

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2018-3001306
Gerry and Melissa Pindroh	:	C-2018-3001787
Office of Consumer Advocate	:	C-2018-3001841
Debra J. Simpson	:	C-2018-3002179
Tom and Shelley Conroy	:	C-2018-3002198
John Cupps	:	C-2018-3002468
David Oster	:	C-2018-3002470
Toni Gorenc	:	C-2018-3002480
David Brodland	:	C-2018-3002485
Robert and Katherine Bair	:	C-2018-3002587
Jerome and Barbara Cypher	:	C-2018-3002671
Jon and Nina Lewis	:	C-2018-3002701
Celeste Emrick	:	C-2018-3003020
Robert J. Kollar	:	C-2018-3003370
Hidden Valley Foundation, Inc.	:	C-2018-3003528

v.

Hidden Valley Utility Services, L.P. –
Water

Pennsylvania Public Utility Commission	:	R-2018-3001307
Office of Consumer Advocate	:	C-2018-3001843
Tom and Shelley Conroy	:	C-2018-3002200
John Cupps	:	C-2018-3002459
David Oster	:	C-2018-3002475
Toni Gorenc	:	C-2018-3002481
David Brodland	:	C-2018-3002487
Jerome and Barbara Cypher	:	C-2018-3002683
Jon and Nina Lewis	:	C-2018-3002698
Robert J. Kollar	:	C-2018-3003372
Hidden Valley Foundation, Inc.	:	C-2018-3003529

v.

Hidden Valley Utility Services, L.P. –
Wastewater

RECOMMENDED DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge
and
Katrina L. Dunderdale
Administrative Law Judge

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INTRODUCTION

I. HISTORY OF THE PROCEEDING

On April 27, 2018, Hidden Valley Utility Services, L.P. – Water (Hidden Valley - Water), Utility Code 210117, filed Supplement No. 1 to Tariff Water - Pa. P.U.C. No. 1 (Water Supplement No. 1) to become effective July 1, 2018. Hidden Valley – Water’s filing contained proposed changes in rates, rules, and regulations calculated to produce an additional \$150,629, or 107.2%, in total annual operating revenues. The Docket Number for the water rate proceeding is R-2018-3001306.

Also, on April 27, 2018, Hidden Valley Utility Services, L.P. – Wastewater (Hidden Valley – Wastewater) filed Supplement No. 1 to Tariff Wastewater-Pa. P.U.C. No. 1 (Wastewater Supplement No. 1) to become effective July 1, 2018, proposing an increase in rates designed to produce an increase in base rate revenue of approximately \$185,432, or 63.1% in total revenue. The Docket Number for the wastewater rate proceeding is R-2018-3001307.

Water Supplement No. 1 provided for a request from Hidden Valley to increase its base rate by \$150,629 per year. If approved, the average water bill for a residential customer using 2,100 gallons per quarter within Hidden Valley’s service territory would have increased from \$26.64 to \$54.72 per quarter, or by 105.4%. The average water bill for a commercial customer using 16,000 gallons would have increased from \$123.52 to \$238.20 per quarter, or by 92.8%.

Wastewater Supplement No. 1 provided for a request from Hidden Valley to increase its base rate by \$185,432 per year. If approved, the average wastewater bill for a residential customer using 2,100 gallons per quarter within Hidden Valley’s service territory would have increased from \$59.76 to \$96.42 per quarter, or by 61.3%. The average wastewater bill for a commercial customer using 16,000 gallons would have increased from \$276.60 to \$446.70 per quarter, or by 61.5%.

On May 14, 2018, the Office of Consumer Advocate (OCA) filed a Formal Complaint against the wastewater rate increase, which was docketed at C-2018-3001843. OCA also filed a Formal Complaint against the proposed water rate increase, which was docketed at C-2018-3001841. Several *pro se* Complainants filed complaints against the proposed water rate increase and the proposed wastewater rate increase.

By Order entered on May 17, 2018 (Commission Suspension Order), the Commission noted Hidden Valley's rate filings were suspended by operation of law, pursuant to 66 Pa.C.S.A. § 1308(d), until February 19, 2019, unless permitted by Commission Order to become effective at an earlier date. The Commission instituted an investigation and provided for the scheduling of such hearings as may be necessary, culminating in the issuance of a Recommended Decision.

Hidden Valley Utility Services, L.P. (collectively, Hidden Valley or HVUS) agreed to enter mediation with the parties in the two base rate cases. Accordingly, Hidden Valley filed Tariff Supplements at each docket (Docket No. R-2018-3001306 and Docket No. R-2018-3001307) on May 23, 2018, agreeing to further suspend these matters until April 1, 2019.

On May 30, 2018, the Commission's Bureau of Investigation and Enforcement (BIE or I&E) filed a Notice of Appearance in both base rate proceedings. Also on May 30, 2018, the Office of Administrative Law Judge (OALJ) issued a Prehearing Conference/Mediation Notice (Notice) scheduling a prehearing conference for Tuesday, June 19, 2018, at 10:00 a.m.

On May 31, 2018, Deputy Chief Administrative Law Judge (DCALJ) Mark A. Hoyer issued a Prehearing Conference Order/Mediation Session which noted the prehearing conference was scheduled for Tuesday, June 19, 2018, at 10:00 a.m., and noted a mediation session would follow immediately afterward.

DCALJ Hoyer conducted the first prehearing conference as scheduled on June 19, 2018, at which Hidden Valley, BIE and OCA were represented but at which neither any *pro se* Complainants nor the Office of Small Business Advocate appeared. The parties agreed to develop a procedural schedule at the Further Prehearing Conference. In addition, the parties agreed the water rate proceeding at Docket No. R-2018-3001306 and the wastewater rate proceeding at R-2018-3001307 should be consolidated for hearing and disposition.

On June 19, 2018, OALJ issued a Further Prehearing Conference Order which scheduled the further prehearing conference for Thursday, July 26, 2018, at 10:00 a.m.

On June 27, 2018, DCALJ Hoyer issued the First Prehearing Order memorializing the matters decided and agreed upon by the parties attending the first prehearing conference. The First Prehearing Order consolidated the formal complaints filed against the water rate increase at Docket No. R-2018-3001306 and the formal complaints filed against the wastewater rate increase at Docket No. R-2018-3001307.

On July 3, 2018, DCALJ Hoyer issued the First Interim Order – Public Input Hearings, which scheduled two public input hearings to be conducted at 2:00 p.m. and 6:00 p.m. on Friday, July 27, 2018, at the Hidden Valley Resort-The Alpine Room in Hidden Valley, Pennsylvania. In addition, Hidden Valley was ordered to publish the approved Notice of Public Input Hearings in a newspaper of general circulation in the Company's service territory one time during the week beginning Sunday, July 8, 2018. Hidden Valley was further ordered to file proof of publication with the Commission's Secretary's Bureau.

On July 20, 2018, the Hidden Valley Foundation, Inc. (Foundation or HVF) filed complaints against Hidden Valley concerning its water rate increase request (at Docket No. C-2018-3003528) and its wastewater rate increase request (at Docket No. C-2018-3003529). In its complaints, HVF alleged a consistent failure by Hidden Valley to provide adequate, safe and reasonable water and wastewater services since its certification in 2005.

On July 23, 2018, DCALJ Hoyer issued: (1) a Protective Order as requested by Hidden Valley in its motion dated June 20, 2018; and (2) the Second Interim Order which added and consolidated formal complaints filed by additional individuals. On July 24, 2018, DCALJ Hoyer issued the Revised Second Interim Order which noted the addition and consolidation of formal complaints filed by Robert J. Kollar and HVF.

On July 26, 2018, DCALJ Hoyer conducted the further prehearing conference as scheduled, at which Hidden Valley, BIE and OCA attended.

Public input hearings were held at the Hidden Valley Resort-Alpine Room on Friday, July 27, 2018 at 2:00 p.m. and 6:00 p.m. A total of 32 HVUS customers testified at the public input hearings.

On July 31, 2018, DCALJ Hoyer issued the Further Prehearing Order which memorialized the matters decided and agreed upon by the parties and which established a litigation schedule.

On August 20, 2018, Hidden Valley filed a Proof of Publication that an advertisement about the two public input hearings appeared in the Somerset Daily American on July 3, 2018.

On October 26, 2018, OALJ issued a Hearing Notice which scheduled the evidentiary hearings to be conducted in the Commission's hearing room in the Keystone Building, Harrisburg, Pennsylvania, on November 15 and November 16, 2018.

On November 16, 2018, the presiding officers conducted the evidentiary hearing, the parties having requested on November 14, 2018 that the hearing scheduled originally for November 15, 2018 be cancelled because the parties had agreed to stipulate to the admission of testimony. Present and represented by counsel was Hidden Valley, BIE, OCA and Hidden Valley Foundation.

At the evidentiary hearing, four documents were offered for admission into evidence and were marked as Joint Exhibits 1, 2 and 3 and HVUS Exhibit RMK-Rejoinder 1. The documents were admitted into the hearing record and the presiding officers asked the parties to submit the joint documents in writing after the hearing. Joint Exhibit 1 was the Joint Stipulation for the Admission of Evidence (Stipulation to Admit); Joint Exhibit 2 was the Joint Petition for Approval of Non-Unanimous Settlement (Partial Settlement or Non-Unanimous Settlement); and Joint Exhibit 3 was the Joint Stipulation (Joint Stipulation).

On November 19, 2018, Hidden Valley filed a Joint Petition for Approval of Non-Unanimous Settlement in both base rate cases. Hidden Valley entered into the Non-Unanimous Settlement with BIE, and requested the Commission approve the Non-Unanimous Settlement without modification.

On November 21, 2018, OCA filed a Motion to Admit Evidence. At the evidentiary hearing on November 16, 2018, OCA orally requested the evidentiary record in two prior cases be admitted into evidence. The two prior cases were *Tanya J. McCloskey, Acting Consumer Advocate and Hidden Valley Utility Services, LP – Water* at Docket No. C-2014-2447138 and *Tanya J. McCloskey, Acting Consumer Advocate and Hidden Valley Utility Services, LP – Wastewater* at Docket No. C-2014-2447169 (*McCloskey Decisions*). Hidden Valley, BIE and HVF indicated on November 16, 2018 that there was no opposition to the request. The ALJs orally granted the request but required OCA to file a written motion which would include a recitation of precisely which documents would be sought to be included from the two complaint proceedings. The Motion to Admit Evidence filed on November 21, 2018 listed the specific items from the evidentiary record in the *McCloskey Decisions* which OCA asked to have admitted into evidence.

On November 29, 2018, the ALJs issued the Second Interim Order which granted the request of OCA to admit portions of the hearing record from the two complaint proceedings (Docket Nos. C-2014-2447138 and C-2014-2447169) into the hearing record in these two base rate proceedings.

Main briefs were filed on or before December 11, 2018 by Hidden Valley, BIE, OCA and Hidden Valley Foundation. Reply briefs were filed on or before December 21, 2018 by Hidden Valley, BIE, OCA and Hidden Valley Foundation.

On December 26, 2018, the presiding officers issued the Third Interim Order closing the hearing record.

II. PUBLIC INPUT HEARINGS

DCALJ Hoyer conducted public input hearings on July 27, 2018, at 2:00 p.m. and 6:00 p.m., at the Hidden Valley Resort in Hidden Valley, Pennsylvania. Present during the hearings were counsel for Hidden Valley, BIE, OCA and Hidden Valley Foundation. Thirty-two HVUS customers testified in person. Twenty customers testified during the 2:00 p.m. hearing and twelve customers testified during the 6:00 p.m. hearing. Four exhibits were marked and introduced into the record as evidence: Sinclair Exhibit 1; Fiola Exhibit 1; Hammer Exhibit 1; and Hammer Exhibit 2.

In summary, the thirty-two witnesses raised six major issues concerning HVUS' handling of its water and sewer system and its requests for rate increases. Those six issues are: (1) the poor water quality, (2) the damage that the poor water has done to home appliances, (3) the negative effect that Hidden Valley's system, and the rate increases, will have on local economic growth, (4) the size of rate increases are too large and should be more incremental over a longer period of time, (5) the poor fiscal management/business practices of HVUS, and (6) the terms of the 2005 Settlement have not been fulfilled.

The table below summarizes the number of customers who complained about each issue.

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

Douglas Henley testified the rate increases are not warranted based upon the rate of inflation. Transcript (Tr.) p. 59. Mr. Henley testified he compared the level of inflation from January 2005 to May 2018, and averred the 2005 water rate inflated to May 2018 would be \$10.26, and the 2005 wastewater rate inflated to May 2018 would be \$22.97. Tr. p. 60. Mr. Henley stated the proposed water rate increase to \$26.06 is 154% above inflation and the proposed wastewater rate increase to \$45.91 is 100% above inflation. Tr. p. 60. Mr. Henley believes the PUC should deny the proposed HVUS rate increases that are above inflation. Tr. p. 61. Mr. Henley additionally claimed the proposed rates are not in step with other local wastewater providers, citing specifically the rates of Seven Springs Municipal Authority. Tr. p. 61.

Chris Umble served as a member of the Hidden Valley Board of Directors for the Hidden Valley Foundation (Foundation) for the last four years and chaired the Strategic Planning Committee for the Foundation since 2013. Tr. p. 63. Mr. Umble described the water pressure at his home as being inconsistent, unreliable, and insufficient. Tr. p. 65. At his home, Mr. Umble testified he experiences brown water, which damages appliances and plumbing fixtures and renders the water unusable for any household purposes. Tr. p. 65. Specifically, Mr. Umble claims the water shortens the life of water heaters. Tr. p. 65. Mr. Umble claims HVUS instructed him to let the water run until the color clears, however, he has found that running the water for hours will not result in clear water every time. Consequently, his water and sewer costs are impacted adversely. Tr. p. 66. Mr. Umble refers to the 2005 Settlement and claims HVUS failed to complete the improvements as required by the Settlement. Tr. p. 66. Mr. Umble implores the PUC to only approve rate increases if they relate directly to improving the

infrastructure of HVUS, and to ensure the improvements to the infrastructure are made in a timely fashion. Tr. p. 67.

Ann Guadino is the president and representative of the Highlands Condominium Association, which consists of 144 condominium owners within the Foundation. Tr. p. 70. The condominium owners have suffered from rust-colored water that corrodes appliances and shortens the useful life. Tr. p. 70. Ms. Guadino claims water heaters that typically last 10 to 15 years will only last 7 to 9 years before leaking due to being corroded by the water quality. Tr. p. 70. More specifically, owners have suffered damage to toilets, washing machines, dishwashers, sinks, and bathtubs, amongst other appliances, and have had to bear the costs of replacing these damaged appliances. Tr. p. 71. The stains left on appliances due to the rust-colored water is permanent, according to Ms. Guadino. Tr. p. 71. Ms. Guadino opposes the rate hike and requests HVUS reimburse its customers for the damage the water caused to homes and appliances before any rate hike is approved. Tr. p. 72.

Jack Mautino is a member of the Foundation Board of Directors. Mr. Mautino claims the 2005 Settlement required HVUS to make improvements to its system by 2014, but those improvements have not been completed. Tr. p. 73. Specifically, Mr. Mautino claims galvanized distribution lines have not been replaced and distribution lines smaller than six inches have not been replaced. Tr. p. 73. Mr. Mautino alleges the drinking water does not meet the Safe Drinking Water Standards for Iron and Manganese nor have the Safe Drinking Water Standards been met regarding buildings in need of Back Flow Preventers to prevent contamination of the potable water. Tr. pp. 74-75. Mr. Mautino raises questions concerning HVUS' handling of its finances concerning Hidden Valley's Spray Field. Tr. p. 76. Mr. Mautino states HVUS should not be given a rate increase when it has yet to complete the requirements of the 2005 Settlement. Tr. p. 75.

Conrad Witalis is a homeowner at the Hidden Valley resort, who testified his water is brown and has low pressure. Tr. p. 78. Mr. Witalis objects to granting a rate increase to HVUS. He claims HVUS has provided poor water quality and service for years. Tr. p. 79.

David Guadino lives part time at the Hidden Valley resort with his wife (Ann Guadino) and asks the Commission to hold HVUS accountable for the “issues” that have been ongoing at the Hidden Valley resort for years. Tr. pp. 80-81.

Roberta Sinclair has lived at the Hidden Valley resort for twenty-seven years. Tr. p. 81. Ms. Sinclair does not use the water at her household to perform household duties due to the water being brown in color. Tr. p. 81. Instead, Ms. Sinclair uses bottled water to perform household duties such as cooking and cleaning. Tr. p. 84. Ms. Sinclair contacts Glenn Fodor frequently, the individual she states oversees the water at Hidden Valley, to discuss the water quality. Tr. p. 84. An exhibit, identified as “Sinclair Exhibit 1,” was introduced and admitted into the record as evidence. Tr. p. 120. Sinclair Exhibit 1 is a picture, taken on October 17, 2017, of the brown drinking water from Ms. Sinclair’s household water spigot. Tr. p. 83.

Joseph D. Sarra, Jr. has owned property at the Hidden Valley resort for twenty-two years. Tr. p. 85. He and his wife own a home that they rent out, however, the property value of the home has gone down due to the water issues experienced at the home by the renters, which has led to negative reviews of the property. Tr. p. 86. The issues include the existence of brown drinking water. Tr. p. 86. Additionally, Mr. Sarra states that he cannot list his properties at the Hidden Valley resort for sale given the existence of brown water at the homes. Tr. p. 87. Mr. Sarra mentions he keeps Glenn Fodor abreast of the water issues experienced at the Hidden Valley resort. Tr. p. 86. Mr. Sarra references the 2005 Settlement and states HVUS has not complied with it. Mr. Sarra contends the Commission should make HVUS make the needed improvements to the infrastructure of its system prior to the PUC entertaining any rate increases. Tr. p. 88.

Dennis Carroll is a retiree who has owned property at the Hidden Valley resort for the last two years. Tr. p. 92. Mr. Carroll testified the brown water, which he claims has sediment in it, has damaged appliances in his home, including humidifiers, house filters, and his hot water heater, which according to him failed earlier than expected. Tr. p. 93. Mr. Carroll states he spent thousands of dollars replacing his appliances. Tr. p. 94.

Linda Jewison has owned a townhome at the Hidden Valley resort since 2004. Tr. p. 98. Ms. Jewison has had to install a pump in her home to increase the water pressure due to the low pressure of the water at her home. Tr. p. 98. The brown water damaged her appliances, stained her fixtures, and caused her to change her water filter every two weeks. Tr. pp. 98-99. Ms. Jewison purchases outside water for household purposes, such as to cook and to drink. Tr. p. 99. Ms. Jewison opposes the rate increases. Tr. p. 98.

Marion Thompson testified she owns a home at the Hidden Valley resort and three homes in her area have experienced water pipe breaks that caused damage inside the homes. Tr. pp. 100-101. Ms. Thompson opposes the rate increases, stating it is unfair for the Company to make rate increase requests when it delivers a substandard product. Tr. p. 100.

Mauvaleen Jones has owned property at the Hidden Valley resort for over twenty years. Tr. p. 103. Instead of drinking the water at her home, Ms. Jones uses bottled water to drink and to perform other household activities. Tr. p. 103. Ms. Jones installed a home filtration system in her kitchen so she can cook with clean water, and the home filter requires replacement every three to four months. Tr. p. 104. Ms. Jones states the brown water damages her clothes when she uses her washer. Tr. pp. 104-105. Ms. Jones references the 2005 Settlement, and states HVUS should not be given the requested rate increases because it has not complied with the Settlement nor does HVUS currently provide clean water to its customers. Tr. p. 103.

Sarah Prady is a homeowner at the Hidden Valley resort who is employed as a pet sitter and claims the poor water quality not only affects her, but also the animals in her care. Tr. p. 107. She does not feel HVUS deserves a rate increase when it has not remedied the water issues subsequent to the 2005 Settlement. Tr. p. 108.

Marie Pfab has owned a townhouse at the Hidden Valley resort since 2000. Tr. p. 108. She has experienced brown water issues intermittently. Tr. p. 108. Ms. Pfab stays at her townhouse 50% of the time, and when she does come to the Hidden Valley resort, she avoids taking showers and using the laundry due to the existence of brown water at her home. Tr. p.

110. Ms. Pfab opposes the rate increases given the quality of the water and the lack of improvements performed following the 2005 Settlement. Tr. pp. 109-110.

Tim King has lived at the Hidden Valley resort for 42 years. Tr. p. 111. Due to the poor water quality at the Hidden Valley resort, Mr. King has had to install house water filtration systems, and he changes the filters monthly at his own cost. Tr. pp. 111-112. Mr. King states the rate increases should be denied, given HVUS has not made the improvements that were agreed upon in the 2005 Settlement. Tr. pp. 112-113.

Joy Starzl moved to the Hidden Valley resort in 2005. Tr. p. 114. Ms. Starzl has had three water heaters break down, including one heater which broke the day of the hearing which Ms. Starzl will have to replace at her own cost. Tr. p. 115. Ms. Starzl additionally had a water line break in 2016 which she replaced at her own cost. Tr. p. 115. Ms. Starzl purchases outside water to cook and drink, and she uses an outside laundromat to clean her clothing. Tr. p. 115. Ms. Starzl opposes the rate increases. Tr. p. 114.

David Fiola testified he and his wife have been homeowners at the Hidden Valley resort since 2004 and full-time residents since 2010. He opposes the proposed rate increases. Tr. p. 119. Initially, Mr. Fiola stated he agreed with the testimony of the residents who testified before him, especially the testimony of Mr. Henley, Mr. Umble, Ms. Guadino, Mr. Mautino and Mr. King. Tr. pp. 119-120. In particular, he agrees with the same quality of water concerns to which the previous witnesses testified. He opposes the rate increases since HVUS has not made the improvements that were agreed upon in the 2005 Settlement. Tr. pp. 119-120. Mr. Fiola sponsored Fiola Exhibit 1, which was admitted into the record. Tr. pp. 120-121. Mr. Fiola explained this exhibit is a picture of the water in his hot tub, which shows the poor quality of water including its brownish color. Mr. Fiola explained that in order to get clearer water, he must run the water for 15 to 30 minutes, then run the water through his filter. He states this process does make the water clear; however, the filter then bears the brownish color of the water. Tr. pp. 122-123.

David Oster testified he and his wife are part-time residents of the Hidden Valley resort. He agreed with “everything what everyone said so far.” Tr. p. 124. Mr. Oster testified he opposes the rate increases because the increases (105.4% for water and 63.3% for wastewater) are too large and will be implemented too quickly. Mr. Oster said the increases should be more incremental over a longer period of time. Tr. pp. 124-125. Mr. Oster complained the quality of the water is unpleasant in appearance and stains the clothing when washed. Mr. Oster explained he learned from attending Foundation Board meetings that there have been incompatible types of metal parts and connectors that immediately corrode and break the system. Mr. Oster stated since 2010 the poor water conditions resulted in him replacing one hot water tank; one refrigerator in which the icemaker did not work because it was clogged; two toilets; one disposal and one dishwasher. Tr. pp. 125-126.

William Castro testified he has been a homeowner at the Hidden Valley resort for about 24 years and is a physician. Tr. p. 128. Dr. Castro testified he agreed with all prior testimony as to the poor quality of water, which he described as orange-brown. Dr. Castro stated the water damages everything with which the water comes into contact including his sinks, toilets, and clothes that are laundered. Tr. p. 128. Dr. Castro testified he installed a water filtering system and changes the filter every month but the filter is always brown. Tr. pp. 132-33. Dr. Castro stated he replaced his filtering system twice because the gaskets and filters wore out due to rust, and he has had two water breaks. Tr. pp. 129, 133. Dr. Castro testified he opposes the increases for the following reasons: (1) such a large increase will dampen the growth of the Hidden Valley community and decrease the tax revenue available to local township residents; (2) the water issues and improvement of the infrastructure should be corrected first, followed by a discussion on increasing the rates; and (3) after Seven Springs bought the resort, the water systems remained with one individual owner, Mr. Kettler. Since Mr. Kettler lives in Bethesda in the Washington, D.C. area, and his one home at the Hidden Valley resort currently is up for sale, Dr. Castro expressed concern Mr. Kettler will no longer have any vested interest to support the local community. Tr. pp. 132-133.

Richard Kalla testified he has been a homeowner at the Hidden Valley resort for about 38 years, is a retired physician, and stated he is most supportive of the testimony of Mr.

Chris Umble. Tr. p. 137. In particular, like Mr. Umble, Dr. Kalla claims HVUS failed to complete the improvements as required by the 2005 Settlement. Dr. Kalla explained, “There’s little reason that I can see to believe that the increased revenues . . . would result in any different behavior on the part of the utility company from what happened in 2005.” Tr. p. 137.

Carl Amenhauser testified he and his wife are full-time residents and he is a retired attorney. Tr. p. 156. Mr. Amenhauser stated he believes the rate increases are not justified or necessary for four reasons: (1) he is skeptical that Mr. Kettler followed standard fiscal and ethical business practices because he has not budgeted for projected business costs to adequately maintain water service operations; (2) the PUC should compare whether Mr. Kettler’s 10% profit margin is consistent with other Class C Utility Services and whether this profit is above and beyond Mr. Kettler’s salary; (3) the HVUS does not have a long term infrastructure improvement plan; and (4) during the past ten years, there has been a 40% failure rate in the accuracy of the water meters. Mr. Amenhauser asked the Commission to force HVUS to reimburse those customers for overcharging customers before HVUS asks for rate increases. Tr. pp. 156-160.

Robert Kollar testified he and his wife have owned a home at the Hidden Valley resort since 2006. He stated his opposition to the rate increases was his personal view although he noted he currently serves as treasurer on the Board of Directors of the Hidden Valley Foundation. Tr. p. 164. Mr. Kollar testified he has been a Certified Public Accountant (CPA) for the past 33 years and currently is a professor of accounting at Duquesne University School of Business. Tr. p. 166. Mr. Kollar testified, in his professional opinion, HVUS failed to provide accurate annual financial reports to the Commission. Tr. pp. 167, 171. Mr. Kollar pointed out that he raised this issue in 2015 during litigation initiated by the OCA, which led to an order in January 2018 requiring HVUS to file corrected financial reports. He acknowledged HVUS recently did file corrected financial reports. However, Mr. Kollar testified these statements still are not accurate and violate Generally Accepted Accounting Principles, based on his initial limited review of the corrected financial reports. Mr. Kollar noted the financial statements: (1) do not balance, (2) omit a major liability which is the accumulated interest on a \$750,000 loan totaling \$240,000; and (3) omit accurate depreciation of expenses. Tr. pp. 166-170. Further, Mr.

Kollar stated HVUS distributed funds every year at an almost two-to-one ratio to its investors despite consistently losing money. Tr. p. 170. Mr. Kollar recommends the Commission should order HVUS to have an audit conducted of its past three years of financial statements and this audit should be completed by an independent CPA firm at HVUS's expense. Tr. p. 170.

Mr. Kollar also stated the water quality issues have been ongoing for years. He testified he had to replace his water heater in 2010 and again in 2017. He added that a water heater is expected to last longer than 6½ years but the poor water quality damaged his water heater much quicker. Mr. Kollar also replaced his water shut-off valve to his unit due to significant corrosion. Lastly, Mr. Kollar testified he and his wife do not drink the water but bring bottled water for drinking and cooking purposes. Tr. pp. 165-166.

Ron Aldom testified he is the Director of the Somerset County Chamber of Commerce and has resided at the Hidden Valley resort for about two years. Tr. p. 174. Mr. Aldom testified the "trickle-down effect" of such a large increase is that it would be detrimental to the recent growth of young professionals in the area since the Hidden Valley resort is regarded as the ultimate place in Somerset County to reside due to its amenities that attract new homeowners with young families. Tr. pp. 174-175.

John Newport testified he and his wife have resided at the Hidden Valley resort for about twenty years. He stated he was formerly a member of the Board of the Hidden Valley Foundation for ten years, nine years of which he was the president. Mr. Newport stated he "cannot begin to count . . . the numbers of complaints that I would get from customers" concerning the water quality. Tr. p. 177. Like Mr. Aldom, Mr. Newport expressed concern that such large rate increases would stop or diminish the growth of attracting young professionals with young families to Somerset County. Tr. p. 178. Mr. Newport also stated most people bring bottled water to drink due to the poor quality of water, which looks brown. Tr. p. 178.

John Cravotta testified he has been a part-time resident at the Hidden Valley resort for a few years and is a structural engineer. Tr. p. 181. Mr. Cravotta stated his sinks and toilets are filled with rust and he is in the process of replacing some of those items. He also

stated he does not drink the water but brings bottled water for drinking. Tr. p. 181. As a newer customer, Mr. Cravotta stated he feels unduly burdened with paying this large rate jump to cover past costs when incremental costs over the past 10 to 13 years would have been fairer. Mr. Cravotta questioned some costs including: the necessity for HVUS to lease land for their facility at \$45,000 per year; the necessity of including \$32,000 in the Pro Forma Operating expense, which is amortized over three years; the need for a technical review to determine if HVUS operates in a competent and efficient manner; and how HVUS's rates compare to other Class C water quality services. Tr. p. 181-183,

Edgar Hammer testified that he and his wife bought a home at the Hidden Valley resort in October of 2017 and downsized from their previous home. Tr. p. 184. Further, when purchasing their residence last year, they factored in the utility rates in their purchase and are now surprised by a proposed 100% rate increase. Tr. p. 184. Mr. Hammer sponsored two exhibits, Hammer Exhibits 1 and 2, which were admitted into the record. Tr. pp. 185-187. Both exhibits are photographs of the jet tub in Mr. Hammer's master bedroom which shows brown discoloration at the waterline when the tub was full (Hammer Exhibit 2) and brown discoloration of the tub after the water is drained from the tub (Hammer Exhibit 1). Further, Mr. Hammer testified he still experiences a "very visible discoloration and poor water quality," despite flushing the water out of the pipes and using the water constantly, as he was told to do when he moved into his home initially. Tr. p. 185.

Erik Okunewick testified he and his wife bought their residence in March of 2015 but are not full-time residents. They experience water quality issues including the brown discoloration of the water. Tr. pp. 191-192. Mr. Okunewick stated he does drink the water but only after he filters it. Tr. p. 192. Mr. Okunewick complained the communication from HVUS regarding the rate increases has not been "very transparent". Tr. p. 192. Finally, Mr. Okunewick stated, as a CPA, he concurs with Mr. Kollar's recommendation that an independent auditor should audit the financial statements of HVUS. Tr. p. 193.

Kathleen Midock testified she owns two residences at the Hidden Valley resort: one where she lives full-time; and one residence which she rents. Tr. p. 194. Ms. Midock stated

she expected to have lower water bills at the Hidden Valley resort since she downsized from her previous residence, but that has not been her experience. She stated her water bills at the Hidden Valley resort are currently higher than her water bills at her previous larger residence in Pittsburgh and to face now a 100% increase is upsetting to her. Tr. p. 194. Ms. Midock described the quality of her water as “awful” and brown. Tr. p. 195. While she does have a whole house filter, Ms. Midock stated her filters clog up quickly and it is expensive to have them replaced. Tr. p. 195.

John Cupps testified he and his wife are full-time residents and he did file a formal complaint. Tr. p. 197. Mr. Cupps wanted to know: why the requirements in the 2005 Settlement were not fulfilled by HVUS; whether the documents submitted by HVUS were accurate; and whether HVUS can run the water system for its customers in a professional and businesslike manner. Tr. p. 197-198.

Deborah Watson testified she resides at the Hidden Valley resort part-time and complained about the quality of the water. She stated the water is always brown. She testified she has a whole house water filter but only changes it quarterly because of the cost to replace the filters. Ms. Watson stated that within 24 hours of when she changes the filter, the water will be just as brown as it was before the filter was changed. Tr. pp. 198-199. Ms. Watson also complained HVUS does not notify her as a resident when it performs maintenance or work on its system. For example, on one occasion, after she arrived at the residence one evening, Ms. Watson turned on the faucets but no water came out. She testified she left the faucets turned on so she would know when the water service returned. However, when HVUS turned the water service back on after the maintenance, the water came through the pipes with such force that it loosened the valve and caused water to leak into her basement. Ms. Watson said HVUS should have advised her and the other residents when it planned to perform maintenance and to turn the faucets off. Tr. pp. 198-200.

Marsha Ebaugh testified she bought her unit at the Hidden Valley resort in January of 2018 and prior to moving in, had extensive renovations done. During this time the workers complained to her that there seemed to be a problem with the water. Tr. pp. 200-201.

Ms. Ebaugh stated she moved into her unit about a month ago and installed a filter. Ms. Ebaugh stated that, as an RN with a Master's Degree in Health Education, she was appalled to discover that within two days of installation, the new water filter, which was white when new, was completely brown. Ms. Ebaugh states it was her opinion that, "there's no way this [the water] is safe to drink." Tr. p. 202.

Eugene Fike testified he is a resident at the Hidden Valley resort and wants the Commission to consider that he heard Seven Springs received a "substantial grant to either convert, or create or to build an event center here at Hidden Valley," despite HVUS' claims it has no further plans to develop Hidden Valley. Tr. pp. 203-204.

III. LITIGATED ISSUES

Two issues were fully litigated herein: (1) the contention of OCA and HVF that the Commission should deny any rate increase to Hidden Valley for water and wastewater services due to inadequate quality of service by Hidden Valley, pursuant to provisions at 66 Pa.C.S.A. § 523 and § 526; and (2) the contention, made initially by HVF and joined by OCA, that the Commission should order Hidden Valley to complete an independent financial audit of its records.

A. OCA's Litigation Position

1. Water Revenue Requirement in Partial Settlement

OCA argues HVUS does not provide safe, adequate, and reliable water and wastewater service, as required by Section 1501 of the Public Utility Code (Code).¹ OCA strongly contends the Public Utility Code and case law allow the Commission to deny the rate increase request in its entirety as an appropriate remedy for the failure of HVUS to provide adequate service. OCA posits HVUS has failed to provide adequate service since at least 2004

¹ 66 Pa.C.S.A. § 1501

and it continues to provide inadequate service today. In addition, OCA points out that the current case does not contain any expenses or capital projects related to improving the service it provides to its customers. OCA contends the revenue requirement agreed to by HVUS and BIE will not be used to make any improvements that will solve the iron and manganese problems, or to address the long list of issues in the engineer's report for wastewater.

OCA argues the record in this case clearly establishes HVUS provides water that is not suitable for all household purposes. HVUS has failed to properly treat its water, resulting in water that is not usable for basic purposes such as drinking, cooking, bathing, or washing clothes, and which damages appliances and fixtures. Therefore, HVUS is failing to provide "adequate, efficient, safe, and reasonable service" as required by Section 1501. The OCA submits that the appropriate remedy is to deny the rate increase request in its entirety.

OCA points out the Commission is empowered to authorize a rate of return that deviates from an indicated rate of return.² However, OCA avers its recommendation to deny any return is consistent with prior cases where the Commission allowed a utility less than the indicated rate of return when service does not meet the requirements of Section 1501.³ Further, OCA points out the Commonwealth Court affirmed the Commission's authority to deny rate increases because of inadequate service, even where the utility argued that without the increase, it would not have enough revenue to continue operating:

While we recognize that to starve NUI [National Utilities, Inc.] of a rate increase may hinder its abilities to upgrade its systems, we also recognize that a public utility is not entitled to a rate increase when its service is so inadequate. As the D.C. Court of Appeals observed, a utility's fulfillment of its service commitment is a *sine qua non* to constitutional protection under confiscation principles. To hold otherwise would mean that regardless of the level of service provided by a utility, or if the utility provided no service, the PUC would be required to give the

² The Commission allowed more than the indicated rate of return when a utility provided especially efficient and reasonable service. *Pa. Pub. Util. Comm'n v. Aqua Pennsylvania, Inc.*, 236 PUR4th 218, 247-48 (Pa. PUC 2004); 52 Pa.Code § 69.711(b)(1).

³ See, e.g., *Pa. Pub. Util. Comm'n v. Pa. Gas & Water Co.*, 61 Pa. PUC 409 at 415-16, 425, 427, 74 PUR4th 238 at 244-45, 254, 256 (1986) (PG&W 1986); *Pa. Pub. Util. Comm'n v. Pa. Gas & Water Co.*, 68 Pa. PUC 191, 195-95 (1988) (PG&W 1988); *Pa. Pub. Util. Comm'n v. National Util., Inc.*, 1997 Pa. PUC LEXIS 100, *aff'd*, 709 A.2d 972 (Pa.Cmwth. 1998).

utility a reasonable rate of return solely because it exists. In this case, there was ample evidence of an inadequate level of service that did not justify any increase in rates.

National Utilities, Inc. v. Pa. Pub. Util. Comm'n, 709 A.2d 972, 979 (Pa.Cmwlth. 1998).

OCA notes Hidden Valley argued it is entitled to rate relief despite the long-term inadequate service HVUS provided to its customers and continues to provide. OCA argues HVUS' position is without support. The Commission has the authority to deny the rate increase in its entirety and OCA contends the Commission should do so in this proceeding. OCA also points out HVUS argues incorrectly that if the Commission denied the rate increase, then the Commission would be imposing a sanction, which OCA argues the Commission is not. Finally, OCA points out the argument from HVUS that it should not be denied rate relief until the deadlines in the *McCloskey Decisions* have expired. OCA argues HVUS' position is not tenable because HVUS is the entity that consciously chose to file its first base rate case in thirteen years only three months after the *McCloskey Decisions* order was entered. HVUS essentially asks the Commission to ignore the Commission's own finding of inadequate service in January 2018, plus ignore that HVUS filed a rate case in April 2018 when HVUS had not yet met the requirements in the *McCloskey Decisions* order, and ignore that HVUS' customers continue to receive and pay for water that is not suitable for all household purposes. OCA submits the Commission should reject Hidden Valley's position and deny the rate increase in its entirety.

Lastly, OCA points out that HVUS states clearly in its Petition for Amendment of the *McCloskey Decisions* order, that it will not be able to meet the April 30, 2019 deadline to address the inadequate water service.⁴ In that Petition, HVUS asked the Commission to replace the one-year deadline (i.e., April 30, 2019) with a series of milestone deadlines related to the option HVUS chooses. At the least, HVUS asked the Commission in that Petition to change the one-year deadline to a four-year deadline.⁵

⁴ HVUS Petition at Para. 22.

⁵ Petition at 8-9.

2. Wastewater Revenue Requirement in Partial Settlement

OCA argues HVUS continues to improperly operate and equip its wastewater treatment and pumping facilities, in addition to the issues with the water service. Proper operation of these facilities is important in order to prevent contamination of streams and groundwater.⁶ As a result of the Company's improper maintenance of its pumping stations, it is possible for sewage to back up into customer homes and buildings.⁷ Sewage can also overflow and contaminate the ground and groundwater, which is more likely when backup pumps are not installed.⁸

OCA notes the engineering report - required by the *McCloskey Decisions* January 2018 Order - identified deficiencies, made recommendations, estimated costs, and prioritized recommended repairs and replacements to the Company's wastewater pumping and treatment facilities.⁹ The engineering report identified seventy-five projects HVUS had to complete.¹⁰ As of July 27, 2018, eight projects were completed, three projects had been started and sixty-four projects had not been started.¹¹ OCA pointed out its witness found the total number of deficiencies identified in the engineering report indicates the wastewater treatment plant and pumping stations have not been properly maintained for many years. In rebuttal, Hidden Valley's Vice President of Operations insisted all pumping stations have two working pumps installed and all alarms are operational.¹² HVUS' witness further explained samples taken from the wastewater system have all been within NPDES permit limitations and

⁶ OCA St. 3 (WW) at 2.

⁷ OCA St. 3 (WW) at 4.

⁸ OCA St. 3 (WW) at 4.

⁹ OCA St. 3 (WW) at 5-6; Exh. TLF-1.

¹⁰ OCA St. 3S (WW) at 3; Exh. TLF-1.

¹¹ OCA St. 3S (WW) at 3.

¹² HVUS St. 4-R (WW), at 2.

the company is currently not in violation of the Department of Environmental Protection's requirements.¹³

OCA witness Fought responded some pumping stations still lacked backup pumps, based on the April 2018 engineering report.¹⁴ HVUS' president testified there had been no incidents where sewage caused contamination, to his knowledge. OCA's witness agreed but stated "that does not mean that the Company acted appropriately. It had not equipped all stations with backup pumps and operating alarms. All of the pumping stations should have primary backup pumps installed and in operating condition, together with an alarm that properly activates."¹⁵

3. Inadequate Service

OCA argues the water quality issues in Hidden Valley are primarily due to a lack of adequate treatment for iron and manganese, which occur at high levels in the well water used to serve customers. Sequestration, used by HVUS, has not been an effective treatment method for this system and problems with iron and manganese remain.

OCA avers the testimony of numerous HVUS customers confirms that sequestration is not effectively treating the water and demonstrates that the water that the Company provides is not suitable for household purposes. OCA contends, as a result of Hidden Valley's failure to make the necessary improvements to its water service, issues regarding discolored and brown water and inconsistent water pressure - present in the Application proceeding and in the *McCloskey Decisions* case - continue in this rate proceeding. OCA notes two public input hearings were held in this proceeding, at which 32 customers testified. Tr. 36-206. The testimony of those customers covered a wide range of problems the customers experience in their water service.

¹³ HVUS St. 4-R, at 3.

¹⁴ OCA. St. 3S (WW) at 1, 2.

¹⁵ OCA St. 3S (WW) at 2.

OCA contends it is evident from those testimonies that the water is not suitable for all household purposes. The testimonies can be broken down as follows:

- Dirty or brown water. Tr., 65 (Umble); 70 (Guadino); 78 (Witalis); 82, 84 (Sinclair); 86, 87 (Sarra); 98, 99 (Jewison); 104, 105 (Jones); 108, 111 (Pfab); 112 (King); 116 (Starzl); 125 (Oster); 128, 135 (Castro); 185, 186, 189 (Hammer, Hammer Exhibits 1 and 2); 192 (Okunewick); 194, 195 (Midock); 200 (Watson).
- Multiple customers stated that they purchased home filtration systems or other filter types as a result of the dirty water, but that they needed to change filters or replace the systems frequently. Tr., 65 (Umble); 78 (Witalis); 87 (Sarra); 92, 94 (Carroll); 98 (Jewison) Ms. Jewison changes the filter in her home every two weeks; 104 (Jones); 111, 112 (King) Mr. King explained that he changes the filters monthly at a cost of \$11 per month or \$132 per year, “year in, year out”; 129, 133, 135 (Castro) Mr. Castro explained that even with the filtering system, it does not completely resolve the issue and that there is grit in the water; 192 (Okunewick); 195 (Midock); 199-200 (Watson); 201 (Ebaugh). Ms. Ebaugh explained that the filters that she uses are a chalk white, like computer paper when she puts a new filter into her whole house filtration system. She said that it turns brown after two days. Tr. 202.
- Multiple customers reported that they use only bottled water for drinking, cooking, and other household activities. Tr. 83, 84 (Sinclair); 86 (Sarra); 103 (Jones); 110 (Pfab); 115 (Starzl) Ms. Starzl explained that she cannot use the ice made by her refrigerator because of the horrible taste; 166 (Kollar); 181 (Cravotta); 195 (Midock).
- Other customers complained that they could not properly perform household tasks such as laundry or cooking, citing instances of dirty and ruined laundry. Tr. 84 (Sinclair); 99 (Jewison); 104-05 (Jones); 109 (Pfab); 115 (Starzl); 125 (Oster); 166 (Kollar).
- Customers stated that they experience stained toilets, bathtubs, and other appliances, which required replacement. Tr. 65 (Umble); 70-71 (Guadino); 82 (Sinclair); 99 (Jewison); 125 (Oster); 129 (Castro); 181 (Cravotta); 186 (Hammer); 195 (Midock).
- Specific appliances that suffer from reduced life and need replacing as a result of the poor water quality include:
 - water heaters, Tr. 65 (Umble); 71 (Guadino); 92 (Carroll); 114 (Starzl); 126 (Oster); 165 (Kollar); 194 (Midock);
 - filters, Tr. 104 (Jones); 111, 112 (King); 135 (Castro); 200 (Watson);

- toilets, Tr. 71 (Guadino); 126 (Oster); 129 (Castro); 181 (Cravotta);
- sinks, Tr. 71 (Guadino); 181 (Cravotta);
- refrigerators, Tr. 126 (Oster);
- humidifiers, Tr. 92, 93 (Carroll);
- garbage disposals, Tr. 71 (Guadino); 126 (Oster);
- dishwashers, Tr. 71 (Guadino); 126 (Oster)
- washing machines, Tr. 71 (Guadino);
- related issues with inconsistent water pressure, even if pumps were installed in some residences. Tr. 65 (Umble); 78, 79 (Witalis); 98 (Jewison) Ms. Jewison's home had a pump installed when the home was bought 14 years ago. The pump has been replaced twice and needs to be replaced again; 114-17 (Starzl). Ms. Starzl had three water pumps installed during the time she has lived in Hidden Valley and her most recent pump cost \$1,000.

OCA contends the poor quality of service (as summarized above) clearly has a financial impact on HVUS customers beyond what they pay to HVUS for their water service, in addition to disrupting the most basic functions of cooking, laundry, and drinking water. Moreover, OCA notes HVUS' advice for its customers to run the water to allow the water to go from brown to clear is a cost to customers on both their water and the wastewater bills. OCA argues this advice is a further indication of how HVUS fails to provide adequate, efficient, safe and reasonable service.

OCA argues the testimony of the customers at the public input hearings establishes the significant failure of HVUS to supply water that can be used for all household purposes. The discolored water, staining of fixtures and laundry, and the need to buy bottled water and install filtration systems are not reasonable when water customers pay rates to a public utility. OCA avers the evidence shows the water service being provided today does not meet the requirements of Section 1501 of the Public Utility Code. In addition, OCA contends Hidden Valley continues to fail to meet the requirements of Section 1501 by failing to make the

necessary changes, alterations, and improvements to its facilities for the accommodation and safety of its customers.

OCA acknowledges the rebuttal testimony of Company witness Glenn Fodor that Hidden Valley “has no current DEP violations with regard to its water system. . . . Hidden Valley’s water is safe to drink. DEP has brought no enforcement actions against Hidden Valley.”¹⁶ However, OCA points out the Company’s water exceeded the maximum contaminant level (MCL) for iron (0.3 milligrams per liter (mg/l)) and manganese (0.05 mg/l).¹⁷ In addition, OCA argues the Commission can find inadequate service even if there are no regulatory violations noted by the Department of Environmental Protection.¹⁸ OCA points out that the Commission’s standard is whether the water provided is suitable for all household purposes.¹⁹

OCA notes Company President Kettler also asserted in rebuttal that, as per the *McCloskey Decisions* January 2018 Order, the Company has until April 2019 to comply with the engineering report received in April 2018 regarding discolored water.²⁰ OCA does not disagree with his statement. However, OCA argues this rate case is pending before the Commission now and must be decided based on the evidence in this proceeding now. The Commission cannot make a decision assuming what may happen in the future.²¹ Moreover, as discussed above, HVUS filed a Petition for Amendment of the Commission’s *McCloskey Decisions* January 2018 Order. In its Petition for Amendment, HVUS asked the Commission to replace the April 30, 2019 deadline (for either an interconnection or treatment for the wells) with reporting requirements, HVUS has not indicated which option it chose (interconnection or treatment for

¹⁶ HVUS St. 4-R, at 2.

¹⁷ OCA St. 3 (W) at 3.

¹⁸ *Pa. Pub. Util. Comm’n v. Lake Latonka, Water Co.*, 71 Pa. PUC 505, 522 (1989); *Kessler v. Shickshinny Water Co.*, 64 Pa. PUC 290, 296-97 (1987); *Ashbaugh v. Fitz Water Co.*, 51 Pa. PUC 287, 291 (1977).

¹⁹ *PG&W 1986*.

²⁰ HVUS St. 1-R (W) at 18.

²¹ See, *PG&W 1988*.

the wells) and it may be 4-5 years before HVUS implements a solution to the iron and manganese problems.²²

OCA contends it demonstrated there has been a significant failure by HVUS to provide adequate and reasonable service to its water and wastewater customers. OCA notes the water provided by HVUS is unsuitable for basic household purposes, and as such, the water service provided by HVUS is not safe and adequate under Section 1501. Additionally, OCA argues HVUS failed to properly maintain its wastewater system, and the system currently requires significant improvements. OCA points out the Commission has plenary authority under Section 501 of the Public Utility Code to carry out and enforce the Public Utility Code and any rules, regulations, orders, or other requirements.²³ OCA argues part of the rates HVUS customers pay to HVUS are intended for maintenance of the system, and HVUS' failure to maintain the system and make necessary improvements constitutes a failure to provide adequate wastewater service. For these reasons, OCA asks the Commission to reiterate its determination that the Company is failing to comply with Section 1501 of the Public Utility Code.²⁴

OCA submits, therefore, that the applicable constitutional and legal standards establish this Commission's authority and obligation to deny the proposed water and wastewater rate increases because this Commission found the quality of Hidden Valley's service to be inadequate in January 2018, because there has been more than thirteen years of inadequate service, and because the evidence in this case shows the customers continue to receive inadequate water and wastewater service.

4. Revenue Requirement in Partial Settlement

Regarding the agreed-upon revenue requirement, OCA notes its accounting witness provided revenue requirement schedules that were higher than the agreed-upon water

²² See HVUS Petition at 4.

²³ 66 Pa.C.S.A. § 501.

²⁴ 66 Pa.C.S.A. § 1501.

revenue but less than the Phase II wastewater revenue requirement. Under OCA's revenue requirement calculations, including OCA's cost of equity recommendations (both without considering quality of service), the resulting rate of return was 7.26% (water) and 7.35% (wastewater). OCA points out that the agreed-upon wastewater requirement (in the Partial Settlement) has a resulting rate of return that is greater than what OCA used in calculating its wastewater revenue requirement of \$117,686.

OCA argues the \$65,557 revenue requirement for water in the Partial Settlement appears to have a return on equity that is more than 0%. OCA notes HVUS and I&E did not provide the resulting rate of return in the Partial Settlement. OCA points out, however, that the revenue increases permitted by the Partial Settlement are higher than the revenue increases indicated by I&E's primary litigation position (which provided 0% return on equity). I&E's calculated revenue increases using a 0% return on equity were \$57,753 for water and \$69,175 for wastewater.²⁵ Because the Partial Settlement allows for increases greater than these amounts detailed in I&E's primary litigation position, OCA opposes the revenue requirements HVUS and I&E agreed-to because the revenue requirements will provide a positive return on equity for HVUS.

5. Correction of Annual Reports

OCA supports the proposal requiring HVUS to correct any existing annual reports on file with the Commission and requiring HVUS to have a consultant review the reports but OCA notes its support of this settlement provision should not be interpreted to mean OCA supports any revenue requirement increase. Lastly, OCA notes it does not oppose the Foundation's recommendation that the Commission order an independent audit of Hidden Valley.

²⁵ I&E St. No. 1 (Water) at 3; I&E St. No. 1 (Wastewater) at 3.

B. HVF's Position

1. Inadequate Service

HVF argues the Commission should deny Hidden Valley's request to increase the rates for water and wastewater services on the grounds that Hidden Valley continues in its failure to provide adequate, safe and reasonable service more than thirteen years after the Commission first ordered compliance. HVF contends Hidden Valley has not come close to meeting its burden under 66 Pa.C.S.A. § 1301 to prove that its rates are just and reasonable. HVF contends Hidden Valley has never provided adequate, safe and reasonable water and wastewater services. While HVF acknowledges the water is technically safe to drink, HVF argues the water is undrinkable for practical purposes and it is unsuitable for other basic household purposes because of the continued presence of high levels of impurities, specifically, iron and manganese. HVF points out that this problem has persisted unabated over the last thirteen years and Hidden Valley has never provided adequate service since its certification as a public utility. HVF asserts Hidden Valley ignored the Commission's specific directive in 2005 until OCA initiated complaint proceedings against it in 2014.

HVF notes the Commission is permitted, pursuant to 66 Pa.C.S.A. § 526, to reject the request to increase rates, and argues that a review of the record in this proceeding and in the *McCloskey Decisions* proceedings compels the Commission to deny the proposed rate increases in their entirety. In addition, HVF asserts Hidden Valley is unable to prove its rates are just and reasonable because its own financial information – which is used to calculate what are just and reasonable rates – is unreliable at best and completely dubious at worst.

HVF avers Hidden Valley consistently fails to file accurate annual reports and shows no current ability to correct this chronic problem. HVF points to the errors in Hidden Valley's recently-filed "corrected" annual reports filed in response to the order in the *McCloskey Decisions* which must now be "re-corrected" due to the errors in the "corrected" reports.²⁶

²⁶ I&E St. No. 1 – ST (Wastewater) at 17.

HVF also points out that Hidden Valley continued to make repeated distributions to its owner, Mr. Kettler, totaling \$857,849 from 2009 through 2017 despite being unable or unwilling to file accurate financial information with the Commission.²⁷ In addition to making these large distributions of cash to its owner instead of making needed repairs, HVF points to the large level of debt Hidden Valley incurred (almost \$1 million) on which Hidden Valley has not made any interest payments and acknowledges it has no plan for how to repay the loan.²⁸ HVF argues Hidden Valley's owner, Mr. Kettler, ignored the obligations ordered by the Commission in 2005, completely failed to address the issues the Commission ordered Hidden Valley to fix, completely mismanaged the Company and has paid himself handsomely for his mismanagement in the form of significant yearly distributions from 2009 to 2017.

HVF argues any increase in rates is unjust and unreasonable for Hidden Valley's customers who have suffered inadequate service for over thirteen years, if the Commission increases Hidden Valley's rates before Hidden Valley demonstrates it is providing adequate, safe and reasonable service. Furthermore, HVF argues the Commission should not require Hidden Valley's customers to provide additional funds to Hidden Valley so that Hidden Valley – at some time in the future – may provide adequate service. HVF contends that, pursuant to 66 Pa.C.S.A. § 1501, Hidden Valley has a specific obligation to provide adequate service currently and only after these improvements are made such that Hidden Valley actually does provide adequate service are the ratepayers obligated to pay for those improvements.

2. Independent Audit

HVF also argues for an independent audit. HVF contends Hidden Valley's financial statements have been unreliable since prior to the *McCloskey Decisions* proceeding. HVF points to testimony and evidence received in the *McCloskey Decisions* proceeding evidencing numerous errors in Hidden Valley's reports. HVF notes the Commission did not

²⁷ November 16, 2018 Hearing Transcript, p. 256.

²⁸ November 16, 2018 Hearing Transcript, pp. 281-282.

order an independent audit performed by an independent CPA firm, and also notes Hidden Valley continues to file inaccurate annual reports up to the present.²⁹

HVF points to the hearing transcript in the instant proceeding for proof of how badly Mr. Kettler has handled the finances of Hidden Valley:

1. Hidden Valley has never been profitable,
2. Mr. Kettler – by himself - has prepared and filed inaccurate annual reports, even though he is not an accountant,
3. Hidden Valley incurred a \$750,000 outstanding loan on which no interest has been paid, and
4. Mr. Kettler has taken \$857,849 in distributions from Hidden Valley through 2017.

Accordingly, HVF argues that an independent financial audit by a neutral third party with no prior connection to Hidden Valley or Mr. Kettler is absolutely necessary to obtaining a fair evaluation of Hidden Valley's financial position, and HVF requests the Commission order such an audit at this time.

3. Partial Settlement

HVF opposes the Partial Settlement entered into by Hidden Valley and BIE. HVF references the argument of OCA in Section VII of OCA's Main Brief and adopted OCA's position and arguments as its own.

²⁹ I&E St. No. 1 (Water), pp. 13-15; I&E St. No. 1-SR (Water), pp. 17-22; I&E St. No. 1 (Wastewater), pp. 11-13; I&E St No. 1-SR (Wastewater), pp. 15-20; November 16, 2018 Hearing Transcript, pp. 301-305.

C. Presiding Officers' Recommendation on the Litigated Issues

Hidden Valley Utility Services, L.P. is a limited partnership³⁰ which owns and operates a water treatment and distribution system and a wastewater collection and treatment system in Jefferson Township, Somerset County, Pennsylvania.³¹ Hidden Valley's service territory consists of approximately 1,399 acres which follows the geographic boundary of the Hidden Valley Resort (Resort), a ski and golf resort community located in Jefferson Township, Somerset County, Pennsylvania.³²

Hidden Valley received its certificates of public convenience in 2005, its initial rates took effect in August of 2005, and those 2005 rates have remained in effect to the present.³³ Hidden Valley's water system presently serves approximately 1,156 residential and non-residential customers, plus approximately 18 availability customers and 50 private fire customers.³⁴ Hidden Valley's wastewater system presently serves approximately 1,154 residential and non-residential customers, plus approximately 18 availability customers.³⁵

Demand on the water system fluctuates with maximum demands occurring during weekends and holidays because most connections on the system are seasonal/weekend customers.³⁶ These demands on the wastewater treatment plant require HVUS to respond to

³⁰ Hidden Valley's limited partnership consists of two partners: James M. Kettler who owns a 99% ownership interest; and Kettler Brothers of Hidden Valley which owns a 1% ownership interest. *McCloskey Decisions*, Initial Decision, Finding of Fact No. 5 (September __, 2016).

³¹ HVUS Statement No. 1 (Wastewater), Direct Testimony of James M. Kettler, p. 2; HVUS Statement No. 1 (Water), Direct Testimony of James M. Kettler, p. 2.

³² HVUS Statement No. 1 (Wastewater), Direct Testimony of James M. Kettler, p.2; HVUS Statement No. 1 (Water), Direct Testimony of James M. Kettler, p. 2.

³³ HVUS Statement No. 1, Direct Testimony of James M. Kettler (Water), p. 4; HVUS Statement No. 1, Direct Testimony of James M. Kettler (Wastewater) p. 6; *Application of Hidden Valley Utility Services, L.P.*, Docket Nos. A-210117 and A-230101 (Final Order entered July 15, 2005).

³⁴ HVUS Statement No. 1 (Water), Direct Testimony of James M. Kettler, p. 2.

³⁵ HVUS Statement No. 1 (Wastewater), Direct Testimony of James M. Kettler, p. 2.

³⁶ HVUS Statement No. 1 (Water), Direct Testimony of James M. Kettler, p. 3.

unusual operational conditions due to the transient resort population with peak flows occurring on winter weekends and low flow conditions during the week and in the spring and fall.³⁷

In 2017, Hidden Valley reported its net operating income available for return for the wastewater system was negative \$105,045, and the net operating income available for return for the Company's water system was negative \$51,736 for a total loss of negative \$156,781.³⁸ However, it should be noted Hidden Valley agreed in this proceeding to file corrected annual reports for 2015 through 2018 due to admitted inaccuracies in its prior annual filings.³⁹

On January 18, 2018, the Commission found Hidden Valley has not provided reasonable and adequate water and wastewater service.⁴⁰ As a result, the Commission ordered Hidden Valley to complete various improvements to its water and wastewater services, and specified deadlines and enforcement mechanisms if Hidden Valley failed to meet the deadlines.⁴¹ Hidden Valley made some but not all of the mandated improvements to the water and wastewater systems prior to the closing date in this proceeding.⁴²

Accordingly, with that ultimate decision made by the Commission in the *McCloskey Decisions*, the concern herein is whether the level of inadequate service is sufficiently egregious to justify the Commission's discretionary decision to deny a proposed rate increase due to that inadequate service.⁴³ For reasons that follow, the Administrative Law

³⁷ HVUS Statement No. 1 (Wastewater), Direct Testimony of James M. Kettler, p. 4.

³⁸ HVUS Statement No. 2 (Wastewater), Direct Testimony of Paul R. Herbert, Exhibit PRH-2, p. 6; HVUS Statement No. 2 (Water), Direct Testimony of Paul R. Herbert, Exhibit PRH-2, p. 6.

³⁹ See Non-Unanimous Settlement, p. 3.

⁴⁰ *McCloskey Decisions* (January 18, 2018 Final Order) p. 23.

⁴¹ *McCloskey Decisions* (January 18, 2018 Final Order) pp. 6-68; *McCloskey Decisions* (May 3, 2018 Order) pp. 25-34.

⁴² HVUS Statement No. 1-R, Rebuttal Testimony of James M. Kettler (Water) pp. 8-10, 17, 18-19; Status Reports filed April 18, 2018; May 9, 2018; May 18, 2018; July 19, 2018; September 17, 2018; and November 16, 2018; Tr. 235-242; and HVUS Exhibit JMK-REJ1.

⁴³ See 66 Pa.C.S.A. § 526(a).

Judges agree with OCA and the Foundation that the continuing quality of service issues necessitate a serious consideration into whether Hidden Valley should receive any increase at this time.

OCA and the Hidden Valley Foundation argue the quality of service issues are so extensive that the Commission should not allow Hidden Valley to earn a return on either the water rate or the wastewater rates. Furthermore, these two entities argue Hidden Valley should not be permitted to increase the rates charged to its customers because it currently fails to provide quality service as mandated by the Code and regulations. Those arguments are discussed in detail in the Main Briefs of OCA and the Hidden Valley Foundation.

It should be noted that the issue in the *McCloskey Decisions* – whether Hidden Valley failed to provide adequate, safe and reasonable water and wastewater services and if there existed financial and managerial issues – previously presented the Commission with the opportunity to consider the related question of whether Hidden Valley should be permitted to continue to operate as a public utility and provide a utility service in exchange for receiving remuneration from customers. The Commission decided in the *McCloskey Decisions* that Hidden Valley failed to provide adequate, safe and reasonable services but the Commission also determined Hidden Valley provided a sufficient level of service that Hidden Valley should not be acquired by another capable public utility, pursuant to 66 Pa.C.S.A. § 529(a).⁴⁴

The presiding officers find OCA’s arguments to be persuasive. The Commission is empowered to deny a request for an increase in rates, in whole or in part, and the

⁴⁴ The Commission “may order a capable public utility to acquire a small water or sewer utility if the commission, after notice and an opportunity to be heard, determines: (1) that the small water or sewer utility is in violation of statutory or regulatory standards,...; (2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources of the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure; (3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future; (4) that alternatives to acquisition have been considered in according with subsection (b) and have been determined by the commission to be impractical or not economically feasible; (5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and (6) that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.” 66 Pa.C.S.A. § 529(a).

circumstances at work in this proceeding, following so closely after the *McCloskey Decisions*, are out of the ordinary and necessitate disallowing some of the requested increase. Hidden Valley has been given over thirteen years in which to correct the issues with its water and wastewater quality – and its failure to do so is deemed to be a refusal. The presiding officers are not persuaded by the testimony of Hidden Valley’s president that such large sums of money are needed to make the improvements required by the Commission in the *McCloskey Decisions*. Hidden Valley attempts to blame the Commission for Hidden Valley’s failure to meet its responsibilities as a certificated utility to provide quality service by evoking arguments that its due process rights will be adversely affected or that the facts herein somehow present a Catch-22 for Hidden Valley. If there is a “Catch-22” in this situation, it is felt by the customers of Hidden Valley, not the utility itself, because they have suffered and endured for thirteen years with brown, murky water that, though potable, should not be forced upon any customer. Now Hidden Valley comes along and insists in the Partial Settlement these customers, who currently pay, on average, \$345.60 annually for brown, murky water unfit for household use and poor sewer service, must now pay \$508.44 annually for the same poor quality water and sewer service. Hidden Valley’s position is not persuasive.

OCA is correct – the Commission is empowered to deny the increase requests, in whole or in part, and the presiding officers recommend that it is in the public interest for the Commission to deny the increase requests – in part. The increase requests should be denied in part in that Hidden Valley must not be permitted to earn a return on equity until all mandated improvements are made and the Commission has verified the improvements were made.

However, while denying the increase requests *in toto* might satisfy Hidden Valley’s customers and OCA, the presiding officers recommend the Commission grant a portion of the requests to Hidden Valley. Hidden Valley has not been managed well and the annual reports continue to be untrustworthy but the presiding officers find persuasive the assertions of BIE in the Partial Settlement that Hidden Valley needs additional sums in order to comply with the totality of the *McCloskey Decisions* Order. While denying the increase requests in whole might make some parties happy, the goal of the Commission must be to do what is best for the public in general and for the customers specifically. Accordingly, as onerous as it might seem,

Hidden Valley's customers must pay more for the services so that the Commission can ensure Hidden Valley has the money needed to make these repairs.

The presiding officers indicate below, in the discussion on the Partial Settlements, how much money the customers must pay and the disposition of the Foundation's request for an independent audit.

IV. UNLITIGATED ISSUES

A. Joint Stipulation for the Admission of Evidence

At the evidentiary hearing, Hidden Valley, BIE, OCA and the Hidden Valley Foundation (collectively, the Stipulating Parties), offered the Joint Stipulation for the Admission of Evidence (Stipulation to Admit) and asked that the Stipulation to Admit be marked as "Joint Exhibit 1" and be admitted into evidence. No party objected and the presiding officers admitted the Stipulation to Admit into the hearing record.⁴⁵

The Stipulation to Admit was proffered by the Stipulating Parties for two purposes: (1) to admit testimony the Stipulating Parties agreed was authentic and which would not be subject to cross-examination; and (2) to preserve two issues which two of the Stipulating Parties (OCA and the Hidden Valley Foundation) wished to contest. The two parties wished to preserve their right to argue against the rate increase sought by Hidden Valley and to argue for the need to order Hidden Valley to provide an independent financial audit. Both issues were examined in the preceding section.

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

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

⁴⁵ Hidden Valley submitted a written request to admit the Non-Unanimous Settlement on November 19, 2018.

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

a. On behalf of Hidden Valley:

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

b. On behalf of I&E:

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

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

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

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

c. On behalf of OCA:

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

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

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

B. Joint Stipulation

At the evidentiary hearing, Hidden Valley, BIE, OCA and the Hidden Valley Foundation (collectively, the Stipulating Parties), offered the Joint Stipulation and asked that the Joint Stipulation be marked as “Joint Exhibit 3” and be admitted into evidence. No party

objected and the Joint Stipulation was admitted.⁴⁶ The Stipulating Parties made the following *verbatim* assertions in the Joint Stipulation:

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

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

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

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

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

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

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

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

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

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

⁴⁶ Hidden Valley submitted a written request to admit the Non-Unanimous Settlement on November 19, 2018.

C. Joint Petition for Approval of Non-Unanimous Settlement

At the evidentiary hearing, Hidden Valley and BIE offered the Joint Petition for Approval of Non-Unanimous Settlement (Partial Settlement). Hidden Valley and BIE asked the presiding officers to mark the Partial Settlement “Joint Exhibit 2” and be admitted into evidence. The Partial Settlement was admitted without objection. In the Partial Settlement, Hidden Valley and BIE agreed to various provisions concerning the revenue requirement, rate design and annual reports. In support of their agreement, Hidden Valley and BIE provided the following details, *in verbatim*:

SETTLEMENT TERMS

A. Revenue Requirement

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

(a) A water tariff with new rates designed to produce \$65,557 in additional annual operating revenue over present rates; and

(b) A wastewater tariff with new rates designed to produce \$82,227 in additional annual operating revenue over present rates.

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

B. Rate Design

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

C. Annual reports

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

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

D. Hidden Valley's Statement in Support

The Company contends the Commission should read together the Partial Settlement and the Joint Stipulation and then approve a certain revenue requirement and rate structure for Hidden Valley, subject to certain terms and conditions. HVUS contends the revenue requirement in the Partial Settlement should be treated as a "ceiling." Hidden Valley avers the Partial Settlement's proposed rates and rate structure are just and reasonable, are supported by substantial evidence and outline a reasonable approach to address allegations arising from the *McCloskey Decisions* proceedings that the corrected annual reports filed therein contain errors.

The Company notes the amount of the proposed water rate increase in the Partial Settlement is virtually identical to I&E's primary litigation position.⁴⁷ HVUS avers the amount of the water rate increase agreed-to in the Partial Settlement is just and reasonable because it allows Hidden Valley to recover the costs of providing service.

With respect to the Company's wastewater system, Hidden Valley notes the amount of the initial step-up increase is also virtually identical to I&E's primary litigation position.⁴⁸ Hidden Valley also notes the initial step of the wastewater rate increase is just and reasonable because it allows the Company to recover its costs of providing service. HVUS also notes the amount of the second step-up of the wastewater increase is very close to I&E's

⁴⁷ I&E Statement No. 1-SR (Water), Surrebuttal Testimony of John Zalesky p. 2.

⁴⁸ I&E Statement No. 1-SR (Wastewater), Surrebuttal Testimony of John Zalesky p. 2.

secondary litigation position.⁴⁹ Hidden Valley notes I&E's secondary litigation position, unlike its primary litigation position, allowed the Company to obtain a return on equity. Hidden Valley contends this second step-up increase in rates is just and reasonable because Hidden Valley will not receive the second step of the rate increase until it demonstrates its wastewater system is in compliance with the requirements of the *McCloskey Decisions*, and Hidden Valley argues that Sections 523 and 526⁵⁰ provide no basis for denying the Company a return on equity, once Hidden Valley is in compliance with the *McCloskey Decisions*.

HVUS acknowledges that OCA - the only other party to introduce evidence regarding the Company's revenue requirement – insisted Hidden Valley should receive no rate increase whatsoever because the Company is not providing reasonable and adequate service.⁵¹ However, Hidden Valley points out that OCA's secondary litigation position was that, if the Company receives any rate increase, it should receive a water rate increase of \$99,633,⁵² and a wastewater rate increase of \$117,687.⁵³ Thus, HVUS points out OCA's secondary litigation position would permit a total rate increase that is greater than the total rate increase outlined in the Partial Settlement. Thus, Hidden Valley argues the Partial Settlement proposes a revenue requirement figure that is essentially the lowest position advocated by any of the three litigants who introduced evidence on the subject. Hidden Valley contends the Commission should determine this fact demonstrates the revenue requirement outlined in the Partial Settlement is just and reasonable and supported by substantial evidence in the record.

Hidden Valley notes no party contested its proposed rate structure. Consequently, Hidden Valley contends a proportionate scale-back of rates should be used to implement the rate increase proposed in the Partial Settlement.

⁴⁹ I&E Statement No. 1-SR (Wastewater), Surrebuttal Testimony of John Zalesky p. 4.

⁵⁰ 66 Pa.C.S.A. §§ 523 and 526.

⁵¹ OCA Statement No. 1 (Water), Direct Testimony of Stacy L. Sherwood p. 3; OCA Statement No. 1 (Wastewater), Direct Testimony of Stacy L. Sherwood p. 3.

⁵² OCA Statement No. 1S (Water), Surrebuttal Testimony of Stacy L. Sherwood p. 4,

⁵³ OCA Statement No. 1S (Wastewater), Surrebuttal Testimony of Stacy L. Sherwood p. 4.

Hidden Valley acknowledges the *McCloskey Decisions* required it to file corrected annual reports by July 17, 2018.⁵⁴ As a consequence, Hidden Valley filed fourteen corrected annual reports on July 17, 2018, which corrected annual reports were prepared by the president of the Company, who is not an accountant.⁵⁵ At the public input hearing, Mr. Robert Kollar, testified the corrected annual reports contained errors, and BIE witness John Zalesky agreed with Mr. Kollar.⁵⁶ Consequently, HVUS points out the Partial Settlement includes a provision to address this issue in Paragraph C.

Hidden Valley notes the Partial Settlement provides it will submit further corrected annual reports for 2015-2018 and, to ensure these annual reports are correct, HVUS agreed to have these corrected annual reports prepared or reviewed by a rate consultant prior to submission to the Commission within six months. In addition, for annual reports submitted to the Commission during the period 2019-2023, or until the Company's next rate case (whichever is earlier), Hidden Valley is to have its annual reports prepared or reviewed by a rate consultant.

The Company avers this settlement provision is a reasonable approach to address concerns about the accuracy of Hidden Valley's financial records and demonstrates its good faith attempt to comply with the mandates of the *McCloskey Decisions*. Consequently, HVUS asks the Commission to approve the Partial Settlement without modification.

⁵⁴ May 2018 Order, Ordering Paragraph 14.

⁵⁵ Tr. 248.

⁵⁶ Tr. 167-170; I&E Statement 1-SR (Water), Surrebuttal Testimony of John Zalesky, p. 19.

E. BIE's Statement in Support

BIE avers its primary revenue requirement recommendation assumed Hidden Valley would not be allowed a return on equity due to the ongoing service issues. BIE avers its primary recommended water revenue requirement was \$65,544⁵⁷ and its primary wastewater revenue requirement was \$82,236.⁵⁸ BIE also conducted a traditional rate of return analysis which resulted in a recommended \$111,199⁵⁹ revenue increase for water service and \$145,807⁶⁰ increase for wastewater service, in the event the Commission did not accept its primary recommendation of 0.00% equity. BIE acknowledges this Partial Settlement is a black box Settlement but BIE contends the agreed-upon increases to revenue requirements for water (\$65,557) and wastewater (\$82,227 initially and \$145,824 after improvements are made) are supported by the primary and secondary litigation positions contained in BIE's testimony.

BIE provided extensive testimony detailing Hidden Valley's ongoing water service issues, which was the reason for its recommended 0.00% equity recommendation.⁶¹ BIE acknowledged the landmark *Bluefield*⁶² and *Hope*⁶³ cases set forth the generally accepted principles accepted as the appropriate criteria for measuring a fair rate of return. BIE contended, however, this proceeding involved "extraordinary circumstances" due to the Company's failure to satisfy its obligation to provide adequate and reasonable service to its water and wastewater customers.⁶⁴ I&E acknowledges the Commission has the authority to disallow a rate increase

⁵⁷ I&E St. No. 1-SR (Water), p. 3.

⁵⁸ I&E St. No. 1-SR (Wastewater), p. 3.

⁵⁹ I&E St. No. 1-SR (Water), p. 4.

⁶⁰ I&E St. No. 1-SR (Wastewater), p. 4.

⁶¹ I&E St. No. 2 (Water), p. 21-25; I&E St. No. 2 (Wastewater), pp. 21-25.

⁶² *Bluefield Water Works & Improvements Co. v. Pub. Serv. Comm'n of West Virginia*, 262 U.S. 679 (1973).

⁶³ *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

⁶⁴ I&E St. No. 2 (Water), p. 22; I&E St. No. 2 (Wastewater), p. 22.

under Section 526 of the Code, if the Commission determines Hidden Valley's service is inadequate.⁶⁵

I&E detailed in its testimony the customer testimony received during the Public Input Hearings, where HVUS customers expressed dissatisfaction with the Company's utility service.⁶⁶ Those customers experienced: brown or rusty water that customers will not drink; damaged clothing; and permanent stains on bathroom and kitchen fixtures as a result of the poor water quality. HVUS ratepayers also testified that they incur excessive costs resulting from: replacement of damaged appliances before the end of their useful life expectancy; higher water consumption (which causes higher water bills) because customers are forced to run water for long periods of time to alleviate water discoloration; and the cost to install supplemental filtration systems.

I&E contends it would have recommended a 9.13%⁶⁷ cost of common equity, if these service issues were absent. However, I&E recommended a 0.00% cost of equity because Hidden Valley failed to meet its obligation to provide adequate and reasonable water service.⁶⁸ BIE maintains the proposed revenue requirement in the Partial Settlement satisfies the statutory requirement that rates must be just and reasonable. The Partial Settlement allows Hidden Valley to recover its prudent operating expenses and plant costs claimed in the base rate filing but does not allow the Company to earn a profit while recognizing the quality of the Company's service is an ongoing concern.

BIE notes its recommended revenue requirement for water service would have been \$111,199⁶⁹ (which is significantly more than the agreed-upon \$65,557 revenue requirement in the Partial Settlement) if customers had been receiving adequate and reasonable service. Similarly,

⁶⁵ 66 Pa.C.S.A. § 526

⁶⁶ I&E St. No. 3 (Water), pp. 13-17; I&E St. No. 3 (Wastewater), pp. 13-18.

⁶⁷ I&E St. No. 2 (Water), p. 5; I&E St. No. 2 (Wastewater), p. 5.

⁶⁸ I&E St. No. 2 (Water), pp. 21-25; I&E St. No. 2 (Wastewater), pp. 21-25.

⁶⁹ I&E St. No. 1-SR (Water), p. 4.

absent the service issues, I&E would have recommended a wastewater increase of \$145,807⁷⁰ instead of the increase provided in the Partial Settlement (\$82,227). BIE points out the Partial Settlement allows the Company to implement a second phase of wastewater rate increases in annual operating revenue up to \$145,824 over present levels only if Hidden Valley makes the infrastructure improvements as required by the *McCloskey Decisions* sometime in the next two years.⁷¹

BIE notes the *McCloskey Decisions* required the Company to obtain the wastewater engineer's report by April 19, 2018, with which requirement the Company complied in a timely manner. The Company was further directed to comply with recommendations contained in the engineer's report on or before January 31, 2019.⁷² The wastewater engineer's report was included in I&E Exhibit 3, Schedule 3 and was summarized in I&E's direct testimony as follows:

The Wastewater Engineer's Report evaluated the Company's wastewater facilities and provided estimated costs to correct identified deficiencies (I&E Exhibit No. 3, Sch. 2). The Wastewater Engineer's Report found the two sewage treatment plants to be in fair condition and the condition of the six pump stations ranged from good to poor (I&E Exhibit No. 3, Sch. 2, pp. 4-6). The Wastewater Engineer's Report estimated the maintenance and repair costs as follows (I&E Exhibit No. 3, Sch. 2, pp. 4-8):

- Sewage Treatment Plant No. 1- \$104,250
- Sewage Treatment Plant No. 2- \$51,900
- Sprayfield, Snowmaking and Storage Lagoon- \$13,000
- Pump Stations- \$58,750

⁷⁰ I&E St. No. 1-SR (Wastewater), p. 4.

⁷¹ *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, L.P.-Wastewater*, Docket No. C-2014-2447169, Ordering Paragraph 9 (Order entered May 3, 2018).

⁷² *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, L.P.-Wastewater*, Docket No. C-2014-2447169, Ordering Paragraphs 9, 11 (Order entered May 3, 2018).

The Wastewater Engineer's Report estimated two years to complete the recommended repairs (I&E Exhibit No. 3, Sch. 2, p. 53).⁷³

BIE contends the second phase of the wastewater increase will not be implemented until all recommendations contained in the wastewater engineer's report have been completed and the engineer's report expects the recommendations to take two years in which to implement.⁷⁴ BIE avers the step-up increase to \$145,824 proposed in the Partial Settlement is appropriate given that the second increase is conditioned upon Hidden Valley complying with all of the wastewater engineer's recommendations. BIE notes its proposed wastewater revenue requirement if there had been no service issues was \$145,807;⁷⁵ therefore, BIE maintains the revenue requirement contained in the Partial Settlement is in the public interest because it moderates the increase to HVUS customers given the service concerns, while still allowing the Company to recover prudent expenses and plant.

As concerns the rate structure, BIE did not contest the Company's proposed rate structure and rate design. Accordingly, BIE contends the proposed proportional scale-back based on settlement rates is appropriate. Under these settlement rates, the average residential water customer using 2,100 gallons will experience a bill increase from \$26.64 per quarter to \$38.70 per quarter.⁷⁶ The average residential wastewater bill for a customer using 2,100 gallons will increase from \$59.76 to \$75.58 per quarter in Phase I and to \$88.41 per quarter in Phase II.⁷⁷

BIE notes that in the Partial Settlement the Company agreed to correct its 2015-2018 annual reports within six months after entry of a final Commission Order in this base rate proceeding and that those corrected reports will be prepared or reviewed by a rate consultant

⁷³ I&E St. No. 3 (Wastewater), p. 11.

⁷⁴ I&E Exhibit No. 3, Sch. 2, p. 53. However, HVUS contends in its main brief (MB at 25, 31) that the wastewater engineer's recommendations are to be completed by January 31, 2019.

⁷⁵ I&E St. No. 1-SR (Wastewater), p. 4.

⁷⁶ Joint Petition for Non-Unanimous Settlement, Appendix A.

⁷⁷ Joint Petition for Non-Unanimous Settlement, Appendix A.

prior to Hidden Valley submitting the corrected reports to the Commission. Additionally, for the 2019-2023 period, or until its next rate case, whichever is earlier, HVUS will have its annual reports prepared or reviewed by a rate consultant.

BIE acknowledges it questioned the accuracy of the Company's annual reports and recommended an independent financial audit and management efficiency audit be conducted to bring transparency and accuracy to the accounting statements.⁷⁸ BIE notes concerns regarding the accuracy of the Company's annual reports had been raised in the *McCloskey Decisions* proceedings and the Order in the *McCloskey Decisions* directed the Company to file correct information in its annual reports and to amend any prior inaccurate reports within 180 days of entry of a final Commission Order.⁷⁹ BIE averred the Company complied with this directive and submitted its revised annual reports for the 2010-2016 period on July 18, 2018.

BIE contends, however, during this base rate proceeding, its witness John Zalesky reviewed the revised annual reports and found several errors, that are presented in I&E Exhibit No. 1-SR, Schedule 4. HVUS President, Mr. Kettler, testified he prepared the original and revised annual reports.⁸⁰ Given the potential inaccuracies that continue to exist in HVUS annual reports filed with the Commission, BIE contends this term in the Partial Settlement appropriately requires annual reports from 2015 going forward to be prepared or reviewed by a rate consultant. BIE avers this settlement term is in the public interest as it will help the Company comply with the orders in the *McCloskey Decisions* and ensure that accurate information is provided to the Commission.

BIE represents that it supports the Partial Settlement as being in the public interest and respectfully requests the Commission approve its terms and conditions without modification.

⁷⁸ I&E St. No. 1 (Water), pp. 13-15; I&E St. No. 1-SR (Water), pp. 17-22; I&E St. No. 1 (Wastewater), pp. 11-13; I&E St. No. 1-SR (Wastewater), pp. 15-20.

⁷⁹ *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, L.P.-Water*, Docket No. C-2014-2447138, Ordering Paragraph 14 (Order entered January 18, 2018); *Tanya J. McCloskey, Acting Consumer Advocate v. Hidden Valley Utility Services, L.P.-Wastewater*, Docket No. C-2014-2447169, Ordering Paragraph 14 (Order entered January 18, 2018).

⁸⁰ Tr. pp. 276-280.

V. ANALYSIS

Initially, Hidden Valley proposed a 105.4% increase to its water base rate for the average water customer using 2,100 gallons from \$26.64 to \$54.72 per quarter. Currently, the average Hidden Valley water customer pays \$106.56 annually for water which is high in iron and manganese, is brown and murky, and damages household appliances due to the high mineral content. Hidden Valley initially proposed to have that same average water customer pay \$218.88 annually for the same inadequate water which is unsuitable for household use.⁸¹

Simultaneously, Hidden Valley proposed a 61.3% increase to its wastewater base rate for the average wastewater customer using 2,100 gallons from \$59.76 to \$96.42 per quarter. Hidden Valley proposed the average customer receiving wastewater services should go from paying \$239.04 annually to paying \$385.68 annually.

Under the Partial Settlement, the average water customer using 2,100 gallons would go from paying \$26.64 per quarter (or \$106.56 annually) to paying \$38.70 per quarter (or \$154.80 annually). The average wastewater customer using 2,100 gallons would go from paying \$59.76 per quarter (or \$239.04 annually) to paying within a two-tier system. Initially, the wastewater customer would pay \$75.58 per quarter (or \$302.32 annually) and, after January 31, 2019, the average wastewater customer would pay \$88.41 per quarter (or \$353.64 annually) if Hidden Valley made the improvements and those improvements are verified by the Commission.

The question remaining is whether the provisions of the Partial Settlement are fair, just, reasonable and in the public interest, and whether the Commission should approve the Partial Settlement without modification. As discussed below, the presiding officers recommend that Commission approve the Partial Settlement but with one modification: the elimination of the second step in the two-tier system for wastewater rates.

⁸¹ See Appendix A, attached, for a listing and comparison of the various rates as proposed and as settled.

A. Presiding Officers' Analysis of Partial Settlement

The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Commission policy encourages settlements which often eliminate or significantly reduce the time, effort, and expense of litigating a proceeding to a final conclusion.⁸² This time, effort and expense can be extensive if the proceeding, with the resulting Commission decision, includes review by the Pennsylvania appellate courts. Such savings directly benefit the individual parties to a proceeding, the Commission, and the utility's ratepayers by reducing expenses the utility could claim in future rate cases.

It is a well-accepted principle that Hidden Valley, as a certificated utility, is entitled to recover all reasonably incurred expenses,⁸³ including such items as the normal cost of operations, maintenance, labor, fuel, administrative costs, depreciation, taxes and improvements made to the water or wastewater facilities.⁸⁴ As has been noted repeatedly within this proceeding, Hidden Valley has not completed all of the tasks required by the Commission's Orders in January 2018 and May 2018 in the *McCloskey Decisions* although some Commission-mandated deadlines have not expired yet and the *McCloskey Decisions* proceedings remain open before the Commission. However, Hidden Valley has completed some tasks dictated by the Commission. Having determined previously herein (in Section III Subsection C above concerning Litigated Issues) that the level of inadequate service by Hidden Valley is egregious enough to deny a portion of the request for increased revenue for water and wastewater services, the determination herein is whether the Partial Settlement is in the public interest.

The Partial Settlement attempts to strike an appropriate balance between the interests of Hidden Valley to obtain a higher rate with which to pay for the required improvements versus the ratepayers' legitimate needs to receive a quality utility service without

⁸² 52 Pa.Code § 5.231(a).

⁸³ *UGI Corp. v. Pa. Pub. Util. Comm'n*, 410 A.2d 923 (Pa.Cmwlth. 1980).

⁸⁴ *Pa. Power Company v. Pa. Pub. Util. Comm'n*, 561 A.2d 43, 47 (Pa.Cmwlth. 1989).

paying excessive amounts for that service. The Partial Settlement provides the company with an increased level of revenue with which to address the quality of service issues which remain unresolved while denying any return for water services and an unknown level of return for wastewater services provided all mandated improvements are made.

In this Partial Settlement, Hidden Valley and BIE specifically agree the Commission should approve a water revenue increase totaling \$65,557, or an approximate 46.6% increase, over present rates. This proposed rate increase is significantly less than the original request in which Hidden Valley asked the Commission to approve an increase totaling \$150,629, or an approximate 107.2% increase. If the Partial Settlement is approved without modification, the average residential water customer using 2,100 gallons per quarter would pay \$38.70 per quarter which is an increase totaling \$12.06 per quarter (or 45.3%) over current rates.

Also, Hidden Valley and BIE specifically agree the Commission should approve a wastewater base rate using a two-tier increase in rates. The wastewater rates would increase, or “step up,” after Hidden Valley documents it made the wastewater improvements ordered by the Commission in the *McCloskey Decisions*. The Company has averred it expects to complete those improvements by January 31, 2019 because that is the date specified by the Commission in the *McCloskey Decisions*. However, it should be noted, as BIE points out, the improvements which must be made will take two years to implement. Therefore, it is clear HVUS will be unable to meet the requirement to make the mandated improvements for a significant period of time.

Despite the delay in making the improvements, both HVUS and BIE propose the wastewater rates should increase in the first tier by \$82,227, or an approximate 28.0% increase, over present rates. Hidden Valley and BIE agree the total increase in wastewater rates (including the first step-up in rates) would total \$145,824, or an approximate 49.7% increase, once those improvements are documented. This proposed wastewater rate increase is significantly less than the original request in which Hidden Valley asked the Commission to approve an increase totaling \$185,432, or an approximate 63.1% increase. If approved, the average residential wastewater customer using 2,100 gallons per quarter would pay first \$75.58 per quarter, or an

approximately 26.5% increase, over current rates. Eventually the average residential wastewater customer would pay \$88.41 per quarter after the Commission verifies all mandated improvements have been made. This increase totals \$28.65 per quarter, or an approximately 47.9% increase, over current rates for a residential customer.

Hidden Valley and BIE acknowledge the Partial Settlement is a “black box” settlement. Accordingly, the presiding officers must make the recommendation using the limited data provided by HVUS and BIE. HVUS and BIE assert the agreed-upon revenue requirement figures are consistent with the evidence introduced by Hidden Valley and are supported by BIE’s primary and secondary litigation positions. For water rates, BIE initially contended Hidden Valley should be allowed to recover operating expenses and plant claimed in the base rate filing but should not be allowed to earn a return on equity because the Commission has determined Hidden Valley did not provide adequate and reasonable water service in the *McCloskey Decisions*. However, in the Partial Settlement, Hidden Valley and BIE agree with BIE’s secondary litigation position – that Hidden Valley be permitted to obtain a return on equity on the wastewater rates, after the improvements have been made by HVUS and verified by the Commission.

The Partial Settlement also includes an agreement from Hidden Valley to correct its annual reports in the *McCloskey Decisions* proceedings which are intended to correct the errors contained in the corrected annual reports it submitted previously. Hidden Valley also agreed that the annual reports for 2015 through 2018 would be prepared by or reviewed by a rate consultant, instead of being prepared only by Mr. Kettler, and would be filed within six months from when the Commission issues a final order in these two rate proceedings. Hidden Valley acknowledged the annual reports contained errors when its corrected reports were submitted in the *McCloskey Decisions* proceedings in 2018 and agreed further that any annual reports submitted to the Commission by HVUS for the time period 2019 through 2023 will be prepared by or reviewed by a rate consultant before their submission.

The presiding officers recommend the Partial Settlement submitted by Hidden Valley and BIE should be approved but with modification. This modification is in the public

interest and justified because Hidden Valley failed for over thirteen years to provide adequate water and wastewater services. As of the closing date in this proceeding, Hidden Valley continues to provide inadequate service with water that is unfit for household purposes and which no person should be forced to drink. The revenue requirements for water and wastewater are significantly below the original requests by HVUS but will provide the funding needed to make the Commission-mandated improvements.

Most persuasive for the presiding officers was the evidence of BIE which provided that \$65,557 was needed in additional revenue for water service, and \$82,227 was needed in additional revenue for wastewater service in order to cover the costs of service, maintenance and improvements without a return on equity. The evidence provided by Hidden Valley contained so many inaccuracies that the presiding officers did not find it to be credible. BIE indicated its secondary litigation position allowed for a slightly higher increase in water revenue than OCA did because BIE made corrections to its own calculations. The presiding officers recommend the Commission accept BIE's averments that an increase totaling \$65,557 for water service will result in a 0% return on equity for Hidden Valley.

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

It is the recommendation of the presiding officers that Hidden Valley be permitted to increase its revenue requirement for water and wastewater service but not to the extent specified in the Partial Settlement. Hidden Valley should not be permitted to earn a return on

equity for either water or wastewater service due to the plethora of service issues. For wastewater service, Hidden Valley should only be permitted the first-step increase proposed in the Settlement. However, sufficient evidence was provided herein to meet Hidden Valley's burden of proving that additional sums are needed in order to effectuate the many improvements required in the *McCloskey Decisions*.

If the Partial Settlement is approved with modification, the presiding officers recommend the average residential water customer using 2,100 gallons per quarter should pay \$38.70 per quarter which is an increase totaling \$12.06 per quarter (or 45.3%) over current water rates. In addition, the presiding officers recommend the average residential wastewater customer using 2,100 gallons per quarter should pay \$75.58 per quarter which is an increase totaling \$15.82 per quarter (or 26.5%) over current wastewater rates

This rate increase is no doubt frustrating and aggravating for the customers who still do not have quality service. However, the presiding officers believe these recommended rate increases are just and reasonable because: (1) this increase is the first increase in over thirteen years; (2) Hidden Valley is making some improvements; and (3) these increases are intended to eliminate or limit the return on equity which Hidden Valley can earn. The fact that Hidden Valley will receive no return, i.e., profit, from the increased water and wastewater revenues is important to note. A Commission-approved rate which does not allow for any return on equity is no small feat and, although permitted under the law, it is a rare case when the Commission exercises its discretionary authority to eliminate any return on equity to a utility. However, the presiding officers here recommend the Commission take this unusual step due to the plethora of poor quality service issues over the past 13 years for this public utility. Attached to this Recommended Decision as "Appendix A" is a chart outlining the impacts of the current rates, as-filed rates and Settlement rates.

Hidden Valley's agreement to re-file corrected annual reports using the services of a rate consultant will provide the customers and the Commission with some reassurance and a means by which Hidden Valley's improvements can be verified. However, the Foundation's argument is persuasive – given the length of time Hidden Valley failed to provide correct reports,

the fact that Hidden Valley already submitted corrected reports once, and because there is little confidence in the financial numbers Hidden Valley provided in this proceeding, Hidden Valley should be required to obtain a financial audit for 2015 through 2018 from an outside independent financial accounting firm or office which has not previously provided auditing services to Hidden Valley.

For all the foregoing reasons, the presiding officers recommend the Commission approve the Partial Settlement but with modifications.

We recommend:

1. That the Partial Settlement represents a fair, just, lawful, and reasonable resolution of this proceeding, and be approved, with modification, and
2. That the base rate for the water division be increased by \$65,557, to produce annual revenues not in excess of \$206,112 annually, and
3. That the base rate for the wastewater division be increased by \$82,227, to produce annual revenues not in excess of \$375,866 annually, and
4. That Hidden Valley be ordered to file with the Secretary's Bureau and the Bureau of Technical Utility Services corrected annual reports from 2015 through 2018 prepared by or reviewed by a rate consultant within 90 days from the date of the Final Order in these proceedings, and
5. That Hidden Valley be ordered to file with the Secretary's Bureau and the Bureau of Technical Utility Services, within 120 days from the date of the Final Order in these proceedings, an independent financial audit of its records from 2015 through 2018 conducted by an outside independent financial accounting firm or office which has not previously provided auditing services to Hidden Valley.

6. That, within 90 days from the date of this Recommended Decision, Hidden Valley file with the Secretary's Bureau and the Bureau of Technical Utility Services corrections of the numerical errors in Appendix A to the Partial Settlement concerning consumption over or under 30,000 as well as the Private Fire customers at Column D, rows 20 and 21; Column K, rows 20 and 21; Columns F and M, row 57 for Water 2018 and for Sewer 2017-2018; and Columns D and K, rows 22 and 23 for Sewer 2017 Phase II.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S.A. § 701 and 66 Pa.C.S.A. § 1308(d).

2. To determine whether a settlement should be approved, one must decide whether the settlement promotes the public interest. See *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Associates*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Philadelphia Electric Company*, 60 Pa. PUC 1 (1985).

3. Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission. 66 Pa.C.S.A. § 1301.

4. The burden of proving the justness and reasonableness of every element of the utility's rate increase rests solely upon the public utility. 66 Pa.C.S.A. § 315(a); *Lower Frederick Twp. v. Pa. Pub. Util. Comm'n*, 409 A.2d 505 (Pa.Cmwlth. 1980).

5. While the burden of proof remains with the public utility throughout the rate proceeding, the Commission has stated that where a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. Pub. Util. Comm'n v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Opinion and Order entered July 17, 2008).

6. The Commission must consider the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates in exchange for customers paying rates for service, which include the cost of utility plant in service and a rate of return. 66 Pa.C.S.A. § 523.

7. In exchange for the utility's provision of safe, adequate and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service including reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return for the utility's investors. *Pa. Pub. Util. Comm'n. v. Pennsylvania Gas & Water Co.*, 61 Pa. PUC 409, 415-16 (1986); 66 Pa.C.S.A. § 1501.

8. The Commission has the discretionary authority to deny a proposed rate increase, in whole or in part, if the Commission finds the service rendered by the public utility is inadequate. 66 Pa.C.S.A. § 526(a).

9. A denial of rate relief, in whole or in part, is warranted where the Commission finds serious deficiencies in the utility's service. *Pa. Pub. Util. Comm'n v. Pennsylvania Gas & Water Co.*, 61 Pa. PUC 409, 415-16 (1986).

10. The rate base is the value of the property of the utility that is used and useful in providing utility service. *Pennsylvania Power Company v. Pa. Pub. Util. Comm'n*, 561 A.2d 43, 47 (Pa.Cmwlth. 1989). In the area of adjustment to rate base, the Commission has wide discretion. *Pennsylvania Power & Light Company v. Pa. Pub. Util. Comm'n*, 516 A.2d 426 (Pa.Cmwlth. 1985); *UGI Corp. v. Pa. Pub. Util. Comm'n*, 410 A.2d 923, 929 (Pa.Cmwlth. 1980)(UGI case); *Duquesne Light Co. v. Pa. Pub. Util. Comm'n*, 174 Pa. Super. 62, 69-70, 99 A.2d 61, 69 (1953). However, the adjustments must be supported by sound reasons. *Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n*, 394 A.2d 1063 (Pa.Cmwlth. 1978).

11. The utility management discretion doctrine holds that as a general matter, utility management is in the hands of the utility, and the Commission may not interfere with

lawful management decisions, including decisions related to the necessity and propriety of operating expenses, unless on the basis of record evidence, it finds an abuse of the utility's managerial discretion. *Emporium Water Company v. Pa. Pub. Util. Comm'n*, 955 A.2d 456, 465 (Pa.Cmwlth. 2008); *National Fuel Gas Distribution Corp. v. Pa. Pub. Util. Comm'n*, 464 A.2d 546, 559 (Pa.Cmwlth. 1983).

12. The law is clear that a utility is entitled to recover its reasonably incurred expenses. *UGI Corp. v. Pa. Pub. Util. Comm'n*, 410 A.2d 923 (Pa.Cmwlth. 1980). Expenses include such items as the cost of operations and maintenance (labor, fuel and administrative costs, e.g.), depreciation and taxes. *Pennsylvania Power Company v. Pa. Pub. Util. Comm'n*, 561 A.2d 43, 47 (Pa.Cmwlth. 1989).

13. The Commission has no authority to permit, in the rate-making process, the inclusion of hypothetical expenses not actually incurred and, if it does so, it is an error of law subject to reversal on appeal. *Barasch v. Pa. Pub. Util. Comm'n*, 493 A.2d 653, 655 (Pa. 1985).

14. The Commission is charged with the duty of protecting the rights of the public. A public utility, whose facilities and assets have been dedicated to public service, are entitled to *no more than* a reasonable opportunity to earn a fair rate of return on shareholder investment. It is the function of the Commission in fixing a fair rate of return to consider not only the interest of the utility but that of the general public as well because the Commission stands between the public and the utility. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 126 A.2d 777, 785 (Pa.Super. 1956).

15. Determination of a fair rate of return for a public utility requires the exercise of informed judgment based upon an evaluation of the particular facts presented in each proceeding. There is no one precise answer to the question as to what constitutes the proper rate of return. The interests of the Company and its investors are to be considered along with those of the customers, all to the end of assuring adequate service to the public at the least cost, while at the same time maintaining the financial integrity of the utility involved. *Pa. Pub. Util.*

Comm'n v. Pennsylvania Power Co., 55 Pa. PUC 552, 579 (1982). *See also Pa. Pub. Util. Comm'n v. National Fuel Gas Dist. Corp.*, 73 Pa. PUC 552, 603-605 (1990).

16. The basic factor in allocating revenue is to have the rates reflect the cost of service. *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010, 1020 (Pa.Cmwlth. 2006).

VII. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Non-Unanimous Settlement is approved with modification.
2. That Hidden Valley Utility Services, L.P. - Water, shall not place into effect the rules, rates and regulations contained in Supplement No. 1 to Tariff Water-Pa. P.U.C. No. 1.
3. That Hidden Valley Utility Services, L.P. - Wastewater, shall not place into effect the rules, rates and regulations contained in Supplement No. 1 to Tariff Wastewater-Pa. P.U.C. No. 1.
4. That, upon entry of a final Commission Order in this proceeding, Hidden Valley Utility Services, L.P. - Water, is authorized to file water tariffs, tariff supplements or tariff revisions containing rates, rules and regulations, consistent with the findings herein, to produce annual revenues not in excess of \$206,112, which is an increase over present revenues of \$65,557.

5. That, upon entry of a final Commission Order in this proceeding, Hidden Valley Utility Services, L.P.- Wastewater, is authorized to file wastewater tariffs, tariff supplements or tariff revisions containing rates, rules and regulations, consistent with the findings herein, to produce annual revenues not in excess of \$375,866, which is an increase over present revenues of \$82,227.

6. That said tariffs or tariff supplements may be filed on at least one day's notice and may be filed to become effective for service rendered on and after the date on which the Commission's Order in this case is entered.

7. That, within 90 days after the entry of the Commission's final order in this proceeding, Hidden Valley Utility Services, L.P shall submit to the Commission's Secretary's Bureau and the Commission's Bureau of Technical Utility Services corrected annual reports for the years 2015-2018. These annual reports will be prepared or reviewed by a rate consultant prior to submission to the Commission.

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

9. That, within 120 days after the entry of the Commission's final order in this proceeding, Hidden Valley Utility Services, L.P shall cause to be conducted an independent financial audit of its records from 2015 through 2018 by an outside independent financial accounting firm or office which has not previously provided auditing services to Hidden Valley Utility Services, L.P. The Company shall file a notice at this docket number and serve a copy of said notice on all parties to this proceeding, stating that the independent financial audit has been completed. The Company shall submit the independent financial audit to the Commission's Secretary's Bureau and the Commission's Bureau of Technical Utility Services.

10. That, within 90 days from the date of this Recommended Decision, Hidden Valley file with the Secretary's Bureau and the Bureau of Technical Utility Services

corrections of the numerical errors in Appendix A to the Partial Settlement concerning consumption over or under 30,000 as well as the Private Fire customers at Column D, rows 20 and 21; Column K, rows 20 and 21; Columns F and M, row 57 for Water 2018 and for Sewer 2017-2018; and Columns D and K, rows 22 and 23 for Sewer 2017 Phase II.

11. That the following complaints against the water rate increase shall be dismissed:

Office of Consumer Advocate	C-2018-3001841
Hidden Valley Foundation, Inc.	C-2018-3003528
Robert J. Kollar	C-2018-3003370
Gerry and Melissa Pindroh	C-2018-3001787
Debra J. Simpson	C-2018-3002179
Tom and Shelley Conroy	C-2018-3002198
John Cupps	C-2018-3002468
David Oster	C-2018-3002470
Toni Gorenc	C-2018-3002480
David Brodland	C-2018-3002485
Robert and Katherine Bair	C-2018-3002587
Jerome and Barbary Cypher	C-2018-3002671
Jon and Nina Lewis	C-2018-3002701
Celeste Emrick	C-2018-3003020

12. That the following complaints against the wastewater rate increase shall be dismissed:

Office of Consumer Advocate	C-2018-3001843
Hidden Valley Foundation, Inc.	C-2018-3003529
Robert J. Kollar	C-2018-3003372
Tom and Shelley Conroy	C-2018-3002200
John Cupps	C-2018-3002459
David Oster	C-2018-3002475
Toni Gorenc	C-2018-3002481
David Brodland	C-2018-3002487
Jerome and Barbara Cypher	C-2018-3002683
Jon and Nina Lewis	C-2018-3002698

13. That upon acceptance and approval by the Commission of the tariff or tariff supplement as being consistent with this Order, the Commission's inquiry and investigation in the Pennsylvania Public Utility Commission, et al v. Hidden Valley Utility Services, LP – Water at Docket No. R-2018-3001306 shall be terminated and the docket marked closed.

14. That upon acceptance and approval by the Commission of the tariff or tariff supplement as being consistent with this Order, the Commission's inquiry and investigation in the Pennsylvania Public Utility Commission, et al v. Hidden Valley Utility Services, LP – Wastewater at Docket No. R-2018-3001307 shall be terminated and the docket marked closed.

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge

Date: January 15, 2019

/s/
Katrina L. Dunderdale
Administrative Law Judge

APPENDIX A

Rates for Hidden Valley Customers

Water

Customer Type	Current Quarterly Charge	Current Annual Charge	As Filed			Per Settlement			
			Proposed Increase	Proposed Total Quarterly Charge	Proposed Change from Current	Settlement Increase from Current	Settlement Quarterly Charge	Settlement Change from Current	Settlement Annual Charge
Residential 2,100 gal.	\$26.64	\$106.56	\$28.08	\$54.72	105.4%	\$12.06	\$38.70	45.3%	\$154.80
Residential 9,000 gal.	\$74.73	\$298.92	\$71.07	\$145.80	95.1%	\$28.69	\$103.42	38.4%	\$413.68
Commercial 16,000 gal.	\$123.52	\$494.08	\$114.68	\$238.20	92.8%	\$45.56	\$169.08	36.9%	\$676.32
Availability	\$9.00	\$36.00	\$11.25	\$20.25	125%	\$6.00	\$15.00	66.7%	\$60.00

Wastewater

Customer Type	Current Quarterly Charge	Current Annual Charge	As Filed			Per Settlement – Phase I			Per Settlement – Phase II			
			Proposed Increase	Proposed Total Quarterly Charge	Proposed Change from Current	Settlement Increase from Current	Settlement Quarterly Charge	Settlement Annual Charge	Settlement Quarterly Charge	Settlement Change from Current	Settlement Annual Charge	
Residential 2,100 gal.	\$59.76	\$239.04	\$36.66	\$96.42	61.3%	\$15.82	\$75.58	26.5%	\$302.32	\$88.41	47.9%	\$353.64
Residential 9,000 gal.	\$167.40	\$669.60	\$102.90	\$270.30	61.5%	\$44.80	\$212.20	26.8%	\$848.80	\$247.45	47.8%	\$989.80
Commercial 16,000 gal.	\$276.60	\$1,106.40	\$170.10	\$446.70	61.5%	\$74.20	\$350.80	26.8%	\$1,403.20	\$408.80	47.8%	\$1,635.20
Availability	\$15.00	\$60.00	\$9.30	\$24.30	62%	\$4.00	\$19.00	26%	\$76.00	\$22.00	46%	\$88.00

Revenue

	As Filed			Per Settlement					
	Current Revenue ^{1, 2}	Proposed Increase to Revenue	Change from Current Revenue	Settlement Increase, in dollars	Settlement Revenue	Change from Current Revenue	Second Tier Increase	New Revenue after 2nd Tier	Change from Current Revenue
Water	140,555	150,629	107.2%	65,557	206,112 ³	46.6%	N/A	N/A	N/A
Waste	293,639	185,432	63.1%	82,227	375,866 ⁴	28.0%	145,824	439,462 ⁵	49.7%

¹ Total Current Water Revenues include Availability Customers (18 customers, or 72 quarterly bills) and Private Fire Customers (50 connections, or 200 quarterly billing units) who produce \$648 and \$6,324 in current total annual revenue, respectively.

² Total Current Wastewater Revenues include Availability Customers (18 customers, or 72 quarterly bills) who produce \$1,080 in current total annual revenue.

³ Total Current Water Revenues under Partial Settlement would include Availability Customers (18 customers, or 72 quarterly bills) and Private Fire Customers (50 connections, or 200 quarterly billing units) who would produce up to \$1,080 and \$10,112 in total annual revenue, respectively.

⁴ Total Current Wastewater Revenues under the First Tier would include Availability Customers (18 customers, or 72 quarterly bills) who would produce up to \$1,368 in total annual revenue.

⁵ Total Current Wastewater Revenues under the Second Tier would include Availability Customers (18 customers, or 72 quarterly bills) who would produce up to \$1,584 in total annual revenue.