

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

INITIAL DECISION ON REMAND

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This Initial Decision on Remand approves the Joint Petition for Approval of Unanimous Settlement, which seeks to resolve a long-standing conflict between the Office of Consumer Advocate, Hidden Valley Utility Services, L.P., the Commission's Bureau of Investigation and Enforcement and various customers of Hidden Valley Utility Services, L. P. This proceeding on remand resulted after Respondent filed a Petition for Review with the Commonwealth Court of Pennsylvania over the Commission's Opinion and Order dated May 3, 2018.

HISTORY OF THE PROCEEDING

The litigation history of this proceeding is long and voluminous, and a digest of that history since 2019, as it relates to these latest proceedings, is included below.¹ The proceeding concerns a remand from Commonwealth Court on May 15, 2019, which quashed the Petition of Hidden Valley Utility Services, L.P. to Amend the Commission's Opinion and Order dated May 3, 2018 (Commission Order, 5/3/18).² In the unreported Memorandum Opinion, Commonwealth Court remanded the proceeding back to the Commission for the purpose of determining if the Commission's one-year deadline (to remediate the water problems) was an appropriate time frame, and for the Commission to schedule evidentiary proceedings, as appropriate.

On May 15, 2019, the Commonwealth Court of Pennsylvania (Commonwealth Court or appellate court) issued its Memorandum Opinion (Commonwealth Opinion, 5/15/19) in which the appellate court quashed the Petition for Review filed by Hidden Valley Utility Services, L.P. (HVUS or Hidden Valley) in the two proceedings captioned above. Hidden Valley had filed the Petition for Review to appeal the Commission's Opinion and Order, dated January 17, 2019 (Commission Order, 1/17/19). In its Commonwealth Opinion, 5/15/19, the appellate court noted the Commission Order, 1/17/19 was interlocutory in nature. In quashing the Petition for Review, the Commonwealth Court directed the Commission to schedule an evidentiary hearing as appropriate concerning the propriety of Hidden Valley's engineer's report, with his estimated schedule included, dated April 16, 2019.³

¹ For more complete recitations of the procedural history starting in 2014, see the decisions/orders in *McCloskey v. Hidden Valley Utility Services, L.P.* in Docket Nos. C-2014-2447138 and C-2014-2447169, specifically the Initial Decision served September 9, 2016, and the Commission's Opinions and Orders dated January 18, 2018 and May 3, 2018. Also see the Commission's Opinion and Order dated July 29, 2019 in *Pa. Pub. Util. Comm'n v. Hidden Valley Utility Services, L.P.* at Docket No. R-2018-3001306.

² The parties also refer to this Commission Order, 5/3/18 as May 2018 Order.

³ The date of the engineer's report was April 16, 2018. The Commonwealth Opinion, 5/15/19 mistakenly refers to the date of the engineer's report as April 18, 2019. The date of April 18, 2019 was the end date for the compliance period anticipated in the Commission's Corrected Order dated May 3, 2018.

The Commonwealth Court noted the Commission previously envisioned conducting a hearing at which time the Commission would review the engineer's report, with his proposed timeline, and Hidden Valley could raise the issue of whether the compliance deadlines set forth in prior Commission orders (including Commission Orders dated January 17, 2019 and May 3, 2018) should be extended. The appellate court noted the Commission indicated it would conduct a hearing forthwith "regarding the sufficiency of both the engineer's report and the previously ordered one-year compliance deadline."

On November 20, 2019, the Office of Consumer Advocate (OCA) sent a letter to the Commission's Secretary's Bureau informing the Commission that Hidden Valley failed to comply with deadlines specified in the Commission's May 3, 2018 Order (Commission Order, 5/3/18).⁴ OCA requested hearings be scheduled as outlined in the Commission's previous orders and pursuant to the Commonwealth Opinion, 5/15/19. OCA also requested a separate proceeding be initiated pursuant to 66 Pa.C.S. § 529 as required by Commission Order, 5/3/18.

On February 7, 2020, pursuant to the Commonwealth Opinion, 5/15/19, and following the Commission's directives in its Opinion and Order dated January 17, 2019 (Commission Order, 1/17/19), the Office of Administrative Law Judge (OALJ) issued a Call-In Telephone Pre-Hearing Conference Notice and scheduled a telephonic prehearing conference in this case for February 25, 2020.

On February 25, 2020, the presiding officer conducted the prehearing conference with the following parties present: OCA, Hidden Valley, the Bureau of Investigations and Enforcement (BIE) and one individual homeowner, Robert Kollar (Mr. Kollar). At the prehearing conference, the parties considered issues raised by the complaints and established a litigation schedule. The presiding officer advised the parties the proceeding involved a very defined and finite question which concerned only a limited amount of evidence. Accordingly, the presiding officer indicated only limited discovery time should be necessary due to the limited

⁴ On May 3, 2018, the Commission issued a Corrected Order with 28 Ordering Paragraphs in which the Commission, *inter alia*, specified that Hidden Valley had ninety days in which to obtain an engineer's report with recommendations on how to rectify the water problems, and had one year in which to effectuate the recommendations.

scope of inquiry and because the evidence was known and available for over a year, namely the engineer's report dated April 18, 2018. The presiding officer noted the Commonwealth Court envisioned a quick resolution to the underlying issue and, due to the passage of time since the Commonwealth Court quashed the appeal, the presiding officer ruled the focus of the instant proceeding was to supplement relevant evidence to the hearing record, obtain the positions of the parties and then to move quickly to obtain a decision on the limited issues.

One request discussed between the parties and the presiding officer at the prehearing conference concerned a request from OCA in its letter dated November 20, 2019, in which OCA requested, *inter alia*, the Commission initiate a Section 529 proceeding (pursuant to 66 Pa.C.S. § 529) against Hidden Valley as a separate proceeding. BIE contended it could file a complaint to initiate the proceeding but that there was another process in place in which the Secretary's Bureau could docket a separate proceeding without a complaint from BIE, due to Ordering Paragraph No. 26 in the Commission's May 3, 2018 Order.⁵ After discussion, BIE agreed to contact the Secretary's Bureau to request the Secretary's Bureau initiate a separate proceeding pursuant to 66 Pa.C.S. § 529.⁶

On March 11, 2020, the presiding officer issued the Prehearing Order which memorialized the matters discussed, decided and agreed to by the parties during the prehearing conference, in addition to establishing a litigation schedule and ruling on requests from the parties concerning a potential Section 529 proceeding. Also, on March 11, 2020, the OALJ issued a Call-In Telephone Hearing Notice, which scheduled an evidentiary hearing to be conducted on May 19, 2020 and May 20, 2020.

Also, on March 11, 2020, Hidden Valley filed two sets of Objections to Certain Interrogatories Propounded by OCA (for Set IX and Set X) (hereinafter referred to as Hidden Valley Objections). Hidden Valley explained OCA had propounded interrogatories on Hidden

⁵ Paragraph No. 26 provided that if Hidden Valley failed to comply with any time deadlines outlined in the May 3, 2018 Order, then OCA was to notify the Secretary's Bureau and BIE within 30 days of the missed deadlines. OCA's letter dated November 20, 2019 provided that notice.

⁶ No request was made in this proceeding to the Secretary's Bureau, and no separate complaint was filed to initiate a Section 529 proceeding against Hidden Valley.

Valley on March 6, 2020 and Hidden Valley had objected orally on March 9, 2020 to five of the interrogatories in Set IX and to all interrogatories in Set X. Hidden Valley filed its Objections because the parties were unable to resolve the dispute.

Hidden Valley objected to the interrogatories on the grounds the interrogatories sought information which extended well beyond the limited scope of the proceeding, the information requested was unreasonably burdensome and the information sought was not relevant to the narrow issues in the proceeding. More specifically, Hidden Valley objected to the information which OCA sought in Set X, in its entirety, because the interrogatories sought information regarding Hidden Valley's wastewater system. The information which OCA sought from Hidden Valley in Set IX included the following:

1. The percentage of unaccounted-for water from 2016 through 2019.
2. Actions taken from January 1, 2016 to present to reduce unaccounted-for water levels.
3. List of all customer complaints received from January 1, 2014 to present.
4. Inspection information about the inside of a 250,000-gallon storage tank.
5. Various data sets for calendar years 2016 through 2019 concerning water volume pumped, water depth readings, contractor repair invoices, rental equipment invoices, distribution system flushing dates, dates when the tank overflowed, and employee time sheets when leaks were repaired.

On March 16, 2020, OCA filed a Motion to Dismiss Objections and to Compel Hidden Valley Utility Services LP to Answer Interrogatories (OCA Set IX, Questions 3 through 7) (hereinafter referred to as OCA Motion to Dismiss Objections). OCA acknowledged Hidden Valley's objections but asserted it needed the information regarding unaccounted for water to determine if the proposed treatment plant Hidden Valley purchased had sufficient capacity to provide maximum day-demand in addition to distribution system leakage and flushing. OCA argued Hidden Valley is wrong to contend the only relevant time period is from 2018 to the present. OCA pointed out that time period is the length of time Hidden Valley had challenged the one-year deadline, but that limited time period does not go to answering the question whether

the engineer's report is proper or sufficient, or if the schedule for implementation is appropriate or sufficient, given the circumstances. OCA opined information about customer complaints may be relevant to whether the proposed timing for construction completion of the new treatment plant and the consideration of the previously ordered one-year compliance deadline was sufficient.

On March 19, 2020, Hidden Valley filed an Answer to OCA's Motion to Dismiss Objections and to Compel Hidden Valley to Answer Interrogatories (OCA Set IX, Questions 3 through 7) (hereinafter referred to as Hidden Valley Answer to Compel Answers). Hidden Valley repeated its objections which it had enumerated in its Objections filed on March 11, 2020.

Accordingly, on March 23, 2020, the presiding officer ruled via email that Hidden Valley's Objections were sustained and OCA's Motion to Compel was denied. The presiding officer noted OCA sought information based on provisions in Paragraph #20 in the Commission Order, 5/3/18 and OCA's Interrogatories asked for information beyond the narrowly defined scope of the Commonwealth Opinion, 5/15/19, which quashed Hidden Valley's appeal based on Ordering Paragraph #26 of the Commission Order, 5/3/18. The presiding officer found the questions to which Hidden Valley objected were an attempt by OCA to expand the issues to include issues which more appropriately concern a Section 529 proceeding and, for those reasons, the Objections of Hidden Valley were sustained and the Motion to Compel of OCA was denied.

Later, on March 23, 2020, Hidden Valley filed a Motion for Protective Order. Hidden Valley requested a Protective Order pursuant to 52 Pa. Code § 5.365(a) in order to protect the information provided by the parties in response to discovery requests or the normal exchange of information pending litigation. There was no opposition to the Motion. On April 16, 2020, the presiding officer granted the Motion for Protective Order.

On April 4, 2020, Hidden Valley submitted written direct testimony from two engineers (identified as HVUS Statements 1 and 2) and James Kettler, President of HVUS (HVUS Statement 3).

On April 14, 2020, Hidden Valley filed the Motion for Stay of Hidden Valley Utility Services, L.P. and Request for Expedited Treatment (Motion for Stay). Hidden Valley requested the instant proceeding be stayed pending a final disposition in the matter of *Jonathan Nase v. Pennsylvania Public Utility Commission* before the Pennsylvania Office of Open Records at Docket No. AP 2019-2652 (the OOR Proceeding). Hidden Valley asked for expeditious handling of its Motion for Stay because it had an outstanding Right to Know Request concerning the Commission. Hidden Valley contended the OOR's Appeals Officer directed the Commission on February 20, 2020, to file a Privilege/Exemption Log by March 6, 2020 which filing deadline was later extended to March 20, 2020. Hidden Valley noted the Commission timely filed the Privilege/Exemption Log with the OOR but a stay herein was necessary because the OOR Proceeding was stayed indefinitely, as a consequence of the Governor's COVID-19 emergency declaration on March 6, 2020. Hidden Valley argued the documents in dispute included communications concerning Hidden Valley between and among Commissioners and those Commissioners' Assistants, and this proceeding should be stayed until after OOR makes its decision about the requested information.⁷

On April 24, 2020, OCA submitted written direct testimony from a licensed engineer and a regulatory analyst (identified as OCA Statements 1 and 2). On May 8, 2020, Hidden Valley submitted written rebuttal testimony from two witnesses (identified as HVUS Statements 2R and 3R).

On May 8, 2020, OCA filed its Answer to the Motion for Stay.⁸ OCA opposed the stay alleging it would harm substantially Hidden Valley's customers and adversely affect the public interest. OCA argued Hidden Valley had failed to show that it met the criteria required to obtain a stay, namely, Hidden Valley did not have a strong likelihood of ultimate success on the merits, Hidden Valley would not suffer irreparable harm unless the stay was granted, the stay

⁷ On April 26, 2022, the Office of Open Records issued its Final Determination which granted in part and denied in part the request for documents by Hidden Valley.

⁸ In electronic discussions with the parties, the presiding officer granted OCA until May 8, 2020, in which to file a response to the Motion for Stay filed by Hidden Valley due to difficulties caused by teleworking during the COVID-19 emergency.

would not substantially harm other parties, and the stay would not adversely affect the public interest.

On May 13, 2020, the OALJ issued the Corrected Hearing Notice which changed the telephonic evidentiary hearing scheduled for May 19, 2020, into an evidentiary prehearing conference for the purpose of discussing evidentiary issues.

On May 15, 2020, the presiding officer issued the Second Prehearing Order, in which she denied the Motion for Stay of Hidden Valley. The presiding officer noted Hidden Valley failed to show it had a strong likelihood of success on the merits: it would suffer irreparable harm if the stay was not granted; the stay would not substantially harm other parties; and the stay would not affect adversely the public interest. The presiding officer further noted that, while it is possible Hidden Valley might succeed on the merits, Hidden Valley failed to show how irreparable harm would result if the stay was not granted. The request for a stay failed because granting the request for an indefinite stay would harm adversely the other parties, especially the homeowners who have a right under 66 Pa.C.S. § 1501 to expect reasonable and adequate customer service in the form of water quality from Hidden Valley. Lastly, the presiding officer noted the public interest would be adversely affected if the quality issues with Hidden Valley's water and wastewater systems remain unresolved indefinitely.

On May 19, 2020, the presiding officer convened an evidentiary prehearing conference to discuss the evidence and matters concerning status reports. Also, on May 19, 2020, OCA filed written surrebuttal testimony from its two witnesses (identified as OCA Statements 1S and 2S).

On May 20, 2020, the presiding officer convened the Telephonic Evidentiary Hearing as scheduled, with the following parties present and/or represented: OCA, Hidden Valley, BIE and individual complainants Robert Kollar and Sharon Howard-Frieri. Direct testimony and cross-examination testimony was received into the hearing record from Hidden Valley's witnesses (Bradley R. Stinebiser and James M. Kettler) and from OCA's witnesses (Terry L. Fought and Noah D. Eastman). OCA and Hidden Valley sponsored exhibits, which

were admitted into the hearing record at the evidentiary hearing. A complete list of exhibits is attached as Appendix A.

On June 11, 2020, the presiding officer issued two orders. In the First Post-Hearing Order, the presiding officer admitted OCA Late-Filed Exhibit 1 and Hidden Valley Post Hearing Exhibits 1 and 2. In the Second Post-Hearing Order, the presiding officer revised the litigation schedule at the request of OCA and Hidden Valley due to a delay in the filing of a complete transcript with all exhibits attached. The presiding officer ordered all Main Briefs to be filed by June 26, 2020, and all Reply Briefs to be filed by July 10, 2020.

Also, on June 11, 2020, Hidden Valley filed the Motion to Correct the Transcript of the May 20, 2020 Hearing (Motion), pursuant to 52 Pa. Code § 5.253, and requested the transcript be modified to include the statement, exhibits and verification of its witness, John F. Larimer, and that the transcript be modified to correct “typographical errors.” On June 15, 2020, Hidden Valley filed the Amended Motion to Correct the Transcript of the May 20, 2020 Hearing (Amended Motion). HVUS sought permission to file a proposed correction to the transcript of the May 20, 2020 hearing to reflect accurately the evidence presented. Hidden Valley did not provide a justification for its requests and did not specify how the proposed corrections were material to the proceeding herein. No other party had an objection to granting Hidden Valley’s requests.

On June 17, 2020, the presiding officer issued the Order Correcting Transcript which specified six places where the official transcript was corrected.

On June 18, 2020, the presiding officer issued the Third Post-Hearing Order which granted the request of Hidden Valley to extend the due date deadlines for the filing of Main Briefs and Reply Briefs to June 30, 2020, and July 14, 2020, respectively.

On June 23, 2020, Hidden Valley filed a letter with the Secretary's Bureau requesting an extension of time, pursuant to 52 Pa. Code § 1.15(a)(1),⁹ to hold a semi-annual meeting with customers, as required by Ordering Paragraph 5(b) in the Commission's January 18, 2018 Order.¹⁰ Hidden Valley averred the other parties did not oppose the request. On June 24, 2020, the presiding officer issued the Fourth Post-Hearing Order which denied the request from Hidden Valley for an extension of time to hold a semi-annual meeting with customers.

Main briefs and reply briefs were received from OCA and Hidden Valley on June 30, 2020, and July 14, 2020, respectively.

On August 11, 2020, Hidden Valley filed a Motion for the Admission of HVUS Post Exhibit 3, with a Notice to Plead and a separate signed verification attached. Hidden Valley requested the presiding officer admit HVUS Post Exhibit 3 into evidence. HVUS Post Exhibit 3 was identified as an affidavit of James M. Kettler which purported to add 10 additional facts to the hearing record. The averments in the affidavit primarily concerned the status of construction by Hidden Valley on a new water treatment plant on leased land. No party objected to the request.

On September 11, 2020, the presiding officer issued the Fifth Post-Hearing Order which admitted Hidden Valley's Post Hearing Exhibit 3 into the hearing record. By the same order, the presiding officer closed the hearing record. The hearing record consisted of a transcript containing 609 pages plus 22 exhibits, including three post-hearing exhibits, sponsored by OCA and 32 exhibits, including three post-hearing exhibits, sponsored by Hidden Valley.

On February 17, 2021, the presiding officer issued the Sixth Post-Hearing Order which reopened the hearing record, pursuant to 52 Pa. Code § 5.571(d), because there was a

⁹ Section 1.15(a)(1) of Title 52 of the Pennsylvania Code provides that a presiding officer may extend a due date provided there is good cause shown for the necessity of extending the due date.

¹⁰ Ordering Paragraph 5(b) orders Hidden Valley to, "schedule and conduct semi-annual customer meetings, to be held at least every six months, with the first meeting to be held on or before June 30, 2018. The customer meetings shall continue until the completion of the requirements under Ordering Paragraph No. 27."

reason to believe conditions of fact or of law concerning Hidden Valley's compliance with the Commission's previous orders had so changed as to require the reopening of the proceeding. Hidden Valley was ordered to provide an updated Detailed Status Report by March 1, 2021, which would include pertinent facts concerning the status of the new water treatment plant.

On February 25, 2021, the OALJ issued the Further Telephonic Hearing Notice which scheduled a telephonic hearing for March 23, 2021.

On March 15, 2021, the parties filed a Joint Stipulation for Admission of Evidence (First Joint Stipulation). The parties requested the presiding officer issue an order admitting the Detailed Status Report into the hearing record, along with the attachments included therein. On March 16, 2021, the presiding officer issued the Seventh Post Hearing Order which admitted the Detailed Status Report into the hearing record, ordered Hidden Valley to respond to OCA's latest discovery request by March 30, 2021, and ordered OCA to notify the presiding officer by April 15, 2021, whether an additional day of hearing was required or if the parties agreed to admit any additional material into the hearing record.

On April 29, 2021, OCA filed a Joint Stipulation for Admission of Evidence (Second Joint Stipulation) on behalf of the attorney-represented parties and requested admission of OCA Post-Hearing Exhibit 1 into the evidentiary record. OCA noted the individual parties did not sign the Joint Stipulation, but OCA was authorized to indicate the individual parties agreed with the admission of the Joint Stipulation into the hearing record.

On May 12, 2021, OCA filed an Amended OCA Post-Hearing Exhibit 1 which reflected additional information that was not available to OCA on April 29, 2021. OCA requested the presiding officer admit the amended exhibit into the hearing record, in place of the exhibit submitted with the Joint Stipulation on April 29, 2021. On May 19, 2021, the presiding officer issued the Eighth Post Hearing Order which admitted the OCA Post-Hearing Exhibit 1 into the evidentiary record.

On June 25, 2021, Hidden Valley filed a Joint Stipulation for Admission of Evidence (Third Joint Stipulation) and requested admission of additional evidence, on behalf of Hidden Valley, BIE and OCA. Specifically, the Stipulating Parties asked to admit five (5) items:

1. The sixty-day status report filed by Hidden Valley on May 14, 2021;
2. The Supplemental Detailed Status Report of Hidden Valley, filed on June 10, 2021;
3. The Certificate of Occupancy issued for the water treatment plant constructed by Hidden Valley;
4. The Pennsylvania Department of Environmental Protections (DEP) permit for the operation of the water treatment plant constructed by Hidden Valley; and
5. The Notice of Water Line Flushing to be posted at the local post office and distributed to residents of the community by the Hidden Valley Foundation, Inc.

On July 13, 2021, Hidden Valley filed a Sixty-Day Status Report. According to that Detailed Sixty-Day Status Report, Hidden Valley asserted the Department of Environmental Protection issued an Operation Permit authorizing the operation of the water treatment plant on June 17, 2021, and the water treatment plant was operational.

On September 13, 2021, the presiding officer issued the Ninth Post-Hearing Order which admitted additional evidence into the hearing record. Specifically, the presiding officer granted the Third Joint Stipulation, dated June 25, 2021, and ordered the admission of Hidden Valley Post Hearing Exhibits 4, 5, 6, 7 and 8.

On the same date, Hidden Valley filed a Sixty-Day Status Report which included a geochemical report from water samples taken on August 23, 2021. Hidden Valley indicated: (1) it installed a water treatment plant (WTP) to address the iron and manganese issues (which installation included the installation of instrumentation to control the on/off cycle of Well 2); (2) Jefferson Township, Somerset County, issued a Certificate of Use and Occupancy for the WTP on May 28, 2021; (3) the Pennsylvania DEP issued an Operation Permit authorizing the operation of the WTP on June 17, 2021; and the WTP was operational. Hidden Valley attached a laboratory report dated August 31, 2021, which HVUS filed with DEP, showing the raw water

had an iron content of 1.13 mg/L, and the finished water had an iron content of only 0.11 mg/L. The status report also indicated the raw water had a manganese content of 0.088 mg/L, and its finished water had a manganese content of less than 0.010 mg/L.

Since September 13, 2021, Hidden Valley has filed additional status reports every two months.

On May 19, 2023, the parties filed the Joint Stipulation for the Admission of Additional Evidence. The parties requested the presiding officer admit into the hearing record five additional pieces of evidence.

On May 25, 2023, the Joint Petition for Approval of Unanimous Settlement (Settlement) was filed with the Commission by the signatories: Office of Consumer Advocate; Hidden Valley Utility Services; Bureau of Investigation and Enforcement and three customers of Hidden Valley Utility Services. The Settlement included Statements in Support from the signatories. Via email, the parties requested the presiding officer allow time for the homeowner's association, Hidden Valley Foundation, Inc. (HV Foundation), to respond and comment on the Settlement, which request was granted.

Written comments from the HV Foundation were filed on June 13, 2023. In its comments, the HV Foundation asserted support for the proposed Settlement and made three observations. The HV Foundation noted HVUS relied heavily upon the services of a long-serving operating engineer, Glenn Fodor, but asserted HVUS did not provide a succession plan after Mr. Fodor leaves the position. The HV Foundation requested a "compliance calendar" that would summarize all key dates noted in the Settlement and would indicate which entity would monitor compliance. Lastly, the HV Foundation contended the Settlement did not address the ramifications to HVUS if HVUS fails to meet the terms and conditions outlined in the Settlement.

On June 16, 2023, HVUS filed its response to the comments. HVUS noted one observation concerned a personnel matter which was not raised previously. HVUS further noted the last two observations generally related to concerns over future compliance by HVUS of the

Settlement, to which HVUS averred any party to these proceedings could bring an action for enforcement before the Commission.

On July 19, 2023, the presiding officer issued the 12th Post Hearing Order, which admitted into evidence Joint Exhibits 1 through 5, pursuant to the Joint Stipulation for the Admission of Additional Evidence filed on May 19, 2023.

On July 19, 2023, the presiding officer issued an Interim Order Closing the Hearing Record.

DESCRIPTION AND TERMS OF SETTLEMENT

In accordance with Rule 5.231 of the Commission's Rules of Practice and Procedure, 52 Pa. Code § 5.231, the parties explored the possibility of settlement. As a result of settlement discussions, the parties achieved a settlement in principle under which all issues are resolved. The Settlement is fully executed by OCA, HVUS, BIE and the three individual parties. The Settlement consists of 79 pages with eight appendices. Appendices B through D consist of Joint Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs. Appendices E through H are Statements in Support of Settlement of HVUS, OCA, BIE, and Mr. Kollar, respectively, which set forth the bases upon which that Party believes the Settlement is in the public interest.¹¹

The parties express their agreement with respect to eight matters: (1) an Independent Audit; (2) a Section 529 Proceeding; (3) the Water System; (4) the Wastewater System; (5) the Closing of the Case; (6) the Continuing Obligations of the Company; (7) the Stipulation to Admit Additional Evidence into the Record; and (8) Standard Settlement Conditions. The signatories specifically agreed to the following settlement terms, as provided in the Settlement at Section III, Paragraph Nos. 41 through 62, and as provided *verbatim* below.

¹¹

Ms. Howard-Frieri was a signatory to the Settlement but did not file a Statement in Support.

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. § 529, *et seq.*, and as outlined under Ordering Paragraph No. 26 of the Commission's Opinion and 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.

Settlement, pp. 7-13.

FINDINGS OF FACT

The signatories agreed to several proposed findings of fact with citations to the record of admitted evidence. As set forth in Appendix B to the Settlement and consisting of Sections I through IV, Paragraph Nos. 1 through 27,¹² the signatories asserted these proposed findings provide the information necessary to support the Settlement and the proposed findings should be adopted as set forth *in verbatim* below.

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

¹² The Joint Proposed Findings of Fact contained 28 paragraphs but only 27 enumerated paragraphs. The Settlement, as filed, contained a typo, starting at Paragraph 8. Because this Initial Decision cites to the Settlement *in verbatim*, the typing error is maintained in the cited material.

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 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.

Settlement, App. B.

STATEMENTS IN SUPPORT

As set forth in Appendices E through H of the Settlement, the Parties provided Statements in Support of the Settlement in which the Parties were afforded the opportunity to set forth the bases upon which that Party believes the Settlement is in the public interest and should be approved.

Position of OCA

As the complainant and the party that initiated these proceedings, OCA notes its joint request to have the Settlement approved is based upon OCA's conclusion the Settlement as proposed is in the interest of HVUS' customers and in the interest of the public as a whole. OCA avers its initial complaints alleged HVUS was failing to provide "adequate, efficient, safe, and

reasonable service and facilities” pursuant to 66 Pa.C.S. § 1501 with the most recent Commission Order having been entered on January 17, 2019. OCA points out the most recent phase of these proceedings have centered on compliance deadlines from 2019. However, OCA argues its focus throughout this nearly 10-year proceeding has been to get all necessary improvements made as soon as possible so HVUS’ customers receive adequate water and wastewater service.

In furtherance of that goal, OCA notes a significant milestone was achieved when HVUS’ water treatment plant became operational on June 17, 2021 and HVUS flushed the water lines in its system. HVUS Post-Hearing Exhs. 4-8. OCA asserts the treatment appears to address the iron and manganese in the water and all the problems which resulted from its presence in the water. Settlement, App. B; Joint Stipulation for the Admission of Additional Evidence (Stipulation), Att. 3 (HVUS’s customer complaint log for 2021 and 2022). Further, OCA points out all of the parties, including the pro se complainants, participated in extensive discussions to resolve the remaining issues regarding the time deadlines directed by the May 3, 2018 Order. Finally, OCA points out this Settlement proposes to complete the factual record before the Commission and conclude all matters in these dockets, in addition to proposing a path for concluding a lingering compliance matter from the Company’s 2019 base rate case.

Independent Audit

OCA noted the Settlement requires HVUS to comply with an earlier requirement that required HVUS to conduct and complete an independent audit of the Company’s financial statements by July 29, 2019.¹³ OCA averred the enormous record in these proceedings make it abundantly clear HVUS’s multiple and continuing errors in reporting loan amounts and accrued interest, which made and continues to make 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, OCA notes HVUS stated its intent to file a base rate case to recover its

¹³ *Pa. Pub. Util. Comm’n v. Hidden Valley Util. Servs., L.P.*, Docket No. R-2018-3001306, at 88-89 (Opinion and order entered Mar. 29, 2019) (*March 2019 Rate Order*); *Pa. Pub. Util. Comm’n v. Hidden Valley Util. Servs., L.P.*, Docket No. R-2018-3001306, at 9-10 (Opinion and Order entered Aug. 29, 2019) (*August 2019 Rate Order*) (denying Company’s motion to extend deadline).

“considerable investment” in the water treatment plant “as soon as possible.” HVUS St. 3R at 2-3. OCA contends the Commission and Parties need to have reliable audited financial statements to ensure the Commission receives accurate information when reviewing the Company’s claims in the anticipated, upcoming rate case filing.

OCA points out the Parties agreed the audit should be conducted on the 2020-2022 financial statements, instead of conducting an audit on the 2015-2018 financial statements as required under the March 2019 Rate Order. OCA further points out the Parties contend the information provided by an audit of the Company’s most recent records will be more useful. Settlement ¶¶ 41-43. The parties agreed to propose slight changes to the original ordering paragraph from the *March 2019 Rate Order*, which would specify: (1) the audit will be “prepared in accordance with Generally Accepted Accounting Principles;” and (2) the firm will be a “Certified Public Accounting firm.”

OCA notes the parties agreed notice would be provided to all parties to the complaint proceedings and the rate proceedings. Settlement ¶ 41-43. OCA contends these changes will provide certainty and clarity about the audit which will benefit the Company, the Commission, the parties who will review HVUS’s financial statements in the next rate case, and will work to ensure the audit to be conducted will meet expectations.

Section 529 Proceeding

OCA points out the original purpose for its stated intent to initiate a Section 529 proceeding (regarding compliance with the time deadlines directed by the May 2018 Order) is a purpose which no longer exists. OCA avers the original purpose of the deadlines was to obtain the fastest relief possible to HVUS’ customers, and OCA sought to pursue that purpose by: (1) requiring aggressive action from HVUS to solve the iron and manganese problem; and (2) setting a date certain when hearing procedures, including a Section 529 investigation, would commence. OCA M.B. at 25-26.

Water System

OCA agrees no further action should be taken on the Commission's previous requirements that: (1) HVUS obtain *inter alia* a report evaluating the need, size and cost of a treatment plant; and (2) HVUS establish a schedule for putting a treatment plan in service with a 2019 deadline for correcting identified deficiencies and providing water that is not rust or brown-colored. See Settlement ¶ 51. OCA contends the purpose of the deadlines was to get relief to customers as soon as possible. OCA notes five years have passed and HVUS has put a treatment plant into service. Accordingly, OCA asserts both provisions are moot, and the initial purpose is no longer served by taking further action to enforce the provisions of the May 2018 Order.

Wastewater System

OCA notes that, through the Commission's May 2018 Order, HVUS was ordered 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. OCA acknowledges HVUS filed an engineer's report on February 14, 2020, which indicated all rehabilitative measures required for the wastewater system had been completed. OCA Exh. TLF-4.

Accordingly, OCA asserts the Settlement updates the record herein regarding the condition of HVUS' wastewater system (Settlement ¶¶ 50, 51) and provides a verification that the condition of the wastewater system has been maintained since 2020. OCA notes the report filed in 2020 continues to reflect accurately the condition of the wastewater system.¹⁴ In conjunction with the other terms and conditions of settlement, OCA avers this information supports the Commission to close the wastewater complaint proceeding and take no further action regarding the deadlines in its May 2018 Order.

¹⁴ The report states that the wastewater system has not received any Notices of Violation after the engineer's last report on the wastewater system on 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.

Continuing Obligations of Hidden Valley

OCA points out the signatories agreed HVUS must annually file copies of its customer complaint logs with the Commission through 2026, which will be five years after the water treatment plant to remove iron and manganese became operational. HVUS Post-Hearing Exhs. 4-8. OCA notes this information will help the Commission and interested parties to monitor the adequacy of the water service provided to customers. OCA agrees the number of complaints – concerning problems caused by iron and manganese in the water – dropped markedly after June 2021 in response to improved treatment. Stipulation, Att. 3.

However, OCA asserts that iron and manganese sediment remains within the distribution system and storage tank (OCA St. 1 at 5; OCA St. 1S at 8) which means Hidden Valley's customers will continue to experience problems until the existing iron and manganese sediment is removed.¹⁵ Tr. 574, 580. OCA contends the Commission and the parties will be better able to identify whether iron and manganese continue to cause problems, and better identify what changes are needed to ensure Hidden Valley's customers receive reasonable and adequate water service, because the Settlement requires HVUS to file customer complaint logs through 2025.

OCA notes the Settlement will lead to improved customer service because the Settlement requires HVUS to have the precipitated iron and manganese removed from the bottom of the standpipe storage tank.¹⁶ 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. OCA notes the Settlement addresses the other component for clearing iron and

¹⁵ 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).

¹⁶ The sediment is removed by a diver vacuuming it out. OCA St. 1 at 5; Tr. 521 (Kettler).

manganese from the distribution system – flushing the water mains by opening fire hydrants and blow-off valves. OCA asserts this provision adopts its recommendation that the Company’s consulting engineer provide a flushing plan and that the Company follow that plan. OCA points to the testimony of its witness who 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, OCA notes HVUS will make a filing when its engineer believes the iron/manganese sediment has been adequately removed from the distribution system to prevent normal operations from causing iron/manganese complaints. OCA contends this filing requirement 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, OCA asserts the Settlement requires the Company to file a report regarding its operation and maintenance activities for all of its water system facilities. OCA asserts this annual report requirement will continue until all other compliance requirements are met. OCA notes these and the other compliance reports required by the Settlement will replace the 60-day status reports 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.

OCA points out the signatories agree no further Commission action should be taken with regard to the compliance deadlines in the May 2018 Order, and OCA submits that replacing the 60-day reports related to that Order with annual and action-specific reporting is appropriate.

Finally, OCA notes the January and May 2018 Orders 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. OCA points out the Settlement 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. OCA points out the meetings could continue by mutual agreement after 2033. OCA asserts those meetings have served the important purpose, since 2018, 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. OCA supports the continuation of these meetings if there is customer interest.

Accordingly, OCA contends these settlement provisions, when taken as a whole and seen within the context of these protracted proceedings, comprise a comprehensive resolution of all issues, are just and reasonable, benefit the public interest and should be approved without modification.

Position of HVUS

HVUS asserts the Settlement is in the public interest, and should be approved, because it avoids litigation costs, admits relevant and critical evidence, documents the repairs and improvements HVUS made to the wastewater system, requires completion of a meaningful financial audit, contains improved reporting requirements for HVUS and ensures HVUS management will meet with customers over the next ten years.

Hidden Valley contends the signatories, through the Settlement, ask the Commission to close these proceedings without further action regarding the deadlines in the May 2018 Order and, by so doing, would generate minimal additional expense to the parties and the Commission. HVUS notes approval of the Settlement will result in OCA not initiating a Section 529 proceeding, 66 Pa.C.S. § 529, regarding compliance with the time deadlines outlined in the May 2018 Order, as envisioned and discussed previously in these proceedings. Finally, HVUS

asserts this Settlement avoids additional litigation and administrative expense by mitigating the risk of litigation relating to HVUS' 2018 water and wastewater rate cases at, Docket Numbers R-2018-3001306 and R-2018-3001307 (the Rate Cases), wherein HVUS was ordered to complete an independent financial audit of its records for the years 2015-2018.

Hidden Valley acknowledges it has not completed that audit. HVUS points out, however, that the Settlement updates this audit requirement and requires HVUS to petition the Commission to modify the Order in the Rate Cases to conform to the agreed-to audit requirement in this Settlement. Settlement ¶¶ 40-42. OCA contends these provisions reduce the likelihood of litigation over HVUS' compliance with the Commission's Order in the Rate Cases.

Overall, HVUS asserts the Settlement is in the public interest because it resolves several existing cases, avoids the risk of additional proceedings and avoids the potential for considerable additional litigation and administrative expenses. HVUS contends these results will benefit the signatories, the Commission, and all ratepayers who pay assessments to finance the Commission and OCA, while directly benefitting Hidden Valley's ratepayers, who ultimately bear the brunt of HVUS' legal fees. Customers already worry about the impending increase in HVUS' rates when the rehabilitative measures required by the May 2018 Order are included in rates but, if the Settlement is approved, that rate increase would not be exacerbated by the legal fees from several additional potentially lengthy and expensive proceedings.

Hidden Valley acknowledges that 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.

Position of BIE

Independent Audit

BIE notes the Settlement provision – requiring HVUS to conduct an independent audit of its financial statements by an independent Certified Public Accounting firm for the years 2020 through 2022 – relates to the Order in the Company’s 2018 base rate proceedings, wherein HVUS was required to conduct an independent financial audit of its records from 2015 through 2018.¹⁷ This requirement grew out of concerns about the accuracy of the Company’s Annual Reports filed with the Commission. BIE points out the goal of the audit requirement was to bring transparency and accuracy to the Company’s accounting statements.

BIE asserts the Commission recognized the value of this recommendation when the Commission stated in its Order 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.”¹⁸ BIE notes HVUS sought to extend the time to comply with the audit, which time extension the Commission ultimately denied. BIE also notes that, to date, HVUS has not complied with the Commission order requiring the independent financial audit for the years 2015-2018.

BIE contends that this outstanding issue is addressed by the signatories because in the Settlement HVUS agrees to perform an independent financial audit for the most recent three-year period of 2020-2022. BIE asserts this later time frame (2020-2022 versus 2015-2018) is more appropriate given that the original 2015-2018 period is now stale. BIE contends this Settlement term is in the public interest as it obligates HVUS to comply with the Commission’s Order but updates the three-year period, which will provide the Commission with more accurate information of the Company’s current financial picture.

¹⁷ *Pa. Pub. Util. Comm’n v. Hidden Valley Util. Servs., L.P.- Water & Wastewater*, Docket No. R-2018-3001306, pp. 78-89 (Opinion and Order entered March 29, 2019).

¹⁸ *Pa. Pub. Util. Comm’n v. Hidden Valley Util. Servs., L.P.- Water & Wastewater*, Docket No. R-2018-3001306, p. 88 (Opinion and Order entered March 29, 2019).

Section 529 Proceeding

BIE notes the Commission's May 2018 Order directed HVUS to undertake substantial measures to remediate its water and wastewater systems and required that these tasks be completed within specific, delineated time frames. The Order further required OCA to notify the Commission and BIE if HVUS failed to comply with any specified deadline and directed that a separate Section 529 proceeding be initiated if the deadlines were missed. BIE contends the specified deadlines and the assertion a Section 529 investigation potentially might be implemented 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.

BIE points out that, since the issuance of that 2018 order, HVUS performed significant work on the water and wastewater systems, including constructing a new water treatment plant and implementing engineering recommendations to improve the wastewater system. BIE asserts these improvements and the Company's ongoing commitments, the signatories agree these proceedings should be closed, and no further action is necessary regarding the deadlines in the May 2018 Order.¹⁹ As a result, BIE contends no Section 529 proceeding should be initiated concerning Hidden Valley's compliance with the May 2018 Order.

Water System

BIE notes the Commission clarified its January 2018 Order when, in its May 2018 Order, the Commission mandated HVUS take concrete steps to improve its water service. BIE points out the Commission specifically 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 Commission required the engineer's report to be complete by April 2018 and required that the report 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 in the

¹⁹ Joint Petition ¶ 51.

water. BIE notes the Commission's Orders further directed HVUS to comply by April 2019 with implementation of the engineer's recommendations to correct identified deficiencies 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.

BIE points out Hidden Valley complied with the January 2018 Order when HVUS submitted the engineer's report on April 18, 2018. That report provided four possible solutions to resolve the ongoing iron and manganese issues. BIE notes HVUS elected to install a water treatment plant, including a pre-chlorination chemical feed system; raw water tank; raw water pumps; greensand filtration system; and a backwash holding tank.²⁰

Further, BIE points out 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 in July 2021.²¹ BIE contends the new water treatment plant appears to address the brown or rust-colored water provided to customers as directed in the Commission's January and May 2018 Orders. As proof, BIE points to the 2021-2022 quarterly lab tests which show the iron in HVUS' raw water was as high as 1.13 mg/L but the iron in the treated water was no higher than .11 mg/L.²² Similarly, BIE notes the manganese levels were significantly lower in the treated water during this same period, ranging as high as .112 mg/L in HVUS' raw water but the levels in treated water were consistently lower than .01 mg/L.²³

BIE also points out the customer complaint log demonstrates that complaints of discolored water have decreased since the new water treatment plant became operational in June 2021. Specifically, BIE notes HVUS received no complaints of brown water from June 2021 through December 2021, after the treatment plant became operational and, while it received seven complaints of brown-colored water in January 2022, BIE points out there were no

²⁰ HVUS Post-Hearing Exhibit 7.

²¹ HVUS Post Hearing Exhibit 7.

²² Joint Stipulation for the Admission of Additional Evidence, Attachments 1-2.

²³ Joint Stipulation for the Admission of Additional Evidence, Attachments 1-2.

additional complaints for the remainder of 2022.²⁴ BIE contends the evidence shows the new water treatment plant is treating raw water and, with the other signatories, BIE recommends the Commission take no further action against Hidden Valley regarding Paragraphs 6 and 8 of its May 3, 2018 Order.

Wastewater System

BIE points out the Commission's January 2018 and May 2018 Orders required HVUS to file a wastewater report by April 18, 2018, and Hidden Valley was to comply with all recommendations in the engineer's report by January 31, 2019. BIE also notes HVUS filed its wastewater report on the designated date and the engineer filed a status report on January 31, 2019, indicating the completed tasks, the tasks that were removed, the reason for removing the tasks, and the tasks that remained outstanding. BIE points out HVUS filed a status report in February 2020, stating that all the remaining items on the engineer's report had been completed.²⁵ Additionally, Appendix A to the Settlement states 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.

Accordingly, BIE asserts the 2020 Wastewater Report continues to accurately reflect the condition of the wastewater system. BIE notes the signatories included Appendix B in the Settlement which contains the HVUS 2021 and 2022 customer complaint logs. BIE points out the logs include only two wastewater complaints from customers, both resulting from broken or blocked service lines. BIE asserts that, given HVUS has complied with the recommendations contained in the engineer's report and that customers have not reported significant wastewater issues, the evidence presented shows HVUS is providing adequate and reasonable wastewater service to its customers.

²⁴ Joint Stipulation for the Admission of Additional Evidence, Attachment 3.
²⁵ HVUS Post-Hearing Exhibit 4.

Continuing Obligations of Hidden Valley

BIE notes Paragraphs 52 and 53 of the Settlement 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. BIE notes OCA raised this concern because the construction of the new water treatment plant should remove the iron/manganese from the raw water, but the water treatment will not remedy the existing iron and manganese sediment present in the storage tanks, water mains and service lines.²⁶ BIE asserts the Settlement addresses these concerns by requiring HVUS to remove the sediment from the storage tank by October 1, 2024, and by requiring Hidden Valley to hire an engineer to advise HVUS on the flushing procedures to utilize going forward. Further, BIE asserts these Settlement terms ensure the problems with brown or rust-colored water will be remedied more fully when the existing iron and manganese sediment is removed from HVUS' storage tank and distribution system.

BIE points out that Paragraph 55 of the Settlement requires HVUS to meet at least one time each calendar year with representatives of the Hidden Valley Foundation's Board of Directors, if requested, for the next ten years. BIE points out HVUS has been conducting semi-annual meetings with customers pursuant to the Commission's January 2018 and May 2018 Orders. In addition, BIE notes Hidden Valley's recent 60-day status report reflects 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.²⁷ In its status reports, HVUS asserted it relayed information regarding the progress of the plant to the community through the Foundation's Facebook page. BIE contends the Foundation's ability to continue these conversations between its Board of Directors and HVUS management over the next decade is important to ensure the lines of communication between the Board's leadership, HVUS management and HVUS' customers remain open in the years to come.

²⁶ OCA St. 1, p. 5.

²⁷ HVUS 60-Day Status Report (May 15, 2023), p. 9.

Position of Individual Parties

Mr. Kollar was the only individual complainant who filed a Statement in Support. In his Statement, Mr. Kollar asserts the primary issue has been Hidden Valley's failure to address the ongoing presence of "brown water" experienced by Hidden Valley's customers, dating back to 2004 and earlier. However, Mr. Kollar notes that, as a result of this proceeding, the Company purchased a water treatment plant in 2019 to address the brown water issues and, then in 2020, Hidden Valley obtained the necessary permits to begin construction on the water treatment plant, which became operational in June 2021. Mr. Kollar asserts the number of brown water complaints made by Hidden Valley's customers has dramatically decreased, to almost zero, since Hidden Valley installed the new water treatment plant.

Mr. Kollar asserts the proposed Settlement includes technical and financial requirements designed to ensure Hidden Valley continues to maintain its water treatment plant and wastewater treatment systems properly and effectively. Mr. Kollar contends Hidden Valley must be in a strong financial position to properly maintain its water treatment plant and wastewater treatment facilities.

To accomplish this goal, Mr. Kollar contends the Company must meet its current financial obligations, but it must also have sufficient capital for investment in future system improvements and replacements as needed. For those reasons, Mr. Kollar pointed out he consistently raised questions about Hidden Valley's accounting practices, financial reports and financial condition since 2014, and Mr. Kollar contends 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.

Mr. Kollar acknowledges the Commission previously ordered an audit of Hidden Valley's financial statements (for the years 2015 to 2018) and he notes the Company never complied with that Commission requirement. Mr. Kollar points out that this Settlement, in Section III A, 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. Mr. Kollar argues 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.

In conclusion, Mr. Kollar asserts, based on his review of the Settlement and his involvement in this matter since 2014, that the terms and conditions contained within the Settlement are in the best interest of the customers of Hidden Valley.

DISCUSSION

Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proving she is entitled to the requested relief. 66 Pa.C.S. § 332(a). To satisfy this burden, Complainant must show Respondent utility is responsible or accountable for the problem described.²⁸ Complainant must show this fact to be true by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that evidence presented by the other party.²⁹ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.³⁰ Furthermore, more evidence is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.³¹

²⁸ *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

²⁹ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

³⁰ *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

³¹ *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

At its core, these Formal Complaints concern the provision of safe, reliable, quality water service by Hidden Valley over the last nine years. After numerous discussions, discovery, litigation, testing and efforts by the parties, the parties were able to reach a settlement that settles all outstanding issues.

Responsibilities of Public Utility

The Public Utility Code provides:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the Commission. Subject to the provisions of this part and the regulations or orders of the Commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service[.]

66 Pa.C.S. § 1501.

The Commission has the authority and responsibility to define reasonable service under 66 Pa.C.S. § 1501 and § 1502. The Commission has exclusive jurisdiction to determine the reasonableness, adequacy and sufficiency of a public utility's services and facilities.³² The term "service" should be "used in its broadest and most inclusive sense, including any and all acts done, rendered, or performed, and any and all things furnished or supplied...by public utilities...in the performance of their duties under the Public Utility Code[.]"³³

³² *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980).

³³ 66 Pa.C.S. § 102.

Historical Perspective

This proceeding involved protracted litigation over a nine-year period that involved appellate/exception proceedings, related proceedings in other tribunals, unforeseen and unexpected delays that spanned across a global pandemic and was peppered by multiple layers of prehearing and post hearing litigation filings. At its core, OCA complained since 2014 that Hidden Valley failed to provide reasonable and adequate customer service in its provision of water and wastewater services. BIE joined OCA in its contention that Hidden Valley did not meet minimum standards for providing quality water service, resulting in ongoing complaints and damage to homeowners' properties. It should be noted this proceeding did not resume until November 2019, after the Commonwealth Opinion, 5/15/19, and did not begin in earnest until February 2020. Unfortunately, after the prehearing conference on February 25, 2020, the COVID-19 pandemic began which changed dramatically the litigation "playing field." Litigating the issues and navigating water and wastewater service issues within the context of this proceeding stopped entirely in March 2020 and then moved at a crawl through 2020 and most of 2021. Through this time frame, the parties herein continued to communicate, share information and work to solve the issues. By the time the restrictive effects of the pandemic began to wane, it became obvious Hidden Valley had been able to accomplish many tasks in improving the quality issues which are at the core of this proceeding.

After a lot of effort by Hidden Valley, OCA, BIE and the three individual ratepayers, it became clear the parties had found a way to accomplish the tasks that needed to be accomplished and Hidden Valley was providing reasonable and adequate water and wastewater service to its customers. In the final analysis, what matters in this proceeding is that a certificated public utility is providing safe, reliable, quality service in a reasonable and adequate manner. Once that service improved, the parties were able to see clearly how to settle this proceeding and how to craft a path forward through compliance issues. As discussed below, the presiding officer agrees with the parties – it is in the public interest and benefits the Commission, the parties and the ratepayers to accept the Settlement without modification.

Settlement

In this proceeding, the parties reached a settlement. The Commission encourages parties in contested on-the-record proceedings to settle cases,³⁴ because settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the positions the parties of interest held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the benchmark or inquiry to determine whether a settlement is acceptable is if the proposed terms and conditions are in the public interest.³⁵ Having reviewed or engaged in extensive proceedings with the parties over the past nine years, I find this Settlement is in the public interest, will benefit the ratepayers of HVUS, and is a fair, just and reasonable resolution of the positions of the parties, in light of the Commission's statutes, regulations and orders.

In their supporting statements, the signatories assert this Settlement resolves the issues encountered in these dockets, fairly balances the interests of the Company and its ratepayers, is in the public interest, and should be approved.

The signatories aver the Settlement resolves all of the issues in a fair and equitable manner, after a detailed examination of HVUS' utility services, treatment facilities and practices, through numerous discovery responses, testimony and accompanying exhibits, followed by the presentation of counter-positions on some issues, and then settlement negotiations. The presiding officer agrees with the parties that the resolution of the issues in this

³⁴ 52 Pa. Code § 5.231.

³⁵ *Pa. Pub. Util. Comm'n v. C.S Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

proceeding has been reached and litigation would expend unnecessarily more energy and money without reaching a better result than the result the parties reached within the Settlement.

Independent Audit

The parties acknowledge the Commission previously required an audit from 2015 through 2018 in HVUS' prior water and wastewaters rate proceedings (at Docket Nos. R-2018-3001306 and R-2018-3001207). In this Settlement, the parties agreed with Hidden Valley's proposal that it should provide an independent financial audit of the three-year period from 2020 through 2022 instead because the more recent data would be more useful for Hidden Valley, the other parties, the Commission and the ratepayers. The presiding officer agrees the Settlement provides more current and more beneficial information by conducting the audit for the three previous years and agrees that the 120-day time period is a sufficient time period in which to produce and provide the audit.

Section 529 Proceeding

Hidden Valley and BIE continue to misunderstand the role OCA was to have in initiating a Section 529 proceeding by insisting OCA was responsible to make the initial filing. As explained by the presiding officer at the Prehearing Conference on February 25, 2020, and later noted in the Prehearing Order dated March 11, 2020, the Section 529 proceeding could be initiated by the Commission's Secretary's Bureau or by BIE, but the presiding officer lacked the authority to initiate a Section 529 proceeding *sua sponte*. However, both HVUS and BIE note the public utility took the actions necessary to solve the iron and manganese problem, and Hidden Valley now provides reasonable and adequate water and wastewater service to its customers.

The presiding officer agrees with OCA that this issue is now moot. The original purpose for initiating a Section 529 proceeding no longer exists because Hidden Valley is providing water service which does not damage customers' clothes or appliances, and the water quality is reasonable and adequate. A Section 529 proceeding, if begun, would have centered

around Hidden Valley's compliance, or non-compliance, with the time deadlines directed by the Commission 5/3/18 Order. Filing a Section 529 proceeding would have been likely to obtain relatively fast relief to HVUS' customers by requiring aggressive action from the public utility to solve the iron and manganese problem and by setting a date certain when hearing procedures, including a Section 529 investigation, would commence. By resolving the problems with its water service, Hidden Valley has eliminated the need for a Section 529 proceeding, and the terms of the Settlement specify that issue is now moot, and these terms are in the public interest because needless litigation is avoided.

Water Service

Hidden Valley has met the Commission's requirements (in Commission Order, 5/3/18) to evaluate the need for a treatment plant, determine the necessary size and cost of a treatment plant, and establish a schedule for putting the treatment plan into service in that Hidden Valley installed the needed treatment plant, corrected the deficiencies that were found and now provides water which is not rust or brown-colored. Hidden Valley acknowledges it installed an operational water treatment plant and flushed all the water lines (to remove rust or brown-colored sediment) shortly thereafter. OCA, BIE and Mr. Kollar agree the water quality has improved and further litigation at this time is not needed. The levels of iron and manganese in the treated water are now at appropriately low levels and the customer complaints about poor water quality have dropped almost to zero. Accordingly, the elements of OCA's complaint concerning water service are now moot and the Settlement serves the public interest by obviating the need for additional litigation costs.

Wastewater Service

The Commission ordered Hidden Valley to obtain an engineer's report about the adequacy of the wastewater system and provide recommendations on providing reasonable and adequate wastewater service. The Commission required Hidden Valley to provide that engineer's report by April 18, 2018, which Hidden Valley did provide, and comply with the recommendations by January 31, 2019, which Hidden Valley did implement. Further, Hidden

Valley updated its status and reflected the completion of all outstanding recommendations. The evidence presented shows the condition of the wastewater system has remained adequate, no Notice of Violation was issued in the last three years and there have not been any effluent limit violations since 2022. This evidence shows the Settlement benefits the public interest by eliminating the need for additional litigation now that the wastewater issues have been resolved.

Continuing Obligations

Through the Settlement, the signatories made various provisions to ensure the improvements to Hidden Valley's facilities continue to be operational and effective, and to ensure a free flow of communication between Hidden Valley and the other parties, as well as between Hidden Valley and its customers. Some of those continuing obligations include: filing copies of customer complaint logs annually for the next three years (through 2026); removal of iron and manganese from the distribution by cleaning out precipitated iron and manganese from the standpipe storage tank; flushing the distribution system; and filing an engineer's report when the sediment has been removed. Most notably, the signatories agree the filing of status reports every 60 days is no longer necessary and should be replaced with annual and action-specific reporting, going forward. In short, the signatories contend the reasons for the Commission's directives in the Commission Order, 5/3/19 and Commission Order 1/7/19 have all been addressed in this proceeding and the proceeding can be marked satisfied and closed.

Conclusion

Upon review of the Settlement and Statements in Support, the presiding officer agrees the signatories achieved a fair and reasonable compromise that resolves the issues which have consumed so much time, energy and effort since 2014. The presiding officer's decision is based in part upon the terms of the Settlement, the salient facts presented by the parties, and the representations made by the signatories which aver the Settlement is in the interests of the constituencies they represent and/or themselves. The parties conducted extensive reviews of the initial filing and supporting information, discovery responses and the filing data, and engaged in settlement discussions. As a result, the Settlement maintains a proper balance of the interests of

all parties, renders further action as unnecessary on the issues contained within the Settlement and completes the investigation of this filing.

CONCLUSIONS OF LAW

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

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

3. The Commission may amend any Commission Order, following notice and opportunity to be heard, if judicious and appropriate under the circumstances. 66 Pa.C.S. § 703(g); 52 Pa. Code § 5.572(d).

4. When considering a party's petition to amend a final order of the Commission, the Commission may consider new and novel arguments, issues or matter that may have been overlooked or not addressed and/or evidence that was not previously available or in existence previously, despite the exercise of due diligence. *Duick v Pa. Gas and Water Co.*, 56 Pa.P.U.C. 553 (Order entered Dec. 17, 1982).

5. Complainant, the Office of Consumer Advocate, carries the burden of proof, as the movant on the Formal Complaint, to prove Respondent did not provide reasonable and adequate service. 66 Pa.C.S. § 332(a).

6. The Commission promotes settlement and the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. 52 Pa. Code § 5.231; *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74

Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004).

7. Respondent, Hidden Valley Utility Services, L.P., carries the burden of proof, as the party seeking affirmative relief from the Commission on its Petition to Amend, to prove the Commission should amend a Commission Order. *Application of Susquehanna Valley Limousine, Inc.*, Docket Nos. A-2013-2305502 and A-00110765 (Opinion and Order entered Nov. 13, 2014).

8. A Commission decision must be supported by substantial evidence within the hearing record, but 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Approval of Unanimous Settlement, pursuant to 52 Pa. Code §§ 5.231 and 69.401, that the Office of Consumer Advocate, Hidden Valley Utility Services, L.P., the Commission's Bureau of Investigation and Enforcement, Sharon Howard-Frieri, Robert J. Kollar and Kellie A. Kuhleman have executed and filed on May 25, 2023, at Docket Nos. C-2014-2447138 and C-2014-2447169, is granted and approved.

2. That, within 120 days of the entry of the Commission's Final Order approving the Joint Petition for Approval of Unanimous Settlement, or the deadline established in the rate proceedings at Docket Nos. R-2018-3001306 and R-2018-3001307, whichever is earlier, Hidden Valley Utility Services, L.P. 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 provided any services to Hidden Valley Utility Services, L.P. previously.

3. That Hidden Valley Utility Services, L.P. will file a completed independent audit with the Secretary's Bureau and the Bureau of Technical Utility Services in the dockets of these complaint proceedings and in Docket Nos. R-2018-3001306 and R-2018-3001307 within 150 days of the entry of the Commission's Final Order approving the Joint Petition for Approval of Unanimous Settlement.

4. That Hidden Valley Utility Services, L.P. shall serve a copy of the completed independent audit on the parties to the complaint proceedings at Docket Nos. C-2014-2447138 and C-2014-2447169, and Hidden Valley Utility Services, L.P. will notify all parties to the rate case proceeding, in Docket Nos. R-2018-3001306 and R-2018-3001307, that the audit was filed, information on where the audit can be found on the Commission's website, and offer to provide a copy to any rate case party who requests it.

5. That, beginning in 2024, Hidden Valley Utility Services, L.P. shall file a copy of the customer complaint logs for the calendar years 2023, 2024, 2025 and 2026, respectively, within three (3) months of the end of the calendar year, or by March 31st.

6. That for each customer complaint listed in the customer complaint logs referenced in Ordering Paragraph No. 5 as a complaint about "dirty water," stained fixtures or stained laundry, Hidden Valley Utility Services, L.P. shall indicate in the log if the "dirty water" or staining resulted from flushing, a water main break or some other cause.

7. That Hidden Valley Utility Services, L.P. shall have the iron/manganese sediment removed from the standpipe storage tank by October 1, 2024 and will notify the Commission's Bureau of Technical Utility Services and all parties herein within thirty (30) days of the removal of the sediment.

8. That Hidden Valley Utility Services, L.P. will file the following items with the Commission when the task is completed, and copy all parties herein:

a. Notice that a Pennsylvania-licensed consulting engineer has advised Hidden Valley Utility Services, L.P. 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: and

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

9. That Hidden Valley Utility Services, L.P. shall file a report, by March 31st each year, starting with the calendar year 2024, which details the operation and maintenance activities of Hidden Valley Utility Services, L.P. for all of its water system facilities in that calendar year. This requirement will end with the calendar year 2026 unless Hidden Valley Utility Services, L.P. meets all of the foregoing obligations.

10. That Hidden Valley Utility Services, L.P. will meet with representatives of the Hidden Valley Foundation's Board of Directors, either virtually or in person, at least one time each calendar year from 2023 through 2033, if requested by the Hidden Valley Foundation's Board of Directors.

11. That all outstanding or proposed proceedings – arising from allegations Hidden Valley Utility Services, L.P. failed to comply with time deadlines established in the Commission's Opinion and Opinion and Order dated May 3, 2018, or failed to comply with Paragraphs 6 and 8, specifically in the Commission's Opinion and Opinion and Order dated May 3, 2018 – are deemed resolved and claims by the Office of Consumer Advocate, the Commission's Bureau of Investigation and Enforcement and Sharon Howard-Frieri are satisfied.

12. That the Secretary mark the Formal Complaint of Sharon Howard-Frieri, at Docket No. C-2019-3008093 as satisfied and closed.

13. That the Secretary mark the Formal Complaints of the Office of Consumer Advocate v. Hidden Valley Utility Services, L.P., at Docket Nos. C-2014-2447138 and C-2014-2447169, as closed.

Date: October 6, 2023

/s/
Katrina L. Dunderdale
Administrative Law Judge