

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	R-2016-2525128
	:	
The Columbia Water Company	:	
	:	
Office of Consumer Advocate	:	
	:	
v.	:	C-2016-2533052
	:	
The Columbia Water Company	:	

RECOMMENDED DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

A water utility filed a tariff to eliminate a surcharge from the rates it charges its customers. The Office of Consumer Advocate (OCA) filed a complaint against the tariff. This decision recommends approval of a settlement agreement among the water utility and statutory advocates.

HISTORY OF THE PROCEEDING

On January 12, 2016, The Columbia Water Company (Columbia) filed Supplement No. 76 to Tariff–Water Pa. P.U.C. No 7 to become effective on March 11, 2016. In Supplement No. 76, Columbia proposed to decrease its rates for its Marietta Division by eliminating the PENNVEST surcharge due to the retirement of the debt covered by the surcharge. On March 9, 2016, OCA filed a complaint against Supplement No. 76 at Docket No. C-2016-2533052.

The OCA complaint alleges that part of the rate reduction related to the full payment of the PENNVEST loan could have been put into effect earlier than proposed by Columbia. The complaint asserts that the rates charged by Columbia from May 2015 through the effective date of the proposed tariff may have been overstated and that Columbia's proposed rates do not provide for a refund. Since Columbia's proposed rates do not provide for a refund, the complaint concludes that the proposed rates may be unjust or unreasonable. The complaint requests that the Commission allow the proposed tariff supplement to go into effect on March 11, 2016 but that the Commission investigate the operation of the proposed tariff supplement and conduct hearings on the reasonableness of Columbia's current rates.

By Opinion and Order entered March 10, 2016, the Commission referred the matter to the Office of Administrative Law Judge for appropriate action, but permitted Supplement No. 76 to become effective on March 11, 2016, subject to reconciliation. On March 15, 2016, the Commission's Bureau of Investigation and Enforcement (I&E) filed a notice of appearance.

On March 23, 2016, Columbia filed a petition for reconsideration and clarification of the Commission's March 10, 2016 order. The petition for reconsideration requests that the Commission reconsider or clarify its March 10, 2016 order to state that the proceedings have been initiated upon OCA's complaint, not upon the Commission's motion and to remove references to reconciliation of the rate decrease because none of the orders establishing the surcharge requires such reconciliation and because the rate is a Commission made rate which, by law, is not subject to reconciliation or other refund.

Also on March 23, 2016 Columbia filed an answer, new matter and counterclaim in response to OCA's complaint and a motion to stay discovery.

On April 1, 2016 Columbia, I&E and OCA filed a joint motion for stay of the proceedings. The joint motion alleged that the parties had reached an agreement in principle settling all the issues in these proceedings. The parties represented that they would file a signed, written settlement agreement.

On April 1, 2016, the Commission issued a Secretarial Letter extending the deadline for parties to file answers to Columbia's petition for reconsideration to July 5, 2016.

On April 1, 2016, I issued an order staying the proceeding, pending the filing of a written settlement agreement and action on that settlement agreement, in order to prevent the parties from expending any more resources in these proceedings when the proceedings could be settled.

On April 7, 2016, the Commission issued an Opinion and Order granting Columbia's petition for reconsideration and clarification, pending further review of and consideration in the merits of the petition.

On April 7, 2016, Columbia filed a joint petition for settlement and attachments. The attachments to the joint petition for settlement are copies of Columbia's verified response to OCA's and I&E's informal discovery request, marked as Exhibit A and a copy of a March 30, 2016 letter from CoBank to Columbia stating that one of the loans that was covered by the rate surcharge had been paid off, marked as Exhibit B. The joint petition for settlement requests that the Commission admit Exhibits A and B into the record in these proceedings.

As of the date of this decision, I have not received any written comments or objections from the parties regarding the joint petition for settlement. The record closed on April 7, 2016, the date Columbia filed the joint petition for settlement. For the reasons set forth below, I recommend that the Commission approve and adopt the joint petition for settlement.

DISCUSSION

In this case, Columbia, I&E and OCA have reached a settlement. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve precious administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401

In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm'n v. York Water Co., Docket No. R-00049165, (Final Order entered October 4, 2004); Pa. Pub. Util. Comm'n v. C S Water and Sewer Assoc., 74 Pa. P.U.C. 767 (1991).

For the following reasons, I find that the settlement, which is unopposed by any party, is in the public interest.

TERMS OF THE SETTLEMENT

1. The joint petition for settlement states that the parties agree to the settlement of this matter on the following terms:

- a. The Commission grants the Joint Petition and approves this Settlement without modification;
- b. Columbia Water's informal discovery responses to informal discovery requests attached hereto as Exhibits A and B are admitted into the evidentiary record of this matter in support of the Settlement;
- c. The OCA Complaint is deemed withdrawn and satisfied by the Commission's order approving this Settlement;
- d. Columbia Water's Answer, New Matter and Counterclaim is deemed withdrawn by the Commission's order approving this Settlement.
- e. The March 10 Order is modified by striking the words "subject to reconciliation" from the penultimate paragraph on page 3 and from the second ordering paragraph on page 4;
- f. Columbia Water's Petition for Reconciliation and Clarification is granted in part and denied in part consistent with the Commission's Order approving the Settlement;
- g. Supplement No. 76 to Tariff - Water Pa. P.U.C. No. 7, as amended, which became effective on March 11, 2016, is approved by Final Order of the Commission.
- h. These proceedings are marked closed.

PUBLIC INTEREST

The terms recited above are in the public interest. OCA and I&E have investigated the use of the proceeds of the PENNVEST surcharge after the retirement of the PENNVEST loan. The results of that investigation indicate that after Columbia repaid the PENNVEST loan in May 2015, it used the PENNVEST surcharge to accelerate repayment of the CoBank loan by four months, making the last payment on the CoBank loan in February 2016. By accelerating repayment of the CoBank loan, Columbia was able to remove the PENNVEST surcharge. Exhibits A and B, attached to the joint petition for settlement support the conclusions reached by the investigation. Therefore, no purpose would be served by further investigation of Supplement No. 76 which removed the PENNVEST surcharge used to repay the PENNVEST and CoBank loans. It is in the public interest to terminate litigation that does not serve a public purpose.

In addition, concerning the Commission's March 10, 2016 order, the Commission should modify its March 10, 2016 order to remove references to reconciliation because OCA is withdrawing its complaint. It appears that the March 10, 2016 order provided for approval of Supplement No. 76 subject to reconciliation in response to OCA's complaint. Since OCA is withdrawing its complaint, the references to reconciliation in the March 10, 2016 are moot.

Furthermore, as explained in great detail in Columbia's petition for reconsideration and clarification, in 1997 the Commission established the surcharge that is the subject of Supplement No. 76 in a rate case, pursuant to 66 Pa.C.S. §1308(d) and that order did not establish a reconciliation or retroactive recovery process for the surcharge amount. Commission orders in subsequent rate cases likewise did not establish a reconciliation or retroactive recovery process for any year that the surcharge was in effect. Since the Commission did not establish a reconciliation process for the surcharge in any of these rate cases, it was inappropriate to approve the tariff provision removing the surcharge, subject to reconciliation in the March 10, 2016 order. Removing the references to reconciliation in the March 10, 2016 order will render that order consistent with prior Commission orders concerning the surcharge and is therefore in the public interest.

Approving and adopting the joint petition for settlement is also in the public interest because accepting the settlement petition will avoid the substantial time and expense involved in

litigating the proceeding. Accepting the settlement petition will negate the need to examine or cross-examine witnesses, prepare main briefs, reply briefs, exceptions and reply exceptions and possibly file appeals. This is in the public interest because avoiding these expenses serves the interests of Columbia I&E and OCA and Columbia's customers.

CONDITIONS OF SETTLEMENT

The joint petition for settlement is conditioned upon the Commission's approval of the terms and conditions of the petition without modification. If the Commission modifies the joint petition for settlement, then any party may elect to withdraw from joint petition for settlement and may proceed with litigation and, in such event, the entire joint petition for settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties and the ALJ within five business days after the entry of an order modifying the joint petition for settlement. The joint petition for settlement is agreed to without any admission against, or prejudice to, any position which any party may adopt in the event of any subsequent litigation of this proceeding in the event a party elects to withdraw as provided in this paragraph.

If the Presiding Officer adopts the joint petition for settlement without modification in his recommended decision, the parties waive their rights to file exceptions to the issues addressed by the joint petition for settlement.

CONCLUSION

For the reasons set forth above, I find that the joint petition for settlement is in the public interest. Accordingly, I recommend that the Commission approve and adopt the joint petition for settlement.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. §§ 1308 and 1309.
2. Columbia has satisfied the requirements of Section 1308 of the Public Utility Code and Section 53.52 of the Commission's regulations. 66 Pa.C.S. § 1308, 52 Pa.Code § 53.52.
3. The settlement filed on April 7, 2016 among Columbia, OCA, and I&E is in the public interest and should be approved and adopted by the Commission. Pa. Pub. Util. Comm'n v. York Water Co., Docket No. R-00049165, (Final Order entered October 4, 2004).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the joint petition for settlement filed on April 7, 2016 among The Columbia Water Company, the Office of Consumer Advocate and the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above-captioned case is approved and adopted.
2. That The Columbia Water Company's' informal discovery responses to informal discovery requests attached to the joint petition for settlement as Exhibits A and B are admitted into the evidentiary record of this matter.
3. That the complaint of the Office of Consumer Advocate at C-2016-2533052, filed on March 9, 2016, is withdrawn and marked closed.

4. That the answer, new matter and counterclaim of The Columbia Water Company, filed on March 23, 2016, is withdrawn.

5. That the Opinion and Order of the Pennsylvania Public Utility Commission, entered March 10, 2016, is modified by striking the words “subject to reconciliation” from the penultimate paragraph on page 3 and ordering paragraph 2 on page 4.

6. That the petition for reconsideration and clarification of the Columbia Water Company, filed March 23, 2016, is rendered moot, consistent with the order in this proceeding approving and adopting the joint petition for settlement.

7. That Supplement No. 76 to Tariff-Water Pa. P.U.C. No.7, as amended, is permitted to become effective on March 11, 2016.

8. That the dockets at Docket Nos. R-2016-2525128 and C-2016-2533052 are marked closed.

Date: April 21, 2016

/s/
David A. Salapa
Administrative Law Judge