



COMMONWEALTH OF PENNSYLVANIA

January 8, 2021

E-FILED

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

**Re: Pennsylvania Public Utility Commission v. The City of Bethlehem – Water
Department Supplement No. 15 Tariff Water- Pa P.U.C. No. 6 / Docket No. R-2020-
3020256**

Dear Secretary Chiavetta:

Enclosed please find the Reply Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

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

Sincerely,

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2020-3020256
	:	
The City of Bethlehem – Water	:	
Department Supplement No. 15 Tariff	:	
Water- Pa P.U.C. No. 6	:	

**REPLY BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney I.D. No. 77538**

**For: John R. Evans
Small Business Advocate**

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I. Introduction

A. History of the Proceeding

On July 31, 2020, the City of Bethlehem – Water Department (the “City” or the “Company”) filed Supplement No. 15 to Tariff Water Pa. P.U.C. No. 6 (“Supplement No. 15”), with the Pennsylvania Public Utility Commission (“Commission”). The rates set forth in Supplement No. 15, if approved by the Commission, would increase the City’s annual jurisdictional revenues by \$908,421.

On August 27, 2020, the Office of Small Business Advocate (“OSBA”) filed a formal Complaint in opposition to Supplement No. 15.

On October 8, 2020, a prehearing conference was held before Administrative Law Judge (“ALJ”) Steven K. Haas.

On October 8, 2020, ALJ Haas issued his Prehearing Order.

On November 6, 2020, the OSBA served the Direct Testimony of Brian Kalcic.

On November 24, 2020, the OSBA served the Rebuttal Testimony of Mr. Kalcic.

On December 9, 2020, the OSBA served the Surrebuttal Testimony of Mr. Kalcic.

On December 17, 2020, the ALJ Haas conducted an evidentiary hearing.

On December 30, 2020, the OSBA submitted its Main Brief.

The OSBA submits this Reply Brief in accordance with ALJ Haas’s October 8th Prehearing Order.

B. Legal Standards

The OSBA fully addressed this issue in its Main Brief.

The OSBA is not addressing this issue in this Reply Brief.

II. Summary of Argument

The City presents a series of disingenuous and baseless legal arguments in its Main Brief. The ALJ and the Commission should reject the City's legal arguments as contrary to statute and Commission precedent.

III. Overall Position on the Proposed Rate Increase

A. Section I.C.5 of the City's Main Brief

In Section I.C.5. of its Main Brief, the City argued, as follows:

While the Commission may have the ability to alter litigation deadlines as a result of the Governor's Proclamation of a Disaster Emergency and the Commission's subsequent Emergency Order as a result of the COVID pandemic, the Commission does not have the authority to alter a utility's substantive right of a rate increase going into effect at the end of the seven-month deadline.

City Main Brief, at 7-8 (citations omitted).

This issue is a red herring advanced by the City in a crude attempt to bully the Commission into granting a rate increase. No party to this proceeding has argued or requested the statutory deadline be altered in any manner whatsoever.

The OSBA recommends that the ALJ and the Commission ignore the City's legal fiction as it is completely immaterial to the case before them.¹

B. Section III.B.1 of the City's Main Brief

In Section III.B.1 of the City's Main Brief, the City argued, as follows:

The City submits that the Commission has no authority under the Code to deny the City's rate increase as proposed by the OCA. The Commission addressed its statutory ratemaking authority in PGW as set forth above and held that it has *no* authority to alter a utility's substantive right of a rate increase going into effect at the end of the seven-month statutory deadline. A Commission

¹ The Pennsylvania Supreme Court definitively addressed the authority of the Governor, and thus the Commission, in *Friends of DeVito v. Wolf*, 227 A.3d 872 (2020), *cert. denied*, 141 S. Ct. 239 (2020). The City's opinion of the Commission's authority during the COVID-19 Pandemic is irrelevant.

decision adopting the OCA “no increase” proposal would violate the Public Utility Code and the Commission’s statutory obligation to set just and reasonable rates.

City Main Brief, at 11 (emphasis in original) (footnote omitted). The City continued, as follows:

The Commission has no authority to deny the City rate relief because of the COVID pandemic.

Id., at 14.

It is necessary to parse the City’s muddled legal arguments, one by one.

First, the City claims that “the Commission has no authority under the Code to deny the City’s rate increase as proposed by the OCA.” In fact, the Commission has total authority to grant the City a \$0 rate increase, as proposed by the OCA, if the Commission finds that to be a just and reasonable result. Section 1308(d) of the Public Utility Code, 66 Pa. C.S. Section 1308(d) states (Voluntary changes in rates; General rate increases), as follows:

Before the expiration of such seven-month period, a majority of the members of the commission serving in accordance with law, acting unanimously, shall make a final decision and order, setting forth its reasons therefor, granting or denying, *in whole or in part*, the general rate increase requested.

Section 1308(d) (emphasis added). Thus, the plain statutory language grants the Commission the authority to fully deny the City’s requested rate increase. The City’s claim (which it proffered without legal authority) that the Commission has “no authority” to deny its requested rate increase is baseless, contrary to statute, and should be rejected by the ALJ and the Commission.

Second, the City claims that the Commission ruled that it had “*no* authority to alter a utility’s substantive right of a rate increase going into effect at the end of the seven-month statutory deadline.” The City cites to a PGW Order² which cited to the following passage in a Columbia Order:

² *PUC v. Philadelphia Gas Works*, Docket No. R-2020-301726 (Order entered November 19, 2020).

Because we are only authorizing the extension or suspension of deadlines and not of substantive rights, failure to meet the seven-month deadline would result in the proposed rates going into effect by operation of law. Therefore, we find that Columbia is entitled to the appropriate rate relief in accordance with Section 1308(d) of the Code immediately following the end of the original statutory rate suspension period, which, in this case, is January 23, 2021.

PUC v. Columbia Gas, Docket R-2020-3018835 (Order entered August 20, 2020) at 20-21.

Thus, as the Commission's plain language makes clear, the Commission concluded that any rate increase must, in their opinion, go into effect at the time of the original seven-month deadline. The Columbia Order *did not* conclude that a Commonwealth utility has a "substantive right" to a requested rate increase, and that the Commission had no authority to deny a rate increase request under Section 1308(d).

Third, the City's claim that the Commission has no authority to adopt the OCA's "no increase" position because it "would violate the Public Utility Code and the Commission's statutory obligation to set just and reasonable rates" is simply absurd. Of course, the City does not provide any citation to the Public Utility Code to substantiate its legal position. Furthermore, as set forth above, Section 1308(d) provides the Commission with complete authority to grant the City a \$0 rate increase if it finds that result just and reasonable in accordance with Section 1301(a) of the Public Utility Code, 66 Pa. C.S. Section 1301(a) (Rates to be just and reasonable; Regulation)

Fourth, the City claims that the "Commission has no authority to deny the City rate relief because of the COVID pandemic." As set forth above, the Pennsylvania Supreme Court in the *DeVito* case has decided what authority the Commission has during the COVID pandemic. As also set forth above, the Commission has full authority to rule on whether the City's proposed rate increase is just and reasonable based upon the record evidence presented in this proceeding.

IV. Issues resolved among the parties

The OSBA is not addressing this issue in this Reply Brief.

V. Rate Base

The OSBA is not addressing this issue in this Reply Brief.

VI. Revenues

The OSBA is not addressing this issue in this Reply Brief.

VII. Expenses

The OSBA is not addressing this issue in this Reply Brief.

VIII. Rate of Return

The OSBA is not addressing this issue in this Reply Brief.

IX. Taxes

The OSBA is not addressing this issue in this Reply Brief.

X. Rate Structure / Rate Design

The OSBA fully addressed this issue in its Main Brief.

The OSBA is not addressing this issue in this Reply Brief.

XI. Miscellaneous issues

The OSBA is not addressing this issue in this Reply Brief.

XII. Conclusion

The City's legal arguments, as set forth above, are absurd, baseless, and a purposeful misreading of Commission precedent. The OSBA respectfully requests that the ALJ and the Commission reject the City's proffered legal fiction.

As set forth in the OSBA's Main Brief, the OSBA respectfully requests that the ALJ and Commission deny the City's proposed revenue increase.

In the alternative, as also set forth in the OSBA's Main Brief, if the ALJ and the Commission grant the City a revenue increase greater than zero, the OSBA respectfully requests that the ALJ and Commission adopt the OSBA's revenue allocation and scale back proposals.

Respectfully submitted,

/s/ Steven C. Gray

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Dated: January 8, 2021

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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