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January 8, 2015

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
PO Box 3265
Harrisburg, PA 17105-3265

RE: Vincent E. Collier v. Columbia Water Company;
Docket Nos. C-2014-2451639 and R-2014-2445660;
**ANSWER AND NEW MATTER OF COLUMBIA WATER COMPANY
TO THE NEW MATTER CONTAINED IN VINCENT E. COLLIER'S
ANSWER TO PRELIMINARY OBJECTIONS**

Dear Secretary Chiavetta:

Enclosed you will find the Answer and New Matter of the Columbia Water Company to the New Matter contained in Vincent Collier's Answer to the Preliminary Objections filed in this matter. Copies of this document will be served in accordance with the Certificate of Service.

If you have any questions regarding this filing, please do not hesitate to contact the undersigned at (717) 236-1300.

Very truly yours,

Thomas J. Sniscak
William E. Lehman

Counsel to the Columbia Water Company

TJS/WEL/das

Enclosure

cc: ALJ Susan D. Colwell
Per Certificate of Service

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

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 §1.54 (relating to service by a party).

Via First Class U.S. Mail

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Vincent E Collier
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Lancaster Pa 17601

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Lancaster Pa 17601



Thomas J. Sniscak
William E. Lehman

Dated: January 8, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vincent E. Collier, III

v.

Columbia Water Company

:
:
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:
:

Docket Nos. C-2014-2451639
R-2014-2445660

NOTICE TO PLEAD

TO: Vincent E Collier
3287 Horizon Drive
Lancaster Pa 17601

Pursuant to 52 Pa. Code §§5.62 and 5.63, you are hereby notified that, if you do not file a written response denying or correcting the enclosed New Matter of Columbia Water Company, within twenty (20) days from service of this notice, the facts set forth by Columbia Water in the New Matter may be deemed to be true, thereby requiring no other proof. All pleadings such as a Reply to New Matter must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Columbia Water Company.

Respectfully submitted,



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Counsel for Columbia Water Company

DATED: January 8, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vincent E. Collier, III	:	
	:	
v.	:	Docket Nos. C-2014-2451639
	:	R-2014-2445660
Columbia Water Company	:	

**ANSWER AND NEW MATTER OF COLUMBIA WATER COMPANY
TO THE NEW MATTER CONTAINED IN VINCENT E. COLLIER'S
ANSWER TO PRELIMINARY OBJECTIONS**

Columbia Water Company ("Columbia Water" or the "Company"), by and through its counsel in this proceeding, Hawke McKeon & Sniscak LLP, hereby submits its Answer and New Matter to the New Matter contained in Vincent E. Collier's ("Complainant") Answer to Preliminary Objections.¹ As explained in the background section below, Mr. Collier filed his Answer to Preliminary Objections on November 25, 2014 and although he included a Certificate of Service indicating service on counsel for Columbia Water, said counsel did not receive this document. Counsel for Columbia Water first learned of this document when a reference to it was contained in ALJ Susan D. Colwell's December 19, 2014 Order Dismissing Columbia's Preliminary Objections. Columbia submits that in order to protect its due process rights, the twenty days for filing this response should run from the date (December 19, 2014) of the ALJ's Order. Therefore, this Answer is timely filed. In support thereof, Columbia Water avers and represents as follows:

¹ In the alternative, if the Commission considers the statements identified below as amending his Formal Complaint, Columbia's response herein should be considered an Answer to the Complainant's Amended Complaint.

BACKGROUND

1. On September 30, 2014, Columbia Water filed Supplement No. 68 to Tariff – Water Pa. P.U.C. No. 7 and supporting data establishing a PennVest Surcharge pursuant to 52 Pa. Code §§ 69.361, et. seq. and 66 Pa. C.S. § 1307(a) to provide for repayment of the \$15.25 million loan – over 90 days prior to the date rates need to go into effect to begin repayment of the PennVest loan.²

2. On November 6, 2014, the Complainant filed a Complaint with the Commission against Columbia Water’s Pennvest Surcharge filing (November 6 Complaint). The Complaint was assigned Commission Docket No. C-2014-2451639. In ¶4 of his November 6 Complaint, titled “Reason for Complaint,” the Complainant averred: "I object to Columbia Water Co. Pennvest Surcharge/Tariff Supplement No. 68, Docket No. R-2014-2445660." In ¶5 of his November 6 Complaint, titled "Request for Relief," the Complainant averred:

Do not let PUC allow Columbia Water Co. to put surcharge on bill. The last Pennvest loan was paid-off, yet no rate reduction. There should be one. You don’t continue to pay mortgage or bank loans once loan(s) are paid-off. This appears to be fraud. If that is the case, I’m requesting you turn this over to Attorney General office for investigation.

Nowhere in his November 6 Complaint did Mr. Collier make an allegation regarding the issue of rate base treatment of PennVest plant in the Company’s last rate case. This is more fully described in ¶¶ 8, 9, and 10 below.

3. On November 18, 2014, Columbia filed an Answer and New Matter to Mr. Collier’s November 6 Complaint DENYING the material allegations. In response to his averment in the November 6 Complaint that: "The last Pennvest loan was paid-off, yet no rate

² By order dated December 4, 2014, the Commission approved the rate to become effective January 1, 2015 subject to the addition of certain tariff language. The Company filed Supplement No. 70 to Tariff – Water Pa. P.U.C. No. 7 containing the additional language on December 15, 2014.

reduction," Columbia averred by way of New Matter that on April 25, 2011, Columbia Water filed Supplement No. 50 to the Company's Tariff Water Pa. P.U.C. No. 7 to decrease rates by eliminating the PennVest volumetric surcharge due to the retirement of its PennVest debt and on June 2, 2011, the Commission, by Secretarial Letter, approved the elimination of the PennVest volumetric surcharge and associated reduction in rates. Copies of the tariff filing and Secretarial Letter were attached as Appendix A to Columbia's Answer. Columbia further averred, had Mr. Collier simply examined his Columbia Water bill after June 1, 2011, it would be obvious that his rates were reduced pursuant to the retirement of the PennVest surcharge – for example, the charge for the first 10,000 gallons of usage went from \$6.33/1000 gallons to \$5.63/1000 gallons when the surcharge was dropped.

4. Also on November 18, 2014, Columbia filed Preliminary Objections on the basis that because the Commission had approved the elimination of the PennVest rate in 2011 and subsequent decrease in rates, the Complaint was legally insufficient and lacking in substance and should be dismissed.

5. On November 25, 2014, the Complainant filed an "Answer to Preliminary Objections." Although he included a Certificate of Service indicating that he had sent his Answer to Preliminary Objections to Counsel for Columbia, neither Mr. Sniscak nor Mr. Lehman received the pleading. In his November 25 Answer to Preliminary Objections, Mr. Collier made an entirely new factual assertion, one that was not included in his November 6 Complaint, as follows: "The company says that it ended the Pennvest surcharge in 2011. ***But after it ended the surcharge in 2011, the Company put the same Pennvest plant into its base rates that it began charging me in 2014. See Docket No. R-2013-236078 [sic – the actual Docket No. is R-2013-2360798] (January 9, 2014 Order).***" (November 25 Answer to

Preliminary Objections at ¶3 (emphasis added)) The Company will respond to this new factual allegation in full below.

6. By Order dated December 19, 2014, Administrative Law Judge Susan D. Colwell dismissed Columbia's Preliminary Objections.

ANSWER

7. Paragraphs 1 through 6 above are incorporated into this section by reference.

8. Columbia DENIES the Complainant's statement in ¶ 3 of his November 25 Answer to Preliminary Objections that, "But after it ended the surcharge in 2011, the Company put the same Pennvest plant into its base rates that it began charging me in 2014. See Docket No. R-2013-236078 [sic – the actual Docket No. is R-2013-2360798] (January 9, 2014 Order)." This statement is false and misleading.

9. By way of further answer, Columbia avers that in its January 9, 2014 final rate case Order (entered January 23, 2014), the Commission approved the "inclusion of Columbia's undepreciated PennVest plant in rate base." (January 9, 2014 Order at 29) This was allowed because all parties had agreed that, "Columbia's surcharge was approved by the Commission in 1993 on the basis of rate base/rate of return treatment of its PennVest plant." (January 9, 2014 Order at 25). Therefore, contrary to the Complainant's false and misleading statement here, the Company did not "put" the plant into rate base for the first time in its last rate case. The PennVest plant had *always been* in rate base since its inclusion there in 1993 in *Pa. PUC v. Columbia Water Company*, Docket No. R-00932594 (Order entered June 1, 1993). (January 9, 2014 Order at 29)

10. As stated by the Commission in the January 9, 2014 Order, the June 1, 1993 Order arose from a request filed by Columbia for approval of a surcharge to recover the costs associated with a PennVest loan. (January 9, 2014 Order at 12) The OCA opposed Columbia's proposed surcharge mechanism (as they have in the instant case), and the Commission subsequently approved a Joint Stipulation of Settlement between the Company and OCA that provided for rate base recovery of the PennVest costs. (Id.) Therefore, contrary to the Complainant's new factual averment in his Answer to Preliminary Objections in this case, the PennVest plant was not just put into ratebase by the Commission's January 9, 2014 Order – it had been there since 1993 and the Commission's January 9, 2014 Order simply allowed that treatment to continue.

11. Furthermore, Mr. Collier was a full participant in Columbia's 2013 rate case of which he cites to in ¶3 of his Answer to Preliminary Objections and prompted his statement in that paragraph about inclusion of the PennVest plant in base rates by the Commission in its January 9, 2014 Order. Once the plant treatment was approved by the January 9, 2014 Order, it became "prima facie evidence of the facts found and remains conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review." 66 Pa. C.S.A. § 316. The PennVest plant rate base treatment by the Commission in its January 9, 2014 Order was never appealed, and thus it remains conclusive on Mr. Collier. He cannot by law re-litigate the same issue here.

NEW MATTER

Pursuant to 52 Pa. Code § 5.62(b) Columbia Water avers by way of New Matter as follows:

12. Paragraphs 1 through 11 of this Answer are incorporated as if set forth in full.

First Affirmative Defense - Collateral Estoppel

13. The Complainant is collaterally estopped from relitigating the rate base treatment of PennVest plant in Columbia's last rate case at Docket No. R-2013-2360798.

14. Collateral estoppel bars relitigation where:

- a. the issue decided in the prior adjudication was identical with the one presented in the later action,
- b. there was a final judgment on the merits,
- c. the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication, and
- d. the party against whom it is asserted has had a full and fair opportunity to litigate the issue in question in a prior action.

Safeguard Mut. Life Ins. Co. v. Williams, 345 A.2d 664, 668 (Pa. 1975). Collateral estoppel prevents a party from litigating an issue the party has previously litigated unsuccessfully in an action with another party. *Shaffer v. Smith*, 673 A.2d 872, 874 (Pa. 1996).

15. As fully explained in ¶¶ 9, 10, and 11 above, the rate base treatment of Columbia's undepreciated PennVest plant was fully litigated in the prior rate proceeding at Docket No. R-2013-2360798 and the Commission reached a final determination on this issue. Mr. Collier was a full participant in that proceeding and had a full and fair opportunity to litigate this issue in that case. Therefore, Mr. Collier is collaterally estopped from litigating this issue in the instant proceeding.

WHEREFORE, Columbia Water Company respectfully requests the Pennsylvania Public Utility Commission accept the Company's Answer and New Matter to the Complainant's New Matter contained in ¶3 of his Answer to Preliminary Objects, or, in the alternative, Columbia's Answer and New Matter to Amended Complaint.

Respectfully submitted,



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Counsel for Columbia Water Company

DATED: January 8, 2015

VERIFICATION

I, David T. Lewis, on behalf of Columbia Water Company, hereby state that the facts set forth in the foregoing document 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.
Vice President and General Manager
Columbia Water Company