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April 24, 2017

VIA ELECTRONIC FILING

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

In re: Docket No. R-2016-2554150, *et al.*
Pa. P.U.C., *et al.* v. The City of DuBois – Bureau of Water

Dear Secretary Chiavetta:

We are counsel to Sandy Township, a Complainant in the above matter, and are submitting, via electronic filing with this letter, its Answer to the Petition for Reconsideration and Clarification of the City of DuBois. Copies of the Answer are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

Encl.

cc: Certificate of Service (w/encl.)
ra-OSA@pa.gov (w/encl.)
David Monella (via email, w/encl.)

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2016-2554150
Office of Small Business Advocate	:	C-2016-2556342
Office of Consumer Advocate	:	C-2016-2556376
Sandy Township	:	C-2016-2557459
	:	
v.	:	
	:	
City of DuBois Bureau of Water	:	

**ANSWER OF SANDY TOWNSHIP TO THE PETITION FOR
RECONSIDERATION AND CLARIFICATION OF THE CITY OF DUBOIS**

AND NOW, comes Sandy Township (“Township”), by its attorneys, and, pursuant to 52 Pa. Code § 5.572, answers the Petition for Reconsideration and Clarification of the City of DuBois (“Petition”). In opposition to the Petition, the Township submits the following:

I. BACKGROUND

1. This proceeding concerns the City of DuBois – Bureau of Water’s (“City Water Bureau” or “City”) Supplement No. 22 to its Tariff Water Pa. P.U.C. No. 4. Through Supplement No. 22, the City Water Bureau sought Pennsylvania Public Utility Commission (“Commission”) approval of rates that would recover an estimated \$257,604 in additional annual revenue.

2. The Township filed a complaint in opposition to Supplement No. 22 and the City’s proposed rate increase. The complaint was assigned to docket C-2016-2557459. The Township is both a sale for resale customer and a commercial customer of the City.

3. By Opinion and Order entered March 28, 2017 (“Opinion and Order entered March 28”), the Commission, following evidentiary hearing and briefing, authorized the City to file a tariff supplement to produce an annual revenue increase over present revenue of \$71,133.

4. On April 12, 2017, the City filed its Petition seeking to increase the additional revenue allowance authorized by the Commission in the Order entered March 28 and to avoid providing notice when it enters into a purchase water contract with the Borough of Falls Creek.

II. STANDARDS FOR RECONSIDERATION

5. The standards for granting a petition for reconsideration are set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 559 (1982), (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)):

“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 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 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.”

6. The City’s petition does not satisfy the *Duick* standards and reconsideration should be denied.

III. THE CITY'S PETITION SHOULD BE DENIED

Rate Case Expense

7. The Opinion and Order entered March 28 allows annual rate case expense of \$42,282 based on total rate case expense of \$225,505 and a normalization period of 5.333 years.¹ In its petition, the City seeks an annual rate case expense allowance of \$90,202 or, in the alternative, \$69,386, based on normalization periods of 2.5 years or, in the alternative, 3.25 years.²

8. Rate case expense, including *Pa. P.U.C. v. Lemont Water Company*, 1994 Pa. PUC LEXIS 44, *18–19 (“*Lemont Water*”), is discussed at length at pages 60 through 66 of the Opinion and Order entered March 28. At page 65, the Commission concludes that the City’s position concerning rate case expense is not in accord with Commission precedent and that the *Lemont Water* decision is not applicable to the facts of the instant proceeding.

9. The City’s continued discussion of *Lemont Water* in its Petition is neither new nor novel. 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 or, in the alternative, \$69,386. 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 \$28,851.³

10. In support of a much shorter normalization period, the City, in its Petition, relies on the fact that 2.5 years have elapsed since the City’s last base rate increase in 2013 and the instant base rate filing.⁴ The elapsed period between the two cases 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

¹ Opinion and Order entered March 28 at 60–65.

² City Petition, Appendix A.

³ Additional revenue of \$71,133 minus the annual rate case expense allowance of \$42,282 equals \$28,851.

⁴ See City Petition, ¶ 14 and footnote 4.

the Commission. 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 Opinion and Order entered March 28. The ratemaking conclusions expressed by the Commission in the Opinion and Order entered March 28 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.

11. The Commission should deny the City's Petition and decline to modify the rate case expense allowance authorized in the Opinion and Order entered March 28. 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.

Notice of Falls Creek Contract

12. Citing differences in language in the body of the Opinion and Order entered March 28 and in Ordering Paragraph No. 10, the City asks to be relieved of any obligation to report to the Commission when it enters into a contract with Falls Creek for the provision of water service.⁵ Irrespective of the language within the body of the Opinion and 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. The reporting requirement is not burdensome. The Commission should deny the City's requested modification of Ordering Paragraph No. 10.

Rate of Return

13. The Opinion and Order entered March 28 and the authorized revenue increase of \$71,133 are based on a return on equity of 9.3% (tax adjusted to 7.61%).⁶ In its Petition, the City

⁵ City Petition, ¶ 20 through ¶ 22.

⁶ Opinion and Order entered March 28 at 111.

asks the Commission to reconsider (and increase) the 9.3% determination because the revenue requirement reported in the Recommended Decision (corrected by the Commission in the Order entered March 28) overstated the impact of rate adjustments upon customers.⁷

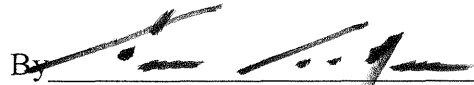
14. The ratemaking adjustments adopted by the Commission that reduce the rate increase below the level recommended by the presiding administrative law judge should not now be used on reconsideration as the basis for boosting the return on equity. The Commission would have fully reflected consideration of its adjustments in its Opinion and Order entered March 28 when it concluded that the appropriate return on equity is 9.3% (tax adjusted to 7.61%).

15. The City has offered nothing new or novel to support reconsideration. The Commission should deny the City's petition and decline to modify its authorized return on equity.

IV. CONCLUSION

WHEREFORE Sandy Township requests that the Pennsylvania Public Utility Commission deny the Petition for Reconsideration and Clarification of the City of DuBois as aforesaid.

Respectfully submitted,

By 
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Attorney for Sandy Township

DATED: April 24, 2017

⁷ City Petition, ¶ 23.

VERIFICATION

I, David Monella, Township Manager, being authorized to submit this Verification on behalf of Sandy Township, Clearfield County, Pennsylvania, hereby state that the facts set forth in the foregoing Answer to Petition for Reconsideration are true and correct to the best of my knowledge, information and belief, and that I expect Sandy Township to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


David Monella
Township Manager

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2016-2554150
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Office of Consumer Advocate	:	C-2016-2556376
Sandy Township	:	C-2016-2557459

v.

City of DuBois Bureau of Water

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of April, 2017, served a true and correct copy of the foregoing Answer of Sandy Township to the Petition for Reconsideration and Clarification of the City of DuBois, upon the persons and in the manner set forth below:

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