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February 27, 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 for filing with the Pennsylvania Public Utility Commission please find the City of DuBois-Bureau of Water's Answers to the Motions to Strike of the Office of Consumer Advocate and the Bureau of Investigation & Enforcement. As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Alessandra L. Hylander

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

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).

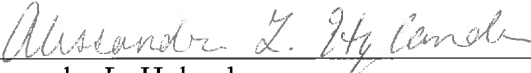
VIA E-MAIL AND FIRST CLASS MAIL

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Dated this 27th day of February, 2017, at Harrisburg, Pennsylvania.

At this evidentiary hearing, the parties introduced pre-served testimony into the record and cross-examined witnesses. At the conclusion of that evidentiary hearing, the ALJ closed the evidentiary record.

3. On November 29, 2016, and December 12, 2016, the parties to this proceeding submitted Main Briefs and Reply Briefs, respectively, discussing the merits of the City's base rate filing.

4. On January 9, 2017, ALJ Mark A. Hoyer issued a Recommended Decision ("R.D.") recommending that the City receive a revenue increase of \$97,534. In response, on February 2, 2017, the City, Office of Small Business Advocate ("OSBA"), Sandy Township, OCA, and I&E filed Exceptions to the R.D. Subsequently, on February 13, 2017, the City, OSBA, OCA, and I&E filed Reply Exceptions.

5. On February 15, 2017, I&E and OCA each filed Motions to Strike Appendix A of the City's Exceptions, as well as various portions of the City's Exceptions (collectively, the "additional evidence" or "new evidence"). In response, the City files this Answer to I&E's and OCA's Motions to Strike.

II. ANSWER TO MOTIONS TO STRIKE

6. I&E and OCA both allege similar arguments in their Motions to Strike and, accordingly, the City will collectively respond to their averments. For the reasons set forth below, the PUC should deny both Motions to Strike.

7. First, the Motions to Strike fail to consider that the additional expenses set forth in Appendix A pertain to limited portions of the City's claim for rate base additions to be completed before December 31, 2016 – the end of the Future Test Year ("FTY"). The City continues to aver that its claimed rate base additions should be approved regardless of the additional evidence for the reasons set forth in its Main and Reply Briefs. However, as the City can furnish previously

unavailable documentary support for these expenses upon conclusion of the FTY, the City is endeavored to disclose them to the Commission.

8. Second, OCA's allegation that there is no connection between the invoiced expenses and the City's rate base additions claim relates only to the appropriate allocation of these costs to the water fund. OCA Motion to Strike, p. 3. If deemed relevant, OCA's allocation concerns impact only the heating and air conditioning ("HVAC") and phone system costs. With regard to the City's expense for the High Street water mains, 100% of these costs are allocated to the water fund, so the total invoiced amount of \$54,430 reflected on page 3 of Appendix A is properly included in rate base. *See City Exceptions, Appendix A, p. 3.* As for the HVAC and phone system costs, the allocation factors applied to the City's claimed expense are easily applied to the actual expenses for both cost items. Specifically, the City based its HVAC claims on total HVAC costs of \$72,300, with a water fund allocation of \$17,532 or 24.2%. *See City Statement No. 3-R, p. 3.* The City based its phone system claim on total phone system costs of \$10,000, with a water fund allocation of \$5,833 or 58.3%. *See id.* The percentage allocations are equally applicable to the City's actual HVAC and phone system cost of \$35,437.20 and \$23,334 respectively. *See City Exceptions, p. 5.*

9. Third, contrary to I&E's and OCA's beliefs, the fact that some of the additional evidence includes invoices received just prior to November 10, 2016, does not foreclose the propriety of taking judicial notice of the invoices at this time. OCA Motion to Strike, p. 5; I&E Motion to Strike, pp. 4-5. The invoices dated before November 10, 2016, are limited to invoices related to the HVAC claim and do not impact the High Street mains addition and phone system claims. *See City Exceptions, p. 5, note 3.* Further, the invoices at issue were received within the seven business days preceding the hearing, and as indicated by the stamps on the invoices,

remained subject to the City's internal administrative review process. *See* City Exceptions, Appendix A, pp. 4-10. Moreover, these invoices do not violate 52 Pa. Code § 5.243(e) because none of the evidence was available at the time the Commission presented its case in chief through Direct Testimony on June 30, 2016. Section 5.243(e) does not bar the Commission from reviewing evidence that was unavailable when the City presented its case-in-chief, and the City has presented legitimate reasons for producing the documents at a later phase of the proceeding, such as the fact that the FTY concluded several weeks before the evidentiary hearing. *Pennsylvania Public Utility Commission; v.; Total Environmental Solutions, Inc. -- Treasure Lake Water Division; Pennsylvania Public Utility Commission*, 2008 Pa. PUC LEXIS 1227 (January 1, 2001) *121.

10. Fourth, the City's request that the PUC take judicial notice of the invoices in Appendix A is procedurally correct. OCA misinterprets the applicability of 52 Pa. Code § 5.408 in this instance. OCA Motion to Strike, pp. 3-4. Further, I&E mistakenly reads *Application of CMV Sewage Co., Inc.*, Docket No. A-230056F2002, pp. 10-11 (Order Entered Dec. 23, 2008) ("*CMV Sewage*") as proof that the Commission will not take judicial notice of evidence that could have been submitted via a petition to reopen the record. I&E Motion to Strike, p. 5. However, in the *CMV Sewage* case, the Commission denied the request to take judicial notice on the merits of the case, not on the basis that such procedure was inappropriate. *CMV Sewage*, pp. 10-11. Accordingly, I&E and OCA misinterpret the City's ability to rely upon 52 Pa. Code § 5.408 in this instance.

11. Finally, the City's request for judicial notice does not deprive I&E, OCA, or any other party from responding to such claims but rather serves the public interest by presenting the Commission with previously unavailable information relevant to its final disposition. I&E Motion to Strike, p. 4; OCA Motion to Strike, pp. 3-4. I&E and OCA had an opportunity to respond to

the City's claim in their Reply Exceptions. I&E's claims of injury are particularly unfounded as I&E did not address the City's rate base additions claims in its testimony or its briefs. Moreover, the ALJ and the PUC have the discretion to "determine whether written presentations...oral argument, oral evidence, or cross-examination is appropriate under the circumstances" to fully evaluate the evidence presented by the party requesting judicial notice. 52 Pa. Code § 5.408(d). Filing a petition to reopen the record is not a prerequisite for submitting a request for official and judicial notice of fact under the PUC's regulations. *See* 52 Pa. Code §§ 5.408 and 5.571. The Commission is well-positioned to weigh the merits of the City's request for judicial notice and accord it the appropriate weight. The OCA and I&E Motions to Strike should therefore be denied in favor of the public interest benefits of allowing the Commission to consider all relevant information in rendering its decision. *Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. Columbia Gas of PA, Inc.*, 2009 Pa. PUC LEXIS 1777 (August 26, 2009) *7. As such, the City's request that the PUC take judicial notice of its additional capital expenses for the FTY complies with the Commission's regulations and should be granted.

III. CONCLUSION

WHEREFORE, the City requests that the Commission deny I&E's and OCA's Motions to Strike.

Respectfully submitted,

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