

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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April 24, 2017

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Pa. Public Utility Commission
v.
City of Dubois – Bureau of Water
Docket No. R-2016-2554150

Dear Secretary Chiavetta:

Attached for electronic filing please find the Answer of the Office of Consumer Advocate to the City of DuBois' Petition for Reconsideration or Clarification in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Attachment

cc: Honorable Mark A. Hoyer
ra-OSA@pa.gov (email only)
Certificate of Service

232150

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
	:	
v.	:	Docket No. R-2016-2554150
	:	
City of DuBois – Bureau of Water	:	

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO THE CITY OF DUBOIS’
PETITION FOR RECONSIDERATION OR CLARIFICATION

The Office of Consumer Advocate (OCA) hereby submits this Answer to the City of Dubois – Bureau of Water (DuBois or City) Petition for Reconsideration And Clarification pursuant to Sections 5.61 and 5.572 of the Public Utility Commission’s (Commission) regulations. 52 Pa. Code §§ 5.61, 5.572.

I. INTRODUCTION

On April 12, 2017, the City filed a Petition for Reconsideration and Clarification of the Opinion and Order of the Pennsylvania Public Utility Commission (Commission) entered on March 28, 2017 in the above-captioned proceeding. In its Order, the Commission determined, *inter alia*, that a 5 year rate case expense normalization period was reasonable, that notice should be provided to the Commission regarding a potential interconnection with the Borough of Falls Creek (Falls Creek), and that a 9.3% Return on Equity (ROE) was appropriate. First, the City seeks reconsideration of the rate case expense normalization period. Second, the City seeks

clarification requiring notice requirements for the potential Falls Creek interconnection. Third, the City asks the Commission to reconsider its 9.3% ROE.

At the outset, the OCA agrees with the City's proposal to clarify the notice requirements regarding the Falls Creek interconnection. The Commission accurately adopted the OCA's recommendation to the Administrative Law Judge (ALJ) that notice should be provided to the Commission and the parties upon completion of a connection to Falls Creek. *See* Order at 31. The corresponding Ordering Paragraph No. 10 directs the City to file a report with the Commission once a contract is entered into between DuBois and Falls Creek. The OCA agrees with the City that the inclusion of language requiring notice upon entry of a contract appears to be an inadvertent error.

The OCA submits that the Commission should otherwise deny the City's Petition. The City presents no new or novel evidence with regard to the rate case expense normalization period or addresses any matters overlooked by the Commission. Rather, the City repeats arguments it previously made before the ALJ and the Commission. The Commission's approved rate case expense normalization period is based on the City's historical average interval between filings which is reasonable and appropriate for ratemaking purposes, and consistent with the OCA's recommendation and Commission precedent.

With regard to the Commission's ROE determination, the City argues that the Commission should further adjust the ROE in light of the reduced impact following a recalculation of the City's rate base. In adopting an ROE of 9.3%, the Commission adopted an upward adjustment of 68 basis points compared to the Recommended Decision's ROE of 8.62%. Moreover, the Commission specifically stated in its March 28th Order as follows:

We conclude that 9.3% is the appropriate cost of equity allowance in this proceeding. We also find that, based on our other conclusions to be discussed *supra*, that this cost of equity should not be further adjusted.

Order at 97-98.

Accordingly, the OCA submits that the Petition fails to meet the well-established standard for reconsideration, and that the Commission's Order was legally and factually grounded in the evidence presented. The OCA submits that the Commission addressed the issues based on a thoroughly developed record, fully briefed by the parties. There is nothing in the Petition for Reconsideration that is new, novel, or overlooked except for the request for clarification regarding the Falls Creek interconnection.

II. LEGAL STANDARD

The standard that the Commission applies in considering a request for reconsideration under Section 703 of the Public Utility Code was delineated by the Commission in Duick v. Pennsylvania Gas and Water Co., 56 PaPUC 553 (1982) (Duick). There, the Commission stated:

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.

In this regard, we agree with the court in the Pennsylvania Railroad Company case, wherein it was said that:

Parties ... cannot be permitted by a second motion to review and reconsider, to raise the same questions, which were specifically decided against them.

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 by the Commission.

Duick, 56 PaPUC at 559. In further enunciating the standard for reopening a final order for reconsideration, the Commission has determined as follows:

[B]ecause a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under appropriate circumstances.

Pa. P.U.C. v. PECO Energy Co., 1999 PaPUC LEXIS 24, *10-11 (PECO) (citing West Penn Power v. Pa. P.U.C., 659 A.2d 1055 (Pa. Cmwlth. 1995), petition for allowance of appeal denied, No. 576 W.D., Allocatur Docket (Apr. 9, 1996); City of Pittsburgh v. PennDOT, 490 Pa. 264, 416 A.2d 461 (1980).)

For the reasons set forth below, the OCA submits that the Company has failed to meet the standard for reconsideration of the Commission's March 28, 2017 Order.

III. OCA ANSWER

The City asserts that the Commission's Order is flawed for three reasons. First, it argues that the Commission's findings with regard to rate case expense rely on inaccurate representations of the record and prior case law. Petition at 4-7. Second, the City contends that the Commission's Order appears to inadvertently modify the Recommended Decision's requirements for notice of service to Falls Creek. Petition at 8-9. Lastly, the City claims that the adjustments to the Recommended Decision's revenue and rate base calculations merit reconsideration of the Commission's cost of common equity determination. Petition at 9-11. Except for the City's claim regarding notice requirements for a Falls Creek interconnection, the City's Petition does not present any considerations that are new, novel, overlooked, or not addressed by the Commission in rendering its March 28th Order. In fact, each of these subjects were extensively discussed and analyzed in the Commission's March 28th Order. Moreover, the

arguments in the OCA's Reply Exceptions concerning rate case normalization and the cost of common equity were not erroneous and did not vary from the OCA's Main and Reply Briefs.

A. Rate Case Expense

In its Main Brief, Reply Brief, and Exceptions, the City proposed that rate case expense should be normalized based on the City's expectations for future rate filings and not on the historical filing frequency.¹ The City's assertion in the Petition that the Commission relied on inaccurate representations of the record and prior case law is not supported.

As stated in the OCA's Reply Brief, Pa. PUC v. Lemont Water, 1994 Pa. PUC LEXIS 44 (1994)² does not support the City's contention that rate case expense should be based on the City's speculative intentions regarding future rate case filings rather than the historical average interval between rate filings. *See*, OCA R.B. at 22-26. As noted in the OCA's Reply Brief: "The City cites to Pa. PUC v. Lemont Water Co., 1994 Pa. PUC LEXIS 44, *18-19 (1994) (Lemont Water) to support its contention that the City's proposed 2.5 year normalization period is proper. *See*, City M.B. at 22. The Commission's determination in the Lemont Water case, however, states as follows: 'we would use a 1.6 year interval for the normalization of the \$120,000 of rate case expense incurred from the litigation of this proceeding. This interval reflects the Company's historical average interval between rate filings.' Lemont Water at *32 (emphasis added)." OCA R.B. at 23.

¹ *See e.g.*, City M.B. at 22-23 ("Averaging the interval periods between these filing would indeed produce a normalization period of approximately 5 years. However, **the City has provided additional information indicating that a five-year interval before the next rate case would be highly unlikely**" (emphasis added); *see also* City R.B. at 22-23 ("The City does not expect such sales [of water to shale gas companies] to recur pursuant to correspondence from the industry indicating no expectation for further purchases. Therefore, the PUC should accept its recommendation for a shorter normalization period.").

² The City, in all of its filings except for its Petition for Reconsideration, cites to a section of the case that merely recites the parties' arguments and does not cite to the Commission's determination which used the historical filing frequency for Lemont's rate case normalization period. *See*, Lemont Water at *32.

The Commission relies on historical filing frequency to determine the rate case expense normalization period. The average historical filing frequency of the previous three rate cases is 6.61 years.³ See OCA M.B. at 40-41; OCA St. 1 at 45. In proposing an appropriate rate case normalization period, the OCA eliminated the 1996 case from the calculation and determined that the average filing frequency is 5.33 years. OCA M.B. at 41. Even when disregarding the interval between the 2005 and 2013, the City's own calculation of 2.5 years (30 months) is a shorter normalization period than the actual period between the City's two most-recent rate cases (39 months). The City's actual historical filing frequency, which includes the interval between the 2005 and 2013 filings, supports the Commission's Order. The Commission exercised discretion in adopting I&E's rate case expense normalization period in that the 1996 case was removed from consideration by both OCA and I&E.

For the reasons stated above and in the OCA's Main Brief, Reply Brief, Exceptions, and Reply Exceptions, the March 28th Order appropriately determines the rate case normalization period. The 2.5 year normalization period was not supported by the City and is less than half of the City's actual historical filing frequency. OCA M.B. at 43; OCA St. 1 at 45. Furthermore, the City did not propose a 3.25 year alternative rate case normalization period in any of their testimonies or briefs. In fact, the City's proposed alternative of a 3.25 year normalization period is a new proposal which was not presented to either the Administrative Law Judge or the Commission.

B. Cost of Common Equity

In its Petition, the City argues that the ROE should be upwardly adjusted a second time. In adopting an ROE of 9.3%, the Commission adopted an upward adjustment of 68 basis points

³ The previous three cases were filed on the following dates: 8/27/1996, 10/28/2005, and 3/1/2013. The current case was filed 6/30/2016.

compared to the Recommended Decision's ROE of 8.62%. The Commission's Order contained an extensive discussion of ROE and concluded as follows: "We conclude that a higher cost of equity is necessitated by our adoption of the City's actual capital structure, but it is important to note that our allowance of a 9.3% return on equity falls within the range of the cost of equity results as calculated by the Parties in this proceeding (8.25 to 10.3%). We conclude that 9.3% is the appropriate cost of equity allowance in this proceeding. **We also find that, based on our other conclusions to be discussed *supra*, that this cost of equity should not be further adjusted.**" Order at 97-98 (emphasis added).

The City's request that the Commission reconsider the 9.3% determination of the ROE presents no new, novel or overlooked information. In the Recommended Decision, the ALJ recommended a revenue increase of \$97,354. When the ALJ's tables were corrected for an inadvertent error, the ALJ's recommended revenue requirement increase would have been \$63,939. The Commission's determination of a revenue requirement increase of \$71,133, however, reflects a higher ROE than recommended by the ALJ.

Furthermore, the City argues that the Recommended Decision overstated the impact of the rate adjustments upon customers. The OCA submits that the revenue requirement reported in the Recommended Decision should not impact the Commission's determination of ROE because the Commission fully reviewed all issues in making its determinations, including recognizing that the ALJ's rate base number needed to be corrected.

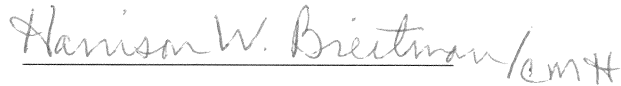
The Commission found that the ROE should not be further adjusted from the 68 basis point upward adjustment. Moreover, the OCA submits that the appropriate ROE should not be adjusted further based on the corrected rate base level as the City appears to argue. The corrected rate base amount was reflected in the OCA's testimony and briefs and as such is not

new information that the City did not have an opportunity to address. In addition, the range of ROE recommendations were presented along with that rate base level. Thus, the corrected number does not require any modifications to be made to the ROE found to be reasonable by the Commission.

IV. CONCLUSION

The City of DuBois' Petition for Reconsideration and Clarification of the Opinion and Order of the Pennsylvania Public Utility Commission entered on March 28, 2017 should be denied, consistent with the OCA's Answer. The City has not met the standard required for reconsideration and further, its positions have already been considered and properly denied by the Commission.

Respectfully Submitted,

Handwritten signature of Harrison W. Breitman in cursive, with the initials 'cmH' at the end.

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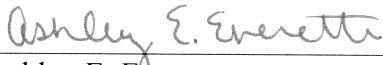
April 24, 2017
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION	:	
	:	
v.	:	Docket Nos. R-2016-2554150
	:	
	:	
CITY OF DUBOIS – BUREAU OF WATER	:	
	:	

VERIFICATION

I, Ashley E. Everette, hereby state that the facts above set forth in the OCA's Answer are true and correct 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).

Signature: 
Ashley E. Everette

Consultant Address: 555 Walnut Street
Harrisburg, PA 17101

DATED: April 24, 2017

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Answer of the Office of Consumer Advocate to the City of DuBois’ Petition for Reconsideration or Clarification, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 24th day of April, 2017.

SERVICE BY E-MAIL AND INTER-OFFICE MAIL

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