

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

April 9, 2018

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

Re: The Tax Cuts and Jobs Act: Tax Reform
Bill Signed Into Law on December 22, 2017
Docket No. M-2018-2641242
Columbia Water Company
Petition for Reconsideration and Rescission

Dear Secretary Chiavetta:

Attached for electronic filing is the Answer of the Office of Consumer Advocate to Columbia Water Company's Petition for Reconsideration and Rescission in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Barrett Sheridan".

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

Enclosures:

cc: James Mullins, Law Bureau
Erin Laudenslager, Bureau of Technical Utility Services
Certificate of Service
*246328

CERTIFICATE OF SERVICE

The Tax Cuts and Jobs Act: Tax Reform :
Bill Signed Into Law on December 22, 2017 : Docket No. M-2018-2641242
Columbia Water Company Petition for :
Reconsideration and Rescission :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer to Columbia Water Company's Petition, 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:s

Dated this 9th day of April 2018.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101

Thomas J. Sniscak, Esquire
William E. Lehman, Esquire
Hawke McKeon & Sniscak LLP
Harrisburg Energy Center
100 North Tenth Street
Harrisburg, PA 17101
Counsel for Columbia Water Company

/s/ Barrett C. Sheridan
Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSherridan@paoca.org

Phillip D. Demanchick
Assistant Consumer Advocate
PA Attorney I.D. # 324761-
E-Mail: PDemanchick@paoca.org

Counsel for Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: April 9, 2018
*246330

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Tax Cuts and Jobs Act: Tax Reform Bill : Docket No. M-2018-2641242
Signed Into Law on December 22, 2017 :
: :
Columbia Water Company’s Petition for :
Rescission to the Commission’s March 15, :
2018 Temporary Rates Order Relative to :
Petitioner :

**ANSWER OF
THE OFFICE OF CONSUMER ADVOCATE**

I. INTRODUCTION

Columbia Water Company (Columbia Water or Company) has petitioned the Public Utility Commission (PUC or Commission) to 1) reconsider the Commission’s March 15, 2018 Order (Temporary Rates Order) which requires Columbia Water to implement temporary rates, and 2) rescind the Temporary Rates Order as it applies to Columbia Water. Columbia Water states that the Temporary Rates Order is flawed by the Commission’s failure to consider facts specific to Columbia Water, and so the Commission should correct its unintentional error. The Company faults the Temporary Rates Order as entered without affording the Company sufficient due process and suggests the Commission may be engaged in improper single-issue ratemaking.

The Office of Consumer Advocate (OCA) submits that the Commission should deny Columbia Water’s Petition. Columbia Water has not shown that the Commission overlooked key information, nor has Columbia Water presented new or novel arguments,

not previously presented. The Company has not met the Duick standards for grant of reconsideration.¹

Reconsideration and rescission of the Temporary Rates Order, as specific to Columbia Water, is not warranted. The Commission took the important and necessary action – with the issuance of the February 12 Secretarial letter followed by the Temporary Rates Order – to assess the impact of Tax Cuts and Jobs Act of 2017 (TCJA) on federal and state tax expense, including the effect on accumulated deferred income taxes, on each utility’s cost of service. The Commission acted within its authority by directing Columbia Water to implement temporary rates, pending further review of the impact of the TCJA on Columbia Water’s cost of service and evaluation of the justness and reasonableness of Columbia Water’s existing base rates.

II. ANSWER

A. The Commission Correctly Determined That Columbia Water Should Implement Temporary Rates

Columbia Water faults the Temporary Rates Order as entered without sufficient consideration of facts specific to Columbia Water, namely the resolution of its recent

¹ The Duick v. Pennsylvania Gas and Water Co., 56 Pa. PUC 553 (1985), standards for grant of a petition for reconsideration are 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.

56 PaPUC at 559 (quoting Pennsylvania R.R. Co. v. Pa. PUC, 118 Pa. Super. 380, 179 A. 850 (1935) (emphasis added)).

base rate case, Columbia Water’s replies to the March 9 Secretarial Letter data requests, and Columbia Water’s 2016 annual report. Petition, ¶¶ 1, 5-7, 10-15, 17, 19. The OCA submits that the Temporary Rates Order did not err by including Columbia Water as one of the utilities subject to the directive to file a tariff supplement establishing existing rates as temporary rates, pursuant to Section 1310(a). 66 Pa.C.S. § 1310(a).

1. The Commission Met the Section 1310(a) Threshold for Entry of the Temporary Rates Order as to Columbia Water

The Commission commenced this proceeding in February 2018 “to determine the effects of the TCJA on the tax liabilities of Commission-regulated public utilities for 2018 and future years and the feasibility of reflecting such impacts in the rates charged to Pennsylvania utility ratepayers.” February 12 Secretarial Letter. The Temporary Rates Order directed Columbia Water to file a tariff supplement to establish its existing rates as temporary rates, pending “further review and analysis” of Columbia Water’s data responses and financial information in a separate rate case docket. Temporary Rates Order at 5. Section 1310(a) states that the Commission may, upon its own motion, after reasonable notice and opportunity to be heard, “immediately fix, determine, and prescribe temporary rates to be charged by the public utility” to protect the public interest, pending a final determination of the proceeding. 66 Pa.C.S. § 1310(a). The Temporary Rates Order reflects the Commission’s authority to expeditiously enter an order directing Columbia Water to implement temporary rates, to be followed by a final determination.

2. The Temporary Rates Order Does Not Conflict With or Violate the Joint Petition for Settlement of Columbia Water’s 2017 Base Rate Case

The Commission's March 1, 2018 approval of the settlement of Columbia Water's 2017 base rate case does not preclude the Commission from considering the impact of the TCJA on Columbia Water's 2018 and future tax expenses, including federal and state income tax, and accumulated deferred income taxes. See, P.U.C. v. Columbia Water Co., Docket No. R-2017-2598203, Opinion and Order (Mar. 1, 2018) (March Base Rate Order). Columbia Water's premise that the Commission overlooked the March Base Rater Order when two weeks later the Commission included Columbia Water within the scope of the Temporary Rates Order is not supported.

First, the Company, OCA, Bureau of Investigation and Enforcement (I&E), and Office of Small Business Advocate (OSBA) signed the Joint Petition for Settlement of the Company's 2017 base rate case on December 12, 2017 (Settlement Petition). It was not possible for the Settling Parties to anticipate and account for, in that Settlement Petition, the extraordinary, major change in federal tax law that was signed into law on December 22, 2017 and became effective January 1, 2018 as the TCJA.

Second, Columbia Water agreed as a term and condition of the Settlement Petition to not file a Section 1308(d) general base rate case, for either of its rate districts, for thirty-three (33) months after Commission approval. Settlement Petition, ¶ 20.c. The OCA submits that condition only restricts *Columbia Water* from filing a general rate increase request.² 66 Pa. C.S. § 1308(d). The Settlement Petition does not insulate Columbia Water from other possible rate changes as expressly stated in Paragraph 20.c:

However, if a legislative body, a court, or an administrative agency, including the Commission, enacts or orders any fundamental changes in policy, regulations or statutes that directly and substantially affect the

² Section 1308(d) defines a "general rate increase" as affecting more than 5% of the Company's customers and requesting an increase of amount in excess of 3% of the Company's total gross annual intrastate operating revenues. 66 Pa.C.S. § 1308(d).

Company's cost of service, the Settlement shall not prevent the Company from filing a tariff or tariff supplement to the extent necessitated due to such action.

Settlement Petition, ¶ 20.c. The Settlement Petition expressly allows adjustments to Columbia Water's base rates to account for impact of the TCJA as a "fundamental change[]" in federal tax statutes "that directly and substantially affect[s] the Company's cost of service...."

These terms and conditions are an integral part of the Joint Petition for Settlement which the Commission approved as in the public interest in the March Base Rate Order. Due to the Company's exceptions and I&E's reply exceptions, the Commission reviewed the Settlement and Recommended Decision in detail. March Base Rate Order at 25-29. The Company's suggestion that the Commission somehow overlooked the March Base Rate Order is not supported.

3. The Temporary Rates Order Properly Directed Columbia Water to Implement Temporary Rates, Based on the Limited and Incomplete Information Provided by Columbia Water

Columbia Water's position that the Commission had – but overlooked – sufficient information to determine that Columbia Water should not be required to implement temporary rates is incorrect. Petition, ¶¶ 10-15, 17.

First, Columbia Water faults the Temporary Rates Order for overlooking the Company's 2016 Annual Report. Petition, ¶ 17. Given that Columbia Water subsequently obtained Commission approval to increase base rates to provide additional operating income, the OCA submits that the Commission did not err in according more weight to the more recent information regarding Columbia Water's rates and revenues.

Second, Columbia Water's verified reply to the February 12 Secretarial Letter asked the Commission to accept the inference that the Company's newly implemented base rates do not include an allowance for federal tax expense, based on the Company's 2017 base rate filing. Petition, ¶ 11, App. A (Company reply to Data Request B2). Counterbalancing the Company's position is the fact the Settlement Petition used a "black box" approach. Settlement Petition, ¶ 19. As the Commission noted in approving the Settlement Petition, "the Settlement before us is a black box settlement in which the Settlement provides for an increase in Columbia Water's revenues but does not indicate the details of how the parties calculated this increase." March Base Rate Order at 28. More information is needed in this docket to confirm the Company's statements.

Third, Columbia Water's verified replies to the Secretarial Letter Data Requests (DR) make clear that some information requested was not yet available and would be provided at a later date. For example, the Company replied as follows:

Data Request B1:

How does the reduction in corporate Federal Income Tax rate from 35% to 21% affect your federal tax obligations for calendar year 2018 and subsequent tax years? Please quantify your response as to the effect on both current and deferred tax obligations.

Response:

Our 2017 financials and tax forms are not finalized as of this date so we are unable to answer this at this time. We will provide this information when available which will occur prior to April 30th.

See, Petition, App. A (Company reply to DR B1). The Company similarly committed to provide, at a later date, the Company's Net Operating Loss amount and Deferred Tax Liabilities as of December 31, 2017. Petition, App. A (Company replies to DR B4, B5).

Fourth, in response to the Secretarial Letter Data Request C, asking each utility to populate a spreadsheet with revenue, expense, ratemaking adjustments, and tax expense information, the Company replied “Inapplicable to CWC” and referred to the Company’s position that its existing rates do not include federal income tax expense. Petition, App. A (Company replies to DR C1, citing Reply to B2). So, Columbia Water did not provide the Commission with information to assess whether the TCJA will impact the Company’s state income taxes or ADIT. The OCA submits that Columbia Water needs to provide information regarding the change in the level of ADIT, including the amount and how it will be returned to customers.

The OCA submits that the Commission properly directed Columbia Water to implement temporary rates, pending further opportunity for the Commission to address the impact of the TCJA on Columbia Water’s federal income tax expense for 2018 and beyond, and Columbia Water’s state income tax expense and ADIT.

B. Columbia Water Has Not Shown that the Temporary Rates Order is Legally Unsound or Unreasonable, as to Columbia Water

Columbia Water states that legal issues support reconsideration and rescission of the Temporary Rates Order, citing in broad terms the Company’s statutory and state and federal constitutional right to due process, citing Sections 1310(a) and (d), and invoking “the single-issue ratemaking principle.” Petition, ¶¶ 1, 16-17, fn. 3. Columbia Water further suggests the Temporary Rates Order is unfair and not in the public interest, as to the Company. Petition, ¶¶ 17-18. The OCA disagrees.

The February 12 Secretarial Letter gave Columbia Water specific and adequate notice of the Commission’s intent to examine “the effects of the TCJA on the tax liabilities of the Commission-regulated public utilities for 2018 and future years and the

feasibility of reflecting such impacts in the rates charged to Pennsylvania utility ratepayers.” February 12 Secretarial Letter at 1, see also 48 Pa.Bull. 1253 (Feb. 24, 2018). The Commission noted its statutory obligation to ensure “that all rates charged are just and reasonable” pursuant to Section 1301. *Id.*, citing 66 Pa.C.S. § 1301.

The OCA submits that the Commission provided Columbia Water and interested parties with sufficient notice and an opportunity to be heard, in the form of written comments and replies to data requests, to support the Commission’s entry of the Temporary Rates Order. Section 1310(a) provides in pertinent part:

The commission may, in any proceeding involving the rates of a public utility, except a proceeding involving a general rate increase, brought either upon its own motion or upon complaint, after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine and prescribe temporary rates to be charged by such public utility pending the final determination of such rate proceeding.

The information before the Commission – the Company’s 2016 annual report, the new rate increase to provide an additional \$635,000 in annual revenues commencing in March 2018, and Columbia Water’s replies to the Data Requests – provided the Commission with adequate baseline information to support a determination that Columbia Water should be directed to implement temporary rates pending a final determination of the impact of the TCJA on the interests of Columbia Water’s ratepayers.

Significantly, the Commission has not adversely impacted any property interest of Columbia Water, as a result of the Temporary Rates Order. Columbia Water suggests that implementation of a temporary rates tariff is unfair and clouds its ability to borrow funds. Petition, ¶ 19. However, Columbia Water, the OCA and other parties agreed in Paragraph 20.c of the Settlement Petition that Columbia Water’s base rates may be adjusted to account for the impact of events such as the TCJA, as a “fundamental

change[]” in federal tax statutes “that directly and substantially affect[s] the Company’s cost of service....”

The Commission should not grant reconsideration and rescission that would prevent a more specific examination of the impact of the TCJA on the Company’s operating expense, including federal and state income tax expense as well as ADIT, and consideration of the need for adjustment to Columbia Water’s base rates. Such a focused examination of the impact of this extraordinary, substantial and non-recurring overhaul and reduction in federal income tax rates and tax law is not prohibited single-issue ratemaking. Philadelphia Electric Co. v. Pa. P.U.C., 93 Pa. Commw. 410, 502 A.2d 722 (1985); *see, also*, Popowsky v. Pa. P.U.C., 695 A.2d 448 (Pa. Commw. 1997)

III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully requests that Commission deny Columbia Water's request for relief in the form of reconsideration and rescission of the Commission's March 15, 2018 Temporary Rates Order, as it applies to Columbia Water.

Respectfully Submitted,



Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61135
E-Mail: bsheridan@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: April 9, 2018

246313