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February 13, 2017

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

VIA ELECTRONIC FILING

**RE: Pennsylvania Public Utility Commission, *et al.* v. City of DuBois – Bureau of Water;
Docket No. R-2016-2554150**

Dear Secretary Chiavetta:

Attached please find for filing with the Pennsylvania Public Utility Commission the Reply Exceptions of the City of DuBois – Bureau of Water to the Recommended Decision of Administrative Law Judge Mark A. Hoyer, issued January 13, 2017, in the above-referenced proceeding. As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By


Adeolu A. Bakare

Counsel to the City of DuBois – Bureau of Water

Enclosure

c: Deputy Chief Administrative Law Judge Mark A. Hoyer (via E-Mail and First-Class Mail)
Office of Special Assistants (ra-OSA@pa.gov)
Certificate of Service

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CERTIFICATE OF SERVICE

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

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Dated this 13th day of February, 2017, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al. :
:
v. : **R-2016-2554150**
:
City of DuBois – Bureau of Water :
:
:

**REPLY EXCEPTIONS OF THE
CITY OF DUBOIS – BUREAU OF WATER**

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Dated: February 13, 2017

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I. INTRODUCTION

On June 30, 2016, The City of DuBois – Bureau of Water ("City") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") Supplement No. 22 to Tariff Water Pa. P.U.C. No. 4 ("Supplement No. 22") proposing to increase jurisdictional revenues by \$257,604.¹ *City of Dubois – Bureau of Water Request for Approval to Increase Water Rates*; Docket No. R-2016-2554150 (June 30, 2016).

On July 14, 2016, the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA") filed Complaints in this proceeding. A formal Complaint was also filed by Sandy Township on July 20, 2016. The Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance on July 15, 2016.

On August 11, 2016, the Commission suspended Supplement No. 22 for investigation. The filing was referred to the Office of Administrative Law Judge ("OALJ") for Alternative Dispute Resolution or hearings before Deputy Chief Administrative Law Judge ("ALJ") Mark A. Hoyer. A Prehearing Conference was held on September 9, 2016, before ALJ Hoyer, at which time the ALJ approved a procedural schedule establishing deadlines for testimony, hearings, and briefs.

An evidentiary hearing was held in this proceeding on November 10, 2016, for purposes of presenting oral rejoinder, admitting pre-served written testimony to the record, and performing cross-examination.² Subsequently, the parties proceeded to file Main Briefs and Reply Briefs pursuant to the litigation schedule.

¹ The City later reduced its requested revenue increase to \$229,551.

² Upon request from the parties, the ALJ cancelled the November 9, 2016, evidentiary hearing.

On January 13, 2017, ALJ Hoyer issued a Recommended Decision ("R.D."), which incorporated various adjustments to the City's rate base, expenses, and rate of return claims, yielding a maximum revenue increase of \$97,534, instead of the requested \$229,551. R.D., p. 1.

On February 2, 2017, the City, OSBA, OCA, I&E, and Sandy Township each filed Exceptions to ALJ Hoyer's R.D.

Consistent with the PUC's Secretarial Letter dated January 13, 2017, the City hereby submits the following Reply Exceptions for the Commission's review. These Reply Exceptions address arguments raised by OCA, OSBA, I&E, and Sandy Township in their respective Exceptions.

II. SUMMARY OF REPLY EXCEPTIONS

The Reply Exceptions filed by OCA, OSBA, I&E and Sandy Township seek revenue, expense, and rate design adjustments contrary to well-reasoned findings in the R.D. issued by ALJ Hoyer. Sandy Township primarily seeks revenue adjustments intended to deprive the City of recovery of reasonable expenses for public utility service, including proposals to recognize potential revenues that may occur far outside the future test year, impute revenues at normal tariff rates for contract customers served under unique circumstances, and even impute revenues from a clearly non-jurisdictional customer. I&E and OCA except primarily to various expense items, many of which fail to reflect upward cost trends. Finally, OSBA proposes a conditional requirement for the Company's next base rate case, which would be more appropriately raised in a subsequent rate proceeding.

For the reasons set forth above and detailed below, the City respectfully requests that the Commission deny the Exceptions of Sandy Township, I&E, OCA, and OSBA and, with respect to the issues addressed herein, adopt the findings in the R.D.

III. REPLY EXCEPTIONS

A. **Reply Exception 1: The PUC Should Reject Sandy Township's Baseless and Unsupported Recommendation to Consider Potential Revenues From Service to Falls Creek in this Rate Case. (Sandy Township Exceptions, pp. 2-5).**

The R.D. advised that the Commission should reject Sandy Township's proposed revenue adjustment imputing \$110,000 for bulk sale of water by the City to Falls Creek. *See* R.D., pp. 20-22. The R.D. appropriately determined that it is inappropriate to impute such revenues in a proceeding where the Future Test Year ("FTY") ended on December 31, 2016. *Id.* at p. 22. Despite the R.D.'s well-reasoned approach, Sandy Township inappropriately perceives that the revenue impact of a speculative interconnection with Falls Creek should be considered in this rate case. Sandy Township Exceptions, p. 3.

Sandy Township erroneously and incredulously alleges that the R.D. creates conditions for a perceived "windfall," declining to recognize revenues from a potential but uncertain connection to Falls Creek. *Id.* at pp. 4-5. Ironically, Sandy Township bases its argument on *Pa. Pub. Util. Comm'n. v. PPL Gas Utils. Corp.*, 102 Pa. P.U.C. 325, 28-30 (2007), which establishes the basic ratemaking tenant that expenses must be known and measurable for recognition on rate proceedings. *Id.* at pp. 4-5. Sandy Township then sets forth a strained and incredulous attempt to show the City stands to receive known and measurable revenues from Falls Creek that should be incorporated into this rate proceeding.

Sandy Township's arguments are woefully flawed. Unsupported testimony from Sandy Township's Manager (who is not a Falls Creek employee) and selected newspaper articles reporting contractual terms *under negotiation* between two parties cannot be considered conclusive evidence that an interconnection with Falls Creek is "known and measurable." *See* City Reply Brief, pp. 9-10. As set forth in the City's Main Brief, the parties have not confirmed whether Falls Creek would be connected within or without the City's municipal boundaries or the appropriate

contract rate. *See* City Main Brief, p. 12. At this point, an interconnection with Falls Creek may not occur at all or could be delayed well beyond any completion date referenced in parties' negotiations. *See* City Reply Brief, p. 9; *see also* City Main Brief, pp. 12-13. As with any other project, plans to connect to Falls Creek would remain subject to considerable delays resulting from unforeseen setbacks in construction, financing, and approval processes making even a projected completion date uncertain for purposes of realized revenues. *See id.*

Sandy Township's attempt to characterize the City's negotiations with Falls Creek as a nefarious attempt to circumvent the regulatory process flat-out misrepresents the record, which evidences nothing more than the everyday reality of water system operations and negotiations of potential interconnections. As set forth in the R.D, the appropriate remedy for parties or Commission personnel interested in the City's potential connection to Falls Creek is for the Commission to adopt the R.D.'s recommendation and require the City to submit a report upon completion of a connection to Falls Creek affirming: (1) the date service began, (2) projected annual sales to Falls; (3) applicable rates and customer charges; and (4) a copy of any contract with Falls Creek.³ *See* R.D., p. 22. To the extent the Commission deems it necessary to address any future connection to Fall Creek at this time, the Commission should adopt the R.D.'s straightforward reporting recommendation.

As set forth above, recognition of uncertain revenues from a potential future interconnection would contravene well-established ratemaking procedures. Accordingly, the Commission must deny Sandy Township's proposed adjustment.

³ As set forth in the City's Main Brief, the City cannot at this time determine whether a connection to Falls Creek would result in PUC-jurisdictional service to Falls Creek or non-jurisdictional service originating from a point within the City. *See* City Main Brief, p. 12.

B. Reply Exception 2: The PUC Must Deny Sandy Township's Proposal to Impute Additional Revenue for Sales to Union Township at Non-Contract Rates. (Sandy Township Exceptions, pp. 6-7).

The R.D. correctly rejected Sandy Township's recommendation to impute additional revenues of \$21,241 for sales to Union Township at standard service tariff rates instead of the \$2.00 per 1,000 gallon contract rate. In its Exceptions, Sandy Township claims its proposed adjustment should be approved because the City has not filed the Union Township contract with the Commission pursuant to Section 507 of the Public Utility Code. *See* Sandy Township Exceptions, p. 6. However, Sandy Township made no effort to address the specific findings in the R.D., including the R.D.'s observation that the Union Township contract and revenues were explicitly noted in each of the City's prior three rate proceedings. Accordingly, the Commission should deny Sandy Township's proposed revenue adjustment as unfounded and contrary to the public interest.

As a threshold matter, Sandy Township's adjustment assumes Section 507 applies to contracts between two municipal corporations. As set forth in the R.D., the City is unaware of a prior instance where the Commission invoked Section 507 to review a contract between two municipal corporations. Sandy has produced no instances or examples. *See* R.D., p. 24; *see* City Reply Brief, p. 12. Although the Commission has jurisdiction over the rates charged to the City's outside water customers, the City remains a municipal corporation rather than a public utility. *See* City Reply Brief, p. 12. Accordingly, as the ALJ noted, the Commission's authority over the City does not extend to its inter-municipal contracts.

Moreover, Sandy Township's Exceptions fail to address the R.D.'s concurrence and clear logic that the publication of Union Township's contract rates and revenues in the City's rate filings and tariff favors rejecting Sandy Township's proposed revenue adjustment. Section 507 of the Public Utility Code expressly limits the obligation to file contracts between public utilities and

municipal corporations to those other than contracts to furnish service at regularly filed and published tariff rates. *See* R.D., p. 24. Under the Public Utility Code, a "tariff" includes "all schedules of rates, all rules, regulations, practices, or contracts involving any rate or rates...." 66 Pa. C.S. § 102. As discussed in the R.D., *and not contested by Sandy Township*, the City disclosed the contract rates charged to Union Township in its prior three rate proceedings at Docket Nos. R-00963691, R-2013-2350509, and R-2016-2554150. *See* R.D., p. 25. Therefore, the Union Township contract falls under the "tariff rate" exemption of Section 507. *See id.*

Sandy Township also fails to establish that a Section 507 review justifies its proposal to impute revenue from sales to Union Township at non-contract rates. As observed in the R.D., Sandy Township and Union Township are not similarly situated customers. *See* R.D., p. 25. Most importantly, Union Township constructed and paid for a water main extending from its system to a meter pit at the City's water treatment plant, while Sandy Township takes bulk water service at twelve (12) separate meter pits at different points on the City's distribution system. *See id.* Accordingly, the City reasonably and rightfully entered into a contract with Union Township for bulk water service under a pricing formula excluding costs for infrastructure and services for which it does not benefit. *See id.*

Finally, even if the contract with Union Township were reviewed pursuant to Section 507, Sandy Township's proposed remedy would not serve the public interest. Sandy Township claims the contract should be deemed null and void because it was not subject to a Section 507 review. However, the Commission has reviewed contracts pursuant to Section 507 in the context of broader proceedings such as this instant rate case. *Application of Pennsylvania-American Water Company*, 2001 Pa. PUC LEXIS 6, (January 19, 2001) *62. Similarly, the R.D., upon review of the contractual terms, determined Sandy's proposed adjustment to be contrary to the public interest.

Instead, the R.D. appropriately concluded that the City should supplement its prior submission of the contract rates and revenues in prior rate proceedings and its submission of the contract to the record in this proceeding, with a separate filing of the contract with the Commission, which the City does not oppose.

As described above, Sandy Township's Exceptions offer no evidence and only unpersuasive arguments in response to the R.D.'s well-developed findings. Therefore, the Commission should disregard the Exception and adopt the R.D.'s recommendation to deny Sandy Township's proposal to impute revenues for sales to Union Township at rates in excess of the contract rate.

C. Reply Exception 3: The Commission Must Reject Sandy Township's Recommendation That the City's Bulk Sales of Water to the Borough of Sykesville ("Sykesville") be Considered in This Base Rate Proceeding. (Sandy Township Exceptions, pp. 7-8).

The R.D. appropriately determined that the PUC should reject Sandy Township's baseless argument that the City's sales of bulk water to Sykesville are Commission-jurisdictional. R.D., pp. 26-28. Despite the R.D.'s finding, Sandy Township continues to allege that recognition of Sykesville as a jurisdictional customer "may be material, if not in this proceeding then in the next City rate proceeding," in determining the City's rates. Sandy Township Exceptions, pp. 7-8. Specifically, Sandy Township claims that the City's argument that bulk sales to Sykesville are non-jurisdictional because Sykesville takes service from outside the City runs contrary to PUC precedent. *Id.* Sandy Township mistakenly avers that a customer's residence determines PUC jurisdiction, not the location of the interconnection. *Id.* at 8.

As demonstrated in the R.D. and the City's Reply Brief, the PUC "has traditionally regarded the provision of utility service by one municipality to another, whereby the line of the customer municipality connects to the line of the provider municipality within the latter's corporate limits,

as nonjurisdictional." *Lehigh Valley Coop. Farmers v. City of Allentown*, 54 Pa. PUC 495, 499 (Sept. 18, 1980) ("*Lehigh*") (citing *Borough of Brookhaven v. City of Chester*, 39 Pa. PUC 472, 479 (1962)); R.D. p. 27, City M.B. p. 15.

In addition to determining whether the utility in question serves the indefinite public, the PUC also considers other factors when deciding whether service is outside corporate limits and therefore non-jurisdictional, such as "(1) the source of consumer billing, (2) the authority to set consumer rates, (3) the authority to accept or reject new customer service, (4) the nature of the service rendered by the provider municipality, *i.e.* bulk/wholesale as opposed to individual/retail service, [and] (5) ownership of and control over extraterritorial facilities. . . ." *Petition of the Borough of Springdale for a Declaratory Order*, 63 Pa. PUC 3, *6 (Oct. 21, 1986) ("*Springdale*") (citing *Re Chestnut Knoll Assocs.*, 1984 Pa. P.U.C. LEXIS 55 (Apr. 6, 1984); *Lehigh*, 54 Pa. P.U.C. 495 (1980); and *Petition of Borough of Middletown*, P-830466 (1984)).

In *Lehigh*, the City of Allentown ("*Allentown*") provided bulk/wholesale sewage service to adjacent municipalities and their authorities via agreements. *Id.* The PUC determined that Allentown was not rendering service beyond its corporate boundaries to the public for compensation because "the adjacent municipalities and their authorities are the direct customers of Allentown, and... the individual customers are ultimately served by these adjacent municipalities and their authorities [therefore] there is no basis to support a finding that Allentown is providing extraterritorial sewage service; accordingly, no basis exists for establishing [C]ommission jurisdiction." *Id.* at 500; City R.B., pp. 15-16.

Accordingly, Sandy Township's mistaken allegation that the residence of the customer determines PUC jurisdiction clearly ignores established case precedent. As a result, the

Commission should adopt the R.D.'s recommendation and deny Sandy Township's proposal to recognize Sykesville as a jurisdictional customer.

D. Reply Exception 4: The PUC Should Reject Sandy Township' Request That the City Provide a Full Explanation and Allocation of Plant and Expenses to Wastewater Service in its Next Rate Case and Adopt the R.D.'s Recommendation Without Modification. (Sandy Township Exceptions, pp. 9-11).

The R.D. correctly determined that wastewater charges do not fall under the purview of this proceeding, nor are they subject to the PUC's jurisdiction. R.D., p. 77. Under 66 Pa. C.S. § 1102(a)(5), the PUC only possesses authority to regulate municipal corporations that provide public utility services outside of their corporate boundaries. *Id.* Because the City does not provide wastewater service to customers outside of its municipal limits, this rate proceeding may only review the City's water service. *Id.* Accordingly, the R.D. correctly recommended that the PUC reject Sandy Township's request to compel the City to submit a full explanation and allocation of plant and expenses to wastewater service in its next rate case. *Id.*

The City respectfully requests the PUC to reject this recommendation and adopt the R.D.'s proposal. Sandy Township paradoxically claims that it is not seeking PUC review of the City's wastewater rates, but then requests that the PUC order the City to submit a cost of service study of its wastewater operations before the next rate proceeding. *Id.* As indicated in the City's Reply Brief, the only reason offered for such request is an increase in Sandy Township's wastewater costs, not any specific allegation of water-related costs that are being double recovered. *See* Sandy Township Main Brief, p. 11. The City already provided the parties with its procedures and methodologies for allocating water and wastewater costs, as evidenced by the fact that other parties have reviewed the methodologies and, in some cases, proposed alternatives. *See* City Reply Brief, pp. 54-55. The City should not be required to provide further studies on issues outside of the scope of its rate proceedings and outside of the PUC's authority. Accordingly, for these reasons, the PUC

should reject Sandy Township's exception and approve the R.D.'s recommendation without modification.

E. Reply Exception 5: The PUC Must Deny the OCA and I&E Exceptions Recommending Adjustments to the City's Transmission & Distribution Contractual Services Expense Claim. (OCA Exception, pp. 3-7, I&E Exceptions, pp. 8-10).

The R.D. appropriately recommended approval of the City's \$132,771 claim for Transmission & Distribution ("T&D") Contractual Services. In response, I&E and OCA both filed Exceptions asking the Commission to modify the R.D. and approve an adjustment reducing the City's T&D Contractual Expense claim by \$40,623 for an adjusted claim of \$92,148. *See* OCA Exception, p. 3; *see also* I&E Exceptions, p. 8. As recognized by the R.D., this adjustment would deprive the City of recovery of known and measurable costs. The justifications offered by OCA and I&E are erroneous and shortsighted and would unreasonably reduce the City's recovery of T&D expenses due to an outlier experience in a single year. To avoid such an unjust result, the Commission should deny the adjustments proposed by OCA and I&E and approve the R.D.'s well-reasoned analysis and recommendation to approve the City's \$132,771 claim for T&D Contractual Expense.

OCA and I&E both argue against the R.D.'s recommendation to approve the City's \$132,771 claim for T&D Contractual Expense on grounds that the recommendation fails to reflect the reduced T&D Contractual Expenses incurred in 2014. *See* OCA Exception, p. 3; *see also* I&E Exceptions, p. 8. No party disputes that the City incurred T&D Contractual Expenses of \$129,587 in 2013, \$14,087 in 2014, and \$132,771 in 2015. *See* R.D., p. 29. I&E and OCA propose to normalize the prior three years of expenses based on a purported necessity to smooth out any variances. *See* OCA Exception, p. 7; *see also* I&E Exceptions, p. 9. To the contrary, the City correctly claimed normalizing the prior three years would unreasonably incorporate data from an

extraordinary outlier year (2014) and fail to reflect the actual costs to be incurred by the City, particularly when all parties agree the City must continue working to improve its Unaccounted for Water ("UFW") ratio.

The R.D. correctly concurred with the City that T&D Contractual Expenses include contractual costs related to "water leak detection, water line break repairs, GIS mapping, road work, patching and paving concrete, etc." *See* R.D., p. 32. As a result, the R.D. concluded "that normalization would not appropriately capture the City's projected T&D contractual expenses." *See* R.D., p. 32.

Neither OCA nor I&E present persuasive arguments in Exceptions justifying a different result. Both entities characterize the City's T&D Contractual Expense as "volatile" or a "significant fluctuation." OCA Exception, p. 3; *see also* I&E Exceptions, p. 9. As explained by the City and affirmed in the R.D., these claims relate solely to the reduced expenses occurring in 2014. The 2013 and 2015 expenses were consistent, with 2015 costs exceeding 2013 costs by just \$3,184 or 2.4% ($\$132,771 - \$3,184 = \$129,587$). *See* R.D., p. 29.

The necessity to avoid unreasonably eroding the City's annual T&D Contractual Expense claims is further underscored by the City's ongoing commitment to improve its UFW ratio. As described in the R.D., the City has substantially reduced its unaccounted for water since its last base rate case and committed to additional measures intended to achieve further reductions both in testimony and a subsequent Stipulation reached with OCA. While OCA claims that not all the items in the Stipulation are likely to result in additional costs, these claims are baseless and contrary to the City's testimony that it traditionally relied on contracted services for water leaks and breaks, which must now include an estimate of losses per the Stipulation. *See* OCA Exceptions, p. 6. Further, the OCA acknowledges that the Stipulation includes measures

associated with additional costs, such as meter installations and exercising of isolation valves. *See id.* Regardless of whether the City proposed an adjustment to its FTY claim for T&D Contractual Expense, its agreement to undertake measures imposing additional costs favors recovery of its full expense claim. Therefore, the Commission should reject proposals to unreasonably reduce the City's claimed expense with a normalization adjustment that would include abnormally low costs for 2014.

Finally, I&E additionally attempts to support its normalization adjustment by pointing to the City's 2016 T&D Contractual Expense as of June 2016 as an indication of variance from the expense levels from 2013 and 2015. I&E Exceptions, p. 9. This argument ignores the fact that the City typically incurs most of its T&D Contractual Expense in the second half of the year. In 2013, the City had incurred T&D Contractual Expenses of just \$9,837.15 through June 2013, with the remaining \$119,749.85 all incurred between August and December 2013. *See* I&E Exhibit No. 2, Schedule 7, pp. 2-3. Similarly, in 2015, the City incurred T&D Contractual Expenses of just \$15,920 through June 2015, with the remaining \$116,851 incurred between August and December 2015. *See* I&E Exhibit No. 2, Schedule 7, pp. 4-5. Therefore, the fact that the City incurred T&D Contractual Expenses of \$8,650 through the first half of 2016 does not support a claim, by any stretch, that 2016 expenses vary from the levels observed in 2013 and 2015.

As determined in the R.D., the City's 2015 T&D Contractual Expense is reflective of its normal expense level, based both on historical costs and record evidence suggesting that the City's reliance of contractors will increase in order to comply with the Stipulation. Accordingly, the Commission should deny the Exceptions of I&E and OCA on this matter and adopt the R.D.'s well-reasoned recommendation to approve the City's proposed \$132,771 claim for T&D Contractual Services.

F. Reply Exception 6: The Commission Must Deny I&E's Exception Requesting an Adjustment to the City's Unaccounted for Water Expense Claim. (I&E Exceptions, pp. 3-6).

The R.D. properly denied a proposal from I&E to adjust the City's proposed expense claim for UFW. In response to the R.D., I&E filed Exceptions urging the Commission to reject the R.D.'s findings and approve an \$11,754 adjustment to the City's claimed UFW expense. As set forth in the R.D., I&E's proposed adjustment is fundamentally flawed and premised on a misreading of a Commission policy. Accordingly, the Commission should adopt the R.D.'s recommendation and approve the City's proposed UFW claim without modification.

Throughout this proceeding, I&E has mischaracterized the City's record of UFW. As referenced in the R.D., the City's average UFW for the period 2010-2012 (preceding its last base rate case) was 30.2%. *See* R.D., p. 50. For the period 2013-2015 (preceding the current base rate case), the City's average UFW was 26.69%. *See id.* By all reasonable measures, this data shows improved UFW levels for the period since the City's last base rate case. *See id.* However, despite the undisputed fact that the City's average UFW for the most recent three-year period shows significant improvement from the City's historical experience, I&E wrongheadedly attempts to skew the data and characterize the City's UFW as a "worsening trend," because the UFW levels increased by minor increments between 2013 and 2015. *See* I&E Exceptions, p. 50; *see* R.D., p. 50. Idiomatically, I&E's proposed adjustments indicate a failure to "see the forest for the trees" and should be denied as unfounded and contrary to record evidence.

I&E's proposed adjustment also fails to account for the City's history of reducing UFW and its further commitments to adopt measures intended to achieve further reductions to UFW. I&E shockingly but falsely claims the City "has presented no evidence or justification in this proceeding regarding its UFW." *See* I&E Exceptions, p. 5. The record plainly refutes this claim. As set forth above, the City provided evidence confirming its average UFW has decreased since its last base

rate case. The City also provided evidence affirming, following its last base rate case, it performed leak testing to reduce its UFW. *See* R.D., p. 50. During the course of this proceeding, the City additionally conducted a site visit with OCA and subsequently agreed to meter all City buildings instead of using estimates, which will result in more accurate UFW data. *See id.* Finally, the City developed a comprehensive plan to achieve additional improvements to its UFW, which was admitted to the record as a Stipulation with OCA. *See id.* at 51. Contrary to I&E's allegations, the City has unquestionably demonstrated a history and now-established practice of improving UFW and a commitment to future reducing UFW.

I&E nonetheless argues its adjustment should be approved pursuant to the Commission's policy statement regarding water conservation. *See* R.D., p. 49. Unfortunately, I&E mischaracterizes the policy statement in claiming "[t]he PUC has stated it *considers any Unaccounted for Water above 20% to be excessive.*" (Emphasis added). *See* I&E Main Brief, p. 20. In truth, the policy statement observes that "levels above 20% *have been considered by the Commission to be excessive.*" (Emphasis added). *See* 52 Pa. Code § 65.20(4). This distinction reflects the discretion applied by the Commission in assessing whether an adjustment to UFW is appropriate in individual base rate proceedings. For example, in the only case cited by I&E in support of a downward adjustment to UFW, the Commission took special care to acknowledge that "the Company's unaccounted-for water history is consistently in the range of 30%, *with no sign of decreasing.*" (Emphasis added). *See Pa. Pub. Util. Comm'n v. Total Environmental Solutions, Inc.*, 103 Pa. PUC 110 (July 30, 2008); *see also* I&E Main Brief, p. 21. To the contrary, and as determined in the R.D., the City's circumstances are more analogous to those in *Pa. Pub. Util. Comm'n et. al. v. City of Bethlehem (Water)*, 1995 Pa. PUC LEXIS 38, 58 (Mar. 16, 1995),

where the Commission denied to adjust the UFW claim where the utility established a plan to combat otherwise excessive UFW. *See* R.D., p. 51.

The record shows the City has achieved meaningful reductions to its UFW and taken additional steps to further reduce UFW from current levels. I&E's adjustment would apply a draconian revenue reduction serving no meaningful purpose. Accordingly, the Commission should adopt the R.D.'s recommendation and approve the City's proposed UFW claim without modification.

G. Reply Exception 7: The PUC Should Reject I&E's Recommendation Alleging the ALJ Erred by Only Focusing on the Historic Test Year's ("HTY") Cost of Overtime. (I&E Exceptions, pp. 6-7).

The City based its overtime expense claim on its HTY, which was adopted by the R.D. R.D., p. 53. However, I&E misguidedly alleges that the ALJ erred by only focusing on the HTY's cost of overtime and continues to recommend averaging these costs based on perceived volatility. I&E Exceptions, p. 6. As detailed in the City's Main Brief and Reply Brief, I&E's proposal ignores the clear upward trend of these expenses since 2013. City Main Brief, p. 18; City Reply Brief p. 18. I&E's recommendation also fails to consider PUC precedent.

The City's overtime expenses for Account 448.183 rose from \$35,840 in 2013 to \$43,534 in 2015, an increase of \$7,694 (>21%). *See* R.D., p. 53. Likewise, overtime expenses under Account 450.183 totaled \$22,694 in 2013, decreased in 2014, but rose to \$34,397 in 2015, a total increase of \$11,703 (34%) over three years. *Id.* Commission precedent indicates the PUC previously approved the practice of relying upon recent cost data over historical averages if the historical data demonstrates an upward trend rather than fluctuations. *Pennsylvania Public Utility Commission v Philadelphia Electric Company*, 1985 Pa. PUC LEXIS 67, *59, 58 Pa. PUC 743, 767 (Jan. 24, 1995). Therefore, as a result of the clear 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 R.D.'s recommendation without modification.

H. Reply Exception 8: The PUC Should Ignore I&E's Erroneous Recommendation That the R.D. Failed to Implement Proper Payroll/FICA Tax Adjustments. (I&E Exceptions, p. 8).

The City's overtime expense claim corresponds to its Payroll/FICA Tax expenses. Accordingly, in connection with its recommended overtime adjustment, the R.D. denied I&E's proposed adjustment to the City's Payroll/FICA Tax expense and approved the City's Payroll/FICA Tax expense claim. R.D., pp. 53-54.

Despite the R.D.'s reasoned finding, I&E recommended adjusting the City's Payroll/FICA tax expense to reflect its proposed adjustment to the City's wage and overtime expenses. I&E Exceptions, p. 8. While I&E ultimately accepted the City's proposed wage expense, I&E still recommends a downward adjustment of \$1,031 to the City's payroll/FICA tax expenses to reflect its adjustment to the City's Overtime expense claim. *Id.* Accordingly, because the City disputes I&E's recommended overtime adjustment, the City also rejects I&E's payroll/FICA tax adjustment. The Commission should grant the R.D.'s proposed payroll/FICA adjustment that compounds with the City proposal and reject I&E's recommended adjustment.

I. Reply Exception 9: OSBA's Exception Proposing to Compel the City to Consider Unspecified Tariff Revisions in its Next Base Rate Case Filing Must be Denied as Premature and Speculative. (OSBA Exceptions, pp. 4-5).

The R.D. appropriately rejected OSBA's vague proposal to compel the City to revise its tariff rate structure if the City finds it is unable to implement a cost-based class revenue allocation in its next base rate case. *See* R.D., p. 81. As set forth in the R.D., OSBA already reserves all rights to review the City's proposed tariff rate structure at the time of its next base rate filing and make any proposals deemed necessary at such time. *See id.* Accordingly, the Commission should adopt the R.D.'s findings and deny OSBA's unclear proposal as premature and speculative. *See id.*

IV. CONCLUSION

WHEREFORE, the City of DuBois - Bureau of Water respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of the Office of Consumer Advocate, Office of Small Business Advocate, Bureau of Investigation and Enforcement, and Sandy Township pursuant to the Reply Exceptions discussed herein.

Respectfully submitted,

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