



Whitney E. Snyder
(717) 236-1300 x260
[wesnyder@hmslegal.com](mailto:wesnnyder@hmslegal.com)

Thomas J. Sniscak
(717) 236-1300 x224
tjsniscak@hmslegal.com

Phillip D. Demanchick Jr.
(717) 236-1300 x225
pddemanchick@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

February 12, 2024

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Second Floor North
Harrisburg, PA 17120

Re: Columbia Water Company; 2023 General Base Rate Increase Filing; Docket No. R-2023-3040258; **COLUMBIA WATER COMPANY’S ANSWER OPPOSING OFFICE OF SMALL BUSINESS ADVOCATE’S PETITION FOR RECONSIDERATION**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is Columbia Water Company’s Answer Opposing the Office of Small Business Advocate’s Petition for Reconsideration in the above-referenced matter.

If you have any questions concerning this filing, please contact me.

Very truly yours,

/s/ Whitney E. Snyder

Whitney E. Snyder
Thomas J. Sniscak
Phillip D. Demanchick Jr.
Counsel for Columbia Water Company

WES/das
Enclosure

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2023-3040258
	:	
	:	
Columbia Water Company	:	

**ANSWER OF COLUMBIA WATER COMPANY
OPPOSING THE PETITION FOR RECONSIDERATION
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

Pursuant to 52 Pa. Code § 5.572(e), Columbia Water Company (“Columbia Water” or the “Company”) files this Answer Opposing the Petition for Reconsideration of the Pennsylvania Public Utility Commission’s (“Commission”) Opinion and Order entered January 18, 2024 (“January 18 Order”) that the Office of Small Business Advocate (“OSBA”) filed on February 2, 2024 (“Petition for Reconsideration”).

I. INTRODUCTION

1. OSBA asks the Commission to reconsider the cost allocation and rate design adopted in the January 18 Order. The Commission should deny OSBA’s Petition for Reconsideration because OSBA has waived gradualism arguments and its Petition does not otherwise meet the standard for reconsideration. Moreover, the Pennsylvania Supreme Court has explained that petitions that request modification of a final agency order may only be granted judiciously and under appropriate circumstances because such an action results in the disturbance of final agency orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa.

264, 271, 416 A.2d 461, 465 (1980) (*City of Pittsburgh*). Disturbing the Commission’s January 18 Order is neither appropriate nor judicious because it would result in unnecessary changes to the Company’s billing software and confusion to customers.

2. OSBA has waived gradualism arguments because it failed to raise gradualism as required in prior stages of the proceeding. OSBA now argues for the first time that the adopted cost allocation and rate design violate the concept of gradualism. Even though this issue has been present in the case since its inception, OSBA did not raise gradualism arguments at any prior point in this proceeding and has waived the issue.

3. The Commission should also deny OSBA’s Petition for Reconsideration because it fails to meet the Commission’s standard for reconsideration. The Petition does not meet the reconsideration standard because it fails to present new or novel arguments or issues the Commission has not previously considered. Specifically, the Commission’s January 18 Order demonstrates the Commission already considered concepts of gradualism and implications of the cost allocation and rate design that the Commission adopted. OSBA does not raise “new or novel arguments” – the allocation and rate design concepts here are basic tenets of ratemaking. Just because OSBA failed to raise gradualism arguments at each required stage of the proceeding does not brand those arguments new or novel. Moreover, there is no “new evidence” on which the OSBA relies. Indeed, the OSBA argued against adopting the OCA’s proposed rate design and scale back as part of the OSBA’s Exceptions, which were subsequently rejected by the Commission in its January 18 Order. *See* OSBA Exceptions at 12-13; *see also* January 18 Order at 159-161. Furthermore, the outcome of the Commission’s chosen cost allocation and rate design is of the same magnitude as the original cost allocation and rate design proposed in this proceeding;

the ultimate rate results are not new evidence, but a foreseeable outcome based upon the evidence in the proceeding.

4. Lastly, disturbing the Commission's January 18 Order is neither appropriate nor judicious because it will create inefficiency for the Company and confusion to customers where, as here, the Commission has already approved the Company's compliance tariff by way of its February 4, 2024 Secretarial Letter and the Company has implemented the rate increases consistent with that compliance tariff. Thus, granting reconsideration will: a) create inefficiency for the Company in having to enact another round of software and billing system changes to implement modified rates; and b) create confusion to residential customers whose rates will necessarily increase, thus, creating a false appearance of the Company implementing two rate increases in a short period of time.

5. For all these reasons, OSBA's Petition for Reconsideration should be denied.

II. LEGAL STANDARDS

A. Waiver

6. "[T]he Commission will not grant exceptions or reconsideration when the party failed to raise an argument earlier in the proceeding." *Ruth Matieu-Alce v. Philadelphia Gas Works*, Docket No. F-2015-2473661 (Order entered Apr. 7, 2016), at 10-11 (*Matieu-Alce*).

7. In *DeMarco v. Jones & Laughlin Steel Corp.*, the Pennsylvania Supreme Court explained the waiver doctrine - issues not raised or presented at the trial stage will not be considered on appellate review. 513 Pa. 526, 530-31, 522 A.2d 26, 28 (citing *Dilliplaine v. Lehigh Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974) and *Commonwealth v. Clair*, 458 Pa. 418, 326 A.2d 272 (1974)) (*DeMarco*).

8. The Court further explained the waiver doctrine applies to administrative proceedings. *DeMarco*, 513 Pa. at 531, 522 A.2d at 29 (citing *Wing v. Unemployment Compensation Board of Review*, 496 Pa. 113, 436 A.2d 179 (1981) (*Wing*)).

The *Dilliplaine* and *Clair* rationales are perfectly apposite in administrative law cases as well: the administrative law tribunal must be given the opportunity to correct its errors as early as possible; diligent preparation and effective advocacy before the tribunal must be encouraged by requiring the parties to develop complete records and advance all legal theories; and the finality of the lower tribunals' determinations must not be eroded by treating each determination as part of a sequence of piecemeal adjudications.

Wing, 496 Pa. at 117, 436 A.2d at 180-81.

9. The Commission likewise applies the principle of waiver when a party has failed to raise an argument earlier in a proceeding. *See, e.g., Pa. P.U.C. v. Uber Technologies, Inc. et al*, Docket No. C-2014-2422726 (Order entered September 1, 2016) (denying reconsideration and finding waiver on constitutional arguments where Uber generally raised issue of excessive penalty but failed to raise excessiveness arguments on constitutional grounds earlier in the proceeding); *Petition of PPL Electric Utilities Corporation for Approval of a Distribution System Improvement Charge*, Docket Nos. P-2012-2325034, *et al.* (Order entered October 1, 2015).

B. Reconsideration

10. The Commission's standard for granting reconsideration following final orders is set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982) (emphasis added) (*Duick*):

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 “[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....” 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 or not addressed by the Commission.

11. Consequently, for a petition to warrant reconsideration by the Commission, a petitioner must raise new and novel arguments not previously considered by the Commission or considerations the Commission overlooked or did not address. The Commission has cautioned that the last portion of the operative language of the *Duick* standard (*i.e.*, “by the Commission”) focuses on the deliberations of the Commission, not the arguments of the parties. *See Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597 (Order entered May 22, 2014), at 3 (*PPL*). Therefore, a petition for reconsideration cannot be used to raise new arguments or issues that should have been, but were not, previously raised.

12. A petition seeking relief under the *Duick* standard may properly raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or part. Importantly, however, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner obtains a second opportunity to argue properly resolved matters. *Id.* Further, as explained by the Pennsylvania Supreme Court, petitions for reconsideration of a final agency order may only be granted judiciously and under appropriate circumstances because such action results in the disturbance of final agency orders. *City of Pittsburgh*, 490 Pa. at 271, 416 A.2d at 465.

III. ANSWER OPPOSING RECONSIDERATION

13. Here, OSBA seeks reconsideration of the Commission’s determinations in the January 18 Order regarding cost allocation and rate design. OSBA raises two issues:

- a. The cost allocation and rate design the Commission chose violates gradualism because it results in some customers receiving greater than 2.5x the system average increase.

- b. The Commission should not adopt OCA's proposed rate design and scale back.

14. As detailed below, OSBA has waived gradualism arguments and its Petition otherwise fails to meet the *Duick* standard for reconsideration.

A. OSBA Waived its Gradualism Argument.

15. “[T]he Commission will not grant exceptions or reconsideration when the party failed to raise an argument earlier in the proceeding.” *Matieu-Alce*, at 10-11.

16. Until it filed the Petition for Reconsideration, OSBA did not previously argue that the cost allocation or rate design the Company proposed violated gradualism generally or, more specifically, that a 2.5x system average increase violates gradualism.

17. OSBA had the opportunity and was required to make these arguments from the outset of the proceeding. Specifically, OSBA's own evidence indicates that it was aware that the Company's as-filed proposal would result in some customers receiving rate increases at greater than 2.5x the system average increase. *See* OSBA Direct Testimony, Exh. BK-3 at 1 (showing proposed 40.3% increase for some customer classes compared to a 13.2% system average increase on a consolidated basis); *see also* OSBA Surrebuttal Testimony, Exhibit BK-1S at 1 (showing proposed 44.3% increase for some customer classes compared to a 13.8% system average increase on a consolidated basis).

18. To preserve gradualism arguments, OSBA could have and should have presented evidence and argument on gradualism in its direct case, briefs to the ALJs, or exceptions or replies to the Commission. Yet OSBA did not raise the issue until reconsideration. Accordingly, OSBA has waived arguments regarding gradualism and the Petition should be dismissed.

B. The Petition for Reconsideration Does Not Meet the *Duick* standard for Reconsideration.

19. OSBA's Petition for Reconsideration does not meet the *Duick* standard because it fails to raise new or novel arguments, issues the Commission has not previously considered, or new evidence.

20. As demonstrated above, OSBA could and should have raised gradualism arguments it raises on reconsideration previously in the proceeding. Failure to do so does not make these arguments new or novel. *See PPL*, at 12 (explaining parties' failure to address an issue does not make the issue appropriate for reconsideration).

21. Moreover, the Commission clearly considered the issues OSBA raises now. As to gradualism, the Commission already considered and was clear that the January 18 Order does not create a legal or other definitive standard for gradualism because there is no definitive standard. January 18 Order at 146 ("there are no definitive rules for determining what kind of rate increase would violate the principle of gradualism"). The Commission also clearly considered the magnitudes of the impacts on each rate class of its chosen cost allocation and rate design. January 18 Order at 146-147.

22. Additionally, the OSBA raised its opposition to the adoption of the OCA's rate design and scale back method as part of its Exception No. 6 arguing that OCA's scale back methodology would assign greater than proportional rate relief in a scale back to the Residential and Public classes, at the expense of the Commercial and Industrial classes. OSBA Exc. at 12-13 (citing OSBA R.B. at 11-12). In denying the OSBA's exception, this Commission stated that it "agree[d] with the recommendation of the ALJs that a proportional scale back of the customer charges and volumetric rates... be performed to attain the Commission allowed revenue increase."

January 18 Order at 159-160. Thus, the Commission has already considered the issues OSBA raises in its Petition. Accordingly, reconsideration should be denied.

23. OSBA also argues that the actual rates produced by the Commission's decision are new evidence. Not so. While the ultimate, specific rates were previously unknown, those rates are not new evidence because the magnitude of the increases produced by the Commission's January 18 Order of which OSBA complains were present in the Company's initial rate design proposal. *Compare* OSBA Direct Testimony, Exh. BK-3 at 1 (summarizing rates Company proposed in direct testimony, including a 40.3% increase for some customer classes compared to a 13.2% system average increase excluding PENNVEST revenues, i.e., over 3x the system average) *with* OSBA Exceptions at Table 1 (showing magnitude of rate increases produced by January 18 Order and highlighting increase over 3x system average). There is no new evidence for the Commission to consider. For these reasons, reconsideration should be denied.

C. Reconsideration is Not Appropriate as It Will Create Inefficiencies for the Company and Customer Confusion

24. Disturbing the Commission's January 18 Order is neither appropriate nor judicious because it will create inefficiency for the Company and confusion to customers. *City of Pittsburgh*, 490 Pa. at 271, 416 A.2d at 465 ("Because such relief may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances."). On February 4, 2024, the Commission issued a Secretarial Letter allowing Supplement No. 125 to Tariff Water - Pa. P.U.C. No. 7 to take effect. The Company has since implemented the compliance tariff consistent with the Secretarial Letter.

25. Granting reconsideration at this time will cause the Company to incur additional time and expense by requiring the Company to update its software and billing system and create

needless complexity by requiring the Company to process any rate changes or additional payments from customers.

26. Moreover, by disturbing the January 18 Order, the Company will be required to increase rates for residential customers creating the impression that the Company has implemented two rate increases in a short period of time. The Commission should seek to avoid such a result, particularly where, as here, the OSBA has already had the opportunity to address these concerns at previous stages of this proceeding.

IV. CONCLUSION

27. Granting reconsideration is not warranted, appropriate, or judicious, where, as here, arguments have been waived, the reconsideration standard is not met, and reconsideration will disturb rates already placed into effect, causing inefficiency for the Company and confusion to residential customers.

WHEREFORE, Columbia Water Company respectfully requests the Commission deny the Office of Small Business Advocate's Petition for Reconsideration.

Respectfully submitted,

/s/ Whitney E. Snyder

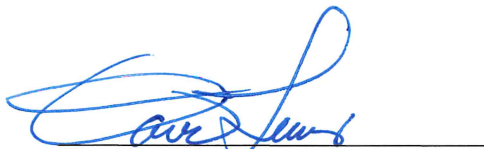
Whitney E. Snyder, Attorney I.D. 316625
Thomas J. Sniscak, Attorney I.D. 33891
Phillip D. Demanchick Jr., Attorney I.D. 324761
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P. O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300
wesnyder@hmslegal.com
tjsniscak@hmslegal.com
pddemanchick@hmslegal.com

*Counsel for
Columbia Water Company*

Dated: February 12, 2024

VERIFICATION

I, David T. Lewis, President, on behalf of Columbia Water Company, hereby state that the facts set forth in the foregoing documents are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



David T. Lewis, P.E.
President
Columbia Water Company

Dated: February 12, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

BY ELECTRONIC MAIL ONLY:

Barrett C. Sheridan, Esquire
Erin L. Gannon, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101
OCAColumbiaWater2023@paoca.org

Carrie B. Wright, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
carwright@pa.gov

Steven C. Gray, Esquire
Small Business Advocate
Pennsylvania Office of Small Business Advocate
555 Walnut Street
1st Floor Forum Place
Harrisburg, PA 17101
sgray@pa.gov

Sandra E. Shaub
3282 Horizon Drive
Lancaster, PA 17601
sandishaub@comcast.net

Vincent E. Collier III
3287 Horizon Drive
Lancaster, PA 17601
vecollierIII@gmail.com

/s/ Whitney E. Snyder

Whitney E. Snyder
Thomas J. Sniscak
Phillip D. Demanchick Jr.

Dated this 12th day of February, 2024