

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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July 1, 2013

Honorable Dennis J. Buckley
Office of Administrative Law Judge
Pa. Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Pennsylvania Public Utility Commission, et al.
v. Columbia Water Company
Docket No. R-2013-2360798, et al.

Dear Judge Buckley:

Enclosed please find copies of the Office of Consumer Advocate's Motion to Compel Answer to OCA Set I Interrogatory No. 26 in the above-referenced proceeding.

The original has been electronically filed with the Secretary's Office and copies have been served upon the parties as evidenced by the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Erin L. Gannon".

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. #83487

Enclosures

cc: Secretary Rosemary Chiavetta
Certificate of Service
170479.doc

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2013-2360798
	:	
Columbia Water Company	:	
	:	

**OFFICE OF CONSUMER ADVOCATE'S
MOTION TO COMPEL ANSWER TO
OCA SET I INTERROGATORY NO. 26**

Pursuant to 52 Pa. Code §§ 5.103, 5.321, 5.331, 5.342, the Office of Consumer Advocate (OCA) hereby moves that the Presiding Officer direct Columbia Water Company (CWC or Company) to provide the information requested in OCA Interrogatory Set I, Question 26.

I. INTRODUCTION

On May 28, 2013, the OCA served OCA Sets I and II to CWC by email and mail. By cover letter dated June 10, 2013, and by email on the same date, CWC served its objection to OCA Set I-26 and three other interrogatories in Set II. The Company did not contact the OCA to discuss its concerns prior to filing its objections. On June 12, 2013, the OCA contacted the Company to discuss possible resolution of the objections. On June 16, the Company provided partial responses to OCA Set II, questions 2(d), 5 and 9 that were acceptable to the OCA and are not included in this Motion to Compel. On June 19, 2013, CWC filed a letter with the Commission indicating that CWC and the OCA agreed to extend indefinitely, the deadline for the OCA to file a Motion to Compel regarding OCA Set I-26.

The OCA and CWC have not been able to resolve the Company's objection and the OCA now timely submits this Motion to Compel. 52 Pa. Code § 5.342(g).

As described below, the OCA's question is relevant and reasonable under the Public Utility Commission's (Commission) rules and regulations relating to discovery. Thus, the objection should be dismissed, and the OCA's motion should be granted. The OCA, therefore, respectfully requests that the Presiding Officer grant the relief requested by the OCA and direct the Company to provide a full and complete response to OCA Set I, question 26 within five days.

II. MOTION TO COMPEL

The OCA filed a Formal Complaint and Public Statement to CWC's proposed Supplement No. 60 to Tariff - Water Pa. P.U.C. No. 7 on May 16, 2013.¹ The OCA served OCA Set I on CWC on May 28, 2013 by e-mail and mail. A copy of OCA Set I-26 is attached hereto.

CWC's filing contains an expense claim for salaries and wages for "Officers, Directors & Majority Stockholders." In OCA Set I, question 26, the OCA asked the Company to provide information about this expense claim, seeking information about these individuals other business interests, actual hours spent on other business interests, and the compensation received therefrom.

On June 10, 2013, CWC, through its counsel, filed its objection to OCA Set I, question 26. Counsel for CWC did not attempt to resolve its objection with the OCA before filing its Objection. Subsequently, the OCA and CWC discussed the Company's objection but have not resolved the issue. Given the limited time for the parties to investigate the Company's claims and develop a record, the OCA determined to move forward and file this Motion to Compel.

¹ The OCA's Formal Complaint was separately docketed at C-2013-2363612.

OCA Set I-26 states:

Refer to the “Officers, Directors & Majority Stockholders” claim of \$68,900 on page 1-15 of the filing. For all officers, directors and majority stockholders, provide the following information, by individual, for 2010, 2011, 2012 and 2013-to-date:

- a. Identify all business interests (i.e., companies of which the individual is an employee, officer, director, or majority stockholder, etc.), whether paid or unpaid. Please include any time spent on Marietta Gravity as a business interest.
- b. All actual hours spent on other business interests.
- c. Any compensation by other business interests: salaries, fees, stipends, reimbursed expenses, or any other form of compensation.

In its Objection, CWC asserts that responding to this request would cause unreasonable annoyance, oppression, burden or expense; require making of an unreasonable investigation; is overbroad and not relevant; is unrelated to the operation and direction of the Company; does not have a bearing on the reasonableness of CWC’s rate increase request; will not lead to the discovery of admissible information; and cause embarrassment and public disclosure of personal financial information. CWC Objection at 1-2.

First, the OCA notes that the scope of discovery is broad, and that “a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” 52 Pa. Code § 5.321(c). “The touchstone as to a discoverable matter under the Commission’s Regulations is that it be relevant to the subject matter involved in the pending action, or reasonably calculated to lead to the discovery of admissible evidence, and not privileged.” Rahn et al. v. Pennsylvania-American Water Co., Docket No. C-20054919 (June 6, 2006 Order Granting Motion To Compel). See also Petition of Verizon PA, Docket No. P-00021973 (Oct. 23, 2002).

The OCA’s interrogatory is relevant, and within the scope of the proceedings. Section 5.321 provides that the scope of discovery encompasses “any matter, not privileged, which is

relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party. . . . It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” 52 Pa. Code § 5.321(c). The interrogatory at issue is relevant to the matter of CWC’s water service and the costs of providing that service; the interrogatory does not relate to privileged matter; and it is within the scope of allowable discovery, being tailored to lead to admissible information regarding costs that directly impact rates in this rate proceeding.

With regard to subsections (a) and (b) of Set I, Question 16, the Commission should be concerned with the hours devoted by officer/directors to utility business compared to other business interests because it bears directly on the reasonableness of the Company’s expense claims. CWC’s officers/directors are part-time. If they are employed by other entities on a full or part-time basis, it does call into question the reasonableness of the fees and salaries paid by CWC – simply stated, there are only so many hours in a day. Wages paid to officers and directors should be commensurate with their duties as officers and directors. In order to evaluate whether the payments claimed are commensurate with their duties, and therefore are reasonable for ratemaking purposes, it is important to have a complete picture of the time that officers and directors spend on other business interests. An accounting of the hours spent on CWC and non-CWC business would allow the parties to assess the reasonableness of the fees and salaries paid to the officers/directors for ratemaking purposes. For example, the Commission has reduced directors’ fees and salaries where the evidence provided regarding time spent on utility business did not support the utility’s claim:

Respondent charged \$16,452 for salaries of five general officers and executives during the test year ended March 31, 1971. The president of the water company

testified that he spends about 35 percent of a 40-hour week on company matters and that the hours within that 35 percent limit might be any time during the week, including Sunday (Tr. 185). He also stated on the record that the secretary and the treasurer spend about 20 to 25 percent of their time and the chairman of the board spends about 10 to 20 percent of his time, on water company business (Tr. 174). In view of the limited participation by the officers in company operations, for rate making purposes, we reduce total salaries of general officers and executives by \$6,452.

...
Included in respondent's operating expenses in the test year are \$4,000 for directors' fees for eight directors. The record shows that one meeting was held during the test year. In view of only one meeting being held during the test year, we allow \$400 for directors' fees, for rate making purposes, and reduce expenses for directors' fees by \$3,600.

Pa. P.U.C. v. Blue Mountain Consol. Water Co., 46 PaPUC 220, 235 (1972). The OCA submits that, in order to support its directors' fees and officers' salary claims with substantial evidence, CWC should be directed to provide an accounting of the hours its directors and officers spend working on behalf of CWC as officers and directors and on behalf of their other interests. See Burleson v. Pa. P.U.C., 501 Pa. 433, 461 A.2d 1234 (1983). Due to the fact that these officers/directors are part-time and have multiple other roles that require their time, it is also reasonable for the officers/directors to account for those hours.

Further, in its Order deciding CWC's last base rate proceeding, the Commission required CWC in its next base rate case to "provide an actual accounting of hours devoted by its officers to company business, in their roles as officers and directors, in relation to all other business interests." Pa. P.U.C. v. Columbia Water Co., Docket No. R-2008-2045157, Order at 41, Ordering Para. No. 5 at 97 (June 10, 2009). In order to determine the hours devoted by officers to CWC business "in relation to all other business interests," as was required by the Commission, it is essential for the Company to provide the hours spent on all other business interests, as was requested in part b of OCA Set I, question 26. The hours devoted by officers, directors and majority stockholders to utility business compared to other business interests bears directly on

the reasonableness of the fees and salaries paid by the Company. The ALJ should compel CWC to promptly provide a response.

With regard to subsection (c) of OCA Set I, question 26, the compensation that the officers and directors receive from other business interests in comparison with their compensation from CWC may show whether or not the pay they receive is commensurate with the duties they are performing for CWC. Additionally, the information sought by the OCA may show that CWC officers, directors and majority stockholders are receiving compensation from other business interests whose services are reflected in CWC's expense claims. This information is directly relevant to the reasonableness of those outside services claims, as well as the reasonableness of the fees and salaries paid by CWC, and may identify potential affiliate issues. Accordingly, the Company should be compelled to respond.

III. CONCLUSION

CWC's objection to OCA Set I, question 26 should be dismissed and CWC should be directed to respond to the question. The OCA respectfully requests that the Presiding Officer issue an order compelling Respondent to promptly provide a full and complete answer to this interrogatory within five days of Administrative Law Judge Buckley's ruling on this motion.

Respectfully Submitted,



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Dated: July 1, 2013

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Pennsylvania Public Utility Commission

v.

Columbia Water Company

Docket No. R-2013-2360798

Interrogatories of the Office of Consumer Advocate

Set I

26. Refer to the "Officers, Directors & Majority Stockholders" claim of \$68,900 on page 1-15 of the filing. For all officers, directors and majority stockholders, provide the following information, by individual, for 2010, 2011, 2012 and 2013-to-date:
- a. Identify all business interests (i.e., companies of which the individual is an employee, officer, director, or majority stockholder, etc.), whether paid or unpaid. Please include any time spent on Marietta Gravity as a business interest.
 - b. All actual hours spent on other business interests.
 - c. Any compensation by other business interests: salaries, fees, stipends, reimbursed expenses, or any other form of compensation.

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission, et al.

v.

Columbia Water Company

Docket Nos. R-2013-2360798

C-2013-2363612

C-2013-2364726

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Motion to Compel Answer to OCA Set I Interrogatory No. 26, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 1st day of July 2013.

SERVICE BY HAND DELIVERY

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Pa. Public Utility Commission
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SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

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