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July 13, 2018

BY ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: The Columbia Water Company; Docket No. R-2018-3000839 and M-2018-2641242; **REQUEST FOR MODIFICATION OF SECRETARIAL LETTER**

Dear Secretary Chiavetta:

On March 15, 2018, the Pennsylvania Public Utility Commission ("Commission") issued a Temporary Rates Order at Dkt. No M-2018-2641242 requiring Columbia Water (among other utilities) to file a Tariff Supplement making all its rates temporary for a trial period of six months. On May 17, 2018, the Commission entered a subsequent Temporary Rates Order in which it determined that Columbia Water's rates had no federal tax liability and it would not be recovering any federal tax from its ratepayers. Therefore, the Commission ordered Columbia Water to file a tariff supplement terminating the currently-effective temporary rates. In compliance with this Order, on May 21, 2018, Columbia Water filed supplement No. 94 to Tariff Water-Pa. P.U.C. No. 7 terminating its temporary rates. The tariff was approved by Secretarial Letter issued June 4, 2018 (June 4 Secretarial Letter) (attached).

In Paragraph No. 2 of the June 4 Secretarial Letter the Commission states that the rates set forth in Supplement No. 94 to Tariff Water – Pa. P.U.C. No. 7 are effective "by operation of law." By this letter, Columbia Water requests the Commission modify the June 4 Secretarial Letter to eliminate paragraph 2 and instead state that "Columbia Waters rates are effective pursuant to the Final Order entered on March 1, 2018 in Columbia Water's recent rate case at Dkt. No. R-2017-2598203." As explained below, Columbia Water asserts that "by operation of law" is improper terminology, as Columbia Water's rates were entered after a fully litigated rate case making them Commission-made rates.

Columbia Water believes "by operation of law" is appropriate when any tariff filing, non-general or general under 1308, is not contested and goes into effect by operation of law. However, a compliance filing in a general rate case to comply with a final Commission order in a contested rate case is different because it results in a "Commission-made" rate which has different status from an untested rate filing that goes into effect or is permitted to go into effect by operation of law. In a contested rate case, the Commission has an affirmative obligation to determine that the rates determined and set by the Commission are "just and reasonable." 66 Pa. C.S.A. § 1301 and § 1308(b), (c) and (d). When the Commission does this, it establishes "Commission-made rates" that have their own legal significance.

The concept of Commission-made rates was first announced by our Supreme Court in *Cheltenham & Abington Sewerage Co. v. Pennsylvania Pub. Util. Comm'n*, 25 A.2d 334 (Pa. 1942). Appellate courts and the Commission have followed and applied and continue to follow and apply *Cheltenham*. In that case the Court said relief against an existing Commission-approved rate in a contested rate case is by definition just and reasonable (otherwise the Commission would violate its obligation to set and allow just and reasonable rates) and that subsequent challenges to those rates can only result in prospective relief from the date the Commission finds an existing rate to no longer be reasonable. The idea is that a utility may rely upon "Commission-made" rates - rates which have been specifically determined in a contested rate case (one with parties challenging the rate case, followed by an ALJ's decision followed by a decision by the Commissioners).

In sum, Columbia Water understands that when there is no litigated rate case, the Commission will allow an uncontested rate filing to go into effect - because it does not want to foreclose retroactive relief or refunds for rates which are not subject to litigation. But contested rate filings are different which result in "Commission-made" rates which are by definition and by the Commission's statutory obligations under 1308, to be just, lawful and reasonable, and may be adjusted only prospectively after a subsequent proceeding.

Columbia Water respectfully requests that the Commission modify Paragraph No. 3 of the June 4, 2018 Secretarial Letter to remove "by operation of law according to the effective date contained on the title page of the supplement" and replace it with "as per the Final Order entered on March 1, 2018 in Columbia Water's recent rate case at Dkt. No. R-2017-2598203."

Thank you very much for your attention to this matter. Please feel free to contact me with any questions or concerns.

Very truly yours,

Thomas J. Sniscak

Thomas J. Sniscak
Counsel to The Columbia Water Company

TJS/das
Enclosure
cc: Marie Intrieri, Bureau of Technical Utility Services, maintrieri@pa.gov

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

June 4, 2018

Docket Nos. R-2018-3000839
M-2018-2641242

Thomas J. Sniscak, Esq.
William E. Lehman, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101

RE: The Columbia Water Company
Tax Cuts and Jobs Act of 2017
Supplement No. 94 to Tariff Water-Pa. P.U.C. No. 7

Dear Messrs. Sniscak and Lehman:

This letter is in response to your communication with our staff on May 31, 2018.

On May 21, 2018, The Columbia Water Company (the Company) filed Supplement No. 94 to Tariff Water-Pa. P.U.C. No. 7 to become effective on May 22, 2018. Supplement No. 94 was filed in compliance with the Commission's Order at Docket No. M-2018-2641242, entered May 17, 2018, and authorizes the Company to terminate their rates as being temporary rates for a trial period ending September 15, 2018.

Commission Staff has reviewed the tariff revisions and found that suspension or further investigation does not appear warranted at this time. Therefore, in accordance with 52 Pa. Code, Supplement No. 94 to Tariff Water-Pa. P.U.C. No. 7 is effective by operation of law according to the effective date contained on the title page of the supplement. However, this is without prejudice to any formal complaints timely filed against said tariff revisions.

If you have any questions in this matter, please contact Marie Intrieri, Bureau of Technical Utility Services, at (717) 214-9114 or maintrieri@pa.gov.

Sincerely,

Rosemary Chiavetta
Secretary

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 FIRST CLASS MAIL

Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Thomas J. Sniscak

Thomas J. Sniscak

Dated this 13th day of July, 2018.