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October 28, 2025

VIA ELECTRONIC FILING

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

Re: Justin Henry v. Columbia Water Company; Docket No. F-2025-3053872;
EXCEPTIONS OF COLUMBIA WATER COMPANY

Dear Secretary Homsher:

Enclosed for filing with the Pennsylvania Public Utility Commission is Columbia Water Company's Exceptions to the October 8, 2025 Initial Decision in the above-referenced matter.

If you have any questions regarding this filing, please contact me.

Very truly yours,

/s/ Whitney E. Snyder

Whitney E. Snyder
Counsel for Columbia Water Company

WES/das
Enclosures

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Justin Henry :
 :
 v. : Docket No. F-2025-3053872
 :
 Columbia Water Company :

RESPONDENT COLUMBIA WATER COMPANY'S EXCEPTIONS

Respectfully submitted,

/s/ Whitney E. Snyder

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Dated: October 28, 2025

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Pursuant to 66 C.S. § 332(h) and 52 Pa. Code § 5.533, Columbia Water Company (“Columbia Water” or “CWC”) files these exceptions to the October 8, 2025 Initial Decision (“ID”) of Administrative Law Judge (“ALJ”) Emily Farren.

Columbia Water excepts to the ID’s erroneous findings that an equivalent dwelling unit (“EDU”) should not be defined by American Water Work Association (“AWWA”) meter equivalency ratios in the calculation and application of the Pennsylvania Infrastructure Investment Authority (“PennVEST”) surcharge. ID at 13-20, FOF 4, COL 11.

I. INTRODUCTION AND SUMMARY OF EXCEPTIONS

The ID’s *sua sponte* finding that Columbia Water miscalculated its \$9.69 PennVEST surcharge, an issue never raised in the Complaint, violates the Company’s due process rights and flies in the face of a Commission-approved settlement and seven Commission orders approving how the surcharge is calculated by basing EDU’s on AWWA meter equivalency ratios which correspond to meter size.¹ To be clear, 5 of the 7 Commission orders discussed in FN 1 *supra*

¹ *Pa. PUC et al v. Columbia Water Co.*, Docket Nos. R-2014-2445660, Recommended Decision at 9 (RD issued June 22, 2015), *adopted without modification* (Order entered July 30, 2015) (RD and Order collectively referred to as *CWC PennVEST Surcharge Order 1*) (“**Each customer’s EDU is based on the size of the water meter.**”), RD at 17 (emphasis added), Order at 2 (approving initial PennVEST surcharge and methodology); *Columbia Water Co. Supplement No. 79 to Tariff - Water Pa. P.U.C. No. 7*, Docket Nos. R-2014-2445660 (Order entered Aug. 11, 2016) (approving change to surcharge based on increase in EDU amount) (“*CWC PennVEST Surcharge Order 2*”); *Columbia Water Co. Supplement No. 84 to Tariff - Water Pa. P.U.C. No. 7*, Docket No. R-2017-2588525 (Order entered Mar. 16, 2017)) (approving change to surcharge based on increase in EDU amount) (“*CWC PennVEST Surcharge Order 3*”); *Columbia Water Co. Supplement No. 98 To Tariff – Water Pa. P.U.C. No. 7*, Docket No. R-2019-3008417 (Order entered May 23, 2019) (“*CWC PennVEST Surcharge Order 4*”) (“**the value for EDUs is determined by applying American Water Works Association meter equivalency ratios to the size and number of water meters for customers** in Columbia Water’s Columbia Rate District”) (emphasis added); *Columbia Water Company Supplement No. 105 To Tariff – Water Pa. P.U.C. No. 7*, Docket No. R-2020-3022302 (Order entered Dec. 17, 2020) (“*CWC PennVEST Surcharge Order 5*”) (“**the value for EDUs is determined by applying American Water Works Association meter equivalency ratios to the size and number of water meters for customers** in Columbia Water’s Columbia Rate District”) (emphasis added); *Columbia Water Company Supplement No. 108 To Tariff – Water Pa. P.U.C. No. 7*, Docket No. R-2021-3024192 (Order entered Apr. 15,

explain that EDU's are **determined by applying American Water Works Association meter equivalency ratios**. CWC Witness, President and Professional Engineer David Lewis testified that the Commission had approved this methodology including calculating EDUs based on the American Water Works Association meter equivalencies. Tr. 37; *see also* ID at 15.

If adopted, the ID will require extensive recalculations of the PennVEST surcharge. *By law, the Commission is required to provide for Columbia Water to recover in rates the principal and interest on its PennVEST loans.*² However, applying the ID, it is unclear how the surcharge is to be calculated because the Commission already expressly approved the calculation for the surcharge and specifically stated that customers would be charged per EDU determined by applying AWWA meter equivalency ratios while the ID provides no direction as to alternative calculation of the surcharge. Recalculation would result in true-up charges and an increase in the amount of the PennVEST surcharge for all customers so that customers like Complainant would pay less overall even though Columbia Water's infrastructure was constructed and sized to be able to serve the volume of water such meter can use, regardless of actual usage.

2021) (“CWC PennVEST Surcharge Order 6”) (“***the value for EDUs is determined by applying American Water Works Association meter equivalency ratios to the size and number of water meters for customers*** in Columbia Water’s Columbia Rate District”) (emphasis added); *Columbia Water Company Supplement No. 117 To Tariff – Water Pa. P.U.C. No. 7*, Docket No. R-2021-3024192 (Order entered Feb. 9, 2023) (“CWC PennVEST Surcharge Order 7”) (“***the value for EDUs is determined by applying American Water Works Association meter equivalency ratios to the size and number of water meters for customers*** in Columbia Water’s Columbia Rate District”) (emphasis added).

² 35 P.S. § 751.14 (“For the limited and special purpose of ensuring repayment of principal and interest on loans made pursuant to this act, the Pennsylvania Public Utility Commission shall approve such security issues, affiliated interest agreements and rate increase requests by applicants that are regulated utilities as are necessary and appropriate. For this purpose, the Pennsylvania Public Utility Commission shall establish such expedited practices, procedures and policies as necessary to facilitate and accomplish repayment of the loans. Nothing in this act shall be construed as to require approval of rate increases greater than that necessary to accomplish the repayment of loans made pursuant to this act.”).

No evidence supports the ID's finding to upend the methodology for calculating the PennVEST surcharge, the calculation of the \$9.69 PennVEST surcharge, or how the PennVEST surcharge is applied to individual customers based on AWWA meter equivalency ratios. Complainant did not present a single exhibit or any evidence related to the PennVEST surcharge other than to acknowledge the surcharge is based on meter size. Tr. 11. The ID must be reversed on this point and the Complaint denied and dismissed with prejudice. If the Commission does not reverse the ID, then *the Commission is legally required to provide alternative means for the Company to fully recover its PennVEST principal and interest payments.*³

II. EXCEPTIONS

CWC Exception 1. The ID erred in violating CWC's due process rights by *sua sponte* finding CWC did not comply with PennVEST tariff provisions in calculating the amount of the PennVEST surcharge. ID at 13-20, FOF 4, COL 11.

The ID violated CWC's due process to notice and ability to be heard by *sua sponte* finding Columbia Water miscalculated the PennVEST surcharge of \$9.69 because this issue was not raised in the Complaint. To the extent Complainant raised any issues in the Complaint relating to the PennVEST surcharge, Complainant alleged that the PennVEST surcharge was not being *applied* to him fairly because he pays 2.5 times the per EDU surcharge of \$9.69 based on his meter size. The Complaint does not make any allegations as to how Columbia Water allegedly miscalculated the PennVEST surcharge of \$9.69.⁴ The ID *sua sponte* took issue with

³ 35 P.S. § 751.14.

⁴ The Company specifically excepts to FOF 4, which states Complainant raised the calculation of the PennVEST surcharge in his informal BCS complaint. At best, during the informal complaint process, Complainant questioned the way the PennVEST surcharge was applied to him, Complainant did not allege the Company was miscalculating the PennVEST surcharge as the ID found.

the calculation of the \$9.69 surcharge and misinterpreted the equation in CWC's tariff for how the PennVEST surcharge is calculated for Columbia Water's entire customer base to find a tariff violation.⁵ This finding upends a Commission-approved settlement, years of Commission approvals of CWC's PennVEST surcharge, would require extensive recalculations and true-up charges, and an increase in the PennVEST surcharge for all customers. The ID thus violates CWC's due process rights and must be reversed.

The Commission is bound by the due process provisions of constitutional law. *See, e.g., W. Penn Power Co. v. Pa. PUC.*, 100 A.2d 110, 128-129 (Pa. Super. Ct. 1953). In Commission proceedings, the Commonwealth Court has recognized that the "fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Barasch v. Pa. PUC*, 521 A.2d 482, 496 (Pa. Cmwlth. Ct. 1987). CWC has a fundamental due process right to notice and the "opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal." *Baker v. SPLP*, Docket No. C-2018-3004294, Initial Decision at 20 (Decision entered Dec. 18, 2019) (*affirmed in relevant part* by Opinion and Order Sept. 23, 2020) (Barnes, ALJ) ("*Baker*") (citing *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. Ct. 2014); *Davidson v. Unemp. Comp. Bd. of Rev.*, 151 A.2d 870 (Pa. Super. Ct. 1959); *In re: Shenandoah Suburban Bus Lines, Inc.*, 46 A.2d 26 (Pa. Super. Ct. 1946)).

Here, the ID violated CWC's fundamental due process rights because CWC was not put on notice to present evidence on matters that were not part of the Complaint. "It is beyond peradventure that an administrative hearing is limited to the legal questions raised by the parties.

⁵ ID at 14-15 (notably, this is the equation to calculate the PennVEST surcharge; it is not a definition for EDU generally as the ID applied it).

The hearing tribunal may not, sua sponte, augment the subject matter of a proceeding.” *Sunoco Pipeline, L.P. v. PUC*, 295 A.3d 37, 52 (Pa. Cmwlth. 2023); *Pocono Water Co. v. Pa. PUC*, 630 A.2d 971, 973-74 (Pa. Cmwlth. Ct. 1993) (finding that the Commission violated the utility’s due process rights “because it assessed liability after determining an issue which [the utility] had not been afforded a reasonable opportunity to defend at the hearing”); *Duquesne Light Co. v. Pa. PUC*, 507 A.2d 433, 437 (Pa. Cmwlth. Ct. 1986) (holding that the Commission violated the utility’s due process rights because the utility was “not given adequate notice of the specific conduct being investigated, and hence its defense was gravely prejudiced”); *see also Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283, 1289 (Pa. Cmwlth. 2019) (“PUC erred in raising the issue of personal standing sua sponte and injecting this theory of standing into the case”); *Commonwealth v. Murchinson*, 2006 PA Super 104, 899 A.2d 1159, 1163 (Pa. Super. 2006) (a tribunal should not "assume an advocate's function of introducing theories which were not raised by the parties and resisted by a party."); *Hrivnak v. Perrone*, 472 Pa. 348, 372 A.2d 730, 733 (Pa. 1977) (court "may not assume the advocate's function of introducing theories not raised by the parties").

The ID violated CWC’s due process rights because CWC was not on notice that it had to justify how it calculated a surcharge that the Commission has already approved both as to the method of calculation and amount seven times.⁶ Had CWC been on notice, it would have discussed the Commission orders approving the form and calculation of the PennVEST surcharge, which specify and demonstrate that EDU’s are based on AWWA meter equivalency ratios. CWC discusses these orders in Exception 2 below. The ID should be reversed for violating CWC’s due process rights.

⁶ *Supra* n.1.

CWC Exception 2. The ID erred in holding that “EDU” used in the PENNVEST surcharge is not defined by AWWA meter equivalency ratios. ID at 13-20, COL 11.

The Commission approved basing the number of EDU’s on which the PennVEST surcharge is calculated using AWWA meter equivalency 7 times, beginning with initiation of the surcharge in 2014.⁷ In *CWC PennVEST Surcharge Order 1*, the Commission acknowledges that “*Each customer's EDU is based on the size of the water meter.*” *Id.* (emphasis added).

In *CWC PennVEST Surcharge Order 4, 5, 6, and 7*, the Commission stated “*the value for EDUs is determined by applying American Water Works Association meter equivalency ratios to the size and number of water meters for customers* in Columbia Water’s Columbia Rate District.” (emphasis added).

In fact, CWC PennVEST Surcharge Order 7 is the current PennVEST surcharge approval and was included in the record of this case as CWC Ex. 6. The Commission has approved that CWC should determine total EDUs for purposes of the PennVEST surcharge by meter equivalency ratios.

The PennVEST surcharge recovers a fixed principal and interest payment to PennVEST, regardless of the volumetric usage of customers. As Columbia Water Witness Mr. Lewis explained, “the larger the meter, the more dwelling units, or EDUs, that can pass through the meter. So water infrastructure is sized, and we construct it based upon the number of EDUs that we need to deliver to our customers.” Tr. 22:3-7. Thus, the PennVEST surcharge is calculated and applied based on AWWA meter equivalency ratios because the infrastructure for which this surcharge is imposed must be sized to meet the demand the customer could impose on the system. The actual volumetric usage of the customer is irrelevant to recovery of the PennVEST surcharge.

⁷ *Supra* n. 1.

The ID erred by not considering these clear and express Commission orders to find an EDU should be based on some other measure. CWC Witness and Professional Engineer David Lewis testified the PennVEST charge is based on AWWA meter equivalency ratios, and specifically indicated that the first time the Commission approved the PennVEST surcharge it was based on AWWA meter size equivalency. ID at 14-15. The ID must be reversed regarding its erroneous holdings as to how the PennVEST surcharge is to be calculated.

CWC Exception 3. The ID erred in shifting the burden of proof and holding that CWC did not prove it is complying with the terms of its PENNVEST surcharge tariff where Complainant failed to present a *prima facie* case. ID at 13-20, COL 11.

The ID inappropriately shifted the burden of proof in this proceeding to require CWC to prove it is complying with its tariff where the Complainant failed to present a *prima facie* case demonstrating CWC did violate its tariff regarding the PennVEST surcharge. In fact, ***Complainant did not present a single shred of evidence that Columbia Water miscalculated or misapplied its PennVEST surcharge.*** Tr. 7-17. The ID should also be reversed on this basis.

As to Complainant's evidence, it is important at the outset to delineate their burden of proof. As the proponent of a rule or order, Complainant has the burden of proof under Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), to prove the elements of their claims by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. Ct. 1990), *appeal. denied*, 602 A.2d 863 (Pa. 1992). *See also*, ID at 69-70. To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, the probative value of the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854, 855-856 (Pa. 1950). To satisfy their burden of proof, Complainant must show that CWC is

responsible or accountable for the problem described in his Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. P.U.C. 196 (1990).

Complainant must prove that CWC violated the Code, a Commission regulation or Order, or a Commission-approved tariff to obtain *any* relief:

We hold that in order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be *in violation* of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require *any* action by the utility.”

West Penn Power Co. v. Pa. PUC, 478 A.2d 947, 949 (Pa. Cmwlth. Ct. 1984) (emphasis added); *see also Twp of Spring. v. Pennsylvania-American Water Co.*, Docket Nos. C-20054919 et al., 2007 WL 2198196, at *6 (Order entered July 27, 2007) (“If we were to order PAWC to conduct testing of the property in the Stonegate community, we would have to base that order on credible evidence that some act or omission by PAWC in violation of the Code or our Regulations would be remedied by the testing.”) (citing *West Penn*). “[T]he offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order or a violation of a Commission-approved tariff.” *Baker*, Docket No. C-2018-3004294, Opinion and Order at 6 (citing 66 Pa. C.S. § 701).

Moreover, the Commission’s adjudications must be supported by “substantial evidence” in the record. 2 Pa. C.S. § 704; *Lansberry*, 578 A.2d at 602. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Co. of N.Y. v. Nat’l Labor Relations Bd.*, 305 U.S. 197, 229 (1938). *See also*, ID at 71. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemp. Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. Ct. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. Ct. 1984).

While the burden of going forward with evidence may shift back and forth during a proceeding, the burden of proof *never* shifts. The burden of proof *always* remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001). In sum, Complainant always had the burden of proof in this proceeding. Here, the record is clear that Complainant has not only failed to meet that burden of proof, but has not even established a prima facie case.

The ID itself makes clear that it inappropriately shifted the burden of proof. In its analysis, it fails to cite a single piece of evidence Complainant submitted in support of a claim the PennVEST surcharge is miscalculated or misapplied; Complainant submitted no exhibits. In fact, the only time the Complainant mentioned the PennVEST surcharge was under questioning from the ALJ and he stated: “And then Columbia Water has their PennVEST surcharge *and that’s also prorated based of meter size*”. Tr. 11 (emphasis added). Complainant clearly understood the PennVEST surcharge is based on meter size as determined by AWWA meter equivalency ratios and presented no evidence that this was inconsistent with CWC’s tariff.

Complainant failed to present any evidence that CWC incorrectly calculated or applied the PennVEST surcharge and thus the ID erred in shifting the burden of proof to make CWC prove it was not violating its tariff. This was clear error and the ID should be reversed on this basis.

CWC Exception 4. The ID erred in ordering a refund without providing a means for Columbia Water to collect the full amount of principal and interest due on its PennVEST loans from customers. ID at 13-20.

In the alternative, if the Commission upholds that EDU means something other than AWWA meter equivalency ratios, the Commission must correct the ID to provide an avenue for CWC to wholly recalculate the surcharge for all customers so it can make the required principal and interest payments to PennVEST.

The law is clear that the Commission must provide the means for Columbia Water to collect in rates from customers the principal and interest due on its PennVEST loans.

For the limited and special purpose of ensuring repayment of principal and interest on loans made pursuant to this act, the Pennsylvania Public Utility Commission shall approve such security issues, affiliated interest agreements and rate increase requests by applicants that are regulated utilities as are necessary and appropriate. For this purpose, the Pennsylvania Public Utility Commission shall establish such expedited practices, procedures and policies as necessary to facilitate and accomplish repayment of the loans. Nothing in this act shall be construed as to require approval of rate increases greater than that necessary to accomplish the repayment of loans made pursuant to this act.

35 P.S. § 751.14.

The ID erred in finding CWC was not appropriately calculating the surcharge, and then further erred by failing to provide an avenue for CWC to fully collect the amount it requires every month. This should have been obvious from the PennVEST calculation the ID misinterpreted – the amount of the surcharge is the total annual principal and interest payment divided by the number of EDUs, then divided by 12 for a monthly surcharge. ID at 14. If EDU is defined as anything other than by meter size for purposes of applying the surcharge, the entire surcharge must be recalculated or Columbia Water will not be able to fully collect the amount it owes PennVEST.

III. CONCLUSION

WHEREFORE, for the reasons stated above, Columbia Water Company respectfully requests the Commission reverse the ID's findings that Columbia Water Company is not in compliance with the provisions of its PennVEST surcharge and DENY and DISMISS the Complaint with prejudice.

Respectfully submitted,

/s/ Whitney E. Snyder

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Counsel for Columbia Water Company

Dated: October 28, 2025

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).

VIA EMAIL ONLY

Mr. Justin Henry
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jhenry1498@gmail.com

/s/ Whitney E. Snyder
Whitney E. Snyder

Dated: October 28, 2025