

COMMONWEALTH OF PENNSYLVANIA



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February 12, 2024

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to the Office of Small Business Advocate's Petition for Reconsideration in the above-referenced proceeding. No verification is required for this filing pursuant to 52 Pa. Code Section 1.36 because it contains no averment of fact not appearing of record in the action or denial of fact.

Copies have been emailed to the parties listed on the enclosed Certificate of Service.

Respectfully submitted,

*/s/ Erin L. Gannon*

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Enclosures:

cc: The Honorable Mary D. Long (email only)  
The Honorable Charece Z. Collins (email only)  
Office of Special Assistants (email only: [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))  
Certificate of Service

\*4896-1703-6197

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer to the Office of Small Business Advocate's Petition for Reconsideration, 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. This document was filed electronically on the Commission's electronic filing system.

Dated this 12<sup>th</sup> day of February 2024.

SERVICE BY E-MAIL ONLY

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	Docket Nos. R-2023-3040258
v.	:	C-2023-3040567
	:	C-2023-3040746
Columbia Water Company	:	

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ANSWER OF THE  
OFFICE OF CONSUMER ADVOCATE  
TO OFFICE OF SMALL BUSINESS ADVOCATE’S  
PETITION FOR RECONSIDERATION

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I. INTRODUCTION

In accordance with 52 Pa. Code Sections 1.31, 1.34 and 5.572(e), the Office of Consumer Advocate (OCA) files an Answer to the Petition for Reconsideration (Petition) filed by the Office of Small Business Advocate (OSBA) on February 2, 2024, in the above-captioned base rate proceeding. OSBA seeks reconsideration of the Public Utility Commission’s (PUC or Commission) January 18, 2024, Opinion and Order (*Order*) in the matter. In its Petition, OSBA requests that the Commission reverse its decision to allow a customer class to receive a 2.50 times greater system average rate increase. Petition ¶¶ 13-26. Second, the OSBA requests that the Commission not compound its 2.5 times error by adopting the OCA’s proposed rate design and scale back methodology. Petition ¶¶ 27-40. As relief, OSBA requests that the Commission: a) reconsider its decision to adopt the OCA’s proposed rate design and scale back method, and b) direct the Company to implement a final revenue allocation that is consistent with traditional ratemaking principles. Petition at 10.

The Commission should deny OSBA’s request for reconsideration of the Commission’s rulings on rate design and how rates should be scaled back from the Company’s proposed allocation of its full requested rate. The OSBA’s focus on the Commission’s alleged error of adoption of “OCA rate design” and the “OCA scale back method” does not accurately reflect the record on these issues and the Commission’s decision-making. Significantly, the OSBA had full opportunity to present its position on the issues covered by the “Rate Structure” section of the *Order*, from testimony through the reply exception phase. The *Order* reflects the Commission’s consideration of each OSBA exception to the Rate Structure section of the *Order* and reasons for adoption of another party’s position. The overall revenue requirement determination by the Commission, granting 97% of the Company’s requested increase primarily due to adopting the Company’s capital structure, creates the harm that OSBA raises in its Petition, along with harm to all customers.

The OSBA Petition does not satisfy the well-established standards for reconsideration set forth in *Duick v. Pennsylvania Gas and Water Company, et al.*, 56 Pa. P.U.C. 553 (1982), (*Duick*).

## II. ANSWER

### A. Legal Standard

Under the Pennsylvania Public Utility Code at 66 Pa. C.S. Section 703(g), a party has a right to seek relief from a Commission final decision.<sup>1</sup> Such requests for relief must be consistent with the Commission’s regulations at 52 Pa. Code Section 5.572.<sup>2</sup>

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<sup>1</sup> 66 Pa. C.S. § 703(g) relating to rescission, clarification, and amendment of orders.

<sup>2</sup> 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. *Pa. PUC v. City of DuBois – Bureau of Water*, Docket R-2016-2444150, Order at 3-4 (May 18, 2017) (*City of DuBois*), citing *City of Pittsburgh v. Pennsylvania Department of Transportation*, 416 A.2d 461 (Pa. 1980). In *Duick*, the Commission set forth the standards for granting a petition for reconsideration, as follows:

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 stated 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. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

*Duick*, 56 Pa. P.U.C. at 559. OSBA has not met the *Duick* standard.

B. The Commission’s Order Gave Due Consideration to the Record Related to OSBA’s Rate Structure Position.

Contrary to the OSBA Petition, the Commission did not overlook or fail to address issues related to rate structure and the appropriate scale back to implement the lesser allowed increase in revenues. Petition ¶ 12. Nor has OSBA identified newly discovered evidence or an error of law, to merit both reconsideration by the Commission and reversal of the Commission’s decision on rate structure and scale back. Petition ¶ 12, IV.

The Commission’s decision on the issues of rate structure – including rate design, cost allocation, and scale back – are properly based upon the evidentiary record particular to these issues and consideration of the respective positions of the Company, OCA, OSBA, and the Bureau

of Investigation & Enforcement (I&E). *Order* at 113-61, 167-69. The *Order* considered each of the six OSBA Exceptions addressed to the Recommended Decision related to the rate structure issues and an on-the-record evidentiary ruling by the presiding officer. The *Order* also considered the replies by other parties to the OSBA Exceptions.

Each part of the OSBA Petition should be denied.

1. The OSBA Request for Reconsideration on Grounds of Gradualism and Rate Shock

The OSBA requests that the Commission reverse its decision on rate structure and revenue allocation, because the Commission violated “legal concepts of gradualism and rate shock.” Petition ¶¶ 13-26. To the contrary, the Commission’s decision on allocation of revenues at the Company’s proposed increase built on resolution of a number of issues contested by the OSBA, coupled with the exercise of Commission discretion. *Order* at 127-49.

The Commission denied the OSBA Exceptions Nos. 1 and 2 that concerned the Company’s cost of service methodology. *See* OSBA Exc. Nos. 1, 2, *Order* at 121-27 (Reliance on Company’s COSS). Upon consideration of the testimony of Company witness Fox describing the COSS performed and the limits of information available, the OSBA exceptions, and the Company and OCA replies, the Commission accepted the Company’s use of estimates for peaking factors, by rate tier, as permissible. *Order* 121-27. The Commission was not convinced by OSBA’s position that the Company’s COSS was unreliable or lead to violation of *Lloyd* or Section 1304 of the Public Utility Code. *Order* at 126.

As to revenue allocation, the Company and OSBA differed as to how to move the current consumption block tiered rates established by the 2017 settlement to determine new volumetric charges for the consolidated rate districts. *Order* at 127-49. “[W]hile the development of volumetric rates is a rate design matter, it has implications for the allocation of revenue

requirement between the classes and is discussed here as a revenue allocation issue.” *Order* at 128. The OCA favored the Company’s approach “which would reduce the severity of the consumption block differentials, over the OSBA’s proposal to assign a uniform percentage rate increase, with the result of roughly maintaining the current rate differentials between the volumetric tiers.” *Order* at 131. In the Recommended Decision, the ALJs considered ratemaking methodologies and the consideration of other factors, including gradualism and rate affordability, to set just and reasonable rates. *Order* at 133, citing R.D. at 68. The ALJs recommended adoption of the Company’s position, as supported by the OCA, noting three associated benefits to ratepayers: 1) a reduction of the severity of the existing differentials between the rate tiers; 2) a larger percentage increase to the higher volume tiers that would provide a strong price signal, promoting conservation; and 3) additional benefits from such customer conservation relative to future capital projects. *Order* at 134, R.D. at 71-72.

The Commission reviewed and denied the OSBA Exception No. 3, after consideration of the ALJs control of the development of the evidentiary record related to the COSS and COSS-related principles, the provision of due process, and the respective positions of the Company, OCA, and OSBA on the weight to be afforded a COSS relative to other principles, such as the OCA’s concern for gradualism and affordability. *Order* at 134-43.

The Commission considered and denied the OSBA Exceptions No. 4 and 5. *Order* at 143-49. OSBA Exception No. 4 set forth OSBA’s position that “[t]he ALJs erred by relying on the OCA’s reference to the AWWA Manual when recommending a class revenue allocation.” OSBA Exceptions, citing R.D. at 70-72. Contrary to the OSBA Exception, the Commission found the OCA’s counter argument based upon the AWWA Manual and review of the rate structures of other water utilities “compelling.” *Order* at 148-49.

OSBA Exception No. 5 described OSBA's position that "[t]he ALJs erred in their conclusion that the existing differentials in rate levels across the Company's GMS rate tiers are significant and should be modified." OSBA Exceptions, citing R.D. at 71-72. The Commission acknowledged OSBA's concern for the rate impact – under the Company's proposed revenue increase and rate design – on larger consumption customers in the second and third tier block. *Order* at 147. Within the construct of the Company's rate design and full revenue increase, the Commission considered the impact of consolidation and rate allocation by rate tier, as customer class equivalent, on customers in the larger Columbia rate district and smaller Marietta rate district. *Order* at 144-49. The Commission considered principles of cost causation in tandem with second considerations of gradualism and affordability. *Order* at 146. In evaluating the impact of the Company's proposed overall allocation of the full proposed increase, the Commission considered a rate implementation metric that limited the overall increase in individual customer bills to no more than two times the overall revenue increase granted. *Order* at 147-48. The Commission acknowledged some individual customer bills – at the Company's full request and premised upon the Company's volumetric and customer charge proposal – could experience bill impacts at a higher magnitude. *Order* at 147-49.

The OSBA's Petition for Reconsideration is directed at this particular portion of the Commission's Order, which OSBA declares – if not reconsidered – would enshrine a new "2.5 times standard" of "rate gradualism." OSBA Petition ¶¶ 13-26, citing *Order* at 143-48.

The Commission exercised its discretion, based upon the particular facts of the case, to adopt the Company's overall revenue allocation among the three declining block tiers at proposed rates. The Commission rejected the OSBA's alternate position on cost of service, how and why to alter the rate differentials between the three rate tiers, and other points raised in the OSBA



exceptions. *Order* at 127-49. The Commission made those evaluations and decision, recognizing that the additional steps of adjusting the allocation of revenues due to adoption of the OCA position on customer charge rate increase “and corresponding shift of the resulting revenue deficiency to usage-based rates” as well as a scale back would still need to be made. *Order* at 144, 149.

The OSBA Petition should be denied. The Commission gave the OSBA’s opposition to the Company’s COSS and changes in the three rates tiers at proposed revenues due consideration. The rate structure portion of the Commission’s Order does not violate Section 1301, contrary to OSBA’s bare assertion. *See* Petition ¶ 24, 66 Pa. C.S. § 1301. The OSBA may not agree with the rate structure outcome of the Commission’s Order, including the Commission’s balancing of the principles of rate gradualism, affordability, promotion of conservation. However, the OSBA Petition does not satisfy the *Duick* standard to merit a grant of reconsideration. The overall revenue requirement determination by the Commission, granting 97% of the Company’s requested increase primarily due to adopting the Company’s capital structure, creates the harm that OSBA raises in its Petition, along with harm to all customers.

2. The OSBA Request for Reversal of the Customer Charge Rate Design and Scaleback

The OSBA’s request for reconsideration and reversal of the Commission’s decision to adopt the OCA customer charge recommendation and OCA scale back methodology also does not satisfy the *Duick* standard. OSBA Petition ¶¶ 27-40.

The Commission acknowledged the interrelationship between its decision on how revenue should be allocated among the three tiers at the Company’s full revenue request and the Commission’s “adoption of the OCA’s proposed reductions to the Company’s proposed customer charge increase,” acknowledging that there would be a “corresponding shift of the resulting deficiency to usage-based rates on a proportional basis.” *Order* at 144, 150-56.

The Commission's decision on the appropriate customer charge design first examined the respective positions of the Company, OSBA, OCA, and I&E. *Order* at 150-56. As noted by the Commission, OSBA, OCA, and I&E each recommended customer charges "which are lower than under the Company's proposal." *Order* at 150. Implicitly, adoption of the OSBA customer charge recommendation would have resulted in shifting of revenue deficiency to usage-based rates. Compare *Order* Table 15, Company Monthly Proposal, OSBA Monthly Proposal.

The ALJs recommended adoption of the OCA's proposed methodology for calculating customer charges. R.D. at 74-76. The ALJs determined that:

OCA's primary customer charge recommendation is sufficiently based upon cost of service principles and consideration of other sound principles of rate design and serves to moderate the increase in fixed monthly charges for Columbia and Marietta customers. OCA's analysis allows the most reasonable level of recovery of direct and indirect costs through the fixed customer charge.

*Order* at 155-56, quoting R.D. at 74-76.

The Commission noted that no party filed exceptions to the ALJs' recommendation on this issue. *Order* at 156. The Commission found that the OCA's analysis and customer charge proposal was adequately supported and "allows for the most reasonable level of recovery of direct and indirect costs through the fixed customer charge." *Id.* The Commission adopted the ALJs' recommendation. *Id.*

The OSBA request that the Commission reconsider and reverse this part of the *Order* should be denied. The Commission's determination is supported by the record related to the appropriate customer charges. Although OSBA proposed a different level of changes to the customer charges, OSBA did not except to the ALJs' recommendation. *Order* at 156.

As to the Commission's resolution of the contested question of how to scale back the Company's proposed rates at a lower allowed revenue requirement, the Commission did consider

the OSBA's scale back position and opposition to the OCA's proposal. *Order* at 156-61, citing OSBA M.B. at 11-13. The ALJs recommended adoption of the OCA scale back proposal. *Order* at 158, citing R.D. at 77. The Commission reviewed OSBA Exception No. 6 in which OSBA reiterated:

the same argument from its Reply Brief that the OCA's scaleback 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).

*Order* at 158 (citations in original) (footnote omitted). The Commission acknowledged the related OSBA exceptions related to the scaleback that reiterated "claims regarding full and fair development of the evidentiary record, to which the OCA had previously rebutted. *See* OSBA Exc. at 7-8; OCA R. Exc. at 18-20." *Order* at 158, fn. 64.

The Commission also reviewed the OCA Reply Exception, in which OCA first noted that the ALJs' recommended adoption of the OCA customer charge proposal was unopposed at the exceptions phase. *Order* at 159, citing OCA R. Exc. at 23. The *Order* summarized the OCA scale back proposal "that both the customer charges and volumetric rates in the first step are proportionately scaled back ..." *Id.* The Commission took note of the OCA's explanation as to the importance of "maintaining a proper balance of fixed and volumetric revenue recovery" in this case due to the impact of rate unification on the Marietta customer charges for 5/8" meter service, under the Company's full revenue increase. *Order* at 159, OCA R. Exc. at 23. Further, "[t]he OCA argues that the scaleback methodologies proposed by the OSBA would shift more cost recovery from fixed to volumetric rates and should not be adopted." *Id.*

The Commission denied the OSBA Exception. *Order* at 158-61. On the matter of scale back, the Commission adopted the ALJs' recommendation "that a proportional scale back of the customer charges and volumetric rates, as found appropriate in this Opinion and Order, be

performed to attain the Commission allowed revenue increase authorized....” *Order* at 159-60. In footnote 65, the Commission acknowledged again that “the reduction to the Company’s requested customer charge, as found appropriate in this Opinion and Order, has the effect of increasing usage rates at the full requested revenue increase.” *Order* at 160, fn. 66.

The OSBA request for reconsideration should be denied. The Commission’s Order presents a detailed and balanced review of the different positions of the Company, OCA, OSBA, and I&E on the different issues related to rate structure and determination of final rates at the allowed revenue increase. The Commission was guided by rate setting principles at each stage. The *Order* acknowledged the interrelationship of the Commission’s decision on revenue allocation at the full requested increase, adoption of a customer charge proposal different than the Company’s and corresponding impact on volumetric rates, and how the scale back proposal adopted would impact volumetric rates. The Commission’s approval of 97% of Columbia Water’s requested additional revenues also had an impact on the amount of scaleback and the resulting amount of revenues, and resulting rates, to be collected through the volumetric rates.

The OSBA request for reconsideration and reversal of the Commission’s decision to adopt the OCA customer charge proposal and scale back methodology does not meet the *Duick* standards and should be denied.

3. If the Commission Grants OSBA Reconsideration and Relief, the Remedy Should Be Limited to Changes to the Usage Rates for Industrial Customers.

The OCA asserts that the OSBA has not established cause for the Commission to grant its request for reconsideration. If the Commission does grant reconsideration, any remedy should be narrow and limited. An examination of the resulting rates set forth in the Company’s compliance filing against the 2.0 times system average measure often used to evaluate rate gradualism would only warrant reduction to the usage rate increases for the third tier, recognized as the industrial

class equivalent. Any reduction should be limited to industrial customers because, as shown in OSBA's Table 1, the Commercial class is already below 2.0 times the system average. *See* OSBA Petition at 7, Table 1, "Total Consolidated Compliance Filing Inc." column.

As addressed by OCA above, the OSBA's request for reversal of the Commission's ruling on the appropriate customer charge design should not be reconsidered much less reversed. The OSBA had not contested the ALJs' well-reasoned recommendation that the OCA approach be adopted. Thus, to the extent any remedy is granted, it should be limited to adjusting *usage* rates so that the increase for Columbia and Marietta industrial (only) customers on a consolidated basis is reduced to 2.0 times the system average. The customer charges presented in the Company's compliance filing for all classes should be unchanged.

### III. CONCLUSION

The Office of Small Business Advocate's Petition for Reconsideration should be denied. The Commission's Order on rate structure issues reflects a careful consideration of the particular facts of the case, the differing positions of the parties, and how best to exercise the Commission's discretion and balance rate principles. If however the Commission determines to grant OSBA reconsideration, the remedy allowed should be very limited.

Respectfully Submitted,

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