



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

Christopher M. Arfaa
(717) 236-1300 x231
cmarfaa@hmslegal.com

William E. Lehman
(717) 236-1300 x248
welshman@hmslegal.com

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

January 22, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Second Floor North
PO Box 3265
Harrisburg, PA 17105-3265

RE: Columbia Water Company; Docket No. R-2017-2598203; **EXCEPTION OF THE COLUMBIA WATER COMPANY**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are The Columbia Water Company's Exception to the Recommended Decision dated December 27, 2017. Copies of this filing letter have been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

Thomas J. Sniscak
Christopher M. Arfaa
William E. Lehman

Counsel to the Columbia Water Company

TJS/WEL/das
Enclosure

cc: Honorable Joel H. Cheskis
Honorable Andrew M. Calvelli
Office of Special Assistants (email only, ra-OSA@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, *et al.*

v.

The Columbia Water Company

R-2017-2598203

C-2017-2614724

C-2017-2614985

C-2017-2615248

C-2017-2620842

C-2017-2622123

C-2017-2623109

**EXCEPTION OF
THE COLUMBIA WATER COMPANY**

The Columbia Water Company (“Columbia” or “Company”), by and through its attorneys in this matter, Hawke McKeon & Sniscak LLP, hereby submits its Exception to the Recommended Decision (“RD”) of Administrative Law Judges Joel H. Cheskis and Andrew M. Calvelli (“ALJs”) pursuant to the Secretarial Letter dated January 12, 2018 and 52 Pa. Code § 5.533.

EXCEPTION

I. COLUMBIA’S EXCEPTION: THE ALJS’ DISCUSSION [RD AT 14], AND INFERENCES AND CONCLUSION REGARDING THE SETTLEMENT’S CONDITION INVOLVING THE EXCLUSION OF UNDEPRECIATED PENNVEST AND COBANK PLANT IN RATE BASE MISSTATES THE SETTLEMENT CONDITION AND MUST BE CLARIFIED AS IT IS INACCURATE, BEYOND THE EXPRESS TERMS OF THE SETTLEMENT, AND IS CONTRARY TO THE COMMISSION’S POLICY TO ENCOURAGE BLACK BOX SETTLEMENTS WHICH DO NOT MAKE CONCLUSIONS ON LITIGATION POSITIONS.

1. The RD recommends that the Commission adopt the Settlement in its entirety without modification because it is in the public interest. (RD at 1, 16) However, the ALJs’ otherwise well-reasoned analysis contains characterizations, interpretations, or conclusions in the discussion section of the RD that differ from the specific language of the Settlement and, if not corrected, contravene the Commission’s policy to encourage settlements including black-box settlements on issues without admission.

2. One of the contested issues in this case was whether the undepreciated amount of used and useful plant funded by PennVest and CoBank loans (the “PennVest-funded plant”) should be included in the Company’s rate base after those loans were paid off. The Company took the position that it should. The OCA took the position that it should not. The Settlement is clearly intended not to decide that issue, as it is effectively deferred to any future claim in a future rate case on the subject. Thus, as part of the compromise, the Parties agreed that “*the Settlement is not premised upon inclusion in rate base of any Marietta Rate District PennVest-funded plant.*” (Joint Petition¹ ¶ 20(d))(emphasis added) The ALJs accurately quoted this condition in the RD at page 9. However, in their discussion of this point, on page 14 of the RD,

¹ Joint Petition for Full Settlement of Rate Proceeding, *Pa. PUC v. The Columbia Water Co.*, Docket No. R-2017-2598203 *et al.* (filed Dec. 12, 2017) (“Joint Petition”).

the ALJs characterize this settlement condition in a manner that differs from its express language, and, after quoting OCA's position of opposing inclusion of PennVest-funded plant in rate base, the RD cites the erroneous characterization as being a point or reason as to why the settlement is in the public interest. Specifically, the RD states that "*Columbia has agreed not to include a [sic] PENNVEST financed plant ... in the base rate [sic]*" citing I&E's Statement in Support ("SIS") at pages 17-18 for this conclusion. (RD at 14)(emphasis added) However, I&E's SIS does *not*, in fact, support the assertion in the RD that "*Columbia has agreed not to include a [sic] PENNVEST financed plant.*" Instead, at the cited pages, I&E correctly states that "*[i]n the Settlement, Joint Petitioners agree that the Settlement is not premised upon inclusion of the PENNVEST financed plant.*" (I&E SIS at 17-18; emphasis added) Similarly, the OCA states that "*[u]nder the proposed Settlement, all parties agree that the Settlement is not premised upon any inclusion of Marietta Division Pennvest-financed Plant in rate base.*" (OCA SIS at 8; emphasis added)

3. The Company submits that the discussion of the PennVest rate base issue on page 14 of the RD contravenes the Commission's policy of promoting black box settlements. As the Commission recently observed in *Manwalamink Water Company*, making a finding as to the reasonableness of a specific element of a black box settlement is both "improper" and "not needed" to evaluate such a settlement.² Simply put, the specific language quoted above from the Settlement Petition speaks for itself, and, as was the case in *Manwalamink*, the RD's characterization of what this black box settlement term does or does not do is both improper and unnecessary. The Final Order should correct this error by deleting the RD's characterization and make it clear that for purposes of this settlement only, the Parties have agreed only that "*the*

² *Pa. PUC v. The Manwalamink Water Co. et al.*, Docket No. R-2017-2603026 *et al.*, Opinion and Order at 17 (Nov. 8, 2017).

Settlement is not premised upon inclusion in rate base of any Marietta Rate District PennVest-funded plant” (Joint Petition ¶ 20(d))(emphasis added), and that Columbia has not agreed that inclusion of this plant is improper or would be improper in any subsequent rate case.

4. Therefore, the Commission should approve the settlement without modification, and modify the RD to correct the RD’s characterizations beyond the express terms of the settlement regarding the PennVest rate base issue.

CONCLUSION

For all of the foregoing reasons, Columbia respectfully requests that the Commission
ORDER:

- a. That Columbia’s Exception is GRANTED;
- b. That the Settlement is APPROVED without modification; and
- c. That the Recommended Decision is MODIFIED consistent with Columbia’s Exception and ADOPTED as modified.

Respectfully submitted,



Thomas J. Sniscak, Attorney I.D. # 33891
Christopher M. Arfaa, Attorney I.D. # 57047
William E. Lehman, Attorney I.D. #83936
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17105-1778
E-mail: tjsniscak@hmslegal.com
E-mail: cmarfaa@hmslegal.com
E-mail: wlelman@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841

*Counsel for
The Columbia Water Company*

DATED: January 22, 2018

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 & FIRST CLASS MAIL

Scott B. Granger, Esquire
Erika L. McLain, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265
sgranger@pa.gov
ermclain@pa.gov

Christine Maloni Hoover, Esquire
Harrison W. Breitman, Esquire
Phillip D. Demanchick
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
CHoover@paoca.org
HBreitman@paoca.org
PDemanchick@paoca.org

Daniel G. Asmus, Esquire
Office of Small Business Advocate
Commerce Building, Suite 202
300 North 2nd Street
Harrisburg, PA 17101
dasmus@pa.gov



Thomas J. Sniscak
Christopher M. Arfaa
William E. Lehman

Dated this 22nd day of January, 2018.