



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

February 2, 2017

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
400 North Street, 2<sup>nd</sup> Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: City of DuBois – Bureau of Water Request for  
Approval to Increase Water Rates  
Docket No. R-2016-2554150

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E)  
**Exceptions** for this proceeding.

Copies are being served on all active parties of record as evidenced in the attached  
Certificate of Service. If you have any questions, please contact me at (717) 783-6151.

Sincerely,

Phillip C. Kirchner  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #313870

PCK/sea  
Enclosure

cc: ALJ Mark A. Hoyer  
Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

City of DuBois – Bureau of Water :  
Request for Approval to : Docket No. R-2016-2554150  
Increase Water Rates :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Exceptions** dated February 2, 2017, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

**Served via First Class and Electronic Mail**

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Harrisburg, PA 17101



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Phillip C. Kirchner  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #313870

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|   |   |                                  |
|---|---|----------------------------------|
| <b>Pennsylvania Public Utility Commission</b> | : |                                  |
|   | : |                                  |
| <b>v.</b>                                     | : | <b>Docket No. R-2016-2554150</b> |
|   | : |                                  |
| <b>City of DuBois – Bureau of Water</b>       | : |                                  |

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**EXCEPTIONS  
OF THE BUREAU OF  
INVESTIGATION AND ENFORCEMENT**

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Phillip C. Kirchner, Esq.  
Prosecutor  
PA Attorney ID #313870

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
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Dated: February 2, 2017

**TABLE OF CONTENTS**

I. INTRODUCTION.....1

II. EXCEPTIONS .....3

**I&E Exception No. 1:** The ALJ erred by recommending rejection of I&E’s adjustment for Unaccounted-For Water. ....3

**I&E Exception No. 2:** The ALJ erred by focusing only on the Historic Test Year’s Cost of Overtime.....6

**I&E Exception No. 3:** The RD failed to implement proper Payroll/FICA Tax Adjustments.....8

**I&E Exception No. 4:** The RD erred by failing to average Contractual Transmission and Distribution (“T&D”) Expenses.....8

III. CONCLUSION .....10

## I. INTRODUCTION

On June 30, 2016, the City of DuBois - Bureau of Water (“City” or “DuBois”) filed Supplement No. 22 to Tariff Water - Pa. P.U.C. No. 4 (“Supplement No. 22”) to become effective August 29, 2016. Supplement No. 22 contains proposed changes in rates, rules, and regulations calculated to produce approximately \$257,604 (33.7%) in additional revenues from customers based on a historic test year ending December 31, 2015 and a future test year ending December 31, 2016. Pursuant to 66 Pa. C.S. § 1308(d), the filing was suspended by operation of law until March 29, 2017, unless permitted by Commission Order to become effective at an earlier date on August 11, 2016.

A Prehearing Conference was scheduled for September 9, 2016, with Deputy Chief Administrative Law Judge Mark A. Hoyer (“ALJ”) presiding. Aside from the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and Sandy Township (“Sandy”) each filed a Formal Complaint against the rate increase request and also actively participated in the full litigation of this proceeding. An evidentiary hearing was held on November 10, 2016 in Harrisburg, PA.

The testimonies and exhibits of I&E Witnesses Rachel Maurer, D.C. Patel, and Ethan Cline were incorporated into the record, as reflected below, at the Evidentiary Hearing.

- Rachel Maurer
  - I&E Statement No. 1 – The Direct Testimony of Rachel Maurer
  - I&E Exhibit No. 1 – The Exhibit to Accompany the Direct Testimony of Rachel Maurer
  - I&E Testimony No. 1-SR – The Surrebuttal Testimony of Rachel Maurer

- I&E Exhibit No. 1 SR – the Exhibit to Accompany the Surrebuttal Testimony of Rachel Maurer
- D.C. Patel
  - I&E Statement No. 2 – The Direct Testimony of D.C. Patel
  - I&E Exhibit No. 2 – The Exhibit to Accompany the Direct Testimony of D.C. Patel
  - I&E Testimony No. 2-SR – The Surrebuttal Testimony of D.C. Patel
- Ethan Cline
  - I&E Statement No. 3 – The Direct Testimony of Ethan Cline
  - I&E Exhibit No. 3 – The Exhibit to Accompany the Direct Testimony of Ethan Cline
  - I&E Testimony No. 3-SR – The Surrebuttal Testimony of Ethan Cline
  - I&E Exhibit No. 3 SR – the Exhibit to Accompany the Surrebuttal Testimony of Ethan Cline

Following the submission of Main and Reply Briefs, the Secretary’s Bureau issued the Recommended Decision (“RD”) of ALJ Hoyer on January 13, 2017, which recommends the City be granted an overall increase of \$97,534 in lieu of I&E’s recommended increase of \$49,180. I&E now timely files these Exceptions.

## II. EXCEPTIONS

### **I&E Exception No. 1: The ALJ erred by recommending rejection of I&E's adjustment for Unaccounted-For Water.**

Recommended Decision: Pages 49-52  
I&E Main Brief: Pages 19-21  
I&E Reply Brief: Pages 14-16

Unaccounted-For Water (“UFW”) is the difference between total system output and the metered quantity of water billed plus an estimate for the amount used for fire service, testing, main-flushing, and unmetered company use.<sup>1</sup> UFW is calculated by taking the total amount of water produced and purchased and subtracting accounted-for water.<sup>2</sup> Accounted-for water is water sold, billed, metered for use, fire department use, hydrant flushing, backwashing/blow-offs, pool filling, tank cleaning/filling, street cleaning, bulk sales, water bill adjustments, waterline construction, and other usage by city buildings, wastewater treatment plants, garages and firehalls.<sup>3</sup> Typically, UFW can be traced to under registration of meters, leaks in mains, hydrants, theft of service, and natural losses.<sup>4</sup> The PUC has stated that it considers any Unaccounted for Water above 20% to be excessive.<sup>5</sup>

Since its prior rate case, the City of DuBois has allowed its UFW to consistently grow worse with yearly UFW averages of 25.78% in 2013, 26.22% in 2014, and 28.07% in 2015.<sup>6</sup> The real impact of this excessive waste is the unwarranted pumping, treatment and transportation expenses incurred. Additionally, UFW reduces the amount of water available to customers.<sup>7</sup> In

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<sup>1</sup> I&E Statement No. 3, Pg. 12.

<sup>2</sup> I&E Statement No. 3, Pg. 13.

<sup>3</sup> I&E Statement No. 3, Pg. 13-14 *referencing* I&E Exhibit No. 3, Schedule 4.

<sup>4</sup> I&E Statement No. 3, Pg. 12.

<sup>5</sup> 52 Pa. Code § 65.20(4).

<sup>6</sup> I&E Statement No. 3, Pg. 13 *citing* I&E Exhibit 3, Schedule 4.

<sup>7</sup> I&E Statement No. 3, Pg. 12-13.

this case, I&E supports an expense adjustment to ensure that ratepayers are not compelled to pay for the City's worsening UFW and also to incentivize the City to address this issue.

According to I&E Witness Cline, the cost of power purchased along with supplies and expenses for treatment and maintenance incurred by the City of DuBois to produce 1,000 gallons of water was calculated at \$0.238.<sup>8</sup> The City was determined to have a yearly average of 195,562,237 gallons of unaccounted-for water.<sup>9</sup> Pursuant to the aforementioned policy, the implicitly non-excessive level of UFW would be 146,278,067 gallons of water.<sup>10</sup> By subtracting the latter from the former, the total excessive UFW is 49,284,171 gallons of water.<sup>11</sup> By multiplying this excessive UFW volumes by the per thousand gallon rate listed above, I&E Witness Cline was able to calculate that the amount of expense the City incurs producing the excessive portion of its UFW is \$11,754 on a total city basis or \$3,615 jurisdictionally.

There is no dispute that the City's UFW levels have increased steadily since DuBois' last rate case with the most recent data indicating *over 49 million gallons* of purified and treated water being wasted as excessive UFW. This worsening trend is troubling and this concern is not alleviated by the City's pointing out that current UFW percentages are not as high as they once were many years ago. This alone does not support DuBois' customers being forced to support the excessive UFW costs of the City.

At the time of the evidentiary hearing, OCA and DuBois revealed a joint stipulation to take certain operational measures that will hopefully help reduce UFW. In the RD, ALJ Hoyer stated that "In light of the stipulation and commitment by the City to reduce UFW, I agree with the City and recommend that I&E's proposed expense adjustment be denied. The City's expense

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<sup>8</sup> I&E Exhibit No. 3, Schedule 6, Line 6.

<sup>9</sup> I&E Exhibit No. 3, Schedule 6, Line 5.

<sup>10</sup> I&E Exhibit No. 3, Schedule 6, Line 7, Column B.

<sup>11</sup> I&E Exhibit No. 3, Schedule 6, Line 7, Column C.



is justified to insure [sic] the provision of water service to jurisdictional customers in accordance with the Public Utility Code.”<sup>12</sup> This agreement merely codifies measures that should have been undertaken already.

ALJ Hoyer relies upon *Pa. Pub. Util. Comm’n, et al. v. City of Bethlehem (Water)*<sup>13</sup> in support of his rejection of this adjustment, but overlooks a key component of that case. In that case, the utility had already been executing a significant and defined plan to reduce its UFW. DuBois, on the other hand, is only now agreeing to enter an established plan and has presented no evidence or justification in this proceeding regarding its UFW.<sup>14</sup> I&E respectfully maintains that the RD fails to distinguish between the two different factual scenarios in this regard and this recommendation should be rejected by the Commission.

I&E avers that shielding the City of DuBois from responsibility for their excessive UFW unfairly and prematurely rewards the City simply for agreeing to address an issue in the future that it should have been addressing over the past three years. Furthermore, the ALJ’s recommendation directly harms ratepayers by forcing them to foot the bill for the City’s increasingly excessive UFW level. Without this adjustment, there is no accountability for the City of DuBois allowing its UFW to increase continuously and significantly since the last rate case, and there will be no incentive beyond the stipulation entered into with OCA for the City to address its UFW. As repeatedly stated in testimony and in briefs, this adjustment can be mitigated in its entirety by the City if the City simply reduces its UFW to non-excessive levels.<sup>15</sup>

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<sup>12</sup> Recommended Decision, Pg. 52.

<sup>13</sup> Cited as *Pa. Pub. Util. Comm’n, et al. v. City of Bethlehem (Water)* 1995 Pa. PUC LEXIS 38, 58 (Order entered Mar. 28, 1995).

<sup>14</sup> I&E Statement No. 3-SR, Pg. 10.

<sup>15</sup> I&E Statement No. 3, Pg. 17.

Accordingly, I&E respectfully requests that the Commission not adopt this recommendation from ALJ Hoyer and implement the UFW adjustment of \$3,615 presented by I&E.

**I&E Exception No. 2: The ALJ erred by focusing only on the Historic Test Year's Cost of Overtime.**

Recommended Decision: Pages 52-53  
I&E Main Brief: Pages 21-22  
I&E Reply Brief: Pages 16-17

The City claimed overtime expenses based exclusively on its historic test year, which was accepted in the recommended decision. This results in yearly overtime expenses of \$43,534 for the Water Treatment Plant (“WTP”) and \$34,397 for the Transmission and Distribution (“T&D”) System. I&E recommended an averaging of these costs due to their variable nature over time. In the RD, ALJ Hoyer states:

Therefore, as a result of the historical upward trend of these expenses, I&E’s recommendation to average overtime costs over three years should be denied and the Commission should adopt the City’s claim without modification.

I agree with the City and recommend that the proposed adjustment to Overtime expense be denied. The City’s expense is justified to insure the provision of water service to jurisdictional customers in accordance with the Public Utility Code.<sup>16</sup>

This is a misstatement of the facts and does not fairly gauge the nature of this highly variable expense. As demonstrated below, the overtime expenses incurred by the City of DuBois has varied significantly each year since the last rate case. Given the inconstant nature of this expense, it is wholly inaccurate and harmful to ratepayers to claim the most expensive year is

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<sup>16</sup> Recommended Decision, Pg. 53.

representative of the needs going forward. It is particularly egregious to do so in cases when the expense has, in certain instances, more than doubled from the previous year. Yet, this is exactly what the RD recommends.

I&E Main Brief, Pg. 22

| <u>Year</u>    | <u>WTP</u>      | <u>T&amp;D</u>  |
|----------------|-----------------|-----------------|
| 2013           | \$35,840        | \$22,694        |
| 2014           | \$40,005        | \$16,856        |
| 2015           | \$43,534        | \$34,397        |
| <b>Average</b> | <b>\$39,793</b> | <b>\$24,649</b> |

This error is further compounded since it is entirely incurred on an as-needed basis. Bearing this in mind, I&E recommends averaging the past three years to give a more accurate projection of the overtime needs going forward. The incorporation of more data and evidence gives more credence to I&E's position when compared to the City's position and will protect ratepayers from paying for expenses not supported by record evidence. Accordingly, I&E respectfully requests that the Commission reject ALJ Hoyer's recommendation for overtime and apply the adjustments recommended by I&E to reflect Water Treatment Plant Overtime expense of \$39,793 and Transmission and Distribution Systems expense of \$24,649.

**I&E Exception No. 3: The RD failed to implement proper Payroll/FICA Tax Adjustments.**

Recommended Decision: Pages 53-54

I&E Main Brief: Pages 22-23

I&E Reply Brief: Page 17

This adjustment goes hand-in-hand with the foregoing adjustment. Reducing the overtime expenses requires a corresponding adjustment to Payroll and FICA tax. This is due to the fact that these taxes are based on a percentage of employees' gross wages plus overtime and vacation pay with the removal of certain healthcare expenses.<sup>17</sup> Exception No. 2 results in a Payroll and FICA tax reduction of \$1,031.<sup>18</sup> Accordingly, based upon the validity of Adjustment No. 2, I&E respectfully requests that the ALJ Hoyer's decision not to implement the recommended Payroll/FICA tax adjustments be rejected by the Commission.

**I&E Exception No. 4: The RD erred by failing to average Contractual Transmission and Distribution ("T&D") Expenses**

This error parallels closely with Exception No. 2, but is significantly more egregious. The City has advocated for, and the RD has recommended, using 2015 exclusively as the bellwether of T&D Contractual expense going forward with a recommended expense of \$132,771 per year. I&E recommended averaging this expense to allow for proper normalization.

T&D Contractual Expenses have fluctuated wildly since the last rate case, as demonstrated in the chart below.

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<sup>17</sup> I&E Statement No. 2, Pg. 13.

<sup>18</sup> I&E Statement No. 2-SR, Pg. 13.

I&E Main Brief, P. 24

| <u>Year</u>                                | <u>Expense</u>  |
|--|-----------------|
| 2013                                       | \$129,587       |
| 2014                                       | \$14,087        |
| 2015                                       | \$132,771       |
| First Half of 2016 (Excluded from Average) | \$8,650         |
| <b>Average</b>                             | <b>\$92,148</b> |

The RD accepted the City's claim of \$132,771 in spite of the fact that 2015 expenses were over nine times higher than what was incurred in 2014 and that expenses from the first half of 2016 totaled only \$8,650. Due to the highly volatile nature of this expense, I&E recommended that it be normalized over the three years. As ALJ Hoyer notes, the City has conceded this normalization methodology to be reasonable for other utilities<sup>19</sup> but claims that this reduction should not be applied to them.

I&E seeks to utilize multiple years of historical data to normalize the extreme fluctuations in this expense and allow for better forecasting of DuBois needs, while ensuring that ratepayers are not compelled to pay for expenses that never actually occur. Again, this incorporation of more data smooths out the fluctuations from year to year and gives I&E's methodology of historical averaging more credence than the City's proposal. I&E avers that the T&D expense should be adjusted to \$92,148 annually, which will allow DuBois to cover its

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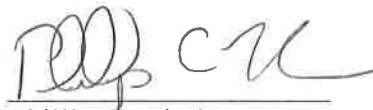
<sup>19</sup> Recommended Decision, Pg. 31.

future expenses but still protect ratepayers. Accordingly, I&E respectfully requests that the Commission reject ALJ Hoyer's adoption of the City position and implement the foregoing adjustment sought by I&E.

### III. CONCLUSION

In order to ensure that the public interest is protected in this matter, I&E respectfully requests that the foregoing Exceptions concerning I&E's recommended UFW adjustment and normalization of both the highly variable T&D contractual expenses and overtime expenses be adopted by the Commission. I&E avers that these adjustments are just, reasonable and in the public interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Phillip C. Kirchner", written over a horizontal line.

Phillip C. Kirchner  
Prosecutor  
PA Attorney ID #313870

Bureau of Investigation and Enforcement  
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Dated: February 2, 2017