**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held May 18, 2017 |
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| Commissioners Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  John F. Coleman, Jr.  Robert F. Powelson  David W. Sweet |  |
| Pennsylvania Public Utility Commission  Pennsylvania Office of Small Business Advocate  Pennsylvania Office of Consumer Advocate  Sandy Township  v.  City of DuBois - Bureau of Water | Pennsylvania Public Utility Commission R‑2016-2554150  Pennsylvania Office of Small Business Advoc C-2016-2556342  C-2016-2556376  C-2016-2557459 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Petition for Reconsideration filed by the Office of Small Business Advocate (OSBA) and the Petition for Reconsideration and Clarification filed by the City of DuBois – Bureau of Water (DuBois or the City) (collectively, Petitions). The Petitions were filed on April 12, 2017, seeking reconsideration of our Opinion and Order entered March 28, 2017 (*March 2017 Order*), relative to the above-captioned proceeding. Answers to the OSBA Petition were filed by DuBois and Sandy Township on April 24, 2017. Answers to the DuBois Petition were filed by the Office of Consumer Advocate (OCA), the Commission’s Bureau of Investigation and Enforcement (I&E) and Sandy Township on April 24, 2017. For the reasons stated below, we shall deny the OSBA Petition and grant, in part, and deny, in part, the DuBois Petition.

**History of the Proceeding**

On June 30, 2016, DuBois filed Supplement No. 22 to Tariff Water - Pa. P.U.C. No. 4, with the Commission to become effective August 29, 2016, at Docket No. R‑2016-2554150. In its original filing, DuBois proposed an annual increase in base rate revenues of $257,604 or an approximately 33.7% increase for customers located outside of the City limits. City Exh. CEH-1 at 6. However, in rejoinder, the City reduced the annual revenue requirement increase to $229,551. City Exh. CEH-3RJ. The rates and service of these customers are subject to the jurisdiction of the Commission, pursuant to 66 Pa. C.S. §§ 1301 and 1501. Pursuant to 66 Pa. C.S. § 1308(d), the filing was suspended by operation of law until March 29, 2017.

On July 13, 2016, the OSBA filed a Formal Complaint at Docket No. C‑2016-2556342. On July 14, 2016, the OCA filed a Formal Complaint at Docket No. C‑2016-2556376 and a Notice of Appearance. On July 20, 2016, Sandy Township filed a Formal Complaint at Docket No. C-2016-2557459. On July 25, 2016, I&E filed a Notice of Appearance.

An evidentiary hearing was held on November 10, 2016, before Administrative Law Judge (ALJ) Mark A. Hoyer.

On November 29, 2016, Main Briefs were filed by the City, I&E, the OCA, the OSBA, and Sandy Township. On December 12, 2016, Reply Briefs were filed by DuBois, I&E, the OCA, the OSBA, and Sandy Township. The record closed on December 21, 2016. The record includes a 150‑page transcript and the Parties’ testimonies and exhibits.

ALJ Hoyer’s Recommended Decision (R.D.) was issued on January 13, 2017. In his Recommended Decision, the ALJ recommended a maximum revenue increase of $97,354 out of the $229,551 increase requested by the City. This represents an increase of approximately 12% over existing rates instead of the approximately 28% requested by the City.[[1]](#footnote-1) ALJ Hoyer also recommended approval of the City’s proposed increase to the customer charges and recommended that the reduction in the requested revenues be achieved by cutting the volumetric rates for the first 100,000 gallons and over 100,000 gallons. R.D. at 1 (citing Appendix A). The ALJ stated that the revised rates are $5.68, or 10.29% over present rates, for the first 100,000 gallons, and $4.30 or 14.06% over present rates, for usage over 100,000 gallons, resulting in an annual revenue increase of approximately $97,341, and total annual revenue of about $897,583. *Id.* According to the ALJ, because the increases in customer charges are maintained, a reduction in the volumetric rates, which is proportional to the reduction in the requested revenue increase, results in greater than allowable annual revenue. Therefore, the ALJ adjusted the volumetric rates to maintain the percentage of revenues from jurisdictional residential, commercial, industrial and “Other Water Utilities” customers as close to the cost of service, as reasonably possible. R.D. at 1.

Exceptions to the ALJ’s Recommended Decision were filed on February 2, 2017, by the City, I&E, the OCA, the OSBA and Sandy Township. Replies to Exceptions were filed by DuBois, I&E and the OCA. In our *March 2017 Order*, we denied the Exceptions of Sandy Township and the OSBA, and granted, in part, the Exceptions of the City, I&E and the OCA. We also adopted the ALJ’s Recommended Decision, as modified by the *March 2017 Order*. Our *March 2017 Order* authorized the City to implement a base rate increase of $71,133. As previously noted, the City and the OSBA filed the instant Petitions seeking reconsideration and/or clarification of our *March 2017 Order* on April 12, 2017. By Order entered April 20, 2017, we granted the Petitions, pending further review of, and consideration on, the merits. On April 24, 2017, the City, Sandy Township, I&E and the OCA filed Answers to the Petitions.

**Discussion**

Before addressing the Petitions, we note that any issue not specifically discussed shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pennsylvania Public Utility Commission,* 625 A.2d 741 (Pa. Cmwlth. 1993); *also*, *generally*, *Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

**A. Legal Standard**

The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and (g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

A petition to modify or rescind a final Commission decision may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation,* 490 Pa. 264, 416 A.2d 461 (1980). Additionally, we recognize that while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting [*Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=118+Pa.+Super.+380)) (*Duick*). Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

**B. City of DuBois Petition**

In its Petition, DuBois raises three issues for the Commission’s consideration. First, DuBois requests that the Commission reconsider its decision to deny the City’s Exceptions with regard to rate case expense and to reconsider its discretional determination of the appropriate cost of common equity within the range of reasonableness results supported by the Parties’ analyses. Also, DuBois requests that the Commission clarify the required notice regarding a potential interconnection with the Borough of Falls Creek (Falls Creek). DuBois Petition at 1. The City submits that the considerations supporting its Petition are either new or novel, were overlooked, or not addressed by the Commission in rendering the *March 2017 Order*. According to DuBois, the standards of *Duick* have been satisfied, and the City requests that the Commission exercise its discretion to grant its Petition. DuBois Petition at 4.

**1. Rate Case Expense**

**a. Position of DuBois**

In its Petition, the City asserts that the Commission’s findings with regard to rate case expense rely on inaccurate representations of the record and prior case law. DuBois claims that in declining to grant its 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, the Commission relied on numerous misstatements from other Parties. DuBois opines that the *March 2017 Order* referenced a mischaracterization of its arguments in support of a reduced normalization period from I&E and statements from both I&E and the 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, DuBois asserts that the Commission found that *Lemont Water* was not applicable to the facts in the instant proceeding and thus approved the 5.33 year normalization period. DuBois requests that the Commission reverse this finding. In the alternative, DuBois suggests that if the Commission declines to grant the requested 2.5 year normalization period it has requested, a 3.25 normalization period would be reasonable in consideration of *Lemont Water*. DuBois Petition at 4-5.

DuBois avers that contrary to statements in I&E’s and the OCA’s Replies to 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 rather than expectations for future rate filings. DuBois states that a review of its Exceptions shows that it acknowledged 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. According to the City, in its Exceptions, it asked the Commission to approve a shorter normalization period because “undisputed factual evidence shows the past filing patterns will not be repeated.” DuBois claims that 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 as this extended interval occurred due to non-recurring revenue from sales of water to natural gas drillers. Therefore, DuBois opines that the contention that it based its recommended rate case normalization period on an expectation of future filings is incorrect. DuBois Petition at 5.

Next, DuBois asserts that the facts in *Lemont Water* are directly applicable to this case. DuBois avers that in *Lemont Water*, the Commission did not use an alternate methodology of calculating a rate case normalization period as all of the recommendations considered by the Commission relied on some measure of historical filing frequency. DuBois points out that in *Lemont Water*, the filing utility’s three most recent base rate cases were in effect for periods of 52, 48 and 19 months, which amounts to an overall average of 36 months. According to DuBois, 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 two filings. DuBois points out that both the original and revised normalization periods reflected its historical filing frequency, but incorporated only the most recent two rate filings. According to DuBois, while the filing utility did represent that the revised 1.6 year normalization period was based on both the nineteen-month interval between its prior two rate increases and its expectation that it would file another rate case in nineteen 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. DuBois Petition at 5-6 citing *Lemont Water* at 32.

DuBois asserts that throughout this proceeding, it 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. DuBois maintains that 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. Petition at 6, citing *Popowsky v. Pa. P.U.C.*, 674 A.2d 1149, 1154 (1996) (*Popowsky).* According to the City, it last increased base rates on January 1, 2014, and the effective date for new rates in this proceeding was March 29, 2017, as set forth in the *March 2017 Order*, which reflects an interval of approximately 3.25 years. DuBois opines that its proposed 2.5 year normalization period more closely approximates the 39 month historical interval between the 2014 and 2017 rate increases than the 5.33 year normalization period set forth in the *March 2017 Order*.

Based on the foregoing, DuBois requests that the Commission 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. DuBois Petition at 7.

**b. Answers of the Parties**

In its Answer to DuBois’ Petition, the OCA first asserts that 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. As such, the OCA states that the City’s assertion in its Petition that the Commission relied on inaccurate representations of the record and prior case law is not supported. The OCA avers that *Lemont Water* 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. According to the OCA, the Commission’s determination in *Lemont Water* 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.” OCA Answer at 5, c*iting Lemont Water* at 32.

Next, the OCA asserts that the Commission relies on historical filing frequency to determine the rate case expense normalization period and that the average historical filing frequency of the City’s previous three rate cases is 6.61 years. The OCA notes that in proposing an appropriate rate case normalization period, it eliminated the 1996 case from the calculation and determined that the average filing frequency is 5.33 years. The OCA points out that even when disregarding the interval between the 2005 and 2013 cases, 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 of 39 months. The OCA opines that the City’s actual historical filing frequency, which includes the interval between the 2005 and 2013 filings, supports the *March 2017 Order*. The OCA points out that 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 the OCA and I&E. OCA Answer at 6.

Finally, the OCA notes that the City did not propose a 3.25 year alternative rate case normalization period in any of its testimonies or briefs. The OCA avers that, 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 ALJ or the Commission. OCA Answer at 6.

In its Answer to DuBois’ Petition on this issue, I&E states that the City’s request for reconsideration should be denied as it does not present new and novel arguments and posits that the Commission’s findings are founded soundly on record evidence and precedent. I&E further denies that the Commission relied on numerous misstatements from other parties in reaching its conclusion that the rate case normalization period should be 63 months instead of the City’s recommended 30 months. According to I&E, the *March 2017 Order* correctly referenced the I&E and the OCA arguments regarding the dissimilarity between the case at hand and *Lemont Water*. In doing so, I&E asserts that there were no misstatements, mischaracterizations or obfuscation as alleged by the City. I&E claims that as it and the OCA both accurately argued, and the Commission recognized, 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. I&E Answer at 4 *citing March 2017 Order* at 66.

Next, I&E states that the City’s contention that it proposed that its rate case expense be normalized based on historical filing frequency, not expectations for future rate filings, directly conflicts with the City’s own testimony given that City witness Heppenstall stated that “[t]he 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.” *See* City of DuBois St. No. 2 at 9. According to I&E, the City wants the Commission to ignore this record evidence simply because it did not exclusively argue the point in briefs or exceptions. I&E opines that this claim conflicts with the fact that the City staunchly asserted that normalization periods based solely upon historical filing frequency was unreasonable through the exceptions phase of this proceeding. I&E Answer at 4-5.

Next, I&E states that *Lemont Water* 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. I&E also notes that *Lemont Water* was decided prior to the adoption of the historical filing frequency standard in 1996. I&E maintains that the City’s 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 Water* is inapplicable to the case at hand. I&E notes that the Final Order in *Lemont Water* was issued in 1994, two years before the Commonwealth Court acknowledged the historical filing frequency standard and several years before other Commission decisions, like *Pa. PUC et al v. Emporium Water Company*, Docket No. R-2014-2402324 (Order entered January 28, 2015) (*Emporium Water*), adhered to the historical filing frequency standard. As such, I&E maintains that *Lemont Water* has been superseded for years. I&E Answer at 5-6.

Next, I&E avers that the facts in *Lemont Water* are very different from the case at hand as in that case I&E (then the Office of Trial Staff) advocated for the use of an approximate three-year historical filing frequency but ultimately supported Lemont Water’s two-year filing frequency in surrebuttal testimony. I&E claims that this was done in conjunction with a recommendation to disallow $56,682 of Lemont Water’s rate case expense claim. I&E explains that in the instant proceeding, 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 Water*. I&E has not sought disallowance of any component of the City’s rate case expense claim in this case. I&E asserts that it disagrees with DuBois’ interpretation of *Lemont Water* and maintains that the Commission determination that the *Lemont Water* decision upon which the City relied upon is not applicable to the facts of the instant proceeding is correct. I&E Answer at 6.

Finally, I&E disputes the City’s assertion that the gap between the 2005 and 2013 filings should be disregarded as an outlier. I&E posits that the City is simply requesting that the Commission ignore a filing interval that it believes is unfavorably long. I&E opines that this attempt to “cherry pick” filing intervals in order to increase rate case expense recovery is contrary to sound ratemaking principles. I&E asserts that 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. Also, I&E points out that this argument is not new and is simply a different spin on the same claims that were previously rejected by the Commission in the *March 2017 Order*. I&E Answer at 6-7.

In its Answer to DuBois’ Petition, Sandy Township states that the City’s continued discussion of *Lemont Water* in its Petition is neither new nor novel. As such, Sandy Township asserts that the Commission is not required to apply *Lemont Water*, as argued by the City, with a resulting annual rate case expense allowance of $90,202 (based upon a 2.5 year normalization period) or, in the alternative, $69,386 (based upon a 3.25 year normalization period). Sandy Township opines that this is especially so where, as here, the net annual revenue increase authorized by the Commission, based on the facts of record and applicable law exclusive of rate case expense, is $28,851.[[2]](#footnote-2) According to Sandy Township, the elapsed period between the 2013 base rate case filed by DuBois and the instant base rate filing does not justify including in rates a rate case expense allowance that is two to three times the level of the net increase authorized by the Commission. Sandy Township posits that, as it is, at $42,282, the rate case expense allowance is approximately $14,000 more than the net rate increase of $28,851 authorized by the *March 2017 Order*. Sandy Township opines that the ratemaking conclusions expressed by the Commission in the *March 2017 Order*, suggest that the City exercised poor judgment in presenting and litigating a rate filing so soon after the conclusion of its prior base rate proceeding in 2013. Sandy Township asserts that the Commission should not authorize an annual rate case expense allowance for the City of $90,202 (or $69,386) for a net annual revenue increase of $28,851. Sandy Township Answer at 3-4.

**c. Disposition**

Based upon our review and consideration of DuBois’ Petition and the Answers filed thereto, and in light of the record as described in this proceeding, we find that DuBois has failed to allege any “new or novel arguments” with regard to the issue of the allowable rate case expense that would persuade us to modify or amend our *March 2017 Order*. On this issue, we are in agreement with the OCA, I&E and Sandy Township that the City’s Petition raises no new or novel arguments and raises no arguments that we have not already considered and rejected. Also, the Petition fails to raise any arguments that have been overlooked by the Commission. We conclude that each of the arguments raised by DuBois in its Petition were specifically addressed and rejected in our *March 2017 Order*.

As we stated in our *March 2017 Order*, we are not convinced by the position of the City that a 2.5 year normalization period is reasonable considering the filing frequency of its most recent base rate filings. Furthermore, the City’s request for an alternative normalization period in its Petition is highly improper at this stage of the proceeding and, as noted by OCA, was not proposed as an alternative in the City’s testimonies or briefs. The alternative is, hereby, rejected. We reiterate our conclusion within the *March 2017 Order* that the City’s position is inconsistent with Commission precedent on this issue and that the *Lemont Water* decision upon which the City relies is not applicable to the underlying facts of this proceeding. Accordingly, we decline to reconsider our *March 2017 Order* on this matter and shall deny DuBois’ request in its Petition to shorten the normalization period for the City’s rate case expense.

**2. Service to Falls Creek**

**a. Position of DuBois**

In its Petition, the City submits that the *March 2017 Order* appears to inadvertently modify the ALJ’s requirements for notice to be provided to the Commission of any service to Falls Creek. As such, DuBois requests confirmation that the notice requirements are contingent upon completion of a connection to Falls Creek. DuBois notes that page 31 of the *March 2017 Order* states that the City had agreed to submit a report to the Commission upon completion of a connection to Falls Creek of certain information. DuBois asserts that this language accurately reflects the recommendations proposed by the OCA and adopted by the ALJ. However, the City avers that 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 and Falls Creek for the provision of water service. *Citing March 2017 Order* at 128. The City states that the inclusion of language requiring notice upon execution of a contract appears to be an inadvertent error, particularly as the requirement also compels the City to disclose the date service began. The City explains that 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.

Therefore, DuBois 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 execution of a contract with Falls Creek. DuBois Petition at 8-9.

**b. Answers of the Parties**

In its Answer, the OCA states that it agrees with the City’s proposal to clarify the notice requirements regarding the Falls Creek interconnection. The OCA notes that the Commission adopted the OCA’s recommendation that notice should be provided to the Commission and the Parties upon completion of a connection to Falls Creek, but that 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 explains that it agrees with the City that the inclusion of language requiring notice upon the entry into a contract appears to be an inadvertent error. OCA Answer at 2.

In its Answer to the DuBois Petition on this issue, I&E states that it 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. I&E Answer at 3.

In its Answer, Sandy Township states that irrespective of the language within the body of the *March 2017 Order*, the Commission, in Ordering Paragraph No. 10, ordered the City to file a report when a contract is entered into between the City and Falls Creek. According to Sandy Township, this reporting requirement is not burdensome and the Commission should deny the City’s requested modification of Ordering Paragraph No. 10. Sandy Township Answer at 4.

**c. Disposition**

Based upon our review of DuBois’ Petition and the Answers filed thereto, we find that the standards of *Duick* are met. We are in agreement with the City that Ordering Paragraph No. 10 does not accurately reflect the OCA’s recommendation during the proceeding that the City provide the requested information when it connects Falls Creek and begins water service. We note that both the OCA and I&E do not oppose the City’s request for clarification of this issue. In light of the foregoing, we conclude that the language within Ordering Paragraph No. 10 inadvertently required that the OCA’s requested information be provided by the City upon execution of the contract between the City and Falls Creek. Accordingly, we shall grant the City’s requested clarification of this issue and modify Ordering Paragraph No. 10 of our *March 2017 Order* to direct that the City file a report with the Commission when the City initiates water service to Falls Creek. The report shall include 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 a copy of the contract between the City and Falls Creek.

**3. Cost of Equity**

**a. Position of DuBois**

In its Petition, DuBois states that the adjustments to the ALJ’s revenue and rate base calculations merit reconsideration of the Commission’s cost of common equity determination. DuBois notes that the *March 2017 Order* implemented numerous adjustments to supporting calculations as set forth in the Recommended Decision, which in total, reduced the revenue requirement proposed by the ALJ from $97,354 to $63,939. DuBois opines that as the Commission based its recommended return on equity (ROE) in part upon the rate impact to customers, it requests that the Commission reconsider the 9.3% determination due to the clarification that the revenue requirement reported in the Recommended Decision overstated the impact of the rate adjustments upon customers. DuBois explains that its Petition does not address the Commission’s findings with regard to capital structure, the Parties’ discounted cash flow (DCF) calculations, or the ROE adjustments it proposed which were denied in the *March 2017 Order*. DuBois notes that it requests reconsideration only of the Commission’s discretionary determination of the appropriate ROE based on the range of reasonable equity costs supported by the Parties’ DCF analyses. DuBois Petition at 9.

DuBois states that it requests that the Commission further adjust the ALJ’s recommendation 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. According to DuBois, the Commission has recently set ROE’s ranging between 9.75% and 10.5%, *citing Pa. PUC et al v. Columbia Water Company*, Docket No. R- 2013-2360798 (Order entered January 23, 2014) (*Columbia Water*); *Emporium Water* and *Pa. PUC v. Templeton Water Company Inc.*, Docket No. R-2016-2544861 (Order entered July 21, 2016). DuBois asserts that, as discussed in the *March 2017 Order*, the Commission determined that the relatively consistent DCF analyses conducted by the City, I&E and the OCA supports a range of cost of equity of 8.25% to 10.3%, citing *March 2017 Order* at 97. DuBois avers that while the 9.3% ROE determination strikes the midpoint of this range, it also falls below the current 9.65% ROE for distribution system improvement charge (DSIC) tariffs published in the Commission’s more recent earnings report. DuBois Petition at 9-10.

Next, DuBois opines that 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 ALJ’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, 2017 binding poll. According to DuBois, since the potential for rate shock is greatly diminished by the adjusted calculations in the *March 2017 Order*, the ROE can be increased without undue rate shock to customers. DuBois Petition at 10.

DuBois requests that in light of the reduced revenue impact upon customers resulting from the adjustments to the ALJ’s expense and rate base calculations, the Commission exercise its discretion to further adjust the ROE towards the higher end of the range supported by the Parties’ DCF analyses. According to DuBois, 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. DuBois Petition at 11.

**b. Answers of the Parties**

In its Answer to the DuBois Petition on this issue, the OCA points out that in adopting a ROE of 9.3%, the Commission adopted an upward adjustment of 68 basis points compared to the ALJ’s recommended ROE of 8.62%. The OCA asserts that the City’s request that the Commission reconsider the 9.3% determination of the ROE presents no new, novel considerations, or overlooked information. The OCA notes that the ALJ had recommended a revenue increase of $97,354, but when the ALJ’s tables were corrected for an inadvertent error, the ALJ’s recommended revenue requirement increase would have been $63,939. The OCA further notes that the Commission’s determination of a revenue requirement increase of $71,133, however, reflects a higher ROE than recommended by the ALJ. 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 determination, including recognizing that the ALJ’s rate base number needed to be corrected. OCA Answer at 6-7.

The OCA next states that the Commission found that the ROE should not be further adjusted from the 68 basis point upward adjustment. The OCA submits that the appropriate ROE should not be adjusted further based on the corrected rate base level as DuBois appears to argue. According to the OCA, the correct rate base amount was reflected in its testimony and briefs and as such is not new information that the City did not have an opportunity to address. Additionally, the OCA avers that the range of ROE recommendations were presented along with that rate base level, and, as such, the corrected number does not require any modifications to be made to the ROE found to be reasonable by the Commission. OCA Answer at 7-8.

In its Answer to DuBois’ Petition on this issue, I&E states that corrections to inadvertent miscalculations do not merit arbitrarily increasing the City’s cost of common equity. While I&E admits that the corrections to supporting calculations reduced the revenue requirement from $97,354 to $63,939, it denies that reconsidering the Commission approved 9.3% cost of common equity is warranted since this is already at the highest point of the Commission’s reasonable DCF range. Specifically, I&E states that the OCA’s DCF range was 7.5% to 9.0%, I&E’s DCF range was 8.2% to 8.9% and the City’s recommended equity determinations based on the DCF was 9.3%.

*See March 2017 Order* at 89. I&E notes that 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%, and the Commission awarded the City the top of that range of 9.3%. *See March 2017 Order* at 97. According to I&E, the City’s request for reconsideration based upon the “range of reasonable equity costs supported by Parties’ DCF analyses” is unwarranted because it has already received the highest equity percentage supported by the Parties’ DCF range. I&E Answer at 7-8.

Next, I&E denies that it is appropriate to increase the equity return to allegedly align it with recommendations in recent water base rate proceedings. I&E asserts that this request is inappropriate for several reasons. First, I&E notes that in the cases cited by the City, each ROE was based upon the respective DCF ranges, which all differ from the 8.25% to 9.3% range in this case. I&E notes that, for example, in *Columbia Water*, the DCF range was 8.25% to 11.35% and the final ROE of 9.75% was well within that range. Similarly, I&E notes that in *Emporium Water* the DCF range was 8.89% to 10.3%, and the final ROE in that case was 10.0%. According to I&E, both of these cases had equity ranges that differ from the 8.25% to 9.3% range of this proceeding. I&E avers that in the instant proceeding, the Commission has already given the City the top of the designated range at 9.3%, and states that the Commission should not arbitrarily increase the ROE above the 9.3% since that is what has been determined to be reasonable. I&E Answer at 8-9.

Second, I&E states that all of the cases cited by the City are investor-owned utilities and subject to different risks and pressures than a municipal utility such as DuBois. I&E notes that investor-owned utilities are not backed by taxing authority and do not have the ability to secure lower cost debt. Furthermore, I&E notes that the City’s attempt to use the ROE for DSIC tariffs to increase the equity return in this case is erroneous. According to I&E, what the City failed to mention is that the 9.3% afforded to DuBois by the Commission exceeds the historic water industry DCF average for every single listed quarter from the latest Quarterly Earnings Report[[3]](#footnote-3) that was put forth by the Commission. I&E stated that according to that report, the DCF provided ranged from 8.28% up to 9.00%. I&E Answer at 9-10.

Next, I&E avers that the City mischaracterizes the evidence of the case when it states that the Commission determined that the DCF analyses of the Parties supports a range of cost of equity of 8.25% to 10.3%. According to I&E, the DCF range, as noted by the Commission in its Order, is 8.25% to 9.3%, not 10.3% as indicated by DuBois in its Petition. I&E Answer at 10 citing *March 2017 Order* at 97.

Finally, I&E states that 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 the record evidence. I&E notes that it recognizes that due to the corrections made to the ALJ’s Recommended Decision, the actual rate impact may be lower than contemplated at the time of the March16, 2017 polling 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. I&E points out that 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 the City received. I&E opines that the City’s argument for an increased ROE ignores the fact that augmenting the ROE in this manner would deviate from reliance upon the DCF methodology. I&E asserts that 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. I&E Answer at 10-11.

In its Answer to DuBois’ Petition on this issue Sandy Township states that the ratemaking adjustments adopted by the Commission that reduce the rate increase below the level recommended by the presiding ALJ should not now be used on reconsideration as the basis for boosting the return on equity. According to Sandy Township, the Commission would have fully reflected consideration of its adjustments in its *March 2017 Order* when it concluded that the appropriate ROE is 9.3%. As such, Sandy Township opines that the City has offered nothing new or novel to support reconsideration. Sandy Township asserts that the Commission should deny the City’s Petition and decline to modify its authorized ROE. Sandy Township Answer at 5.

**c. Disposition**

Upon our review of the City’s Petition and the Answers filed thereto, and in light of the record in this proceeding, we find that DuBois has failed to allege any “new or novel arguments” that would persuade us to modify or amend our conclusion within our *March 2017 Order* that the reasonable ROE for the City should be 9.3%. *See Duick*. We find that the DuBois request on this issue is without merit as this Commission was fully aware of the inadvertent errors within the Recommended Decision which resulted in an incorrect revenue allowance within the Recommended Decision when deliberating on the resolution of the litigated issues within this proceeding which was accomplished pursuant to a binding poll held on March 16, 2017. On this issue, we are in agreement with the OCA, I&E and Sandy Township that DuBois’ Petition raises no new or novel arguments and raises no arguments that we have not considered and rejected.

We also find that the City’s assertion in its Petition that in our *March 2017 Order* we determined that the range of cost of equity results of the Parties in this proceeding was 8.25% to 10.3% is in error. As noted by I&E in its Answer to the Petition, it is clear from our *March 2017 Order* that the range of the DCF results on the record on this proceeding was 8.25% to 9.3% and not 10.3%. We note that the 10.3% amount utilized by the City in its Petition was based upon the City’s calculations resulting from the Capital Asset Pricing Model and Risk Premium studies it performed, not on the DCF methodology. As such, the Commission provided the City with the highest ROE of 9.3% based upon the DCF calculations as provided on the record in this proceeding. Based on the foregoing, we conclude that, consistent with our *March 2017 Order*, no further upward adjustment is warranted.

Accordingly, we decline to reconsider our *March 2017 Order* and shall deny the City’s Petition requesting an increase to our determination that a reasonable and appropriate ROE for the City is 9.3%.

**C. OSBA Petition**

**1. Revenue Allocation**

In its Petition, the OSBA states that it is seeking reconsideration of the Commission decision that it agreed with the recommendation of the ALJ that the City’s 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. However, the OSBA alleges that the ALJ did scale back the City’s consumption charges, but he did not proportionally scale back the City’s consumption charges. The OSBA states that the ALJ applied a differential scale back by adjusting the City’s consumption charges. The OSBA notes that the ALJ stated that this adjustment achieves the desired revenues while maintaining the revenue allocation as close to the cost of service as reasonably achievable. OSBA Petition at 4-5 citing the ALJ’s R.D. at 81.

The OSBA states that neither the ALJ nor the *March 2017 Order* provided a proof of revenue to demonstrate how the proposed class increases conform to the revenue allocation required by the City’s cost of service study. The OSBA avers that it performed the proportional scale back of the consumption charges as ordered by the Commission and its calculations 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. According to the OSBA, the consumption charges calculated in accordance with the *March 2017 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. OSBA Petition at 5-6.

The OSBA next asserts that the City’s originally filed revenue allocation directly follows the results of the City’s class cost of service study, and as such, complies with the requirements of *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d  1010, 1020 (Pa. Cmwlth. 2006), *appeals denied*, 916 A.2d 1104 (Pa. 2007)(*Lloyd)*. However, the OSBA opines that the Commission’s revenue allocation is entirely divorced from the City’s class cost of service study, and therefore is in violation of *Lloyd.* For example, the OSBA asserts that the residential customer class was to receive a less than system average rate increase under the City’s originally filed revenue allocation. Pursuant to the *March 2017 Order,* the OSBA maintains that the residential class fares significantly worse as it would receive an increase far in excess of the system average. OSBA Petition at 6.

Finally, the OSBA asserts that it cannot address this rate design issue at the compliance filing stage of this proceeding as exceptions to a compliance filing are limited in scope to the factual issue of alleged deviation from requirements of the Commission Order citing 52 Pa. Code § 5.592(c). According to the OSBA, the City could make a compliance filing that follows the *March 2017 Order* to the letter but is in violation of *Lloyd.* Therefore, the OSBA 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.” The OSBA opines that 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 scale back. OSBA Petition at 6-7.

**2. Answers of the Parties**

In its Answer to the OSBA Petition, DuBois states that 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. DuBois asserts that contrary to the allegations set forth in the OSBA Petition, the supporting calculations filed by the City confirm that Supplement No. 24 complies with both the *March 2017 Order* and the decision in *Lloyd*. *See* Supplement No. 24, supporting calculations at 2. According to DuBois, any deviations from the City’s cost of service study still reflect the City’s reliance on its cost of service study as the underlying basis for the rate design and therefore do not violate *Lloyd*. DuBois avers that while Lloyd establishes cost of service rates as the polestar of ratemaking, it does not preclude consideration of other factors. *See Lloyd*, 904 A.2d 1010, 1020. As such, the City maintains that the concerns raised by the OSBA are moot and its Petition should be denied. DuBois Answer at 3.

In its Answer to the OSBA Petition, Sandy Township states that pursuant to page 2 of the supporting information submitted with Supplement No. 24 filed by the City in purported compliance with the *March 2017 Order*, the City appears to have allocated the authorized revenue increase as follows:

|  |  |  |
| --- | --- | --- |
| **Customer Class** | **Percent Increase (%)** | **Amount of Increase ($)** |
| **Residential** | 9.2 | 14,768 |
| **Commercial** | 8.9 | 16,838 |
| **Industrial** | 9.7 | 11,334 |
| **Sales for Resale** | 9.9 | 28,283 |
| **Public Fire Protection** | 0.0 | 0 |
|  | ‘------------------------------- | ‘-------------------------------- |
| **Total** | 9.3 | 71,244 |

Sandy Township notes that the City’s allocation retains the originally proposed customer charges while scaling back the consumption charges. Sandy Township avers that assuming the City has correctly calculated its proposed rates and the revenue to be produced from them, the City’s Supplement No. 24 will produce an approximate and roughly equivalent nine to ten percent revenue increase to each Outside-City customer class for water service in Sandy Township. Sandy Township asserts that this increase to each customer class is acceptable to the Township for allocation of the $71,133 revenue increase authorized by the Commission in the *March 2017 Order*. According to Sandy Township, the end result of the OSBA’s proposed rate allocation is not apparent from its Petition. As such, Sandy Township opines that it cannot discern from the OSBA Petition whether the OSBA’s revenue allocation proposal would produce a result more acceptable for the Township and its residents and businesses than the revenue allocation that would be effected through the City’s Supplement No. 24. Sandy Township Answer at 2-3.

**3. Disposition**

Based upon our review of OSBA’s Petition, the Answers filed thereto and Supplement No 24 filed in compliance with our *March 2017 Order*, we are not persuaded by the arguments presented by the OSBA on this issue. We determined in our *March 2017 Order* that the City’s proposed customer charges were reasonable and should be adopted and that the consumption charges should be scaled back proportionally. Review of Supplement No. 24, as well as the chart included in the Answer of Sandy Township, reveals that the City’s proposed revenue allocation is consistent with its originally proposed revenue allocation and is consistent with the requirements of *Lloyd.* On this point, we are in agreement with the City that while *Lloyd* establishes cost of service rates as the polestar of ratemaking, it does not preclude consideration of other factors. In this proceeding, a significant factor was the Commission decision to maintain the reasonable customer charge increases as proposed by the City and to only scale back the consumption charges. As such, we conclude that Supplement No. 24 complies with and is consistent with both the *March 2017 Order* and the decision in *Lloyd*. Accordingly, we decline to reconsider our *March 2017 Order* and shall deny the OSBA’s Petition for Reconsideration.

**Conclusion**

Based on the foregoing discussion, we shall grant, in part, and deny, in part, the Petition for Reconsideration and Clarification filed by the City of DuBois –Bureau of Water and deny the Petition for Reconsideration filed by the Office of Small Business Advocate; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration and Clarification filed on April 12, 2017, by the City of DuBois – Bureau of Water, relative to the Opinion and Order entered herein on March 28, 2017, is hereby granted, in part, and denied, in part, consistent with the discussion in the body of this Opinion and Order.

2. That the Petition for Reconsideration filed on April 12, 2017, by the Office of Small Business Advocate, relative to the Opinion and Order entered herein on March 28, 2017, is hereby denied, consistent with the discussion in the body of this Opinion and Order.

3. That the City of DuBois – Bureau of Water shall file a report with the Commission when the provision of water service is initiated between the City of DuBois – Bureau of Water and Falls Creek Borough 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 a copy of the contract.

4. That the record in this proceeding be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 18, 2017

ORDER ENTERED: May 18, 2017

1. Upon our review, we determined that due to some inadvertent errors in the Tables in Appendix A that were attached to the Recommended Decision, the actual increase in rates recommended by the ALJ was $63,939. This represents an increase of approximately 8% instead of the approximately 28% requested by the City. We attached in Appendix A of the *March 2017 Order* the corrected Tables along with a list of the identified corrections based upon the record evidence. [↑](#footnote-ref-1)
2. Additional revenue of $71,133 minus the annual rate case expense allowance of $42,282 equals $28,851. [↑](#footnote-ref-2)
3. 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 at 27 (Public Meeting held January 26, 2017). [↑](#footnote-ref-3)