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May 1, 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 is the Reply of City of DuBois to the Exceptions of the Office of Small Business Advocate, in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

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)  
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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Adeolu A. Bakare

Counsel to the City of DuBois – Bureau of Water

Dated this 1<sup>st</sup> day of May, 2017, at Harrisburg, Pennsylvania.



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.<sup>2</sup> 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.

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. On March 28, 2017, the Commission entered an Order ("March 28 Order"), which implemented additional modifications to the R.D. to correct inadvertent errors in the supporting calculations appended to the R.D. The March 28 Order directed the City to, *inter alia*, file a tariff supplement and supporting calculations consistent with the authorized revenue requirement.

9. On March 12, 2017, the City and OSBA filed Petitions for Reconsideration. The OSBA's Petition for Reconsideration alleged that the City "could make a compliance filing that follows the March 28 Order to the letter, but is in total violation of *Lloyd*."<sup>3</sup>

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<sup>2</sup> Upon request from the parties, the ALJ cancelled the November 9, 2016, evidentiary hearing.

<sup>3</sup> See OSBA Petition for Reconsideration, p. 6 *citing* *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006).

10. On April 17, 2017, the City made a Compliance Filing consisting of Supplement No. 24 to its Tariff Water Pa. P.U.C. No. 4 ("Supplement No. 24") and supporting calculations. The City additionally filed an Answer to OSBA's Petition for Reconsideration on April 24, 2017.

11. On April 25, 2017, OSBA filed Exceptions to the City's Supplement No. 24. ("Compliance Exceptions") No other party filed Exceptions to the City's Supplement No. 24.

12. OSBA's Compliance Exceptions reflect a fundamental misunderstanding of the Commission's March 28 Order. OSBA's Compliance Exceptions allege that the City's Compliance Filing fails to comply with the March 28 Order because "... the City's Compliance Filing adopted its proposed customer charges, but differentially scaled back the consumptions charges." *See* OSBA Compliance Exceptions, p. 4. To the contrary, the City's Compliance Filing appropriately implements the scaled back rate design required by the March 28 Order, which the Commission described 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.

*See id.* (Emphasis added). As evidenced by the above excerpt, the March 28 Order did not modify the rate design approved in the R.D. *See* March 28 Order, p. 118.

13. Notwithstanding the March 28 Order's concurrence with the R.D., the OSBA characterizes the R.D. as a "differential" scaleback and attempts to distinguish the R.D.'s rate design from that approved by the Commission in Ordering Paragraph No. 5. This claim is not consistent with a reasonable and comprehensive interpretation of the Commission's directives in the March 28 Order, particularly as the Commission specifically adopted the R.D.'s recommendation for and denied the OSBA's Exceptions. *See* March 28 Order, p. 118. Any other interpretation of the

March 28 Order would lead to an absurd result, contrary to established principles of statutory construction. *See Unemployment Compensation Board of Review of Pennsylvania v. Frazier Dixon*, 365 A.2d 668; (Pa. Cmwlth. 1976).

14. Consistent with the R.D., the City's Compliance Filing scales back the consumption charges to achieve proportional rate increases for each customer class. *See City Compliance Filing*, p. 2. As such, the Commission should reject OSBA's attempt to revise the March 28 Order, which explicitly approved the rate design set forth in the R.D.

WHEREFORE, for the reasons discussed above, the City respectfully requests that the Office of Small Business Advocate's Exceptions to the Compliance Filing be denied.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By



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Dated: May 1, 2017

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