



ATTORNEYS AT LAW

Thomas J. Sniscak
(717) 236-1300 x224
tjsniscak@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

February 20, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room, 2 North
Harrisburg, PA 17120

RE: Columbia Water Company; Docket No. R-2013-2360798;
ANSWER TO PETITION FOR RECONSIDERATION

Attached is the Answer of The Columbia Water Company filed in response to the Petition for Reconsideration filed by the Office of Consumer Advocate in the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service, as well as upon the Office of Special Assistants and Administrative Law Judge Dennis J. Buckley.

If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Very truly yours,

Thomas J. Sniscak
William E. Lehman

Counsel to the Columbia Water Company

WEL/bes

cc: Per Certificate of Service
Honorable Dennis J. Buckley, Administrative Law Judge
Office of Special Assistants (via hand delivery with enclosed CD)

RECEIVED
2014 FEB 20 PM 3:35
PA PUC
SECRETARY'S BUREAU

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

2014 FEB 20 PM 3: 35

Pennsylvania Public Utility Commission

:
:
:
:
:

PA PUC
SECRETARY'S BUREAU

v.

Docket No. R-2013-2360798

The Columbia Water Company

**ANSWER OF THE COLUMBIA WATER COMPANY
TO THE PETITION FOR RECONSIDERATION OF THE
OFFICE OF CONSUMER ADVOCATE**

Pursuant to the 52 Pa.Code § 5.572(e) of the Pennsylvania Public Utility Commission's ("Commission") Regulations, The Columbia Water Company ("Columbia"), by and through its attorneys, Hawke McKeon & Sniscak LLP, hereby submits its Answer to the Petition for Reconsideration ("Petition") filed by the Office of Consumer Advocate ("OCA") regarding the Opinion and Order entered on January 23, 2014 in this proceeding ("January 23 Order").

I. INTRODUCTION AND SUMMARY

Columbia submits that the Petition does not meet the standard for reconsideration, otherwise fails on the merits, and should be denied. The Petition fails to raise any reason that satisfies the steep burden for reconsideration.

The Petition alleges that the Commission miscalculated the federal and state income tax and assessment amounts resulting in an overstatement of \$90,776 to the overall taxes, and, thus, the overall revenue requirement. Petition at 3. However, this is nothing more than a collateral attack on a *tax expense* adjustment OCA lost in the Commission's January 23 Order under the guise of an alleged *tax rate* miscalculation.

Specifically, the January 23 Order at page 91 fully addressed an adjustment proposed by the Company correcting income tax expense “to reflect the tax effect of increasing taxable income by \$214,095.” OCA’s Income Tax Calculation Table (OCA Schedule 1 attached to the Petition), Line 14, leaves out the \$214,095 associated with the accretion of the deferred credit related to the book and tax depreciation for Contributions in Aid of Construction (“CIAC”). Company witness Gary Shambaugh explained details of this adjustment in his rebuttal testimony (CWC Statement No. 2R at 20:5-11) and included it in his GDS Rebuttal Exhibit No. 3 (Revised) on page 5. The OCA did not contest the inclusion of this amount in the body of its surrebuttal testimony but did exclude it from its tax calculation table attached to its surrebuttal testimony. (OCA Exhibit AEE-1S, Schedule 8S, Line 23) Therefore, the OCA was fully aware of the tax accretion issue and contested it by excluding it from its tax calculation table. The Commission, in its January 23, 2014 Order, fully addressed this issue and included the \$214,095 in its taxable income calculations. This issue is not new and novel, as OCA’s position opposing the Company’s adjustment was rejected by the Commission by granting the Company’s position, and thus the Petition does not meet the legal standard for reconsideration as set forth in *Phillip Duick, et al. v. Pennsylvania Gas and Water Company*.¹ OCA’s reconsideration request and collateral attack on the Commission’s resolution of a litigated tax expense adjustment by disputing tax factors should be denied.

II. OCA HAS NOT SATISFIED THE LEGAL REQUIREMENTS FOR RECONSIDERATION.

In *Duick*, the Commission enunciated the standards for exercising its discretion to grant a petition for reconsideration of a Commission Order. The Commission stated:

A petition for reconsideration . . . may properly raise any matters designed to convince the Commission that it should exercise its

¹ 56 Pa. P.U.C. 553 (1982).

discretion under [66 Pa. C.S. § 703] to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that "[p]arties . . . cannot be permitted by a second motion to review and reconsider, **to raise the same questions which were specifically considered and decided against them. . . .**" What we expect to see raised in such petitions are **new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.** Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on the matter or issue was either unwise or in error.

56 Pa. P.U.C. at 558-59 (internal citations omitted, emphasis supplied).

The Petition, while alleging that the Commission miscalculated the federal and state income tax and assessment amounts resulting in an overstatement of \$90,776 to the overall taxes, and, thus, the overall revenue requirement (Petition at 3), does so by eliminating² in its calculations a tax expense adjustment made by the Commission at page 91 of its January 23 Order; namely, the amount of \$214,095 associated with the accretion of the deferred credit related to the book and tax depreciation for CIAC. (OCA Schedule 1- attached to the Petition, Line 14) OCA's Petition offers a faulty and apparently new calculation which would lead to an understatement of total taxes to the Company to the contrary of the January 23 Order.

Reconsideration should not be granted where the issue has been previously heard, considered and resolved by the Commission. *Duick*. That is precisely the situation here. The issue of the validity of the \$214,095 in taxable income is not new to this proceeding nor is OCA offering a new and novel argument against the adjustment. Moreover, OCA had ample and repeated opportunities to produce evidence as to tax factors and it should not be given a second bite at the evidentiary apple via reconsideration.

² The body of OCA's Petition does not state that the Commission's approved tax expense adjustment had been removed; however, a review of OCA's new calculation of tax rates appearing as OCA Schedule 1 to the Petition at line 14 shows OCA's error in not reflecting the adjustment made by the January 23 Order.

Specifically, the record shows Company witness Gary Shambaugh explained the basis for this adjustment in his rebuttal testimony (CWC Statement No. 2R at 20:5-11) and included it in his GDS Rebuttal Exhibit No. 3 (Revised) on page 5. Mr. Shambaugh testified:

The remaining portion of the increase in revenues is attributable to the correction in the accretion of the deferred credit related to the book and tax depreciation for Contributions in Aid of Construction. AUS Consultants removed the \$214,095 from booked revenues and made another adjustment to further reduce the Company's basis for taxes, thus double accounting for this adjustment and understating the state and federal income taxes. That has been corrected.

CWC St. 2R at 20:5-11. Mr. Shambaugh included this amount in his GDS Rebuttal Exhibit No. 3 (Revised) on page 5.

The OCA could have, but did not contest the inclusion of this amount in the body of its surrebuttal testimony. The OCA did, however, exclude it from its tax calculation table attached to its surrebuttal testimony at OCA Exhibit AEE-1S, Schedule 8S, Line 23. There is no question about the OCA having been fully aware of the tax accretion issue as it in fact contested it in its tax calculation table. The Commission, in its January 23 Order, addressed and considered the claim or issue and included the \$214,095 in its taxable income calculations:

[W]e find that a correction is necessary to increase income tax expense due to a double counting of a deduction of taxable income related to Contributions in Aid of Construction. CWC St. 2R at 20. To correct this error, the income taxes reflected in the Recommended Decision will be increased to reflect the tax effect of increasing taxable income by \$214,095.

January 23 Order at 91.

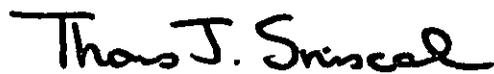
The Commission obviously considered the evidence and legal arguments presented regarding this adjustment, and simply rejected the OCA's position on this matter and accepted Columbia's. The fact that OCA disagrees with the Commission's decision is an insufficient ground for reconsideration, and it is not a valid justification for the Commission to change its

decision in this case. This issue is not new and novel, OCA's proposed treatment of the tax expense claim was rejected by the Commission when it granted the Company's position, and thus OCA's Petition does not meet the legal standard for reconsideration as set forth in *Duick*. Consequently, OCA's reconsideration Petition – including its reduction of \$90,776 to revenue requirement – should be denied.

III. CONCLUSION

For all the reasons set forth above, Columbia Water Company respectfully requests that the Petition for Reconsideration filed by OCA be denied.

Respectfully submitted,



Thomas J. Sniscak, I.D. No. 33891
William E. Lehman, I.D. No. 83936
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P. O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300
(717) 236-4841 (fax)
tjsniscak@hmslegal.com
welchman@hmslegal.com

Counsel for the Columbia Water Company

Dated: February 20, 2014

RECEIVED
2014 FEB 20 PM 3:36
PA PUD
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

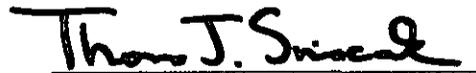
VIA FIRST CLASS U.S. MAIL

Christine Maloni Hoover, Esquire
Senior Assistant Consumer Advocate
Erin L. Gannon, Esquire
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101
CHoover@paoca.org
EGannon@paoca.org

Daniel G. Asmus, Esquire
Office of Small Business Advocate
300 North Second St., Suite 1102
Harrisburg, PA 17101
dasmus@pa.gov

Charles Daniel Shields, Esquire,
Senior Prosecutor
Richard A. Kanaskie, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
400 North Street, Second Floor West
Harrisburg, PA 17120
chshields@pa.gov
rkanaskie@statc.pa.us

RECEIVED
2014 FEB 20 PM 3:35
PA PUC
SECRETARY'S BUREAU


Thomas J. Sniscak
William E. Lehman

Dated this 20th day of February, 2014