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April 12, 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 Petition for Reconsideration and Clarification of the City of DuBois 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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PA PUBLIC UTILITY COMMISSION
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION FOR RECONSIDERATION AND CLARIFICATION
OF THE CITY OF DUBOIS**

Pursuant to Sections 703(g) of the Public Utility Code and Sections 5.41, 5.43, and 5.572 of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Regulations, the City of DuBois ("City"), hereby submits this Petition for Reconsideration and Clarification ("Petition") of the Commission's March 28, 2017, Order ("March 28 Order") approving, as modified, the Recommendation Decision issued by Administrative Law Judge ("ALJ") Mark A. Hoyer. For the reasons described below, the City requests that the Commission: (1) reconsider its decision to deny the City's Exceptions with regard to rate case expense; (2) clarify the required notice regarding a potential interconnection with the Borough of Falls Creek ("Falls Creek"); and (3) reconsider its discretionary determination of the appropriate cost of common equity within the range of reasonable results supported by Parties' analyses.

I. Introduction

1. On June 30, 2016, the City filed with the 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).

2. 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.

3. 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 ALJ 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.

4. 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.

5. 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.

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

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.

7. On March 16, 2017, the Commission conducted a binding poll in which the Commission voted to increase the cost of common equity from the 8.62% recommendation in the R.D. to 9.3%. The Commission otherwise declined to modify the recommendations in the R.D.

8. Following the binding poll, the Commission entered the March 28 Order. As set forth therein, the March 28 Order implemented additional modifications to the R.D. to correct inadvertent errors in the supporting calculations appended to the R.D. The corrections resulted in a drastic reduction to the revenue requirement originally calculated in the R.D.

9. In light of these factors, the City avers that reconsideration of the March 28 Order is appropriate and in the public interest.

II. Legal Standards Applicable to the Petition

10. Section 703(g) of the Public Utility Code authorizes the Commission to reopen the record in a proceeding to amend a prior Order.³ Similarly, Section 5.572 of the Commission's Regulations sets forth the procedures for petitioning for reconsideration of a Commission Order.

11. The Commission enumerated its standard for reconsideration in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982). In pertinent part, the Commission stated that 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," and that the Commission "expect[s] to see raised in such petitions... new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." *Id.*; *Application of Consolidated Rail Corporation, et al.*, 2012 WL 3042071 (Penn. P.U.C., 2012).

³ See 66 Pa. C.S. § 703(g).

12. The City submits that the considerations supporting its Petition are either new and novel, were overlooked, or not addressed by the Commission in rendering the March 28 Order. Specifically, the Petition presents explanations of erroneous statements made in Parties' Reply Exceptions concerning rate case normalization, requests clarification of conflicting statements in the March 28 Order with regard to notice requirements for service to Falls Creek, and requests reconsideration of the Commission's cost of common equity determination based on the reduced potential for rate shock to customers arising from adjustments to the ALJ's revenue and rate base calculations. Therefore, the standards of *Duick* have been satisfied, and the City respectfully requests that the Commission exercise its discretion to grant this Petition for Reconsideration and Clarification.

III. Discussion

a. The Commission's Findings with Regard to Rate Case Expense Rely on Inaccurate Representations of the Record and Prior Caselaw.

13. In the March 28 Order, the Commission declined to grant the City's Exceptions requesting a 2.5 year normalization period for rate case expense in place of the 5.33 year normalization period recommended by I&E. In reaching its conclusion, the Commission relied on numerous misstatements from other parties. Specifically, the March 28 Order referenced a mischaracterization of the City's arguments in support of a reduced normalization period from I&E and statements from both I&E and OCA obfuscating parallels between the facts at issue in this proceeding and the circumstances in *Pa. PUC v. Lemont Water Company*, 1994 Pa. PUC LEXIS 44, *18-19 (1994) ("*Lemont Water*"). As a result, the Commission found *Lemont Water* to be inapplicable to the facts of the instant proceeding and approved the 5.33 year normalization period recommended by I&E. March 28 Order, p. 66. For the reasons set forth below, the Commission should reverse this finding. Even if the Commission declines to grant the requested

2.5 year normalization period requested by the City, consideration of *Lemont Water* warrants a reduction of the 5.33 year normalization period to 3.25 years.

14. Contrary to statements in I&E's and OCA's Reply Exceptions, **the City's Main Brief, Reply Brief, and Exceptions all proposed that rate case expense should be normalized based on the City's historical filing frequency, not expectations for future rate filings.**⁴ See March 28 Order, pp. 63-64. A review of the City's Exceptions shows that the City acknowledged that the rate case normalization period should generally reflect historical filing frequency, but that *Lemont Water* indicates that the Commission can apply flexibility as to the specific calculation of a utility's historical filing frequency where parties have proposed conflicting recommendations. In its Exceptions, the City asked the Commission to approve a shorter normalization period because "undisputed factual evidence shows the past filing patterns will not be repeated." City Exceptions, p. 8. However, this statement was not a request to ignore the City's entire historical filing frequency, but only a request to disregard the abnormally lengthy interval between the City's 2005 and 2013 rate cases in light of the City's explanation that the extended interval occurred due to non-recurring revenue from sales of water to natural gas drillers. See *id.* Therefore, the contention that the City based its recommended rate case normalization period on an expectation of future filings is incorrect.

15. Similarly, and contrary to the representations from other parties, the facts in *Lemont Water* are directly applicable to this case. I&E initially attempts to discredit the findings in *Lemont Water* by characterizing the case as superseded by subsequent cases confirming that

⁴ City Witness Connie Heppenstall testified that her 2.5 year recommended normalization period was based on both the 2.5 years elapsed between the City's last base rate increase and the instant base rate filing as well as the expectations for the City regarding future filings. However, in its Main Brief, Reply Brief, and Exceptions, the City supported the proposed normalization solely by referencing the City's historical filing frequency, including the proposal to disregard the historical filing interval between the 2005 and 2013 rate cases due to non-recurring revenues. See City Main Brief, p. 21; see also City Reply Brief, p. 22, see also City Exceptions, p. 8.

rate case normalization periods are based on a utility's historical filing frequency. March 28 Order, p. 63. However, the Commission's findings in *Lemont Water* are consistent with the precedents cited by I&E. In *Lemont Water*, the Commission did not use an alternate methodology of calculating a rate case normalization period. The parties recommended different normalization periods based on differing opinions as to the appropriate calculation of historical filing frequency, but all of the recommendations considered by the Commission relied on some measure of historical filing frequency.

16. In *Lemont Water*, the filing utility's three most recent base rate cases were in effect for periods of 52, 48, and 19 months respectively, which amounts to an overall average of 3 years (36 months). See City Main Brief, p. 22. In that case, the filing utility proposed a two-year normalization period based on its most recent two filing dates, which it later corrected to a 1.6 year normalization period based on the intervals of time for which new rates were in effect between its most recent 2 filings.⁵ Importantly, both the original and revised normalization periods reflected its historical filing frequency, but incorporated only the most recent two rate filings. While the filing utility did represent that the revised 1.6 year normalization period is based on both the 19-month interval between its prior two rate increases and its expectation that it would file another rate case in 19 months, the Commission clearly stated that it approved the 1.6 year normalization period solely because it "reflects the Company's historical average interval between rate filings," not out of consideration of any expectations for future filings. See *Lemont Water*, at *32.

⁵ The filing utility in *Lemont Water* also proposed to amortize unrecovered rate case expense from its prior rate proceeding. See *Lemont Water*, at *16. This portion of its rate case claim was denied. See *id.* at *32. The City's references to *Lemont Water* concern solely the Commission's treatment of the filing utility's rate case normalization proposal for current rate case expenses.

17. Therefore, I&E's contention that *Lemont Water* was superseded by subsequent decisions basing rate case normalization periods on the utility's historical filing frequency is in error. To the contrary, the Commission recognized that in limited circumstances, it is appropriate and reasonable to approve a historical filing frequency calculation based on a utility's two most recent filings, which is consistent with the City's proposal in this case.

18. Throughout this proceeding, the City has agreed that the rate case normalization period should be based on its historical filing frequency, but contended that the interval between its 2005 and 2013 rate cases should be disregarded as an outlier due to the receipt of non-recurring shale gas revenues during this period. See City Exceptions, p. 8. As indicated above, this proposal is consistent with *Lemont Water* and the Commonwealth Court's findings that the establishment of a rate case normalization period is a matter within the Commission's discretion. See *Popowsky v. Pa. PUC*, 674 A.2d 1149, 1154 (1996) (*Popowsky*). The City last increased base rates on January 1, 2014. The effective date for new rates in this proceeding was March 29, 2017, as set forth in the March 28 Order, which reflects an interval of approximately 3.25 months. The City's proposed 2.5 year normalization period (30 months) more closely approximates the 39 month historical interval between the 2014 and 2017 rate increases than the 5.33 year normalization period (63 months) set forth in the March 28 Order.

19. Therefore, in light of the above clarifications of statements relied upon in the Commission's March 28 Order, the Commission should approve the City's proposed 2.5 year normalization period or alternatively reduce the 5.33 year normalization period to a 3.25 year normalization period consistent with the actual historical interval between the implementation of new rates effective January 1, 2014 and March 29, 2017.⁶

⁶ Appendix A, attached hereto, recalculates the rate case expense claim with the proposed 2.5 and 3.25 normalization periods.

b. The Commission's March 28 Order Appears to Inadvertently Modify the Recommended Decision's Requirements for Notice of any Service to Falls Creek.

20. The March 28 Order appears to contain conflicting recommendations with regard to the requisite notice to be provided to the Commission for service to Falls Creek. Accordingly, the City requests confirmation that the notice requirements are contingent upon completion of a connection to Falls Creek.

21. On page 31 of the March 28 Order, the Commission stated as follows:

Moreover, the City has agreed to submit a report to the Commission upon completion of a connection to Falls Creek including: (1) the date service began; (2) projected annual sales to Falls Creek; (3) applicable rates and customer charges; and (4) a copy of any contract with Falls Creek. City Exc. at 4 (citing R.D. at 22). Therefore, the Exceptions of Sandy Township regarding this issue are hereby denied and we shall adopt the recommendation of the ALJ.

March 28 Order, p. 31. This language accurately reflects the recommendations proposed by the OCA and adopted by the ALJ. However, the corresponding Ordering Paragraph No. 10 directs the City to file a report with the Commission "**when a contract is entered into** between the City of DuBois – Bureau of Water and Falls Creek Bureau for the provision of water service which includes the date service began, the annual gallons to be sold, the rate to be charged per thousand gallons, the expected annual customer charge revenue, and the contract." March 28 Order, p. 128 (Emphasis added).

22. The inclusion of language requiring notice upon entry of a contract appears to be an inadvertent error, particularly as the requirement also compels the City to disclose the date service began. As discussed in the City's Reply Exceptions, execution of a contract precedes construction of the facilities, with the result that whether and when service actually begins remains unverifiable until the facilities are constructed and all applicable permits are obtained. City Reply Exceptions at 3-4. Therefore, the City requests that the Commission clarify that the

City shall be required to provide notice when a connection to Falls Creek is completed rather than upon entry of a contract with Falls Creek.

c. The Adjustments to the Recommended Decision Revenue and Rate Base Calculations Merit Reconsideration of the Commission's Cost of Common Equity Determination.

23. As detailed therein, the March 28 Order entered after the March 16 binding poll implemented numerous adjustments to supporting calculations set forth in the R.D., which in total, reduced the revenue requirement proposed by the R.D. from the original \$97,354 to \$63,939. See March 28 Order, p. 4. As the Commission based its recommended Return on Equity ("ROE") in part upon the rate impact to customers, the City requests that the Commission reconsider the 9.3% determination due to the clarification that the revenue requirement reported in the R.D. overstated the impact of the rate adjustments upon customers. This Petition does not address the Commission's findings with regard to capital structure, parties' Discounted Cash Flow ("DCF") calculations, or the ROE adjustments proposed by the City and denied in the March 28 Order. The City requests reconsideration only of the Commission's discretionary determination of the appropriate ROE based on the range of reasonable equity costs supported by Parties' DCF analyses.

24. The City respectfully requests that the Commission further adjust the R.D. to more closely align with the ROE recommendations in recent water system base rate cases, particularly in light of the reduced rate impact following the staff recalculation of the City's rate base. The Commission has recently set ROEs ranging between 9.75% and 10.5%. See *The Pennsylvania Public Utility Commission et al. v. the Columbia Water Company*, Docket No. R-2013-2360798 (January 23, 2014); see also *The Pennsylvania Public Utility Commission et al. v. Emporium Water Company*, Docket No. R. 2014-2402324 (January 28, 2015); see also *The*

Pennsylvania Public Utility Commission v. Templeton Water Company Inc., Docket No. R-2016-2544861 (July 21, 2016). As discussed in the March 28 Order, the Commission determined that the relatively consistent DCF analyses conducted by the City, I&E, and OCA supports a range of cost of equity of 8.25% to 10.3%. See March 28 Order, p. 97. Notably, while the 9.3% ROE determination strikes the midpoint of this range, it also falls below the current 9.65% ROE for DSIC tariffs published in the Commission's more recent earning report.

25. While the Commission reasonably determined that a 9.3% ROE would appropriately balance the City's interests and the rate impact upon customers based upon the circumstances at hand, the additional adjustments to the R.D.'s supporting calculations suggest that the actual rate impact upon customers may be considerably lower than that contemplated when the Commission issued its ROE recommendation at the March 16 binding poll.⁷ As noted by the Commission, the 9.3% ROE was approved as an "appropriate balance that can foster strong credit for the City, while not overly burdening the Commission's jurisdictional customers of the City with excessive rates." See March 28 Order, p. 98. Since the potential for rate shock is greatly diminished by the adjusted calculations in the March 28 Order, the ROE can be increased without undue rate shock to customers. Examples of the revenue impact of further ROE adjustments are set forth below:

ROE Adjustment	Increase to March 28 Order Jurisdictional Revenue Requirement
9.65%	\$3,846
9.85%	\$5,983
10.00%	\$7,265

⁷ See Motion of Chairman Gladys M. Brown, Docket No. R-2016-2554150 (Public Meeting held March 16, 2017).

In light of the reduced revenue impact upon customers resulting from the adjustments to the R.D. expense and rate base calculations, the City respectfully requests that the Commission exercise its discretion to further adjust the ROE towards the higher end of the range supported by Parties' DCF analyses. The City avers that such an adjustment would more appropriately balance the City's and customers' interests and provide the City with strong credit while maintaining reasonable rates for customers.

IV. Conclusion

WHEREFORE, for the reasons discussed above, the City respectfully requests that the Commission reconsider and clarify its March 28 Order consistent with the above recommendations.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Counsel to City of DuBois – Bureau of Water

Dated: April 12, 2017

Appendix A
CITY OF DUBOIS
RATE CASE EXPENSE

Line	Description	Expense
	Revenue Requirement, Rate Base, Depreciation, Rate of Return, Rate Design and Application	\$ 100,000
	Legal Fees	125,000
	Customer Notice and Postage	505
(1)	Total	225,505
(2)	Normalized 2.5 years as filed - Line (1) divided by 2.5	\$ 90,202
(3)	Normalized 3.25 years - Line (1) divided by 3.25	\$ 69,386
(4)	Commission Order at 64 months - Line (1) divided by 5.333	\$ 42,282
(5)	Increase if win 2.5 years - Line (2) - Line (4)	\$ 47,920
(6)	Increase if win 3.25 years - Line (3) - Line (3)	\$ 27,104

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).

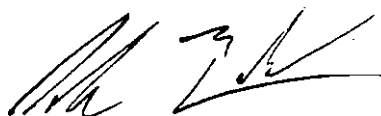
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Dated this 12th day of April, 2017, at Harrisburg, Pennsylvania.

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