-2014-2447169

**ROBERT J. KOLLAR STATEMENT IN SUPPORT OF JOINT PETITION FOR
APPROVAL OF UNANIMOUS SETTLEMENT OF ALL ISSUES**

Robert J. Kollar (“Kollar”), one of the signatory parties to the Joint Petition for Approval of Unanimous Settlement of All Issues (“Settlement”) respectfully requests that the terms and conditions of the Settlement be approved by the Pennsylvania Public Utility Commission (PUC or Commission). This request is based upon my opinion that the proposed Settlement is in the best interest of the customers (“Customers”) of Hidden Valley Utility Services, LP (“Hidden Valley” or the “Company”).

Background

In July 2014, Kollar was approved by the Administrative Law Judge in the aforementioned Docket Nos. as a party to this matter. Since that time until the present date, Kollar has actively participated in all facets related to this matter. In preparation for filing this Statement in Support of Joint Petition for Approval of Settlement of All Issues (Statement in Support), Kollar reviewed the proposed Settlement and participated in discussions regarding the wording of the Settlement and made recommendations for changes in the Settlement which were accepted and agreed to by the other parties to this Settlement. Additionally, Kollar has reviewed the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law that have been prepared in this matter.

Terms of Settlement

The primary issue in this matter was Hidden Valley's failure to address the ongoing presence of "brown water" experienced by Hidden Valley Customers for many years, dating back to at least 2004. As a result of this proceeding, in 2019 the Company purchased a water treatment plant to address the brown water issues and in 2020 obtained the necessary permits to begin construction of the plant. The water treatment plant became operational in June 2021. As a result of installing the new water treatment plant, the number of brown water complaints made by Customers has been dramatically reduced to almost zero.

The proposed Terms of Settlement include technical and financial requirements that are designed to ensure that Hidden Valley will continue to properly and effectively maintain its water treatment plant and wastewater treatment systems. Kollar's comments will focus on the financial aspects of the proposed Settlement. For Hidden Valley to properly maintain its water treatment plant and wastewater treatment facilities, it must be in a strong financial position. This means that the Company must be able to not only meet its current financial obligations, but it must also have sufficient capital for investment in future system improvements and replacements as needed. Kollar has consistently raised questions about Hidden Valley's accounting practices, financial reports and financial condition since 2014 and firmly believes that the financial statement audit requirement included in Section III A of the Settlement is essential for a thorough understanding and analysis of Hidden Valley's current financial condition and future financial viability. An audit of Hidden Valley's financial statements for the years 2015 to 2018 was previously ordered by the PUC but was never completed by the Company. Section III A of the Settlement requires the Company to have an independent Certified Public Accounting firm complete an audit of its financial statements for the years 2020 through 2022 within 120 days of the entry of an Order approving this settlement, or the deadline established in the complaint proceedings. It is essential that Hidden Valley comply with this requirement on a timely basis in order for an effective review and analysis of the Company's financial condition to be performed and monitored in the future.

Conclusion

Based on my review of the proposed Settlement and involvement in this matter since 2014, it is my opinion that the terms and conditions of Settlement are in the best interest of the Customers of Hidden Valley.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Robert J. Kollar". The signature is written in a cursive style with a large initial "R".

Robert J. Kollar, CPA

Dated: May 25, 2023