



COMMONWEALTH OF PENNSYLVANIA

April 12, 2017

E-FILED

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

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

Dear Secretary Chiavetta:

I am delivering for filing today the Petition for Reconsideration, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding. As evidenced by the enclosed Certificate of Service, all known parties will be served, as indicated.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Mr. Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	DOCKET NO. R-2016-2554150
	:	
CITY OF DUBOIS BUREAU OF WATER	:	

**PETITION FOR RECONSIDERATION
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

Pursuant to 66 Pa. C.S. § 703 and 52 Pa. Code § 5.572, the Office of Small Business Advocate (“OSBA”) files this Petition for Reconsideration of the Opinion and Order of the Pennsylvania Public Utility Commission (“Commission”) entered in the above-captioned proceeding on March 28, 2017.

I. Introduction

1. On June 30, 2016, the City of DuBois - Bureau of Water (the “City”) filed Supplement No. 22 to Tariff Water - Pa. P.U.C. No. 4 with the Commission. The proposed tariff would provide the City with a general rate increase of \$257,604 per year.
2. On July 13, 2016, the OSBA filed a Formal Complaint.
4. On September 9, 2016, a Prehearing Conference was held before Administrative Law Judge (“ALJ”) Mark A. Hoyer.
5. On October 5, 2016, the OSBA served the Direct Testimony of Brian Kalcic.
6. On November 10, 2016, an Evidentiary Hearing was held before ALJ Hoyer.
7. On November 29, 2016, the OSBA submitted its Main Brief. The OSBA argued in support of the City’s class cost-of-service study. The OSBA also argued in support of the

City's proposed revenue allocation (at DuBois' requested revenue requirement level) because it was based directly on the City's class cost-of-service study. The OSBA also argued for a proportional scale back of the City's proposed class increases in the event the Commission awarded the City less than its original revenue request. Finally, the OSBA recommended that the Commission should order the City to consider revising its overly simplistic rate structure.

8. On December 12, 2016, the OSBA served its Reply Brief. The OSBA argued that the City's plan to implement a proportional scale back of its filed increase to each customer class may result in inaccurate final class increases. Specifically, the City proposed to reduce volumetric charges, but not scale back (proportionally or otherwise) the City's originally requested customer charges.

9. On January 13, 2017, ALJ Hoyer issued his Recommended Decision ("RD"). The ALJ adopted the City's plan to reduce its filed class increases proportionally, while keeping customer charges fixed at the level originally requested by the City. However, the ALJ ran into the problem foretold by the OSBA. Specifically, the City's simplistic rate structure prevented the ALJ from implementing a class revenue allocation that accurately reflected the results of the City's class cost-of-service study, namely, a proportional scale back of the City's filed class increases.

10. On February 2, 2017, the OSBA filed Exceptions to the RD. The OSBA argued that the rate design proffered by the ALJ violated the mandates of *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006), *appeals denied*, 916 A.2d 1104 (Pa. 2007).¹ Specifically, the ALJ's rate design was now the tail wagging the dog in that the rate

¹ The Commonwealth Court in *Lloyd* held "that rates and rate structures [must] be set for each service primarily on a cost-of-service study." *Lloyd*, 904 A.2d 1010, at 1020. (Pa. Cmwlth. 2006), *appeals denied*, 916 A.2d 1104 (Pa. 2007). Although the Court indicated that the Commission may consider other factors, the Court characterized cost of service as the "polestar" of ratemaking concerns. *Id.*

design produced a class revenue allocation that did not comport with the City's class cost-of-service study. Furthermore, the OSBA observed that its recommendation that the City address its simplistic rate structure was not premature after all.

11. On March 28, 2017, the Commission entered its Opinion and Order in *Pennsylvania Public Utility Commission, et al., v. City of DuBois – Bureau of Water*, Docket No. R-2016-2554150 (Order entered March 28, 2017) (“*March 28th Order*”).

II. The Legal Requirements to Grant a Petition for Reconsideration

12. In *Philip Duick et al. v. Pennsylvania Gas and Water Company*, Docket No. C-R0597001 (Order entered December 17, 1982), 1982 Pa. PUC LEXIS 4, 56 Pa. PUC 553 (1982), the Commission explained the basis for rescinding or amending a prior order:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . . 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.

Duick, 1982 Pa. PUC LEXIS 4, at *11-*13.

13. In *Pennsylvania Public Utility Commission v. Jackson Sewer Corporation*, 2001 Pa. PUC LEXIS 44, the Commission also stated:

Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.

Jackson Sewer, 2001 Pa. PUC LEXIS 44, at *6.

14. This Petition for Reconsideration satisfies both *Duick* and *Jackson Sewer*, as this Petition for Reconsideration raises issues “which appear to have been overlooked or not

addressed by the Commission” (the rate design problems caused by the City’s simplistic rate structure) and “alleges errors of law” (the resulting violation of the mandates of *Lloyd*).

III. Argument

15. The OSBA seeks reconsideration of the Commission decision, as follows:

Based upon the evidence of record, we are in agreement with the recommendation of the ALJ that the City proposed customer charges should be approved and that a proportional scale back of the consumption charges be performed to attain the Commission allowed revenue increase per this Opinion and Order.

March 28th Order, at 118.

16. The ALJ recommended, as follows:

I recommend approval of the customer charge increases requested by the City. *See Appendix A.* I further recommend that the volumetric rates be scaled back to attain the desired revenue while maintaining the standard volumetric rate structure and the proposed increases to the customer charges.

ALJ RD, at 81.

17. However, the ALJ observed that there was a problem with creating a rate design for the City’s customers:

A scaleback of the rates which is proportional to the reduction in revenues and maintains the increase in customer charges would require the creation of separate volumetric rates for each customer class. If separate rates were not established for each customer class, ***a proportional scaleback of the volumetric rates which maintained the City’s proposed increase in the customer charge would result in greater than allowable revenues.***

ALJ RD, at 81 (emphasis added).

18. The ALJ did scaleback the City’s consumption charges, but he did not *proportionally* scaleback the City’s consumption charges. Specifically, the ALJ “adjusted” (*i.e.*,

he applied a *differential* scaleback to the first and second block charges) the City's consumption charges:

The adjustment achieves the desired revenue increase while maintaining the revenue allocation as close to the cost of service as reasonably achievable.

ALJ RD, at 81.

19. The ALJ did not provide a proof of revenue to demonstrate how his proposed class increases conform to the revenue allocation required by the City's class cost-of-service study.

20. Subsequently, the Commission overruled the ALJ's rate design approach which differentially scaled-back the consumption charges. Instead, the Commission ordered the City to proportionally scale back the consumption charges. *March 28th Order*, at 118. Curiously, the Commission did not heed the ALJ's conclusion that proportionally scaling back the consumption charges would not work. *See* RD, at 80.

21. The *March 28th Order* did not provide a proof of revenue to demonstrate how "the City proposed customer charges should be approved and that a proportional scale back of the consumption charges be performed" conforms to the revenue allocation required by the City's class cost-of-service study. The Commission simply ordered a proportional scale back of the consumption charges, and apparently assumed it would comport with the City's cost-of-service study.

22. The OSBA has performed the proportional scaleback of the consumption charges ordered by the Commission. Simple arithmetic shows that the consumption charges would be set at \$5.6993 per thousand gallons for consumption up to 100,000 gallons and \$4.0652 per thousand gallons for consumption greater than 100,000 gallons.

23. The consumption charges calculated in accordance with the *March 28th Order* produce a revenue allocation that bears no resemblance to the revenue allocation proposed by the City in its original filing. *See* Exhibit CEH-1, Appendix C.

24. Specifically, the City's originally filed revenue allocation directly follows the results of the City's class cost-of-service study, and therefore complies with the requirements of *Lloyd*. However, the Commission's revenue allocation (that results from the *March 28th Order's* directive to proportionally scaled-back consumption charges) is entirely divorced from the City's class cost-of-service study, and therefore is in violation of *Lloyd*.

25. The Commission can easily create a proof of revenue to show the class revenue allocation that results when the City's originally requested customer charges are granted but consumption charges are proportionally scaled back. An evaluation of that revenue allocation will clearly demonstrate that the associated class increases do not comport with *Lloyd*. For example, the residential customer class was to receive a less than system average rate increase under the City's originally filed revenue allocation. The residential class fares significantly worse under the *March 28th Order*, as it would receive an increase far in excess of the system average.

26. Finally, the OSBA cannot address this rate design issue at the compliance filing stage of this proceeding. Exceptions to a compliance filing are "strictly limited in scope to the factual issue of alleged deviation from requirements of the Commission Order." 52 Pa. Code § 5.592(c). As the proceeding stands at the time of this writing, the City could make a compliance filing that follows the *March 28th Order* to the letter but is in total violation of *Lloyd*.

IV. Conclusion

Wherefore, the OSBA respectfully requests that the Commission reverse its decision to order that “the City proposed customer charges should be approved and that a proportional scale back of the consumption charges be performed.”

It bears repeating that the City’s rate structure consists of a customer charge, a first block consumption charge, and a second block consumption charge. The only mathematical way to meet the requirements of *Lloyd* is to proportionally scale back the City’s original class revenue allocation by including customer charges in that proportional scaleback.

Respectfully submitted,



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For:
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Small Business Advocate

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Dated: April 12, 2017

VERIFICATION

I, Steven C. Gray, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date: April 12, 2017


(Signature)

