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February 2, 2017

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

In re: Docket No. R-2016-2554150, *et al.*
Pa. P.U.C., *et al.* v. The City of DuBois – Bureau of Water

Dear Secretary Chiavetta:

We are counsel to Sandy Township, a Complainant in the above matter, and are submitting, via electronic filing with this letter, its Exceptions to the Recommended Decision of Administrative Law Judge Mark A. Hoyer, dated January 9, 2017, and transmitted to the parties by letter of the Office of Secretary, dated January 13, 2017. Copies of the Exceptions are being served upon the persons and in the manner set forth on the certificate of service attached to them.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

Encl.

cc: Certificate of Service (w/encl.)
ra-OSA@pa.gov (w/encl.)
David Monella (via email, w/encl.)

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Deputy Chief Administrative Law Judge
Mark A. Hoyer, Presiding**

Pennsylvania Public Utility Commission	: R-2016-2554150
Office of Small Business Advocate	: C-2016-2556342
Office of Consumer Advocate	: C-2016-2556376
Sandy Township	: C-2016-2557459
	:
v.	:
	:
City of DuBois – Bureau of Water	:

**EXCEPTIONS OF
SANDY TOWNSHIP TO THE
RECOMMENDED DECISION OF
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE MARK A. HOYER**

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DATED: February 2, 2017

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I. INTRODUCTION

This proceeding concerns the City of DuBois – Bureau of Water (“City Water Bureau” or “City”) Supplement No. 22 to Tariff Water Pa. P.U.C. No. 4 addressing rates “governing the furnishing of water service in Sandy Township, Clearfield County.”¹

Through Supplement No. 22, the City Water Bureau seeks approval to increase its rates for water service in Sandy Township by \$257,604, or approximately 32%.

The City’s desire to increase its rates by 32% follows a 57.1% increase in rates that became effective on January 1, 2014 at the conclusion of the proceeding at Docket No. R-2013-2350509.

Sandy Township (“Township”) is both a sale for resale customer and a commercial customer of the City Water Bureau. Supplement No. 22 seeks to increase the purchase water charges for sale for resale service to the Township by 34%, at average usage.

Supplement No. 22 seeks to increase the bill of a typical Sandy Township residential customer by 33.6%, and the bills for the typical Sandy Township commercial customer and for the typical Sandy Township industrial customer by 37.5% and 35.8%, respectively.²

Township filed a Complaint in opposition to the rate increase, which was assigned Docket No. C-2016-2557459, and actively participated in the proceeding presenting the testimony of David Monella, Township Manager, cross examining witnesses and filing briefs.

By Recommended Decision issued January 13, 2017, Deputy Chief Administrative Law Judge Hoyer recommends that the City be allowed an increase in annual revenue of \$97,534.

Sandy Township submits the following Exceptions to the Recommended Decision.

¹ Supplement No. 22 to Tariff Water Pa. P.U.C. No. 4, Cover Page.

² In addition to its sale for resale service to Sandy Township, the City also provides end use water service directly to 528 Sandy Township residents and businesses.

II. EXCEPTIONS

1. EXCEPTION NO. 1 - Revenues – Falls Creek Borough
Township excepts to the recommendation that no revenue from sales to Falls Creek Borough be imputed in the revenue requirement calculation. Rec. Dec. at 20-22. The Commission should impute revenue of \$110,000 for the bulk sale of water by the City to Falls Creek Borough.

The Recommended Decision recommends that the Commission deny Sandy Township's proposed revenue adjustment imputing \$110,000 for bulk sale of water by the City to Falls Creek Borough ("Falls Creek").³

Falls Creek is a neighboring municipality to the City of DuBois.⁴ Falls Creek is operating under a Consent Order and Agreement with the Department of Environmental Protection to do something about its water supply.⁵ It is a matter of public and common knowledge in the local area that Falls Creek is abandoning its surface water source and connecting a water supply line to the City of DuBois.⁶

The interconnection project will be constructed by the City and Falls Creek beginning within Sandy Township at the intersection of Central Christian Road and West Long Avenue and will continue along West Long Avenue and Larkeytown Road through Sandy Township ending at a point across the Falls Creek Borough line and connecting with Falls Creek Borough's water system.⁷

Newspaper articles of May 4, 2016, September 7, 2016, September 8, 2016 and October 7, 2016 included as Attachment 1 to Sandy Township Statement No. 1 and as Attachment 1 to

³ Recommended Decision at 20-22. Although it declines to impute revenue for City service to Falls Creek, the Recommended Decision adopts an OCA recommendation that the City be required to inform the Commission when it connects Falls Creek and begins service. Recommended Decision, Ordering Paragraph 7.

⁴ Sandy Township St. No. 1 at 3.

⁵ N.T. 56.

⁶ Sandy Township St. No. 1 at 4.

⁷ Sandy Township St. No. 1 at 4.

Sandy Township Statement No. 1SR address the anticipated purchase of water by Falls Creek from the City.⁸

The headline of the article dated May 4, 2016 reports that “Falls Creek residents will be using DuBois water” and goes on to report that Falls Creek Borough Council unanimously voted to give their blessing to an Intergovernmental Cooperation Agreement for the purchase of water from DuBois and that the cost of water from DuBois will be \$4.05 per 1,000 gallons.⁹

The revenue impact of adding Falls Creek as a new City customer will be significant and it should be considered in determining the level of rates that the City will be allowed to charge to Sandy Township and its residents.

The expectation is that the sales level will be approximately 80,000 gallons per day.¹⁰ At the rate of \$4.05 per 1,000 gallons cited in the May 4, 2016 newspaper article, which is the same rate already charged by the City to the Borough of Sykesville, the City stands to achieve additional annual revenue of approximately \$116,640 by selling water to Falls Creek.¹¹ Significantly, the City offered no testimony in rebuttal that this very specific rate of \$4.05 per 1,000 gallons for sales to Falls Creek was not, in fact, accurately reported in the May 7 newspaper article.

⁸ The newspaper articles of May 4, 2016, September 7, 2016, September 8, 2016 and October 7, 2016 were admitted into the evidentiary record without objection. N.T. 145. They were not the subject of Judge Hoyer’s Second Interim Order dated December 21, 2016. The Second Interim Order addressed a different newspaper article – the article of November 21, 2016.

⁹ Sandy Township St. No. 1, Attachment 1.

¹⁰ At 80,000 gallons per day, monthly sales will be approximately 2,400,000 gallons (30 days x 80,000 gallons per day). At the existing monthly consumption charge of \$5.15 per 1,000 gallons for the first 100,000 gallons (\$515.00) and \$3.77 per 1,000 gallons for usage above 100,000 gallons (\$8,671.00), Falls Creek will pay the City Water Bureau approximately \$9,200 per month or approximately \$110,000 per year (12 months x \$9,200 per month) in water consumption charges. Customer charges at the current level will add approximately \$2,000 to the yearly payment (assuming an 8 inch meter). At the higher monthly rate levels of \$7.15 per 1,000 gallons for the first 100,000 gallons and \$5.10 per 1,000 gallons for usage above 100,000 gallons proposed by the City Water Bureau in Supplement No. 22, Falls Creek annual payments to the City for water service would be even higher – approximately \$150,000 ((\$715.00 + \$11,730) per month x 12 months). Sandy Township St. No. 1 at 5.

¹¹ \$4.05 per 1,000 gallons multiplied by 2,400,000 gallons per month multiplied by 12 months.

The Commission, in its Final Opinion and Order, should assume the existence of Falls Creek purchased water revenue for the purposes of determining the City Water Bureau's need for additional annual revenue from Sandy Township and its residents. The revenue adjustment at existing rates, as presented in Sandy Township Statement No. 1, is \$110,000.¹²

To fail to account for revenue from Falls Creek in the revenue requirement calculation would create a potential windfall for the City to the detriment of Sandy Township and its residents. While well intentioned, the reporting requirement recommended in the Recommended Decision¹³ does not, in any way, address the potential windfall and its detrimental impact.

In denying the Township's revenue adjustment, the Recommended Decision relies on the fact that the sale of water will not begin until after the end of the future test year – December 31, 2016.¹⁴ The practical effect of the Recommendation Decision is to allow the City to control the ratemaking consideration of Falls Creek revenue by waiting until after the end of the future test year to sign the agreement.

When the City ultimately signs an agreement and the interconnection is accomplished, revenue from Falls Creek will flow to the City increasing its return above the level allowed by the Commission, while Sandy Township and its residents continue to pay the tariff rates determined without the Township's proposed revenue imputation. This scenario, which is entirely likely to occur, is neither just nor reasonable to Sandy Township and its residents.¹⁵

Citing *Pa.P.U.C. v. PPL Gas Utilities Corporation*, 102 Pa. P.U.C. 325 (2007), the Recommended Decision recites a City argument that the Township's proposed revenue adjustment would contravene "Commission precedent limiting revenue recognized for

¹² Sandy Township St. No. 1 at 5 – 6.

¹³ Recommended Decision, Recommended Ordering Paragraph 7 at 98.

¹⁴ Rec. Dec. at 22.

¹⁵ Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that "every rate made, demanded, or received by [the City]...shall be just and reasonable...."

ratemaking purposes to those *reasonably known and measurable*.¹⁶ Applying this standard, Township submits that the sale of water to Falls Creek is “reasonably known” from the testimony of Township Manager Monella and the newspaper reports admitted into the evidentiary record without objection.¹⁷ The dollar amount of the revenue, moreover, is “reasonably measurable” based on the rate of \$4.05 per thousand gallons reported in the newspaper on May 7, 2016, which is the same rate already charged by the City to the Borough of Sykesville. Township’s revenue adjustment, accordingly, should be adopted.

In the end, the burden of proof to establish the justness and reasonableness of every element of its rate increase rests solely upon the City. 66 Pa. C.S. § 315(a). The evidence adduced by the City to meet this burden must be substantial. *Lower Frederick Twp. v. Pa. P.U.C.*, 48 Pa. Cmwlth. 222, 227, 409 A.2d 505, 507 (1980). *See also Brockway Glass Co. v. Pa. P.U.C.*, 63 Pa. Cmwlth. 238, 437 A.2d 1067 (1981). The City’s burden applies equally to its revenue claim just as it does to every other element of its rate increase. Sandy Township submits that the City has failed to support a revenue level that excludes recognition of Falls Creek revenue.

Sandy Township’s Exception No. 1 should be granted. The Commission, in its Final Opinion and Order, should assume the existence of Falls Creek purchased water revenue for the purposes of determining the City Water Bureau’s need for additional annual revenue from Sandy Township and its residents. The revenue adjustment, as presented in Sandy Township Statement No. 1, is \$110,000.

¹⁶ Rec. Dec. at 21. Emphasis added.

¹⁷ Sandy Township St. No. 1 at 3-6 and Sandy Township St. No. 1-SR at 2-4.

2. **EXCEPTION NO. 2** -

Revenues – Union Township Contract Sales

Township excepts to the recommendation that revenue at the standard tariff rate for the City’s service to Union Township should not be imputed in the revenue requirement calculation. Rec. Dec. at 22-26. Revenue of \$21,241 based on the full tariff rate for contract sales to Union Township should be imputed for ratemaking purposes.

The Recommended Decision recommends that the Commission deny Sandy Township’s proposed revenue adjustment and, “for purposes of this rate proceeding,” revenue of \$21,241 should not be imputed for contract sales to Union Township.¹⁸ Union Township is a contract customer of the City Water Bureau.¹⁹ Union Township pays a rate of \$2.00 per 1,000 gallons for its water service, which is significantly less than the City Water Bureau’s tariff rate.²⁰ The Township’s proposed revenue adjustment is based on the difference between the contract rate and the City’s existing tariff charge.²¹

Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, addresses contracts between public utilities and municipalities and provides that, except for contracts to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date. The City has never submitted a Section 507 filing for its contract with Union Township. The City’s claim that its contract rate of \$2.00 per 1,000 gallons is reasonable for service to Union Township has never been validated through a Section 507 filing.

Sandy Township’s Exception No. 2 should be granted. With the Commission not having approved the below tariff rate, Sandy Township submits that it is appropriate under the

¹⁸ Rec. Dec. at 26.

¹⁹ The City Water Bureau’s contract with Union Township is included in the evidentiary record as Attachment 6 to Sandy Township Statement No. 1.

²⁰ Sandy Township St. No. 1 at 9 and Attachment 7.

²¹ Sandy Township Main Brief at 7 – 8.

circumstances to reflect revenue from Union Township at the full tariff level for ratemaking purposes. For the reasons stated above and in Sandy Township's Main Brief, Section IV.B, pages 7 and 8, and Reply Brief, Section IV.B, page 5, the Commission should impute revenue of \$21,241 for contract sales to Union Township.

3. **EXCEPTION NO. 3** - Revenues – Borough of Sykesville
Township excepts to the recommendation that the City's bulk water sales are outside the Commission's jurisdiction. Rec. Dec. at 26-28. The City's bulk sale of water to the Borough of Sykesville is within the Commission's jurisdiction.

The Recommended Decision recommends that the Commission reject Sandy Township's argument that the City's bulk water sale to the Borough of Sykesville is within the Commission's jurisdiction. The City's sale of bulk water to Sykesville is substantively indistinguishable from its sale of bulk water to Sandy Township and Union Township and each of those services is treated by the City as within the Commission's jurisdiction and, in fact, regulated by the Commission.²²

The Township's interest in the jurisdictional status of the City's service to the Borough of Sykesville is one of revenue/cost allocation.²³ The recognition of Sykesville as a jurisdictional customer may be material, if not in this proceeding then in the next City rate proceeding, in the determination of just and reasonable rates under the Public Utility Code, in the determination of the City's regulated revenue requirement and how that regulated revenue requirement is to be met and

²² Sandy Township pays a tariff rate for its bulk water. Union Township pays a contract rate the revenue from which the City treats as Contract Customer Revenues – Outside-City. *See* Exhibit_(CEH-1) at 8.

²³ Township did not propose a dollar revenue adjustment for the City's bulk water service to the Borough of Sykesville in either its Main Brief or in its Reply Brief. It is not proposing a dollar revenue adjustment in this Exception.

allocated.²⁴ The allocation of revenue/cost to the City's many services is an issue of significant interest and concern to Sandy Township.

The City argued that its bulk water service to the Borough of Sykesville is non-jurisdictional because Sykesville takes service within the boundaries of the City.²⁵ This view of Commission jurisdiction is contrary to established precedent. It is the residence of the consumer that determines Commission jurisdiction under the Public Utility Code, not the location of the interconnection. *County of Dauphin v. Pa. P.U.C.*, 159 Pa. Cmwlth. 649, 634 A.2d. 281 (1993), citing *State College Borough Authority v. Pa. P.U.C.*, 152 Pa. Superior Ct. 363, 31 A.2d 557 (1943). The Borough of Sykesville is not a City resident.

This, moreover, is not a situation where a municipality is providing limited utility service outside its municipal border. Here, in addition to what it asserts is an unregulated bulk water service to Sykesville, the City provides a regulated water service to end users in Sandy Township, a regulated bulk water service to Sandy Township, a regulated bulk water contract service to Union Township, an unregulated water service to its City residents and a bulk wastewater service to Sandy Township. The proper recognition of all of these services for revenue and cost allocation purposes may well be significant for ratemaking purposes.

Sandy Township's Exception No. 3 should be granted. For the reasons stated above and in Sandy Township's Main Brief, Section VII.C, pages 12 through 14, and Reply Brief, Section IV.C, pages 5 and 6, the Commission should conclude that the City's bulk sale of water to the Borough of Sykesville is within the Commission's jurisdiction.

²⁴ See Township Reply Brief at 6.

²⁵ City Main Brief, Section III.B.3; see also City Main Brief at 5.

4. EXCEPTION NO. 4 -

Cost of Service

Township excepts to the Recommended Decision's failure to address the Township's concern that costs the City is seeking to recovery through its regulated water service are also being recovered through the City's unregulated wastewater service. Rec. Dec. at 75-78. The Commission should require the City to present a complete cost of service study in its next rate filing. That analysis should include a full explanation and allocation of plant and expenses to the City's wastewater services.

The Recommended Decision rejects the Township's request that the City be required in its next rate case to submit a full explanation and allocation of plant and expenses to wastewater service. Citing an argument from the City's Reply Brief,²⁶ the Recommended Decision inaccurately concludes that the Township is seeking to make the City's wastewater rates an issue in this proceeding.²⁷

Township is not asking the Commission to address the City's wastewater rates. Township, however, is asking the Commission to address *cost allocation* – *i.e.*, whether the City is recovering costs through its regulated charges for water service that the City is already recovering through its wastewater charges. Is the City, in other words, double recovering costs through its water and wastewater service charges?

Sandy Township has a legitimate concern that the City may be double recovering costs through the rates charged by the City to the Township and its residents. The City Water Bureau also provides wastewater service to Sandy Township.²⁸ The City's wastewater charges to the Township are significant and are increasing. Since May 2016, City Water Bureau *monthly*

²⁶ The City did not address the Township's cost of service proposal in its Main Brief. *See* Township Reply Brief at 7.

²⁷ The Recommended Decision cites to an argument presented by the City, in its Reply Brief, based on 52 Pa. Code § 5.401. Section 5.401 lists bases for challenging the admission of evidence. The City, however, did not challenge any Township evidence on this issue. The cited Section has no application here.

²⁸ The Recommended Decision is incorrect when it states in footnote 15 at page 40 that the City's sewer operations serve inside-City customers only. The City also provides a bulk wastewater service to Sandy Township. Sandy Township St. No. 1 at 6.

invoices for wastewater service to the Township have risen from approximately \$80,000 to \$130,000.²⁹

In an effort to avoid controversy, Township asked the City, at the discovery stage, to explain the steps it took in its rate filing and in its cost of service study to assure that the City would not double recovery costs.³⁰ Instead of offering an explanation, the City, first, referred the Township to pages of its rate case supporting information and then, in an updated response, referred to pages of City of DuBois witness Heppenstall's testimony with modifications.³¹

While the Recommended Decision concludes that the Township was the only party to question the City's cost of service analysis, Township, most certainly, was *not* the only party to question the City's allocation of costs to water service within that analysis. The City's allocation of costs also was challenged by both the OCA and I&E in respect to City's claim for the allocation of the City Manager's Salary³² and by I&E in respect the City's claim for the allocation for Administrative Expense.³³

The Recommended Decision, in fact, *rejects* the City's proposed allocation of the City Manager's Salary and of Administrative Expense to the Water Fund. The Recommended Decision concludes that the testimony of the City Manager that 60% of his time is devoted to the Bureau of Water was not "*credible at all, given all the other duties and responsibilities his job*

²⁹ Sandy Township St. No. 1 at 6. The increases have occurred due to a change in billing procedure initiated by the City. Prior to the June invoice, sewer billing was determined by water meter reading totals from individual customers located in Sandy Township. Monthly invoices for wastewater services to the Township for May through August 2016 are included as Attachment 3 to Sandy Township Statement No. 1. Sandy Township St. No. 1 at 6-7.

³⁰ The Township's Interrogatory No. 14 asked the City to "[e]xplain the steps taken by the City Water Bureau and in preparation of the cost of service study to assure that City Water Bureau costs are not double recovered – first, in the ratemaking costs of providing water service and, again, in the ratemaking costs of providing water service." Sandy Township St. No. 1, Attachment 4.

³¹ Sandy Township St. No. 1 at 7 and Attachment 4. The City Water Bureau responses to discovery are included in the evidentiary record as Attachment 4 to Sandy Township Statement No. 1.

³² Rec. Dec. at 38 – 42.

³³ Rec. Dec. at 42 – 44.

*entails.”*³⁴ With less forceful language, the Recommended Decision also rejects the allocation of Administrative Expenses to the Water Fund. The existence of these allocation issues and the rejection of the City’s claims in the Recommended Decision support Township’s request for a thorough cost of service analysis in the next proceeding.

In the end, the way to get to the bottom of what is a legitimate cost allocation concern to Sandy Township and its residents – who are paying the City for its services – is to require the City to present a complete cost of service study in its next rate filing. That analysis should include a full explanation and allocation of plant and expenses to the City’s wastewater services.

While the Recommended Decision suggests that there may be a resource or cost concern with the Township’s proposal,³⁵ a full explanation and allocation of costs, actually, could be a useful tool to avoid litigation thereby minimizing resources/costs in the next rate proceeding. With a normalized, annual rate case expense of \$42,282 as recommended in the Recommended Decision,³⁶ the City, in any event, should have sufficient resources to present the study in its next rate filing.

Sandy Township’s Exception No. 4 should be granted. For the reasons stated above and in its Main Brief, Section VII.B, pages 11 and 12, and Reply Brief, Section VII, pages 7 and 8, the Commission should require the City to present a cost of service study in its next rate filing that includes a full explanation and allocation of plant and expenses to the City’s wastewater services.

³⁴ Rec. Dec. at 42.

³⁵ Rec. Dec. at 77.

³⁶ The Recommended Decision does not identify a dollar amount of recommended rate expense. The recommended expense appears to be \$42,282 based on the expense allowance supported by I&E. The City is proposing a normalized, annual rate case expense of \$90,202. Rec. Dec. at 46.

III. CONCLUSION

For all the reasons set forth above, Sandy Township's Exceptions Nos. 1, 2, 3 and 4 to the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer should be granted.

Respectfully submitted,

By  _____

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DATED: February 2, 2017

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Deputy Chief Administrative Law Judge
Mark A. Hoyer, Presiding**

Pennsylvania Public Utility Commission	: R-2016-2554150
Office of Small Business Advocate	: C-2016-2556342
Office of Consumer Advocate	: C-2016-2556376
Sandy Township	: C-2016-2557459
	:
v.	:
	:
City of DuBois – Bureau of Water	:
	:

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of February, 2017, served a true and correct copy of the Exceptions to the Recommended Decision of Deputy Chief Administrative Law Judge Martin A. Hoyer, upon the persons and in the manner set forth below:


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