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November 21, 2022

BY ELECTRONIC FILING

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

Re: Distribution System Improvement Charge - Implementation Order to address all issues pertaining to the distribution system improvement charge calculations required in the Pennsylvania Supreme Court's decision in McCloskey v. Pa. PUC, 255 A.3d 416 (Pa. 2021); Docket No. M-2012-2293611; **COLUMBIA WATER COMPANY'S ANSWER TO THE PETITION FOR CLARIFICATION AND RECONSIDERATION OF THE OFFICE OF CONSUMER ADVOCATE REGARDING REFUND ISSUES**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Company's Answer to the Petition for Clarification and Reconsideration of the Office of Consumer Advocate Regarding Refund Issues.

Copies have been served as indicated on the enclosed Certificate of Service.

Very truly yours,

/s/ Whitney E. Snyder

Thomas J. Sniscak
Whitney E. Snyder

Counsel for the Columbia Water Company

WES/das

Enclosures

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Distribution System Improvement Charge - :
Implementation Order to address all issues :
pertaining to the distribution system :
improvement charge calculations required : Docket No. M-2012-2293611
in the Pennsylvania Supreme Court’s :
decision in *McCloskey v. Pa. PUC*, 255 :
A.3d 416 (Pa. 2021) :

**ANSWER OF COLUMBIA WATER COMPANY
TO THE PETITION FOR CLARIFICATION AND
RECONSIDERATION OF THE OFFICE OF CONSUMER ADVOCATE
REGARDING REFUND ISSUES**

Pursuant to the 52 Pa. Code § 5.572(e) of the Pennsylvania Public Utility Commission's ("Commission") Regulations, Columbia Water Company ("Columbia"), by and through its attorneys, Hawke McKeon & Sniscak LLP, hereby submits its Answer to the Petition for Clarification and Reconsideration ("Petition") filed by the Office of Consumer Advocate ("OCA") regarding the Supplemental Implementation Order entered on October 27, 2022 in this proceeding ("October 27, 2022 Order").

I. INTRODUCTION

Columbia Water is responding solely to the issues OCA raises regarding refunds, which should be denied. OCA’s request for the Commission to reconsider its Order holding that refunds are beyond the scope of this implementation proceeding does not meet the standard for reconsideration because it fails to raise issues overlooked by the Commission or new or novel issues not previously considered. The Commission clearly considered the many comments submitted regarding refunds, made a straightforward finding that this proceeding is not the forum for refunds, and correctly chose not to make a sweeping determination as to whether refunds should

be issued, much like the Supreme Court did in *McCloskey v. Pa. Pub. Util Comm'n*, 255 A.3d 416 (Pa. 2021). This proceeding was specifically set for implementing *McCloskey* wherein the Court specifically held it was not addressing refunds.

Instead, the Commission correctly held that the issues of whether to grant refunds is better resolved elsewhere. This will allow for development of a factual record and provide due process where the Commission would clearly be infringing upon a utilities' right to its cash property if refunds are ordered. There is no need for the Commission to specify a procedure for the OCA to try to seek refunds. The Public Utility Code and the Commission's Regulations already have procedures for challenging rates and seeking refunds. Assessing whether to pursue refunds on a case by case basis is the correct procedure for moving forward. OCA can review the data available to it concerning distribution system improvement charge ("DSIC") calculations and, if it believes refunds are substantial enough to pursue litigation, can attempt to do so on a utility-by-utility basis utilizing available rules of procedure.

Moreover, reconsideration should be denied because the Commission was correct not to order procedures for refunds where, as here, the law does not provide for refunds in this scenario. As Columbia Water explained at the length in its Comments in this proceeding, Section 1301.1, 66 Pa.C.S. § 1301.1, of the Public Utility Code does not provide the Commission authority to order refunds in this scenario, but instead requires using any accrued differential 50% "to support reliability or infrastructure related to the rate-base eligible capital investment as determined by the Commission" and 50% "for general corporate purposes." 66 Pa. C.S. § 1301.1(b).

In the alternative, if the Commission chooses to specify a refund proceeding, to the extent OCA could prove a refund is necessary and allowable under the law, not every utility should be subject to the time and expense of such a proceeding; some utilities, particularly smaller size

utilities like Columbia Water, may be able to show that refunds for customers would be in the range of zero to *de minimis*. Requiring such a utility to litigate a generic proceeding regarding refunds would be a waste of the Commission and ratepayer resources. If the Commission does grant the OCA's Petition, the Commission should specify that utilities will have the opportunity to show that refunds would be *de minimus* and in that circumstance the utility would be exempt from having to provide refunds, without wasting Commission and ratepayer resources on further litigation or incurring the administrative costs of issuing such refunds.

II. THE COMMISSION SHOULD NOT RECONSIDER ISSUES REGARDING REFUNDS BECAUSE OCA HAS NOT SATISFIED THE LEGAL REQUIREMENTS FOR RECONSIDERATION.

A. OCA HAS NOT RAISED NEW OR NOVEL ARGUMENTS OR ISSUES THE COMMISSION HAS NOT ALREADY CONSIDERED

The OCA's request that the Commission reconsider the October 27, 2022 Order's holding that this proceeding is not the appropriate forum for addressing potential refunds does not raise new or novel arguments and the Commission did not fail to consider this issue.

In *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C 553, 558-59 (1985), the Commission enunciated the standards to grant a petition for reconsideration of a Commission order. The Commission stated:

A petition for reconsideration . . . may properly raise any matters designed to convince the Commission that it should exercise its discretion under [66 Pa. C.S. § 703] 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 said 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 the matter or issue was either unwise or in error.

Id. (internal citations omitted, emphasis added).

To obtain reconsideration of a Commission order, new and novel arguments not previously presented must be proffered. Here, the Commission set a generic proceeding to implement the holding in *McCloskey*. And while the *McCloskey* decision clearly did not require the Commission to provide for or even consider refunds, the Commission solicited, received, and reviewed comments from multiple parties concerning refunds and decided refunds were not appropriate here based on the input of all the interested parties' positions, including the OCA. Accordingly, reconsideration is not warranted.

B. THE COMMISSION DECISION NOT TO SPECIFY PROCEDURES FOR REFUNDS IS CORRECT AND SHOULD NOT BE RECONSIDERED

Section 1301.1 specifies that if a utility accrues a differential because it applied the ratemaking methods that the Commission used to apply prior to Section 1301.1, then that differential is used as follows: 50% for reliability or infrastructure and 50% for general corporate purposes. Section 1301.1(b) specifically provides:

(b) Revenue use.--*If a differential accrues to a public utility resulting from applying the ratemaking methods employed by the commission prior to the effective date of subsection (a) for ratemaking purposes, the differential shall be used as follows:*

- (1) fifty percent to support reliability or infrastructure related to the rate-base eligible capital investment as determined by the commission; and
- (2) fifty percent for general corporate purposes.

66 Pa. C.S. § 1301.1(b). Thus, the General Assembly has already mandated what the Commission and utilities must do if a differential occurs from the application of Section 1301.1(b) – not order utilities to issue refunds to customers, but instead for utilities to use the differential for

infrastructure or reliability and corporate purposes.

The General Assembly wisely recognized that there would be a timing issue in the application of Section 1301.1 – that rates would not just automatically change to incorporate Section 1301.1 on the effective date, but instead past Commission rate methodologies would continue to be used until a rate was in fact changed to comply with Section 1301.1. To resolve this issue, the General Assembly provided for a look back period to the Section 1301.1 effective date and mandated that any difference between what a utility charged under past ratemaking methodologies and what it would have charged if it had applied Section 1301.1 would go to a specific use and not be refunded to customers.

C. IN THE ALTERNATIVE, IF THE COMMISSION SPECIFIES PROCEDURES FOR A REFUND PROCEEDING IT SHOULD PROVIDE AN EXCEPTION FOR *DE MINIMUS* REFUNDS

For some utilities, changing the calculation of the DSIC has a very minimal impact on the DSIC rate and may result in zero to *de minimus* refunds on a per customer basis. It would be a waste of the parties, ratepayer, and Commission resources to require a utility in this position to litigate a refund proceeding. Moreover, to the extent refunds are ordered, it would be a waste of administrative costs to engage in the refunds process. Accordingly, if the Commission chooses to order a refund proceeding, it should allow for any utility to show that any refunds would be *de minimus* or zero and explain why such utility should be exempt from the refund proceeding.

III. CONCLUSION

Columbia Water Company respectfully requests OCA's Petition for Clarification and Reconsideration be denied.

Respectfully submitted,

/s/ Whitney E. Snyder
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Dated: November 21, 2022

Counsel for the Columbia Water Company

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).

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Dated: November 21, 2022