



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

April 24, 2017

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E)
Answer to Motion to Reconsider for this proceeding.

Copies are being served on all active parties of record as evidenced in the attached
Certificate of Service. If you have any questions, please contact me at (717) 783-6151.

Sincerely,

Phillip C. Kirchner
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #313870

PCK/sea
Enclosure

cc: ALJ Mark A. Hoyer
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Answer to Motion to Reconsider** dated April 24, 2017, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via First Class and Electronic Mail

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Phillip C. Kirchner
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #313870

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC
UTILITY COMMISSION

v.

CITY OF DUBOIS
BUREAU OF WATER

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R-2016-2554150

ANSWER OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
TO THE PETITION FOR RECONSIDERATION AND CLARIFICATION OF THE
CITY OF DUBOIS

I. INTRODUCTION

On June 30, 2016, the City of DuBois (“City”) filed with the Pennsylvania Public Utility Commission (“Commission”) Supplement No. 22 to Tariff Water Pa. P.U.C. No. 4 (“Supplement No. 22”) proposing to increase jurisdictional revenues by \$257,604. On August 11, 2016, the Commission suspended Supplement No. 22 for investigation. The filing was referred to the Office of Administrative Law Judge (“ALJ”). A Prehearing Conference was held on September 9, 2016, before ALJ Hoyer. An evidentiary hearing was held in this matter on November 10, 2016. Thereafter, the parties submitted Main Briefs and Reply Briefs pursuant to the litigation schedule.

On January 13, 2017, ALJ Hoyer issued a Recommended Decision (“R.D.”), that incorporated various adjustments to the City's rate base, expenses, and rate of return

claims, yielding a maximum revenue increase of \$97,534. On February 2, 2017, the City, Office of Small Business Advocate (“OSBA”), Office of Consumer Advocate (“OCA”), the Bureau of Investigation and Enforcement (“I&E”), and Sandy Township each filed Exceptions to ALJ Hoyer's R.D.

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. Following the binding poll, the Commission entered the March 28 Order. This Order corrected inadvertent calculation errors in the R.D, which resulted in a reduction of the revenue requirement from \$97,354 to \$63,939.

On April 12, 2017, the City of DuBois filed a Petition for Reconsideration and Clarification (“Petition”). The Bureau of Investigation and Enforcement now timely files its Answer to that Petition pursuant to 52 Pa. Code § 5.572.

II. DISCUSSION

In support of this Answer, I&E offers the following enumerated responses to the City of DuBois’ Petition for Reconsideration and Clarification:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.

6. Admitted.
7. Admitted.
8. Admitted. It is admitted that the Commission Order corrected the errors contained in the R.D.; however, I&E disputes the use of the word “drastic” to describe the reduction in the revenue requirement adjustment.
9. Denied. It is denied that this Petition for Reconsideration is appropriate or that it is in the public interest.
10. Admitted.
11. Admitted. The Commonwealth Court of Pennsylvania has recently reaffirmed the standard for reconsideration:

Duick requires that a reconsideration petition identify “new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission,” not “a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.”¹

12. Admitted in part, denied in part. I&E does not oppose the clarification request regarding the conflicting statements addressing the notice requirements for Falls Creek and believes that is a concern that was not addressed. It is denied that the remainder of the City’s Petition is new and novel, overlooked, or not addressed by the Commission and fulfilling the *Duick* standard. I&E also disputes the claim that erroneous statements were made in Parties’ Reply Exceptions concerning rate case normalization and denies

¹ *Exec. Transp. Co. v. Pennsylvania Pub. Util. Comm'n*, 138 A.3d 145, 150 (Pa. Commw. 2016).

that the cost of equity determination should be modified upward based upon rate shock considerations.

A. The City's request for reconsideration of rate case expense normalization should be denied as it has not presented new and novel arguments and the Commission's findings are founded soundly on record evidence and precedent.

13. Admitted in part, denied in part. I&E admits that the Commission adopted I&E's rate case expense normalization period of 63 months instead of using the City's recommended normalization period 30 months. I&E denies that the Commission relied on numerous misstatements from other parties in reaching this conclusion. The Commission's Order correctly referenced I&E and OCA arguments regarding the dissimilarity between the case at hand and *Pa. PUC v. Lemont Water Company*² ("*Lemont*").³ In doing so, there were no misstatements, mischaracterizations, or obfuscation as the City alleges. I&E and OCA both accurately argued, and the Commission recognized, that "the City's position is not in accord with Commission precedent on this issue and that the *Lemont Water* decision upon which the City relied upon is not applicable to the facts of the instant proceeding."⁴

14. Denied. In its Petition the City argues that its Main Brief, Reply Brief and Exceptions all proposed that rate case expense be normalized based on the City's historical filing frequency, not expectations for future rate filings.⁵ This contention directly conflicts with the City's own testimony given that City witness Heppenstall

² *Pa. PUC v. Lemont Water Company*, 1994 Pa. PUC Lexis 44, *18-19 (1994).

³ Order, p. 66

⁴ Order, p. 66.

⁵ Petition, p. 5.

stated that, “The 2.5-year period is based on the recent history of City filings (new rates were put into effect 2.5 years ago) as well as **expectations of the City regarding future filings.**”⁶ The City wants the Commission to ignore this record evidence simply because it did not exclusively argue the point in Briefs or Exceptions. This claim conflicts with the fact that the City staunchly asserted that normalization periods based solely upon historical filing frequency was unreasonable up and through Exceptions.⁷

15. Denied. *Lemont* is distinguishable from the case at hand since the eventual settlement reached by the parties consisted of a reduction in the normalization period accompanied by a reduction in rate case expense. Furthermore, *Lemont* was prior to the adoption of the historical filing frequency standard in 1996. This averment fails to present new and novel arguments as this dispute was already argued by the parties and rejected by the ALJ and the Commission, which rightly noted that *Lemont* is inapplicable to the case at hand.

16. Admitted in part, denied in part. I&E does not dispute the recited historical filing frequencies in *Lemont* that was enumerated by DuBois. It is denied that the settlement in *Lemont* has any bearing on the matter at hand. As previously stated by I&E in its Reply Exceptions and noted in the Commission Order, “the Final Order in *Lemont Water* was issued in 1994, two years before the Commonwealth Court acknowledged the historical filing frequency standard⁸ and several years before other Commission decisions, like

⁶ City of DuBois St. No. 2, p. 9 (Emphasis added).

⁷ City of DuBois Exceptions, pp. 7-8.

⁸ *Popowsky v. Pennsylvania Public Utility Commission*, 674 A.2d 1149, 1154 (1996).

Emporium Water, adhered to the historical filing frequency standard.”⁹ *Lemont* has clearly been superseded for years.

Furthermore, the facts in *Lemont* are very different from the case at hand. In *Lemont*, I&E (then Office of Trial Staff or “OTS”) advocated for the use of an approximate 3-year historical filing frequency but ultimately supported Lemont’s 2-year filing frequency¹⁰ in surrebuttal testimony. This was done in conjunction with a recommendation to disallow \$56,682 of Lemont’s rate case expense claim.¹¹ In DuBois, the timing difference between the City’s recommended normalization period of 30-months and I&E’s 64-month recommendation, a difference of 34 months, is much longer than the 12-month difference in *Lemont* and I&E has not sought disallowance of any component of the City’s rate case expense claim in this case.

17. Denied. I&E disagrees with DuBois’ interpretation of *Lemont* and maintains that the Commission correctly determined that “the City’s position is not in accord with Commission precedent on this issue and that the *Lemont Water* decision upon which the City relied upon is not applicable to the facts of the instant proceeding.”¹²

18. Denied. I&E disputes that the gap between the 2005 and 2013 should be disregarded as an outlier. The City is simply requesting that the Commission ignore a filing interval that it believes is unfavorably long. This attempt to cherry pick filing intervals in order to increase rate case expense recovery is contrary to sound ratemaking

⁹ Order, pp. 65-66.

¹⁰ *Pennsylvania Public Utility Commission v. Lemont Water Co.*, 1994 Pa. PUC LEXIS 44, *1819 (1994).

¹¹ Id.

¹² Order, p. 66.

principles. Using both the longer and shorter filing intervals smooths out potential anomalies and results in an appropriate normalization period based on the City's actual filing frequency. Therefore, the Commission correctly relied on the City's actual filing frequency to determine the appropriate normalization period. Additionally, this argument is not new and is simply a different spin on the same claims that were previously rejected by the Commission in this matter.

19. Denied. The Commission's prior decision in this issue produced a fair, just and reasonable result that was supported by historical data and sound ratemaking principles. Amending it would be contrary to the public interest.

B. Notice requirements for Falls Creek

20. Admitted.

21. Admitted.

22. Admitted.

C. Corrections to inadvertent miscalculations do not merit arbitrarily increasing the City's cost of common equity.

23. Admitted in part, denied in part. I&E admits that the corrections to supporting calculations reduced the revenue requirement from \$97,354 to \$63,939 and recognizes that the Commission partially based its determination of the appropriate cost of equity upon the impact it would have to ratepayers.¹³ However, I&E denies that reconsidering

¹³ Order, pp. 96-98.

the Commission approved 9.3% cost of common equity is warranted since this is already at the highest point of the Commission's reasonable Discounted Cash Flow ("DCF") range. Specifically, OCA's DCF range was 7.5%-9.0%, I&E's DCF range was 8.2%-8.9%, and the City's recommended equity determination based on the DCF was 9.3%.¹⁴ Based on these DCF results, the Commission determined that the record in this proceeding provides an appropriate cost of equity in the range of 8.25% to 9.3%.¹⁵ The Commission then awarded the City the top of that range of 9.3%.¹⁶ Accordingly, the City's request for reconsideration based upon the "range of reasonable equity costs supported by Parties' DCF analyses"¹⁷ is unwarranted because it has already received the highest equity percentage supported by the parties' DCF range.

24. Denied. I&E denies that it is appropriate to increase the equity return to allegedly align it with recommendations in recent water base rate proceedings. This averment makes a request that is inappropriate for several reasons. First, in the cases cited by the City, each return on equity ("ROE") was based upon the respective DCF ranges, which all differ from the 8.25% to 9.3% DCF range in this case. For example, in *Pennsylvania Public Utility Commission et al. v. the Columbia Water Company*,¹⁸ the DCF range was 8.25% to 11.35% and the final ROE of 9.75% was well within that range. Likewise, in *Pennsylvania Public Utility Commission et al. v. Emporium Water*

¹⁴ Order, p. 89.

¹⁵ Order, p. 97.

¹⁶ Order, pp. 97-98.

¹⁷ Petition, p. 9.

¹⁸ *Pennsylvania Public Utility Commission et al. v. The Columbia Water Company*, Docket No. R-2013-2360798 (Order entered January 23, 2014).

Company,¹⁹ the DCF range was 8.89% to 10.3%, and the final ROE in that case was 10.0%. *Pennsylvania Public Utility Commission v. Templeton Water Company Inc.*²⁰ never left the PUC's Technical Utility Services division, which simply determined that "suspension or further investigation of the tariff filing is not warranted at this time."²¹ This was accompanied by the explicit disclaimer in the Commission's order that "[t]his does not constitute a determination of the lawful, just, and reasonable rates to be charged by Templeton."²² As demonstrated, all of those cases had equity ranges that differ from the 8.25% to 9.3% range this proceeding. Here, the Commission has already given the City the top of the range at 9.3%, and it should not arbitrarily increase the ROE above the 9.3% since that is what has been determined to be reasonable.

Second, it is important to note that all of the foregoing cases cited by the City are investor-owned utilities and subject to different risks and pressures than a municipal utility such as DuBois., For example, investor-owned utilities are not backed by taxing authority and do not have the ability to secure lower cost debt. Furthermore, the City's attempt to use the ROE for DSIC tariffs to increase the equity return in this case is erroneous. What the City failed to mention is that the 9.3% afforded to the City by the Commission exceeds the historic water industry DCF average for every single listed

¹⁹ *Pennsylvania Public Utility Commission et al. v. Emporium Water Company*, Docket No. R-2014-2402324 (Order entered January 28, 2015).

²⁰ *Pennsylvania Public Utility Commission v. Templeton Water Company Inc.*, Docket No. R-2016-2544861 (Order entered July 21, 2016).

²¹ *Id.* at 3.

²² *Id.*

quarter from the latest Quarterly Earnings Report²³ that was put forth by the Commission, as shown below.

Quarter	DCF
Q3'14	8.83
Q4'14	8.84
Q1'15	8.81
Q2'15	8.75
Q3'15	8.39
Q4'15	8.79
Q1'16	8.28
Q2'16	9.00
Q3'16	8.92

Finally, the City mischaracterizes the evidence of the case when it states that, “As discussed in the March 28 Order, the Commission determined that the consistent DCF analyses conducted by the City, I&E, and OCA supports a range of cost of equity of 8.25% to 10.3%.”²⁴ The DCF range, as noted by the Commission in its Order, is 8.25% - 9.3%, not 10.3% as indicated in the City’s Petition.²⁵

25. Admitted in part, denied in part. While the Commission determined that a 9.3% ROE would appropriately balance the City’s interests and rate impact, this was also done in consideration of the DCF methodology and sound ratemaking principles founded on

²³ Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities for the Year Ended September 30, 2016, Docket No. M-2017-2583651, p. 27 (Public Meeting held January 26, 2017).

²⁴ Petition, p. 10

²⁵ Order, p. 97.

the record evidence. I&E recognizes that due to the corrections made to the R.D., the actual rate impact may be lower than contemplated at the time of the March 16, 2017 poll of the Commission; however, the record evidence and decisions rendered by the Commission have not changed and no new or overlooked evidence has been presented. While the City requests that the ROE in this case be adjusted to the higher end of the DCF analyses from the parties, DuBois overlooks that the DCF analyses only went up to 9.3%, which is what was received. The City attempts to demonstrate that increasing the ROE to 9.65%, 9.85% or even 10.00% would not result in rate shock to customers. However, this argument ignores that augmenting the ROE in this manner would deviate from reliance upon the DCF methodology. The Commission determined that 9.3% was the top of the DCF range of reasonableness, and the City's rate shock argument fails to warrant abandoning the DCF methodology. Accordingly, I&E disagrees with the City's assertion that such an adjustment would serve a fair balance of both the City and its jurisdictional ratepayers.

III. CONCLUSION

The City of DuBois has failed to present novel arguments or considerations that appear to have been overlooked or not addressed by the Commission outside of the request to clarify notice requisites regarding Falls Creek Borough connections. Accordingly, the City's Petition should be rejected and the original order propounded by the Commission should remain in effect with the exception of clarifying the notice requirements regarding any future connections to Falls Creek.

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests that the Commission reject the City's Petition for Reconsideration and Clarification to shorten the Commission approved rate case expense normalization period from 63 months to 30 months and to increase the approved cost of equity above 9.3%.

Respectfully submitted,

Phillip C Kirchner (SEA)

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Prosecutor

PA Attorney ID No. 313870

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Dated: April 24, 2017