

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

REBUTTAL TESTIMONY OF

**JAMES H. CAWLEY**

ON BEHALF OF  
THE PITTSBURGH WATER  
AND SEWER AUTHORITY

Docket Nos.

R-2020-3017951 (Water)

R-2020-3017970 (Wastewater)

P-2020-3019019 (DSIC)

TOPICS:

Responses to Mr. Rubin  
(Pages 1-29 & 59-60)

August 18, 2020

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**TABLE OF EXHIBITS**

JHC-1	OCA interrogatory responses to various discovery requests that describe the methodology and background of Mr. Rubin’s proposed ratemaking approach.
JHC-2	Testimony of S. Rubin re: <i>Pennsylvania Public Utility Commission, Paul Maden, James A. Dimperio v. Colony Water Systems, Ltd.</i> , Docket No. R-00922375, Order entered June 10, 1993.
JHC-3	<i>Re Utility Rates During Economic Emergency</i> , 3 P.U.R. NS 123, 125 (Pa. P.S.C. 1934).

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND CURRENT POSITION.**

3 A. My name is James H. Cawley. My consulting business address is 1020 Kent Drive,  
4 Mechanicsburg, PA 17050.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am an independent consultant and an attorney. It is in that role that my testimony is  
7 presented. As an attorney, I am also Of Counsel to the law firm of SkarlatosZonarich  
8 LLC, 320 Market Street, Suite 600W, Harrisburg, PA 17101.

9 **Q. PLEASE DESCRIBE THE NATURE OF YOUR CONSULTING PRACTICE AS**  
10 **OPPOSED TO YOUR LAW PRACTICE.**

11 A. My consulting practice is limited to matters affecting the public utility industry. My law  
12 practice with SkarlatosZonarich LLC, is confined to legal representation. My consulting  
13 services include advice to investment management firms concerning matters important to  
14 them that are pending before the Pennsylvania Public Utility Commission  
15 (“Commission”), and some government relations activity at the Commission and the  
16 General Assembly on matters affecting the public utility industry. I am a registered  
17 lobbyist.

18 **Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE.**

19 A. Before my appointment to the Commission in 1979, I served as majority counsel to the  
20 Pennsylvania Senate Consumer Affairs Committee where I was a major draftsman of  
21 substantial amendments to Pennsylvania’s public utility laws as a part of the two-year  
22 effort of that committee under the chairmanship of Senator Franklin L. Kury to reform  
23 Pennsylvania’s public utility laws for the first time since their enactment in 1937. During  
24 that effort, I spent a great deal of time studying the history of public utility regulation and

1 public utility ratemaking in the United States. The Kury Committee's work culminated  
2 in passage of Acts 215 and 216 of 1976. I then worked with the Pennsylvania Joint State  
3 Government Commission to codify those laws into the Pennsylvania Public Utility Code.  
4 In 1977, I was appointed chief counsel to the Senate Democratic Floor Leader.

5 I then served two terms as a member of the Pennsylvania Public Utility  
6 Commission, the first from 1979 to 1985 during which time I co-authored with Norman  
7 James Kennard a guide to ratemaking before the Commission.<sup>1</sup> My second term was  
8 from 2005 to 2015. I was Chairman of the Commission from 2008 to 2011.

9 Between my two terms, I primarily represented clients before the Commission  
10 while serving as the managing partner of the Harrisburg office of the New York City law  
11 firm of LeBoeuf, Lamb, Greene & MacRae LLP (1988-1996) and then as a partner of the  
12 Harrisburg law firm of Rhoads & Sinon LLP (1996-2005).

13 From 1998 to 2003, I served on the Board of Directors of Pennsylvania-American  
14 Water Company, and from 1991 to 1999 on the Pennsylvania Energy Development  
15 Authority. Since 2016, I have served on the Board of Directors of The York Water  
16 Company.

17 From 1994 until 2014, I was an adjunct professor of federal administrative law and  
18 appellate advocacy at Widener University Commonwealth Law School in Harrisburg.

19 **Q. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY IN THIS PROCEEDING?**

20 A. No.

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<sup>1</sup> James H. Cawley and Norman James Kennard, A GUIDE TO UTILITY RATEMAKING BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION (2d ed. 2018) (hereinafter Cawley & Kennard Guide), *available at* [http://www.puc.pa.gov/General/publications\\_reports/pdf/Ratemaking\\_Guide2018.pdf](http://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf).

1 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

2 A. On behalf of the Pittsburgh Water and Sewer Authority (“PWSA” or “the Authority”),  
3 the purpose of my testimony is to provide my expert opinion regarding the direct  
4 testimony (pages 1-29 and 59-60) of Scott J. Rubin filed on behalf of the Pennsylvania  
5 Office of Consumer Advocate on July 21, 2020, which recommends that, given the  
6 economic effects of the current pandemic over the last five-month period, the  
7 Commission completely deny PWSA’s requested multiyear rate increases based on a  
8 theory of public utility ratemaking that rejects cash flow ratemaking principles and  
9 substitutes an ad hoc, overly broad, asymmetric, and essentially undefined customer  
10 affordability standard for ratemaking.

11 **Q. ARE YOU PRESENTING ANY EXHIBITS?**

12 A. Yes. I am including the responses of OCA to various discovery requests that describe the  
13 methodology and background of Mr. Rubin’s proposed ratemaking approach. All of  
14 these responses are included in Exhibit JHC-1 and include the below responses:

- 15 • Responses of OCA to PWSA Set II, Nos. 4, 10, 11, 12, 13, and 14.
- 16 • Responses of OCA to PWSA Set XI, Nos. 2, 5, 7, 9, 10, 11, 12, 14, 16, 17, 19,  
17 20, 21, 23, 24, 25, 26 and 28.

18 I am also sponsoring JHC-2 (Mr. Rubin’s testimony regarding Colony Water Systems)  
19 and JHC-3 (a resolution from the Commission during economic emergency).

20 **Q. DO YOU HAVE ANY PRELIMINARY MATTERS TO ADDRESS?**

21 A. Yes. I express the same disclaimers as Mr. Rubin does at pages 3-4 of his testimony. My  
22 testimony deals with regulatory policy issues. Given the nature of public utility  
23 regulation, much of the public policy in this field is constrained by and contained in  
24 decisions by regulatory agencies and courts; or in statutes, ordinances, or regulations. I  
25 cite to these types of sources, not as a legal opinion (although I am qualified to provide

1 expert testimony as a regulatory attorney in Pennsylvania), but rather as sources  
 2 supporting my expert opinion concerning appropriate public policy and regulatory  
 3 practice.

4 My references to a “utility” (singular or plural) refer to PWSA. My references to  
 5 “investors” refer, as Mr. Rubin does at page 4 of his testimony, to the holders of the  
 6 Authority’s outstanding bonds and other forms of debt.

7 **II. SUMMARY**

8 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

9 A. PWSA is a municipal utility that the legislature only recently placed under the  
 10 Commission’s jurisdiction, quite possibly because PWSA needs substantial infrastructure  
 11 improvements that would more likely occur under the Commission’s ratemaking  
 12 discipline.

13 The Authority urgently needs to continue the progress made in its first rate case  
 14 and to undertake very substantial construction to prevent the total failure of its system.  
 15 Slippage in this construction schedule because of inadequate rate support would increase  
 16 the risk to customers of catastrophic failures. Additionally, PWSA voluntarily committed  
 17 in its first rate case to remove all lead service lines from its system by 2026,<sup>2</sup> a promise  
 18 that cannot be kept without the requested and future rate relief.

19 Mr. Rubin recommends that the Commission “deny any rate increase to PWSA in  
 20 this case, unless it finds that an increase is needed for PWSA to comply with its bond  
 21 indentures.”<sup>3</sup> His recommendation should be rejected for the following reasons:

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<sup>2</sup> *Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority*, Docket Nos. R-2018-3002645 (Water) and R-2018-3002647 (Wastewater), Joint Petition for Settlement, November 29, 2018, at 9-13, adopted by Opinion and Order entered Feb. 27, 2019.

<sup>3</sup> OCA St. No. 1, p. 5.

- 1 1. Mr. Rubin abandons the Commission-mandated Cash Flow Method and  
2 normalized test year ratemaking in favor of a method that forsakes the  
3 required *balancing* of investors’ and customers’ interests by giving exclusive  
4 consideration to customers’ interests when prevailing economic conditions  
5 (such as the current pandemic) make it difficult for an undetermined number  
6 of them to pay their utility bills.
- 7 2. Mr. Rubin’s proposed method of conducting a general rate case short circuits  
8 the traditional and required ratemaking process before it begins and imposes a  
9 preordained result, giving PWSA no opportunity to prove its case. It is  
10 regulation by surveys, polls, and selective reference to economic data to  
11 determine PWSA’s revenue requirement. Fundamental ratemaking principles  
12 require that a utility’s revenue requirement be determined principally by an  
13 examination of the utility’s financial data. Customer interests must be  
14 considered as a matter of the required balancing of interests but cannot be  
15 completely overriding or exclusively determinative.
- 16 3. Mr. Rubin’s recommendation that, in times of economic distress, just and  
17 reasonable rates may be set within a “null” zone (reflecting the value and  
18 affordability of service to customers) that is below—instead of *within*—the  
19 traditionally regarded zone of reasonableness simply invites the Commission  
20 to confiscate PWSA’s property.
- 21 4. Mr. Rubin’s “bare bones” recommendation of rates that only meet PWSA’s  
22 debt coverage requirements is contrary to the Commission’s interpretation of  
23 the Cash Flow Method as described in its policy statement regarding rate  
24 making for the Philadelphia Gas Works, including revenue allowances from  
25 rates adequate to cover its reasonable and prudent operating expenses,  
26 depreciation allowances and debt service, as well as sufficient margins to meet  
27 bond coverage requirements and other internally generated funds over and  
28 above its bond coverage requirements.
- 29 5. His method is overly broad because all customers, including most customers  
30 who remain employed and even the wealthy would pay little or no rate  
31 increase.
- 32 6. His method is an arbitrary and an ad hoc method of setting rates that is not  
33 predictable because it lacks adequate standards. It therefore would be  
34 unacceptable to investors that have historically provided capital to PWSA and  
35 other Pennsylvania utilities with the result that capital will become more  
36 expensive and potentially not available in difficult economic conditions.
- 37 7. His proposal is fundamentally asymmetric because it would produce rates  
38 below the traditional zone of reasonableness during an economic disruption,  
39 but it undoubtedly would not produce rates above the zone of reasonableness  
40 in good economic times.
- 41 8. His method contravenes the Legislature’s intent in enacting Act 11 of 2012  
42 (creating a Distribution System Improvement Charge (DSIC), as PWSA has  
43 requested in this case)—to ensure that Commission-determined rates provide

1 as nearly as possible the Authority’s needed revenues at the time that the rates  
 2 are put into effect, for it to make desired infrastructure investments and to  
 3 increase employment opportunities in the Commonwealth.

- 4 9. He fails to recognize the important programs the Authority maintains for those  
 5 ratepayers who experience ability to pay situations, and he essentially ignores  
 6 substantial government aid provided in response to the COVID-19 pandemic  
 7 in determining whether the increase requested is affordable or not.

8  
 9 Rather than adopting Mr. Rubin’s ratemaking solution to assist customers in times  
 10 of pandemic or other serious economic dislocation, the Commission should (1) apply the  
 11 Cash Flow Method consistent with the policy statement, and (2) continue to ensure that  
 12 PWSA’s customers in financial need receive all possible help from PWSA and from state  
 13 and federal COVID-19 relief funding.

14  
 15 **III. MR. RUBIN’S AFFORDABILITY RATEMAKING METHOD**

16 **Q. PLEASE DESCRIBE MR. RUBIN’S RATEMAKING METHOD FOR**  
 17 **DETERMINING JUST AND REASONABLE RATES UNDER THE PUBLIC**  
 18 **UTILITY CODE.**

- 19 A. Section 1301 of the Public Utility Code<sup>4</sup> requires that “[e]very rate made, demanded, or  
 20 received by any public utility ... shall be just and reasonable, and in conformity with  
 21 regulations or orders of the commission.” In Mr. Rubin’s view, however, economic  
 22 circumstances and affordability determine the justness and reasonableness of rates,  
 23 viewed solely from the perspective of the utility’s customers.<sup>5</sup>

24 He contends that public utility rates should be adjusted to coincide with the ability  
 25 of (an unspecified number of) PWSA’s customers to pay their utility bills when their  
 26 incomes have been diminished (an unspecified degree) by current economic conditions.

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<sup>4</sup> 66 Pa.C.S. § 1301.

<sup>5</sup> OCA St. No. 1, pp. 7-11, 26.

1           He complains that traditional rate cases focus too much on investors’ interests and  
2           too little on customers’ interests.<sup>6</sup> “Ideally, rates should be set within a ‘zone of  
3           reasonableness’ which represents a range within which all of the relevant interests  
4           intersect,”<sup>7</sup> but “if interest rates or the levels of investment become very high, investors’  
5           minimum return requirements may become so high as to fall above the range of rates  
6           which consumers can afford to pay. When this happens, the rate regulators may have to  
7           set rates which fall outside of the normal zone of reasonableness [i.e., into a “null” zone  
8           lower than the lowest reasonable rate within the zone],”<sup>8</sup> because the interests of  
9           investors and consumers have “diverged.”<sup>9</sup>

10           He claims that, because PWSA’s filing is based on data from “normal” economic  
11           conditions which do not presently exist due to the current pandemic, the Commission  
12           cannot rely on such data to set just and reasonable rates.<sup>10</sup> Instead, he argues, the  
13           Commission “must act within the broad public interest”<sup>11</sup> and focus on what are just and  
14           reasonable rates under these extraordinary circumstances,<sup>12</sup> because “what may have  
15           been a ‘just and reasonable’ rate a few months ago may be unreasonable today.”<sup>13</sup>

16           Because “regulation is supposed to be a substitute for market forces, ...  
17           competitive businesses cannot sustainably raise prices when their customers’ incomes

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<sup>6</sup> *Id.*, pp. 11-12, 22.

<sup>7</sup> *Id.*, p. 8.

<sup>8</sup> *Id.*, p. 10 (and Figure 2 entitled “Divergent Interests: A Null Zone of Reasonableness”).

<sup>9</sup> *Id.*, p. 9.

<sup>10</sup> *Id.*, pp. 22, 28-29.

<sup>11</sup> *Id.*, p. 11.

<sup>12</sup> *Id.*, p. 22.

<sup>13</sup> *Id.*, p. 13.

1 have decreased significantly<sup>14</sup> ... That is the real-world competitive market that  
 2 regulation is trying to mirror.”<sup>15</sup>

3 In sum, “if economic conditions change such that rates become unaffordable to  
 4 many customers, rates may need to be reduced in order to remain ‘just and reasonable’  
 5 from the perspective of customers.”<sup>16</sup>

6 Consequently, he substitutes customer-determined value, quality, and  
 7 affordability of service ratemaking for the Commission-mandated Cash Flow Method of  
 8 ratemaking—described below—adopted by the Commission<sup>17</sup> under the Public Utility  
 9 Code to determine just and reasonable rates for PWSA’s customers.

10 **Q. IN MR. RUBIN’S VIEW, HOW SHOULD PWSA’S RATE CASE PROCEED?**

11 A. Applying his principles as I understand them, PWSA’s rate case would proceed as  
 12 follows:

13 (1) a determination of whether an economic dislocation exists, such as that caused  
 14 by the COVID-19 pandemic;

15 (2) an assessment of the severity and effects of the economic dislocation on  
 16 PWSA’s residential and small business customers by consulting various resources  
 17 that are extraneous to PWSA’s financial condition, such as unemployment data in  
 18 PWSA’s service area, Federal Reserve System surveys on household finances,  
 19 Federal Reserve Bank of Philadelphia surveys of the business community, U.S.  
 20 Census Bureau estimates of job losses, Electric Power Research Institute surveys  
 21 of customers’ concerns about paying their utility bills, and examples of utility  
 22 regulatory bodies in Canada and the United States postponing or denying rate  
 23 increase requests);<sup>18</sup> and

24 (3) a general conclusion (derived without discernable standards or dollars and  
 25 cents supporting data), based on selectively chosen information, that an imprecise

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<sup>14</sup> *Id.*, p. 12.

<sup>15</sup> *Id.*, p. 28; see also p. 7 (“It is often stated that regulation is a substitute for competitive market forces.”).

<sup>16</sup> *Id.*, p. 8.

<sup>17</sup> *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, Docket Nos. M-2018-2640802 (water) and M-2018-2640804 (wastewater), Final Implementation Order entered March 15, 2018, at pp. 27-28.

<sup>18</sup> OCA St. No. 1, pp. 13-21, 24-26.

1           number of PWSA’s customers may not be able afford to pay PWSA’s proposed  
2           increase in rates.<sup>19</sup>

3  
4           If these subjective criteria lead to such a conclusion, the Commission is precluded  
5           from lending any credence to PWSA’s projections for its fully projected future test year  
6           (“FPFTY”)—and “essentially every aspect of PWSA’s projections”—because there is too  
7           much uncertainty.<sup>20</sup> The Commission is also precluded from assuming that the rates  
8           based on such data will be just and reasonable.<sup>21</sup>

9           The rate case ends there, without giving PWSA an opportunity to present or prove  
10          its case, and existing rates continue without change.<sup>22</sup> The Commission would be  
11          required to deny PWSA’s multiyear rate increase request entirely “unless it finds that  
12          some increase is needed to ensure that PWSA meets its interest coverage obligation to  
13          bondholders.”<sup>23</sup>

14   **Q.    WHAT IF MR. RUBIN ACTUALLY INTENDS THAT PWSA BE GIVEN THE**  
15   **OPPORTUNITY TO PROVE ITS CASE?**

16   A.    I do not interpret his testimony as intending that because it only proposes determinations  
17          of affordability and seriousness of an economic dislocation that, if found to be valid, are  
18          dispositive. To save time, effort, and needless expense complying with filing and notice  
19          requirements, these determinations would best be done preliminarily, immediately after a  
20          utility notifies the Commission that it intends to file a rate increase request. All that

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<sup>19</sup> *Id.*, pp. 8, 12.

<sup>20</sup> *Id.*, pp. 12, 22, 28.

<sup>21</sup> *Id.*, p. 26.

<sup>22</sup> *Id.*, p. 26 (“To put all of this in terms of utility ratemaking: it would be neither just nor reasonable for PWSA to increase its rates at this time. The Commission should deny PWSA’s request in its entirety and keep PWSA’s existing rates (and all other tariff provisions) in effect.”).

<sup>23</sup> *Id.*, pp. 59, 5 (“unless it finds that an increase is needed for PWSA to comply with its bond indentures”).

1 would be required are preliminary determinations under Public Utility Code § 331(g)<sup>24</sup>  
2 (relating to powers of commission and administrative law judges; official notice defined)  
3 and Commission Rule of Administrative Practice and Procedure § 5.408 (relating to  
4 official and judicial notice of fact) that a serious economic dislocation exists that has  
5 rendered some percentage of the utility's customers unable to afford any increase in their  
6 utility rates. In addition to the types of extraneous information used by Mr. Rubin in his  
7 testimony, public input hearings may be necessary to convince the presiding officer that  
8 official and judicial notice of the economic dislocation is justified. The utility would, of  
9 course, be given the opportunity under § 331(g) to prove that a sufficiently serious  
10 economic dislocation did not exist, or that too few customers would find a rate increase  
11 unaffordable. If the utility is successful with its proof, the case could proceed normally  
12 with the introduction of evidence of the financial condition of the utility. But if official  
13 and judicial notice is taken of the economic dislocation and its unaffordability by some of  
14 the utility's customers, no rate relief is possible, so no further action by the utility would  
15 be permitted. Existing rates and tariff provisions would continue.

16 Even if Mr. Rubin intends that normal rate case procedures occur, the proceeding  
17 would be a pointless exercise because the result would be preordained if a serious  
18 economic dislocation exists and the rate increase is claimed to be unaffordable to some  
19 customers. His ratemaking method would make it impossible for the Authority to carry

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<sup>24</sup> 66 Pa.C.S. § 331(g) **Official notice defined.**--As used in this chapter the term "official notice" means a method by which the commission may notify all parties that no further evidence will be heard on a material fact and that unless the parties prove to the contrary, the commission's findings will include that particular fact.

1 its burden of proof under Section 315(a)<sup>25</sup> no matter what evidence it introduced into the  
 2 record regarding its need to increase its revenues.

3 **IV. FUNDAMENTAL PROBLEMS WITH MR. RUBIN'S CLAIMS**

4 **Q. DO YOU AGREE WITH MR. RUBIN THAT PUBLIC UTILITY RATES**  
 5 **SHOULD BE ADJUSTED TO COINCIDE WITH THE ABILITY OF PWSA'S**  
 6 **CUSTOMERS TO PAY THEIR UTILITY BILLS WHEN THEIR INCOMES**  
 7 **HAVE BEEN DIMINISHED BY CURRENT ECONOMIC CONDITIONS?**

8 A. No, I do not agree. First, if utility rates rose and fell in sync with changes in current  
 9 economic conditions and the effects on some portion of the utility's customer base, the  
 10 resulting unpredictability of revenues would seriously handicap utility management's  
 11 financial and construction planning. Rates would frequently fluctuate (sometimes  
 12 dramatically) depending on what was happening with the general economy. Sometimes  
 13 utilities would over earn and sometimes under earn. Sometimes customers would  
 14 overpay for service and sometimes under pay. Sometimes there would be sufficient  
 15 revenues for the utility to make needed improvements to ensure safety, and other times  
 16 not.

17 Regulation exists to ensure that utilities always earn no more than a fair amount  
 18 because they provide an essential service that is best achieved when the utility is  
 19 financially stable. Such stability fosters desirable predictability by ratemaking that  
 20 normalizes revenues and expenses and allows returns on investment for a period during  
 21 which the utility is given an opportunity to earn a return at that level.

22 Second, allowing utility rates to "yo-yo" with the economy would jeopardize not  
 23 only the financial stability of the utility but also service reliability and safety. To ensure

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<sup>25</sup> 66 Pa.C.S. § 315(a).

1 against such adversities, utility regulators are empowered to set the rates, terms, and  
 2 conditions of service of private and (as here) publicly owned utilities. To an extent,  
 3 especially during the rate design phase of rate cases, rates are permissibly lowered with  
 4 various programs for customers of lesser means by raising rates for others. Because  
 5 government must protect all its citizens, such subsidization within reasonable bounds is  
 6 entirely proper.

7 Patently impermissible and shortsighted, however, is reducing shareholder (or  
 8 bondholder) returns below the otherwise appropriate level to subsidize customers of  
 9 lesser means. If that occurs, investors raise the cost of capital to compensate for the  
 10 increased risk of obtaining a fair return. If diminishing returns is done in the extreme,  
 11 confiscation occurs, and investors take their money elsewhere leaving the utility in ever  
 12 more serious financial straits.

13 Thus, rather than Mr. Rubin's shortsighted "no increase in rates except to meet  
 14 interest coverages" solution to helping those of lesser means (from whatever cause), I  
 15 believe the better course is twofold, the first within regulators' authority and the second  
 16 not: (1) customer assistance programs, like those PWSA provides, coupled with state and  
 17 federal aid if available, and (2), because even temporary poverty is intolerable and private  
 18 charity never suffices, actions to help those impoverished to better afford utility service  
 19 by raising their income and increasing their wealth by (among other things) lowering  
 20 their cost of housing, health care, transportation, and education.

21 **Q. MR. RUBIN AT PAGES 11-12 OF HIS TESTIMONY CITES HIS PREVIOUS**  
 22 **TESTIMONY IN *COLONY WATER SYSTEM, LTD.*, DOCKET NO. R-00922375,<sup>26</sup>**  
 23 **REGARDING "JUST AND REASONABLE" RATES AND THE "ZONE OF**

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<sup>26</sup> Exhibit JHC-2, *Pennsylvania Public Utility Commission, Paul Maden, James A. Dimperio v. Colony Water Systems, Ltd.*, Docket No. R-00922375, Order entered June 10, 1993.

1       **REASONABLENESS”. DOES HIS TESTIMONY IN THIS CASE DIFFER FROM**  
2       **HIS EARLIER TESTIMONY?**

3       A.     Yes, it differs in an important regard although it substantially mirrors his earlier  
4       testimony. Rather than recommending (as he does here) complete denial of the utility’s  
5       rate increase request that allegedly would make service unaffordable to some customers,  
6       Mr. Rubin in *Colony Water* advocated a different ratemaking approach to proposed rates  
7       that were (in his view) “above the range of reasonableness from the consumers’  
8       perspective; particularly the perspective of low-income consumers.”<sup>27</sup> In doing so, he  
9       elaborated on his theory of a “null” zone of reasonableness that substantially agrees with  
10      my testimony regarding the proper responses to rates that cause difficulty to some  
11      customers.

12             Specifically, I believe his *Colony Water* testimony is consistent with my view that  
13      needed revenue increases should be responsibly granted, and that customers who cannot  
14      afford the increase should be helped with all available financial assistance. His earlier  
15      testimony gives an example of electric rates “which are unaffordable for some segments  
16      of the population.” In response to such rates, he describes the same types of help that I  
17      recommend when rates must be set at a level that causes some customers difficulty:  
18      “Some responses to that problem have been energy assistance funds, customer assistance  
19      programs, lifeline rates, and the like which effectively reduce rates for low-income  
20      consumers so that they lie within their range of affordable rates.”<sup>28</sup> These responses are  
21      more appropriate and responsible than complete denial of the requested increase.

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<sup>27</sup> *Id.*, p. 10.

<sup>28</sup> *Id.*

1 **Q. IS THERE SUCH A THING AS A “NULL” ZONE LOWER THAN THE**  
 2 **LOWEST REASONABLE RATE WITHIN THE TRADITIONAL ZONE OF**  
 3 **REASONABLENESS?**

4 A. No. A rate, or a return on investment, is either reasonable—i.e., neither confiscatory of  
 5 the utility’s property nor exploitive of customers, or it is unreasonable—i.e., it is  
 6 confiscatory or exploitive. A “null” rate or return on investment falling below the lowest  
 7 reasonable rate within the traditional zone of reasonableness is confiscatory.

8 **Q. MR. RUBIN RECOMMENDS THAT THE COMMISSION “ACT WITHIN THE**  
 9 **BROAD PUBLIC INTEREST.” DOES THAT MEAN THAT CUSTOMERS’**  
 10 **INTERESTS CAN BE FAVORED OVER INVESTORS’ INTERESTS TO**  
 11 **DETERMINE JUST AND REASONABLE RATES IN TIMES OF ECONOMIC**  
 12 **DISTRESS?**

13 A. No, that is not what “acting in the broad public interest” means. Favoring customers’  
 14 interests (or investors’ interests) would be a distortion of the most accepted principle of  
 15 utility ratemaking announced in the famous *Hope* decision by the U.S. Supreme Court:<sup>29</sup>  
 16 rates are defined to be just and reasonable if they *balance* consumer and investor  
 17 interests. The public interest is determined by a balancing of the interests without  
 18 favoring either of them. It is an amalgam of both as determined by the discretion of the  
 19 Commission.

20 Mr. Rubin acknowledges that principle<sup>30</sup> but wrongly applies it by changing what  
 21 he perceives as bias favoring investors’ interests to bias favoring customers’ interests.  
 22 Thus, he advocates that, because the pandemic adversely affects some customers, no just  
 23 and reasonable rate beyond existing rates is possible or justified. This, of course, is not  
 24 the required balancing of interests but improper unbalancing of interests.

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<sup>29</sup> *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

<sup>30</sup> OCA St. No. 1, p. 8 (“In setting rates, regulators should attempt to balance the interests of all relevant sectors of the public.”).

1           Here, it is especially important for the Commission to take not only a broad view  
 2 of the public interest but a long one as well because utilities provide essential services  
 3 that require ongoing investment supported by regular and rational rate relief, especially to  
 4 put in place costly long-lived infrastructure made possible by indispensable private  
 5 investors. More than most Pennsylvania utilities, PWSA is in need of such a long view  
 6 because of the condition of its infrastructure and the commitments it made in settlement  
 7 of its first rate case.<sup>31</sup>

8 **Q. TO SET PWSA’S RATES, SHOULD THE COMMISSION MIRROR**  
 9 **COMPETITIVE MARKET FORCES?**

10 A. No. Competitive market pricing is incompatible with regulation of natural monopolies  
 11 like public and municipal utilities because, unlike competitive enterprises, they are not  
 12 free to charge what the market will bear. As I noted previously, utilities are limited to no  
 13 more than a fair return in good times and bad because their service is “affected with the  
 14 public interest.” Because their service is essential to the public’s health, safety, and  
 15 convenience, they are intentionally insulated from the boom and bust cycles characteristic  
 16 of many competitive enterprises.

17           Utilities are therefore protected from some of the downside risks of the business.  
 18 As I state below regarding the asymmetry of Mr. Rubin’s recommendations, in return for  
 19 that protection, the utility surrenders the upside opportunity to make large economic  
 20 profits were it to be an exceptionally brilliant or lucky performer.

21           In the end, the “competitive forces” suggestion is an exercise in circular

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<sup>31</sup> *Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority*, Docket Nos. R-2018-3002645 (Water) and R-2018-3002647 (Wastewater), Joint Petition for Settlement, November 29, 2018, adopted by Opinion and Order entered Feb. 27, 2019.

1 reasoning: because competitive markets cannot work as intended where monopoly  
 2 service is provided, rate regulation is necessary, but in setting rates, every effort should  
 3 be made to mirror the outcome of a competitive market.

4 Consequently, Mr. Rubin errs in arguing that “regulation is supposed to be a  
 5 substitute for market forces, ... competitive businesses cannot sustainably raise prices  
 6 when their customers’ incomes have decreased significantly.”<sup>32</sup> PWSA is not a  
 7 competitive business because, in Mr. Rubin’s words, “it would be economically  
 8 inefficient (more expensive) to have competing enterprises provide the service.”<sup>33</sup>

9 **Q. MR. RUBIN CITES REGULATORY PRECEDENTS, PAST AND PRESENT,**  
 10 **REGARDING RATEMAKING DURING A PANDEMIC. ARE YOU AWARE OF**  
 11 **STATE REGULATORY COMMISSIONS DEFERRING DECISIONS AND**  
 12 **SUPPRESSING RATES BECAUSE OF ECONOMIC DISLOCATIONS?**

13 A. Like Mr. Rubin, I have not conducted exhaustive research to try to identify every  
 14 regulatory and utility response to rate setting during the pandemic. I am not impressed,  
 15 however, by the seven current American and two Canadian examples he cites.<sup>34</sup> There  
 16 surely are dozens of rate cases in the United States that have been decided or are  
 17 underway because of the pressing need to sustain essential public utility services despite  
 18 the adverse effects of the pandemic. Under the best of circumstances, other state  
 19 commissions’ decisions are of limited precedential value because of differing laws and  
 20 regulatory rules in those states and the uniqueness of every utility’s financial makeup,  
 21 climate, customer mix, management structure and ability, and the like.

22 Without intending to offer a legal opinion but merely to state facts obvious to any

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<sup>32</sup> *Id.*, p. 12.

<sup>33</sup> *Id.*, p. 7.

<sup>34</sup> *Id.*, pp. 24-25.

1 observer, I am equally unimpressed by Mr. Rubin’s citation of *Donham v. Public Service*  
2 *Commission*, 232 Mass. 309, 122 N.E. 397 (1919),<sup>35</sup> or his reliance on that case’s  
3 quotation from *Missouri, Kansas & Topeka Railway Co. v. Interstate Commerce*  
4 *Commission*, 164 Fed. 645, 648 (1908) (confirming the settled principles that investors’  
5 and customers’ interests must be balanced, and that a utility bears the burden of failing to  
6 achieve its allowed return if it operates imprudently or inefficiently).

7 *Donham* itself is a lonesome and factually inapt precedent for making a valid  
8 public policy recommendation for the present pandemic circumstances. The court cited  
9 six reasons for the streetcar company’s dire financial straits, listing “the wide prevalence  
10 of the epidemic known as influenza, a factor seriously affecting receipts [only] during  
11 October and November, 1918.”<sup>36</sup> The first five reasons were “(1) Heavy increase in  
12 wages likely to absorb sixty-five to seventy per cent of yearly receipts on present basis;  
13 (2) great increase in cost of steel, coal, copper and other materials necessary for  
14 operation; (3) offset of increase in fares by loss of traffic; (4) the adverse conditions of  
15 poor equipment; (5) lack of profit on many country lines.”<sup>37</sup> The Massachusetts Public  
16 Service Commission’s underlying decision stated, “It is clear that the chief factor in the  
17 present unfortunate plight of this company is the recent extraordinary rise in wages and  
18 prices, rather than any of these things. ... The problem is ... meeting the necessary and  
19 unavoidable cost of furnishing the service.”<sup>38</sup> In short, the economic effects of the  
20 influenza epidemic had little to do with the Commission’s decision, while the court’s

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<sup>35</sup> *Id.*, p. 22.

<sup>36</sup> 122 N.E. at 400.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, 122 N.E. at 401.

1 decision primarily concerned the propriety of the rates proposed by the receiver of the  
2 streetcar company's parent company versus the trial period rates set by the Commission.

3 As an historical matter, rate suppression was not common during our nation's  
4 most severe economic dislocation, the Great Depression of the 1930's. In fact, the  
5 treatment of public utilities by the courts and state commissions during the Great  
6 Depression provides no precedent for what Mr. Rubin proposes because of the adverse  
7 economic effects of the current pandemic. As observed in the most classic of public  
8 utility law treatises (first published by James C. Bonbright in 1961),<sup>39</sup> "On the whole, the  
9 utility companies were treated very liberally by the courts and by most commissions  
10 during the 1930s, with the result that their rates either remained at about predepression  
11 levels or else were reduced only to a minor extent—in some cases voluntarily."<sup>40</sup>

12 This is consistent with the Pennsylvania Public Service Commission's actions in  
13 1932 and 1934. By resolution, the Commission first initiated an investigation on April 5,  
14 1932, by a two-commissioner committee which was directed to hold conferences  
15 principally with the Commonwealth's electric utilities (although it met with other utilities  
16 as well) "concerning the reasonableness of [their] rate schedules and structures" with the  
17 committee's findings to be reported to the full Commission. The committee's report  
18 resulted in a further resolution adopted on April 2, 1934:

19 That so long as the present economic conditions of the country exist, this  
20 Commission believes that an annual rate of return of 6 per centum to public  
21 service companies in its jurisdiction is a fair and reasonable return on the  
22 value of the property used and useful in the rendition of the service to the

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<sup>39</sup> Available at

file:///C:/Users/J%20and%20K/Downloads/1961%20EDITION%20JAMES%20C.%20BONBRIGHT'S%20PRINCIPLES%20OF%20PUBLIC%20UTILITY%20RATES%20(L0898246xA35AE)%20(1).pdf.

<sup>40</sup> James C. Bonbright, Albert L. Danielsen, and David R. Kamerschen, PRINCIPLES OF PUBLIC UTILITY RATES (2d ed. 1988), PPUR CH 14, 2005 WL 998348 at 22.

1 public; and further, that the Commission confer with representatives of the  
 2 public service companies earning more than a fair return upon this basis for  
 3 the purpose of having them revise their rate structures to conform to this  
 4 annual rate of return.<sup>41</sup>  
 5

6 Notably, in the midst of the Depression, like other commissions around the  
 7 country as described by Bonbright, the Commission adopted a uniform benchmark *fair*  
 8 rate of return that I believe was consistent with allowed returns of the time, rather than  
 9 denying rate relief or freezing rates at current levels. It did so by resolution, not order,  
 10 and apparently relied on and achieved voluntary compliance after informal discussions.<sup>42</sup>

11 The authors who updated Bonbright’s treatise added the helpful observation that,  
 12 “In more recent years, business-cycle experts have become skeptical of proposals to  
 13 combat a depression by enforced reductions of administered prices, and attention has  
 14 been turned to other alternatives including the possibility of using the versatile machinery  
 15 of government to encourage private utilities *to maintain their construction and equipment*  
 16 *budgets*, even when their existing plants are partly idle because of a temporary drop in  
 17 demand.”<sup>43</sup>

18 Regarding the courts’ treatment of public utilities during the Depression, one  
 19 famous (but also lonesome) case stands out, as described by Bonbright:

20 A significant though vain attempt to invoke a value standard of reasonable  
 21 rate levels in the interest of ratepayers was made by the Wisconsin Public  
 22 Service Commission during the depression of the 1930s. In 1934 the  
 23 Commission ordered the Wisconsin Telephone Company to reduce its rates,  
 24 not on the ground that they were yielding a rate of return that would be  
 25 judged excessive by tests applicable to normal years, but rather on the

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<sup>41</sup> *Re Utility Rates During Economic Emergency*, 3 P.U.R. NS 123, 125 (Pa. P.S.C. 1934), included herein as Exhibit JHC-3.

<sup>42</sup> The Commission did not gain authority to order temporary rates until enactment of the Act of May 28, 1937, P.L. 1053, § 310, 66 P.S. § 1150 (now 66 Pa.C.S. § 1310).

<sup>43</sup> *Id.* (emphasis added).

1 ground that some decrease in rates was called for in response to the  
 2 reduction in general price levels and in consumer incomes. In an opinion  
 3 speaking for the Commission, Chairman Lilienthal made the point that the  
 4 depression had resulted in a decrease in the (money) value of telephone  
 5 service. But the Commission’s order was overruled by the Wisconsin  
 6 Supreme Court, which held that even a severe business depression did not  
 7 deprive the utility company of a constitutional right to the enjoyment of an  
 8 opportunity to earn a fair rate of return.<sup>44</sup>  
 9

10 **V. PWSA’S UNIQUENESS AND WHY IT MATTERS**

11 **Q. WHAT IS YOUR OPINION OF MR. RUBIN’S PROPOSED “AFFORDABILITY”**  
 12 **RATEMAKING PROPOSAL?**

13 A. It demonstrates a fundamental misunderstanding of PWSA’s uniqueness and of the Cash  
 14 Flow Method of ratemaking.

15 **Q. HOW IS PWSA UNIQUE AND WHY DOES IT MATTER?**

16 A. PWSA is the only entity regulated by the Commission that is (1) a municipal authority  
 17 providing water, wastewater, and storm water service (2) regulated by the Commission  
 18 pursuant to Act 65 of 2017,<sup>45</sup> and that is (3) subject to calculating its revenue  
 19 requirement using the Cash Flow Method consistent with the Commission’s policy  
 20 statement set forth at 52 Pa. Code §§ 69.2702 & 2703<sup>46</sup> announcing the ratemaking  
 21 elements, procedures, and considerations it will use in setting just and reasonable rates  
 22 for PWSA.

23 Most urgently, I am informed by the Authority that PWSA is unique because it  
 24 must undertake very substantial construction to prevent the total failure of its system, and

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<sup>44</sup> *Id.*, PPUR CH 6, 2005 WL 998339 at 2. See also *Wisconsin Tel. Co. v. Pub. Serv. Comm’n*, 232 Wis. 274, 324-26, 287 N.W. 122, 147 (1939), *cert. denied*, 309 U.S. 657 (1940); William A. Prendergast, *The “Economic Emergency” as a Factor in Rate Making*, 10 Pub. Util. Fort. 243 (1932) (criticizing the Wisconsin Public Service Commission’s decision; Prendergast was the former chairman of the New York Public Service Commission).

<sup>45</sup> See 66 Pa.C.S. §§ 3201-3209.

<sup>46</sup> *Application of PGW Cash Flow Ratemaking Method—Final Statement of Policy*, 40 Pa.B. 2668 (2010), 52 Pa. Code §§ 69.2701-2703.

1 that slippage in this construction schedule because of inadequate rate support would  
2 increase the risk to customers of catastrophic failures. PWSA is also unique because it  
3 voluntarily committed in its first rate case to remove all lead service lines from its system  
4 by 2026,<sup>47</sup> a promise that cannot be kept without the requested and future rate relief.

5 PWSA's uniqueness also matters because, unlike public utilities that are owned  
6 by their shareholders who provide equity capital to supplement their other sources of  
7 financing for operations and infrastructure, PWSA's only source of revenue is its  
8 customer base supplemented by borrowing and other credit facilities requiring the  
9 payment of interest and principal by those same customers.

10 Mr. Rubin's "interest coverage only" recommendation fails to appreciate that  
11 substantial additional cash is needed for a host of other expenses over and above the  
12 revenue needed to meet the Authority's bond coverage and other debt requirements.  
13 Without rates that produce this extra revenue, PWSA simply cannot pay its bills. If that  
14 were to occur, the Authority's credit rating would fall (raising the cost to borrow) and its  
15 ability to provide safe, adequate, and reliable service at reasonable rates would decline.

16 Thus, perhaps unwittingly, Mr. Rubin has suggested a perfect way for those he  
17 professes to protect to instead suffer harm. If the Commission were to adopt his  
18 recommendation, the opposite of what he intends would occur—those having difficulty  
19 paying their bills would have even more difficulty doing so as PWSA paid more to  
20 borrow needed revenue to provide safe, adequate, and reliable service and those costs are  
21 passed on to customers, as they must be.

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<sup>47</sup> *Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority*, Docket Nos. R-2018-3002645 (Water) and R-2018-3002647 (Wastewater), Joint Petition for Settlement, November 29, 2018, at 9-13, adopted by Opinion and Order entered Feb. 27, 2019.

1 PWSA's uniqueness also matters because, if consistently reasonable, rational, and  
 2 carefully balanced (between ratepayers and investors) ratemaking is abandoned by, for  
 3 example, adopting one-sided measures like Mr. Rubin's "bare bones, interest coverage  
 4 only" approach, the result for a vulnerable municipal utility like PWSA will be (1) a loss  
 5 of confidence by the investment community in the Commission's willingness to provide  
 6 PWSA with the financial wherewithal to persevere with its betterment efforts; (2) a  
 7 perception that investing in PWSA is riskier; and (3) therefore a demand for a greater  
 8 yield on any investments made in PWSA's bonds and credit facilities, which inexorably  
 9 must be passed onto to PWSA's customers in higher rates. Instead of seeing progression  
 10 and hard-fought momentum maintained, investors would see regression and backsliding.

11 PWSA's customers should not be forced to pay much more for such  
 12 shortsightedness. They expect that PWSA's managers and the Commission will protect  
 13 them from the entirely avoidable costs of myopic ratemaking however well intentioned.

14 **VI. PROPER STATUTORY RATEMAKING**

15 **Q. WHAT ARE THE FUNDAMENTAL PRINCIPLES OF THE CASH FLOW**  
 16 **METHOD OF UTILITY RATEMAKING?**

17 A. PWSA came under Commission regulation pursuant to the act of December 21, 2017,  
 18 P.L. 1208, No. 65, which added Chapter 32 to the Public Utility Code, 66 Pa.C.S. §§  
 19 3201-3209 (relating to water and sewer authorities in cities of the second class). Section  
 20 3202(a) provides that, as of April 1, 2018, with the exception of Code Chapters 11 and  
 21 21, "the provisions of this title ... shall apply to an authority [as defined by Section 3201]  
 22 in the same manner as a public utility," and Section 3204(a) provides that "[t]he  
 23 commission shall conduct a rate proceeding in accordance with the commission's  
 24 procedures for tariff filings."

1           As noted previously, the Commission in its Final Implementation Order directed  
 2           that PWSA’s revenue requirement be determined using the debt service coverage-based  
 3           rate making method (known as the Cash Flow Method) that it described in its policy  
 4           statement regarding rate making for the Philadelphia Gas Works.<sup>48</sup> The policy statement  
 5           is therefore equally applicable to PWSA.

6           In its policy statement, the Commission described the requirements of the Cash  
 7           Flow Method as follows:

8           The Commission is obligated under law to use the cash flow methodology  
 9           to determine PGW’s just and reasonable rates. Included in that requirement  
 10          is the subsidiary obligation *to provide revenue allowances from rates*  
 11          *adequate to cover its reasonable and prudent operating expenses,*  
 12          *depreciation allowances and debt service, as well as sufficient margins to*  
 13          *meet bond coverage requirements and other internally generated funds over*  
 14          *and above its bond coverage requirements,* as the Commission deems  
 15          appropriate and in the public interest for purposes such as capital  
 16          improvements, retirement of debt and working capital.<sup>49</sup>

17          In addition to debt service coverage, the Commission also stated in its policy statement  
 18          that it would consider in determining just and reasonable rate levels for PGW (and  
 19          therefore for PWSA) the following *financial* factors:<sup>50</sup>

- 20           1. PGW’s test year-end and (as a check) projected future levels of non- borrowed  
 21           year-end cash.
- 22           2. Available short-term borrowing capacity and internal generation of funds to  
 23           fund construction.
- 24           3. Debt-to-equity ratios and financial performance of similarly situated utility  
 25           enterprises.

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<sup>48</sup> *Application of PGW Cash Flow Ratemaking Method—Final Statement of Policy*, 40 Pa.B. 2668 (2010), 52 Pa. Code §§ 2701-2703. See also Cawley & Kennard Guide at 157-60.

<sup>49</sup> 40 Pa.B. at 2672; 52 Pa. Code § 69.2702(b) (emphasis added).

<sup>50</sup> 52 Pa. Code § 69.2703(a).

- 1                   4. Level of financial performance needed to maintain or improve PGW’s bond  
2 rating, thereby permitting PGW to access the capital markets at the lowest  
3 reasonable costs to customers over time.

4                   And the following *non-financial* factors:

- 5                   1. Level of operating and other expenses in comparison to similarly situated  
6 utility enterprises.  
7                   2. PGW’s management quality, efficiency and effectiveness.  
8                   3. Service quality and reliability.  
9                   4. Effect on universal service.<sup>51</sup>

10  
11                   The Commission is obligated to establish rate levels adequate to permit PWSA to  
12 satisfy its bond ordinance covenants, the most important of which is the debt service  
13 coverage covenant.<sup>52</sup> Debt service coverage ratio is a financial metric used to determine  
14 the utility service provider’s ability to generate enough income in its operations to cover  
15 annual debt expenses (interest and principal). The formula (generally) is net operating  
16 income divided by debt service.

17                   Therefore, “rather than having its revenue requirement determined on the basis of  
18 a fair rate of return on a used and useful rate base, PWSA’s rates are set by determining  
19 the levels of cash necessary to fund an operating budget that enables PWSA to operate

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<sup>51</sup> *Id.*

<sup>52</sup> Public Utility Code § 3208(c)(1), 66 Pa.C.S. § 3208(c)(1) (“The commission shall permit an authority to impose, charge or collect rates or charges as necessary to permit the authority to comply with its covenants to the holders of any bonds or other financial obligations.”). *See also* 52 Pa. Code § 69.2703(b); *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket No. R-00006042, Opinion and Order (October 4, 2001) at 43, *aff’d*, *City of Philadelphia v. Pa. Pub. Util. Comm’n*, 829 A.2d 1241 (Pa. Cmwlth. 2003) (“[T]he Commission is required to ensure that PGW is able to maintain an adequate level of financial health required to fund operations and meet debt service requirements.”).

1 and maintain the system, pay for needed capital improvements and maintain access to the  
 2 capital markets at reasonable rates.”<sup>53</sup>

3 **Q. DOES MR. RUBIN’S RATEMAKING METHOD COMPLY WITH THESE**  
 4 **REQUIREMENTS FOR DETERMINING JUST AND REASONABLE RATES?**

5 A. No, it does not, with my opinion based on my experience as a member of the  
 6 Commission, because it departs completely from Public Utility Code Section 3204(a)  
 7 (requiring the Commission to conduct a PWSA rate proceeding in accordance with its  
 8 procedures for tariff filings, including tariffs proposing increased rates) and the  
 9 Commission’s policy statement set forth at 52 Pa. Code §§ 69.2702 & 2703.

10 Section 1301 of the Public Utility Code requires the Commission to regulate  
 11 utilities within its jurisdiction to ensure that the rates it establishes are just and reasonable  
 12 for PWSA and all utilities and their customers. Quoting again from the Commission’s  
 13 Policy Statement:

14 The Commission is obligated under law to use the cash flow methodology  
 15 to determine PGW’s just and reasonable rates. Included in that  
 16 requirement is the subsidiary obligation to provide revenue allowances  
 17 from rates adequate to cover its reasonable and prudent operating  
 18 expenses, depreciation allowances and debt service, *as well as* sufficient  
 19 margins to meet bond coverage requirements and other internally  
 20 generated funds over and above its bond coverage requirements, as the  
 21 Commission deems appropriate and in the public interest for purposes  
 22 such as capital improvements, retirement of debt and working capital.<sup>54</sup>  
 23

24 A Commission order deciding a “tariff filing” seeking approval of a general rate  
 25 increase pursuant to 66 Pa.C.S. § 1308(d), as here, that only allowed a rate increase  
 26 permitting PWSA “to comply with its bond indentures” (as Mr. Rubin recommends),

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<sup>53</sup> *Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority*, Docket Nos. R-2018-3002645 (Water) and R-2018-3002647 (Wastewater), Recommended Decision, Jan. 17, 2019, at 41, adopted by Opinion and Order entered Feb. 27, 2019.

<sup>54</sup> 40 Pa.B. at 2672; 52 Pa. Code § 69.2702(b) (emphasis added).

1 would ignore the other described financial needs to fund capital improvements,  
 2 retirement of debt, and working capital. Such a miserly “bare bones” approach is not  
 3 consistent with the Commission’s requirements for just and reasonable rates as stated in  
 4 the quoted passage from the Policy Statement.

5 **Q. WHAT OCCURS ONCE THE REVENUE REQUIREMENT HAS BEEN**  
 6 **DETERMINED?**

7 A. Once PWSA’s revenue requirement has been determined, the final step is the translation  
 8 of the overall increase into tariffs (replacing those initially filed to produce the proposed  
 9 rate increase), a process called “rate design” or determining the “rate structure.” Once  
 10 the size of the “pie” is determined in the revenue requirement process, it is then parsed  
 11 into “slices”—groupings of customers with similar usage patterns. There are two steps:  
 12 the allocation of revenue responsibility between the rate classes and the distribution of  
 13 that portion into individual rate elements.

14 Like investor-owned utilities, PWSA provides a cost of service study in rate cases  
 15 that allocates plant in service, depreciation expense, return dollars, and net income by  
 16 class so that the Commission can determine if the revenue received from each class is  
 17 more or less than the cost of providing service to that class.

18 Beyond the basic concern of allowing PWSA the opportunity to recover the  
 19 allowed revenue increase, there are a variety of other factors to be considered: the cost of  
 20 service by rate class, value of service, gradualism (meaning rates should not be raised too  
 21 abruptly), policy objectives (e.g., conservation), and social welfare considerations.<sup>55</sup> But  
 22 these factors go to how the “pie” is to be sliced; not the size of the pie in the first place.

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<sup>55</sup> See Cawley & Kennard Guide, pp. 138-155.

1           Other examples of relevant factors include the utility's recent and past rate history  
 2 and rate programs of the utility, the sales characteristics of the various classes of  
 3 consumers, the practicability of administering the schedules, the value of the service to  
 4 the various consumers, the promotional aspects of the rates, and the competition in  
 5 certain areas by other fuels.<sup>56</sup>

6           More pertinent to our present economic circumstances, rate structures may be  
 7 modified from time to time in response to changes in economic conditions, whether  
 8 general changes or changes especially affecting particular classes of customers.<sup>57</sup>

9 Adjustments should not be made for temporary economic fluctuations.<sup>58</sup>

10 **Q. ARE YOU SUGGESTING THAT THE COVID-19 PANDEMIC IS A**  
 11 **TEMPORARY ECONOMIC FLUCTUATION?**

12 A. Whether the current pandemic remains serious for customers when PWSA's proposed  
 13 rates are scheduled to go into effect remains to be seen, but that will be reflected in the  
 14 level of the Authority's arrearages, uncollectible accounts expense, and most importantly,  
 15 participation rates in the Authority's customer assistance programs and initiatives that  
 16 may become the subject of future proceedings. Meanwhile, the parties to this case should  
 17 focus on the reasonableness of PWSA's FPFTY projections.

18 **Q. WHY DO YOU SUGGEST SUCH A FOCUS?**

19 A. Sound and accepted utility ratemaking should not be deterred by unsettling economic  
 20 circumstances because PWSA's obligation to provide *essential* safe, adequate, and  
 21 reliable service at reasonable rates is not suspended during such times. PWSA's need to

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<sup>56</sup> *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 126 A.2d 777, 785-86 (Pa. Super. 1956).

<sup>57</sup> *U.S. Steel Corp. v. Pa. Pub. Util. Comm'n*, 390 A.2d 865, 871 (Pa. Cmwlth. 1978).

<sup>58</sup> *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 144 A.2d 648, 660 (1958).

1 recover its operating expenses and attract capital does not disappear during difficult  
2 economic straits.

3 Mr. Rubin’s advocacy urging complete regulatory distrust and rejection of  
4 PWSA’s claims because of the uncertainty of existing or anticipated economic conditions  
5 is not sound public policy. No one has a crystal ball, but ratemaking is prospective and  
6 must occur somehow because, again, PWSA provides an *essential* public service. That  
7 “somehow” is facilitated using test year data and projections of revenue and expenses as  
8 reasonably as they can be determined, which is a process authorized by Pennsylvania’s  
9 General Assembly.<sup>59</sup>

10 Because PWSA’s service is essential to the public’s health, welfare, and safety in  
11 good times and in bad, the Commission and its counterparts across the nation use the test  
12 year method to provide reasonable rate certainty during the period when the rates will be  
13 in effect.<sup>60</sup> The use of a test year is a sound and reasonable basis for establishing a  
14 representative level of prospective rates. It allows for a reasonable measure of  
15 predictability and semi-permanence in ratemaking.

16 The test year concept is such a basic tenet of ratemaking that the use of a fully  
17 projected future test year (“the twelve month period beginning with the first month that  
18 the new rates will be placed in effect after application of the full suspension period”) was  
19 recognized by the General Assembly under Act 11 of 2012 and is now embodied in  
20 Section 315(e) of the Public Utility Code.

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<sup>59</sup> See Public Utility Code Section 315(e) (relating to burden of proof; use of future test year), 66 Pa.C.S. § 315(e).

<sup>60</sup> See Cawley & Kennard Guide, pp. 85-88.

1 **Q. HOW DOES THIS BEAR ON THE PROPRIETY OF MR. RUBIN’S PROPOSED**  
 2 **METHOD OF RATEMAKING?**

3 A. His method is the antithesis of accepted ratemaking principles because it is based on  
 4 abnormal, extraordinary conditions, while the test year concept rejects abnormal  
 5 distortions and reflects typical conditions (which guards against, at any given time, the  
 6 utility either receiving too much or too little, and customers either paying too much or too  
 7 little).

8 **Q. MR. RUBIN SUGGESTS, HOWEVER, THAT A UTILITY’S RATE INCREASE**  
 9 **IS ALWAYS CONTINGENT ON NON-ECONOMIC CIRCUMSTANCES,**  
 10 **SPECIFICALLY THE UTILITY’S PROVISION OF SAFE, ADEQUATE AND**  
 11 **REASONABLE SERVICE AND THAT COMMISSIONS IN THE PAST HAVE**  
 12 **DENIED RATE INCREASES FOR FAILURE TO MEET THIS “SAFE AND**  
 13 **ADEQUATE” STANDARD. CAN YOU COMMENT?**

14 A. Mr. Rubin may be correct that a (perhaps implicit) “quid pro quo” for a utility rate  
 15 increase is a determination that the utility is in fact meeting its obligations to provide  
 16 safe, adequate and reasonable service as required by Public Utility Code Section 1501.<sup>61</sup>  
 17 From my experience as a member of the Commission for many years, in a rate case of a  
 18 utility that exhibits severe service quality deficiencies, the Commission accounts for them  
 19 in a variety of ways. In its rate order it may be more skeptical of the utility’s expense  
 20 prudence claims, disallowing some or all of them. It may deny inclusion of items in the  
 21 company’s rate base. It may award a rate of return on that rate base at a lower end of the  
 22 zone of reasonableness. It invariably will require the company to correct the deficiencies,  
 23 and it will monitor the company to ensure compliance.

24 Notably, however, service quality problems do not justify a confiscatory rate

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<sup>61</sup> 66 Pa.C.S. § 1501 (“Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.”).

1 order (one falling below the zone of reasonableness) that arbitrarily denies otherwise  
2 legitimate and prudent expenses and rate base additions.

3 In my experience, significant service quality problems usually plague very small  
4 companies, and the Commission has little choice but to grant rate relief to enable the  
5 utility to make the necessary improvements, subject to Commission monitoring. Denying  
6 most or all the rate increase request would be counterproductive and only worsen service  
7 quality.

8 I recall only one complete denial of a large public utility's rate increase request  
9 based on service inadequacies.<sup>62</sup> It involved a rate case filed by Pennsylvania Gas &  
10 Water Company, whose divisions have long since been sold to other utilities. The denial  
11 was based on what the Commission perceived as a very grave systemic failure by the  
12 company to construct adequate water filtration facilities that resulted in widespread  
13 intestinal sickness among the company's customers from a giardia infestation in the  
14 company's reservoirs. The infestation was likely caused by overly lax local regulation of  
15 residential housing development near some of the company's reservoirs, but the  
16 Commission faulted the company for not preventing the sickness with adequate water  
17 filtration. The Commission's refusal to grant any rate relief until the utility constructed  
18 eight new water filtration plants over a period of years nearly bankrupted the company  
19 and caused it to defend opportunistic lawsuits that were unsuccessful but very costly to  
20 defend. For lack of adequate revenues, the company struggled to maintain service quality  
21 until all eight new plants were completed. I know all this because I represented the

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<sup>62</sup> *Pennsylvania Public Utility Commission v. Pennsylvania Gas & Water Co.*, 61 Pa. P.U.C. 409, 74 P.U.R.4<sup>th</sup> 238 (1986).

1 company throughout the rate case and meritless lawsuits. The case involved extreme  
 2 circumstances that certainly do not exist in PWSA's service territory despite its urgent  
 3 need to replace key infrastructure.

4 Here, Mr. Rubin does not claim that PWSA's service is inadequate as a basis for  
 5 adopting his "bare bones" "interest coverage only" ratemaking method.<sup>63</sup> He therefore is  
 6 precluded on service quality grounds from justifying rates falling in a "null" (i.e., below  
 7 the) zone of reasonableness any more than he can do so based on a subjective and  
 8 standardless determination that PWSA's customers cannot afford a rate increase beyond  
 9 that necessary to meet PWSA's interest coverage requirements.

10 **VII. THE CONFISCATORY RISK OF CHANGING RATEMAKING**  
 11 **METHODOLOGIES**

12 **Q. IS THERE A RISK OF CONFISCATION BY ADOPTING MR. RUBIN'S**  
 13 **AFFORDABILITY MODEL?**

14 A. Yes, there is a significant risk of confiscation which Mr. Rubin acknowledges but then  
 15 ignores with his affordability model. He correctly acknowledges that "[i]n protecting  
 16 consumers, regulators cannot confiscate the property of the utility's investors. That is,  
 17 regulators cannot tilt the scale so far in favor of consumers ... that the utility's investors  
 18 are deprived of an opportunity to earn a reasonable return on their investment."<sup>64</sup>

19 I can speak to this risk from my experience as a commissioner. I voted to allow  
 20 recovery from customers of nuclear power plant cancellation costs (thinking that it  
 21 encouraged early, prudent cancellation rather than imprudent continuation and much  
 22 greater costs needing recovery later). The case on appeal was ultimately decided by the

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<sup>63</sup> Response to PWSA Interrogatories to OCA, Set XI, No. 12.

<sup>64</sup> OCA St. No. 1, p. 7.

1 U.S. Supreme Court’s most recent decision regarding public utility ratemaking<sup>65</sup>  
 2 Affirming the disallowance of the cancellation costs contrary to my vote, the Court  
 3 recognized that ratemaking can be confiscatory if there is an arbitrary change in  
 4 methodology.

5 As described by the Court, “a State’s decision to arbitrarily switch back and forth  
 6 between methodologies in a way which required investors to bear the risk of bad  
 7 investments at some times while denying them the benefit of good investments at others  
 8 would raise serious constitutional questions.”<sup>66</sup>

9 Mr. Rubin’s suggested switch from traditional to “affordability” ratemaking is  
 10 just such an arbitrary change of ratemaking methodology. In fact, his proposal is even  
 11 more arbitrary. Rather than making investors bear only the risks of bad investments  
 12 while denying them the benefit of good ones, his method that ignores the Cash Flow  
 13 Method and gives PWSA no opportunity to prove its case beyond a “bare bones,”  
 14 minimum interest coverage result could deny PWSA the revenues it needs to maintain  
 15 adequate financial metrics and to operate in the FPFTY. That is playing a regulatory  
 16 game of heads-the-customer-wins, tails-the-Authority-loses.

17 **VIII. OTHER SPECIFIC INFIRMITIES IN MR. RUBIN’S PROPOSED METHOD**

18 **Q. ARE THERE OTHER SPECIFIC INFIRMITIES IN MR. RUBIN’S PROPOSED**  
 19 **METHOD?**

20 A. Yes, there are at least five. *First*, Mr. Rubin’s remedy is overly broad. Under his  
 21 method, all customers, including most customers who remain employed and even the  
 22 wealthy, would pay little or no rate increase. This result makes no sense and

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<sup>65</sup> *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989).

<sup>66</sup> *Id.*, 488 U.S. at 315.

1 demonstrates that his relief is too broad.

2 Mr. Rubin does not explain why most of PWSA's customers should be absolved  
3 of a rate increase when they have not lost their income. Mr. Rubin has not demonstrated  
4 that the government and Authority assistance provided to those who have lost some or all  
5 their income is insufficient to pay the proposed increase. Moreover, if it is insufficient,  
6 the appropriate remedy is for the Commonwealth and PWSA to adjust such programs, not  
7 to deny an increase to customers who can afford to pay it.

8 *Second*, Mr. Rubin provides no analysis of the actual impact of the proposed rate  
9 increase on the customers whom he claims are too harmed by the pandemic to pay any  
10 increase in PWSA's rates. Nor does he demonstrate that PWSA's customer assistance  
11 programs have failed to resolve those issues.

12 *Third*, he essentially ignores substantial government aid provided in response to  
13 the COVID-19 pandemic in determining whether the increase requested is affordable or  
14 not. He also fails to recognize the important programs that PWSA maintains for payment  
15 troubled customers. These safety net programs have not gone away or been idled by the  
16 pandemic, but rather stand ready to support ratepayers who are affected to a greater  
17 degree by the pandemic. PWSA has implemented customer assistance programs, many  
18 of which are identified in the rebuttal testimony of Ms. Quigley (PWSA St. No. 8-R) who  
19 specifically notes PWSA's efforts to provide additional relief in response to the COVID-  
20 19 pandemic.

21 *Fourth*, Mr. Rubin's approach must fail for lack of adequate standards. How  
22 large must the proposed rate increase be before it becomes unaffordable? For what  
23 percentage of the customer base? When and to what extent are economic conditions

1 sufficiently debilitating as to justify restricting rate increases? Under what conditions is  
2 normalcy restored? Mr. Rubin's testimony provides no standards to decide these and  
3 other pertinent questions. Based as the variability of the economy, his proposed  
4 ratemaking by polls and surveys would result in unpredictable, perhaps wildly fluctuating  
5 rates.

6 What is predictable is that such a system would be unacceptable to the investors  
7 that have historically provided capital to Pennsylvania utilities with the result that capital  
8 will become more expensive and potentially not available in difficult economic  
9 conditions.

10 *Five*, his proposal is fundamentally asymmetric. Mr. Rubin proposes a  
11 ratemaking method that would produce rates below the traditional zone of reasonableness  
12 during an economic disruption, but it undoubtedly would not produce rates above the  
13 zone of reasonableness in good economic times.

14 Unregulated businesses' earnings, during good financial times, are not  
15 constrained. Regulated businesses, such as PWSA's, are fundamentally different in this  
16 respect. Utility profits are constrained at both ends of the equation—they may not be too  
17 high or too low.

18 Furthermore, unregulated businesses can generally enter and exit markets at their  
19 discretion and seek to serve markets where they can earn higher profits and refuse to  
20 serve low profit markets altogether. PWSA cannot do this. It must serve all customers in  
21 its service territory, and it must provide safe and reliable service throughout its service  
22 area. For these reasons, its rates are regulated and its earnings protected on the low end  
23 by confiscation standards and constrained on the high end by its regulators.

1 **IX. MR. RUBIN’S RECOMMENDED STOPGAP MEASURES**

2 **Q. DO YOU AGREE WITH MR. RUBIN’S RECOMMENDATION “IF THE**  
 3 **ECONOMIC SITUATION WORSENS SIGNIFICANTLY AND CASH FLOW**  
 4 **BECOMES A CONCERN FOR PWSA”?**

5 A. No, I do not agree with his recommendation that PWSA defer construction projects “that  
 6 are not needed to ensure the current provision of safe and reliable service to existing  
 7 customers,” such as “growth-related projects or system rehabilitation activities that are  
 8 longer-term in nature (that is, projects that are not needed to ensure current levels of  
 9 service within the next six to 12 months).”<sup>67</sup>

10 For starters, Mr. Rubin applies the wrong ratemaking standard when he states that  
 11 “PWSA would not suffer *severe financial hardship* if rates remained at their current level  
 12 through the FPFTY.”<sup>68</sup> That is not the proper ratemaking standard for determining just  
 13 and reasonable rates under the Cash Flow Method.

14 Mr. Rubin’s recommendation contravenes what I believe was the Legislature’s  
 15 intent in enacting Act 11 of 2012 (creating a Distribution System Improvement Charge  
 16 (DSIC), as PWSA has requested in this case)—to ensure that Commission-determined  
 17 rates provide as nearly as possible the utility’s needed revenues in the period in which  
 18 rates will be in effect for it to make desired infrastructure investments and to increase  
 19 employment opportunities in the Commonwealth.

20 It is well-established that many electric, gas and water companies in Pennsylvania  
 21 have aging infrastructure and must undertake substantial capital investments to continue  
 22 to provide safe and reliable service to customers. PWSA is among those utilities facing

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<sup>67</sup> OCA St. No. 1, p. 29.

<sup>68</sup> *Id.*, p. 60.

1 this issue.

2 Mr. Rubin fails to consider that denying PWSA’s proposed rate increase would  
3 have detrimental consequences for PWSA and its ratepayers. *First*, denying a rate  
4 increase will cause PWSA to fall below the minimum legal requirements of its bond  
5 covenants and threaten its ability to receive future funding from the bond market (as  
6 explained by Mr. Barca in PWSA St. No. 5-5). *Second*, denying PWSA the funding  
7 necessary to continue its ongoing infrastructure construction projects will threaten  
8 PWSA’s ability to provide safe and reliable service that is in compliance with legal  
9 requirements (many of these projects are imperative to address aging systems, to comply  
10 with regulatory mandates and to remove lead from service lines). *Finally*, rates that  
11 adequately fund PWSA’s necessary infrastructure and other programs produces  
12 substantial economic benefits and jobs in PWSA’s service territory. Thus, in the end,  
13 PWSA’s ratepayers and the community as a whole are the ones who will unnecessarily  
14 suffer if PWSA does not receive the financial resources necessary to invest in its  
15 operations.

16 Overall, Mr. Rubin tries to have it both ways—by assuring us that he is not  
17 “suggesting that PWSA should have rates that are inadequate to ensure the provision of  
18 safe and reliable service to its customers”<sup>69</sup>—while simultaneously ensuring with his  
19 “bare bones” ratemaking proposal that PWSA will not receive reasonable and necessary  
20 revenues to fulfill its statutory and Commission-ordered obligations.

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<sup>69</sup> OCA St. No. 1, p. 28.

1    **X.**    **CONCLUSION**

2    **Q.**    **DOES THAT COMPLETE YOUR REBUTTAL TESTIMONY?**

3    **A.**    Yes. I reserve the right to supplement this testimony as may be appropriate.

# PWSA Exh. JHC-1

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**PWSA INTERROGATORIES TO OCA, SET II**

4. Reference OCA St. No. 1 at 8-11 (Rubin), please identify examples of when the Commission has used a “zone of reasonableness” analysis in setting rates.

Response:

Mr. Rubin believes that every ratemaking order issued by the Commission makes a determination that rates are just and reasonable, which should be synonymous with a zone of reasonableness.

Sponsoring Witness: Scott J. Rubin

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10. Reference OCA St. No. 1 at 26 (Rubin), has Mr. Rubin conducted an analysis of the potential impacts to PWSA if the Commission were to deny its requested rate increase? If so, please provide any supporting workpapers or information relied upon by Mr. Rubin.

Response:

Mr. Rubin discusses this on pages 26-27 of OCA Statement 1. There are no supporting workpapers. The testimony on those pages is based on data provided by PWSA, as referenced in the testimony.

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11. Reference OCA St. No 1 at 26 (Rubin), did Mr. Rubin evaluate any other factor beyond PWSA's interest coverage requirements in deciding to recommend that the Commission focus only on that one factor to determine whether to approve an increase in rates? If so, please identify each factor and the reasons why Mr. Rubin concluded the Commission should not focus on it.

Response:

Mr. Rubin relied on interest coverage as an all-encompassing measure of the ability of PWSA to continue to operate during and immediately after the emergency without increasing its rates.

Sponsoring Witness: Scott J. Rubin

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12. Reference OCA St. No. 1 at 28, lines 4-5 (Rubin), please detail the analysis and evaluation performed by Mr. Rubin to support the statement that a denial of PWSA proposed rate increase would allow it “to continue operations, recover all of its expenses, and pay its bondholders.” Provide all supporting workpapers and documentation.

Response:

The basis for Mr. Rubin’s conclusion is on pages 26-27 of OCA Statement 1. There are no supporting workpapers. The testimony on those pages is based on data provided by PWSA, as referenced in the testimony.

Sponsoring Witness: Scott J. Rubin

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13. Reference OCA St. No. 1 at 28, lines 3-4 (Rubin), Mr. Rubin indicated that he is not suggesting that PWSA should have rates that are inadequate to ensure the provision of safe and reliable service to its customers. Please detail the analysis and evaluation performed by Mr. Rubin to ensure that PWSA's rates, without an increase, would be adequate to ensure the provision of safe and reliable service to its customers.

Response:

Please see the response to questions 10-12.

Sponsoring Witness: Scott J. Rubin

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14. Reference OCA St. No. 1 at 29, lines 15-20 (Rubin), has Mr. Rubin evaluated PWSA's Capital Improvement Plan to identify which of these projects could be delayed to preserve cash? If so, please stated which projects Mr. Rubin has identified as candidates for delay. If not, state why such analysis was not performed to support Mr. Rubin's recommendation.

Response:

No. Mr. Rubin did not identify any specific projects that could be delayed because he does not believe that such delays would be necessary during and immediately after the pandemic in order for PWSA to meet its interest-coverage requirements.

Sponsoring Witness: Scott J. Rubin

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2. Reference OCA St. No. 1 at Page 3, lines 6-7 (Rubin). Provide a full and complete copy of any and all testimony(ies) and interrogatory responses that the witness sponsored before the Halifax Regional Water Commission. Provide full and complete copies of any and all responsive testimony filed by other parties. Provide a copy any decisions rendered by an Administrative Law Judge and/or the Commission.

Response:

The requested documents are provided in the ZIP file labeled *OCA-PWSA-XI-2.zip*. The Nova Scotia Utility and Review Board (NSUARB) does not use hearing examiners or administrative law judges. As of this date, the NSUARB has not issued its final decision. When Mr. Rubin receives it, OCA will provide a supplemental response to this request.

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5. Reference OCA St. No. 1 at Page 8, lines 8-11 (Rubin). Fully and completely explain the basis for the witness’s opinion that “if economic conditions change such that rates become unaffordable to many customers, rates may need to be reduced in order to remain ‘just and reasonable’ from the perspective of customers.” Fully and completely identify and provide copies of all documents, reports, studies and/or analyses that the witness referenced or relied upon in forming this opinion.

Response:

The statement reflects Mr. Rubin’s understanding of the purpose of public utility regulation, based on his more than 35 years of experience. The underlying premise is that rates should be reasonable from the perspectives of both the customers and the utility. Reasonableness from the customers’ perspective includes consideration of the value, quality, and affordability of service. If circumstances change, then a rate that may have previously been reasonable when compared to the value, quality, and affordability of service might no longer be consistent with the current perceived value, quality, or affordability of service.

Mr. Rubin did not rely on any specific documents in making this statement, but the documents cited in response to questions 3,4, and 8 are consistent with his opinion. Particularly, he believes this is the type of situation the U.S. Supreme Court referred to in the *Natural Gas Pipeline* case when it stated: “the Commission is also free under § 5 (a) to decrease any rate which is not the ‘lowest reasonable rate.’”

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7. Reference OCA St. No. 1 at Page 8, lines 8-11 (Rubin). Fully and completely describe and identify what rates the witness would consider to be “affordable” for PWSA water service. Provide copies of all documents, reports, studies and/or analyses referred to in this response.

Response:

Mr. Rubin has not conducted an analysis of the specific rates or assistance provisions that would make (or keep) PWSA’s rates affordable. OCA witness Colton addresses these issues in detail in OCA Statement 6.

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9. Reference OCA St. No. 1 at Page 9 (Rubin). Identify the source of the Venn diagram and any jurisdiction where the diagram has been expressly relied upon to set rates. Identify and provide copies of all documents, reports, studies and/or analyses relating thereto.

Response:

Mr. Rubin created the diagram as a simplified illustration. He is not aware of any jurisdiction where it has been expressly relied upon to set rates.

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10. Reference OCA St. No. 1 at Page 9, lines 6-7 (Rubin). Identify the specific “range of rates that consumers are willing and able to pay...” for PWSA water service. Provide full and complete copies of any supporting material and workpapers.

Response:

Mr. Rubin has not attempted to identify a specific range of rates consumers are willing and able to pay. Given the level of economic distress being experienced by PWSA’s customers (as reflected in the data cited in OCA Statement 1, as well as the testimony of customers and elected officials at the public input hearings in this case), Mr. Rubin believes the top end of that range is at or below the existing level of PWSA’s rates. The statement reflects Mr. Rubin’s understanding of the purpose of public utility regulation, based on his more than 35 years of experience. See the responses to questions 5 and 8.

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11. Reference OCA St. No. 1 at Page 9 and passim (Rubin). Fully and completely state whether the witness believes that the issue of ability to pay can be addressed in customer assistance programs that provide financial help to customers instead of in the setting of tariffed rates. If the response is anything other than a univocal affirmative, fully and completely describe the basis for the witness's position.

Response:

Customer assistance programs are an important component of addressing customers' ability to pay for utility service. There may be circumstances, however, where the ability-to-pay problem becomes so pervasive that it is not reasonable to share the cost among the remaining customers. In such circumstances, customer assistance programs would not be sufficient to address ability-to-pay concerns.

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12. Reference OCA St. No. 1 at Page 10, line 4 (Rubin). Fully and completely state whether the witness is asserting that PWSA is providing “poor service.” If the response is anything other than a univocal negative, fully and completely describe the factual basis for the witness’ position.

Response:

No.

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14. Reference OCA St. No. 1 at Page 12, line 18-19 (Rubin). Fully and completely identify each and every step that a “competitive business” must go through to raise prices. Identify the average time it takes for a “competitive business” to effectuate a price increase. Identify any and all regulatory approvals needed for a “competitive business” to raise prices.

Response:

Mr. Rubin believes that competitive businesses can change their prices at their discretion, subject to the avoidance of collusion, price gouging, or other unlawful practices.

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16. Reference OCA St. No. 1 at Pages 15-17 and passim (Rubin). Fully and completely identify any and all federal and/or state programs instituted to provide economic relief to individuals and businesses due to Covid-19. For each program identified, identify:
- a. A description of the program.
  - b. The date upon which the program commenced.
  - c. The status of distribution of dollars starting with inception to date.
  - d. The outlay of dollars by week (or month) starting with inception to date.
  - e. The effect of these monies upon household income levels in the witness's opinion.

Response:

Mr. Rubin has not researched this question and does not have the requested information. He is generally aware that the federal CARES Act contains numerous relief programs designed to assist specific sectors of the economy through a variety of funding mechanisms (including changes in income tax laws, grant programs, and loan programs). He also is aware that Pennsylvania is using some of its CARES Act allocation to assist small businesses and local governments.

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17. Reference OCA St. No. 1 at Pages 15-17 and passim (Rubin). Fully and completely state the impact of the following programs, Economic Impact Payments, Emergency Food Assistance, Unemployment Benefits, and Pandemic Unemployment Compensation, on the levels of income reported on the cited pages of testimony. Quantify the dollar impact of each program on Pittsburgh households. Provide any and all workpapers.

Response:

Mr. Rubin cannot estimate how the listed programs affected the income figures in the sources cited on pages 15-17 of his testimony. It is apparent, however, that such programs have not been sufficient to allow many families to pay their bills, as he states on pages 17-18.

In addition to the information cited in his testimony, Mr. Rubin recently became aware of a survey conducted in June 2020 by the Federal Reserve Bank in which the majority of respondents were nonprofit organizations working with low- and moderate-income people. (<https://www.frbatlanta.org/-/media/documents/community-development/publications/national-covid-19-survey/2020/06/perspectives-from-main-street-the-impact-of-covid-19-on-low-to-moderate-income-communities-and-the-entities-serving-them.pdf>)

The survey's conclusions include: "60% of respondents indicated that COVID-19 was having a significant disruption on the economic conditions of the communities they serve"; "Nearly half of respondents (46%) indicated it will take more than 12 months for their communities to return to the conditions prior to the disruption from COVID-19"; and "56% indicated that demand for their services has increased since early April or is anticipated to increase."

This provides further confirmation that federal benefit programs (which were fully in place by early June when the study was conducted) have not been sufficient to avoid serious economic and health impacts on low- and moderate-income households.

The programs listed have the following general impacts on Pittsburgh households (Mr. Rubin cannot state specifically how many households received each benefit):

- Economic Impact Payment: provided one-time payments of \$1,200 per adult and \$500 per child. The payments for adults are limited to individuals who filed tax returns for 2018 or 2019, have a valid social security number, and reported incomes less than \$99,000 (\$198,000 for joint filers).

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- **Emergency Food Assistance:** the CARES Act provided supplemental funding for the Emergency Food Assistance Program that provides surplus food to food banks, community action agencies, and similar organizations. For individuals to benefit from this program, they would need to meet the qualifications and distribution requirements set by each food pantry or other provider.
- **Unemployment Benefits:** the Families First Coronavirus Response Act and CARES Act temporarily expanded federal funding for unemployment compensation, including allowing states to extend benefits to self-employed people and others who usually are not eligible for unemployment benefits.
- **Pandemic Unemployment Compensation:** the CARES Act provided supplemental unemployment benefits of \$600 per week in addition to a state's regular unemployment benefits. The additional \$600 per week expired with the last benefit period in July (the week ending July 25 in Pennsylvania).

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19. Reference OCA St. No. 1 at Page 22, lines 1-4 (Rubin). Fully and completely explain the basis for the witness's opinion that "every residential customer is using PWSA's services differently than it does during normal circumstances..." Identify and provide copies of all documents, reports, studies and/or analyses that the witness referenced or relied upon in forming this opinion.

Response:

Mr. Rubin did not base these statements on any specific research or data, but rather on press reports, his personal experience, conversations with social service providers, and surveys (such as the EPRI survey). Obviously some of the statements ("every customer", "every meal") are not to be taken literally, but as an indication of the extraordinary changes that have affected society.

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20. Reference OCA St. No. 1 at Page 22, lines 6-7 (Rubin). Fully and completely explain the basis for the witness's opinion that all PWSA customers are at home 24 hours per day, 7 days a week. If not "all" customers are home, state what percentage do not stay home on a 24/7 basis. Identify and provide copies of all documents, reports, studies and/or analyses that the witness referenced or relied upon in forming this opinion.

Response:

See the response to question 19.

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21. Reference OCA St. No. 1 at Page 29, lines 4-8 (Rubin). Fully and completely state whether it is the witness's opinion that a test year is should reflect a utility's expected operating conditions during the period for which rates will be in effect. If the response is anything other than an unqualified affirmative, fully and completely fully explain the response. Identify and provide copies of all documents, reports, studies and/or analyses that the witness references or relied upon in forming this opinion.

Response:

Mr. Rubin's opinion is that all aspects of a test year (revenues, sales, expenses, rate base, cost of capital, etc.) should be synchronized and reflect normal operations and normal relationships among those items. At the present time, it is not possible to know what "normal operating conditions" will be for PWSA or when such conditions will exist. This opinion is based on Mr. Rubin's more than 35 years of experience with utility regulation in Pennsylvania. It is not based on any specific documents, reports, or studies.

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23. Reference OCA St. No. 1 at Page 25 (Rubin). Fully and completely compare and contrast the financial circumstances and additional revenue needs of each and every identified company and municipality with that of PWSA.

Response:

Mr. Rubin has not conducted such an analysis.

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24. Reference OCA St. No. 1 at Page 28, line 4-5 and passim (Rubin). Fully and completely state whether the witness would agree that, if current economic conditions continue, PWSA's revenue requirement as presented in this case is most likely will be understated. If the response is anything other than an unqualified affirmative, fully and completely explain why and under what circumstances, PWSA's revenue requirement may be overstated under such circumstances.

Response:

No. The changes in economic conditions, usage patterns, and governmental support programs have had some positive and some negative effects on utilities, including PWSA. Mr. Rubin does not know what the net effect of those changes will be on PWSA.

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25. Reference OCA St. No. 1 at Page 28, line 4-5 (Rubin). Provide any and all studies and analysis undertaken by the witness that proves or tend to prove that: “My recommendation allows PWSA to continue operations, recover all of its expenses, and pay its bondholders.” Provide any and all documents and workpapers related thereto.

Response:

See OCA’s response to PWSA set II question 12.

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26. Reference OCA St. No. 1 at Page 28-29 (Rubin). Identify the specific dollar impact upon PWSA's test year expense and revenue claims of each of the following:
- a. Lower interest rates near zero;
  - b. Lower oil prices;
  - c. Negative inflation;
  - d. Increasing residential water consumption;
  - e. Decreasing non-residential consumption;
  - f. Number of restaurants open;
  - g. Number of children attending school remotely this fall;
  - h. Number of colleges and universities open next semester; and
  - i. Occupancy rates in off-campus student housing?

Response:

Mr. Rubin has not conducted such an analysis.

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28. Reference OCA St. No. 1 at Page 28-29 (Rubin). In addition to those factors listed in the immediately preceding interrogatory, fully and completely identify any and all other Covid -19 related factors that the witness believes will or may have an impact on PWSA's test year expense and revenue claims. For each and every factor listed, identify the specific dollar impact upon PWSA's test year expense and revenue claims. Provide full and complete copies of any and all workpapers.

Response:

OCA assumes this request refers to question 26. Mr. Rubin has not conducted such an analysis.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos. R-2020-3017951 (Water)
v.	:	C-2020-3019348
	:	R-2020-3017970 (WW)
Pittsburgh Water and Sewer Authority	:	C-2020-3019349
	:	
Petition of Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing	:	Docket No. P-2020-3019019

VERIFICATION

I, Scott J. Rubin, hereby state that the facts set forth in my response to Pittsburgh Water and Sewer Authority's Interrogatories, Set II, are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

DATED: August 13, 2020  
\*293929

Signature:

  
\_\_\_\_\_  
Scott J. Rubin

Consultant Address: 333 Oak Lane  
Bloomsburg, PA 17815

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos. R-2020-3017951 (Water)
v.	:	C-2020-3019348
	:	R-2020-3017970 (WW)
Pittsburgh Water and Sewer Authority	:	C-2020-3019349
	:	
Petition of Pittsburgh Water and Sewer	:	
Authority for Waiver of Provisions of Act 11	:	Docket No. P-2020-3019019
to Increase the DSIC CAP, to Permit	:	
Levelization of DSIC Charges, and to	:	
Authorize the Pay-As-You-Go Method of	:	
Financing	:	

VERIFICATION

I, Scott J. Rubin, hereby state that the facts set forth in my response to Pittsburgh Water and Sewer Authority's Interrogatories, Set XI, are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

DATED: August 14, 2020  
\*293930

Signature:

  
\_\_\_\_\_  
Scott J. Rubin

Consultant Address: 333 Oak Lane  
Bloomsburg, PA 17815

# PWSA Exh. JHC-2

1 Q.PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS.

2 A.My name is Scott Rubin. I am an attorney, employed by the  
3 Pennsylvania Office of Consumer Advocate as a Senior Assistant  
4 Consumer Advocate. My business address is 1425 Strawberry  
5 Square, Harrisburg, PA 17120.

6

7 Q.WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS CASE?

8 A.My testimony will propose a method of setting rates for Colony Water  
9 System, Ltd. (Colony) which I believe to be fair to both Colony  
10 and its customers.

11

12 Q.WHAT ARE YOUR QUALIFICATIONS TO TESTIFY ON THESE ISSUES?

13 A.I have been employed by the Office of Consumer Advocate (OCA) since  
14 1983 in increasingly responsible positions. I have become  
15 expert in matters relating to the economic regulation of public  
16 utilities, particularly water and electric utilities. I have  
17 published articles and authored speeches and other  
18 presentations, on both the national and state level, relating  
19 to regulatory issues. Since 1990, I have been one of two senior  
20 attorneys with the OCA. Among my other responsibilities in this  
21 position, I have a major role in setting the OCA's policy  
22 positions on water and electric matters. I have testified on  
23 public policy and rate design issues before this Commission on  
24 three other occasions. Appendix A to this testimony is my  
25 curriculum vitae.

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Q.PLEASE DESCRIBE COLONY WATER SYSTEM.

A.Colony is a small, privately owned water system which serves approximately 35 customers. It is located in Fairview Township, Erie County and purchases all of its water from the Fairview Township Water Authority (FTWA). While Colony once had its own well, it no longer has its own source of water supply. In essence, then, Colony is a reseller and distributor of water; it purchases from FTWA at wholesale and resells the water to Colony's customers at retail.

Even though Fairview's rates are metered, Colony does not meter its customers. At present, each Colony customer pays a flat rate of \$37.50 per quarter. Under Colony's proposal, that rate would nearly quintuple to \$181.72 per quarter, or more than \$725 per year.

Q.WHY DOES IT COST SO MUCH FOR COLONY TO SERVE ITS CUSTOMERS?

A.With the exception of less than \$1500 per year for testing and maintenance, Colony's only expenses consist of purchased water, administration, and depreciation. It has no production expenses. In fact, its only claimed rate base is the interconnection with FTWA; Colony states that all of the distribution system is fully depreciated.

On Schedule 1, attached to this testimony, I have summarized Colony's claimed cost of service. I also calculate the cost

1 per customer for each category of costs. As that Schedule shows,  
2 the cost to Colony of actually supplying the water to its  
3 customers is only \$218 per customer per year. The bulk of this  
4 cost (\$176 per customer) is purchased water expense.  
5 Significantly, the remaining \$510 per customer which Colony  
6 claims is comprised of administrative expenses (\$185 per  
7 customer) and return of (\$43) and return on (\$282) Colony's  
8 investment in the interconnection with FTWA.

9  
10 Q.IN YOUR OPINION, IS IT REASONABLE FOR COLONY'S CUSTOMERS TO HAVE  
11 TO BEAR COSTS OF THIS MAGNITUDE?

12 A.No, it is not. There is no valid reason why the customers of a  
13 water utility should have to pay \$185 each to administer a utility  
14 and \$325 each to cover the costs of invested capital. It must  
15 be remembered that Colony is a reseller of water; that is, a  
16 middle man. Where the costs to resell the water are more than  
17 twice the costs of actually purchasing the water, I believe that  
18 the middle man must find a way to greatly reduce its costs.  
19 If it cannot do so, then I do not believe it to be in the public  
20 interest for the middle man to remain in business.

21  
22 Q.WHAT DO YOU RECOMMEND?

23 A.I recommend that the Commission set Colony's rates equal to the  
24 rates which Colony's customers would pay if they were direct  
25 customers of FTWA. On Schedule 2, I provide a calculation of

1 the bill for Colony's customers under FTWA's rates. I would  
2 note that, because Colony is not metered, I could not simply  
3 apply FTWA's rates to the individual usage of Colony's customers.

4 My Schedule, therefore, is based on the following assumptions:

5 1. That Colony will purchase 776,000 gallons per quarter  
6 from FTWA (Colony Exh. 1, page 8).

7 2. That all of this water should be charged to Colony's  
8 customers. This means that I am assuming that Colony  
9 has no lost or unaccounted for water.

10 The result of this calculation is that Colony's flat rate for its  
11 customers would be set at \$84.22 per quarter (\$336.88 per year).

12 This represents a 125 percent increase over Colony's existing  
13 rates.

14  
15 Q. WHAT IS THE EFFECT ON COLONY OF SETTING RATES AT THIS LEVEL?

16 A. On Schedule 3, I have summarized the effect of my recommendation.

17 It can be seen from that Schedule that Colony would be able  
18 to cover all of its supply and depreciation expenses and an  
19 additional \$2,672 per year (\$76 per customer). It would then  
20 be up to Colony to determine whether it can remain in business  
21 for that additional \$2,672 per year.

22  
23 Q. IS THERE ANY PRECEDENT FOR THIS TYPE OF RECOMMENDATION?

24 A. This situation is closely analogous to unregulated resellers of  
25 utility services. For example, there are numerous apartment

1 complexes, condominium developments, office buildings, and  
2 similar businesses which purchase utility services at wholesale  
3 and resell those service to tenants or owners at retail. Under  
4 Section 1313 of the Public Utility Code, such a resale is  
5 permitted if the retail rate charged is no more than the retail  
6 rate which the tenant/owner would pay as a direct retail customer  
7 of the utility. The theory is that the end user is protected  
8 from having to pay more than it would pay as a direct customer  
9 of the public utility; and the business is protected by receiving  
10 some margin above its costs to cover the costs of administration  
11 and maintenance.

12 Similarly, under Sections 63.111 to 63.118 of the Commission's  
13 Regulations, resellers of intrastate telecommunications  
14 services are generally permitted to charge no more than the  
15 customer would be charged under the tariff of any public utility  
16 providing a comparable service.

17 While these provisions are not directly applicable to this case,  
18 I believe that the same principles apply here. The best way  
19 to protect the customers of Colony (the reseller) is to ensure  
20 that they pay no more than they would have to pay as direct  
21 customers of FTWA. If the reseller cannot recover its costs  
22 at those rates, then it is not in the public interest for the  
23 reseller to provide the service. Stated differently, it is only  
24 reasonable for the reseller to act as a middle man if it can

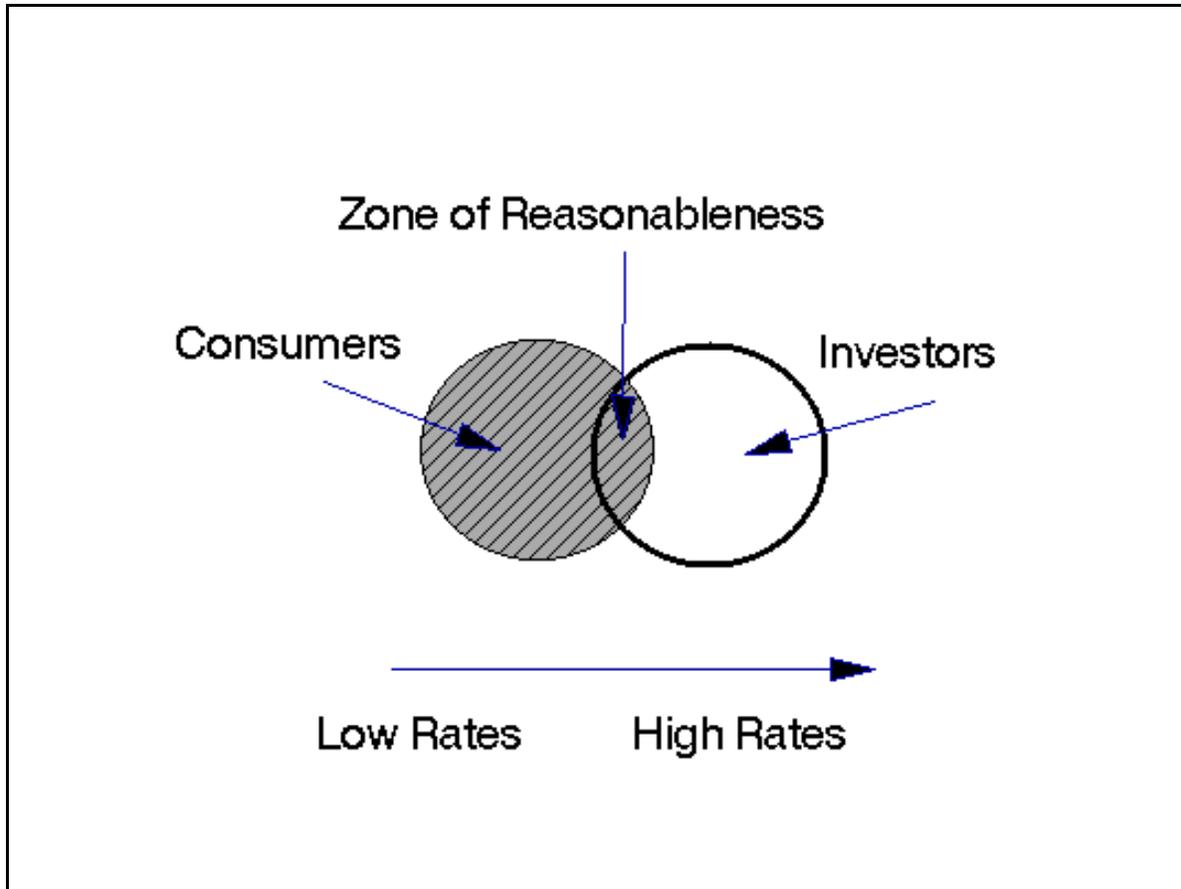
1 provide the service at a rate which is no more than the rate  
2 charged for the same service by the initial supplier.

3  
4 Q.YOUR RECOMMENDATION WOULD RESULT IN COLONY'S RATES BEING SET AT  
5 WELL BELOW ITS COST OF SERVICE. CAN YOU EXPLAIN WHY, IN YOUR  
6 OPINION, IT IS SOUND PUBLIC POLICY FOR THE COMMISSION TO DO THIS.

7 LET ME EMPHASIZE THAT I AM NOT ASKING YOU FOR A LEGAL OPINION,  
8 BUT FOR YOUR OPINION AS A PUBLIC POLICY EXPERT.

9 A.With that understanding, I will attempt to provide you with an  
10 overview of the relevant policy considerations. I will leave  
11 it to trial counsel to discuss the Commission's legal authority  
12 to do what I believe it should do as a matter of public policy.  
13 I begin with the premise that when it sets rates, the Commission  
14 should attempt to balance the interests of all relevant sectors  
15 of the public. This includes the utility's investors, the  
16 utility's officers and employees, the customers (recognizing  
17 that different customer classes also have different interests),  
18 and local governments whose residents are served by the utility.

19 Ideally, rates should be set within a "zone of reasonableness"  
20 which represents a range within which all of the relevant  
21 interests intersect. To help explain the concept, I have  
22 provided Figure 1 which illustrates this zone of reasonableness  
23 as a simplified diagram, showing just consumers as a whole and  
24 investors.



**Figure 1: Traditional Zone of Reasonableness**

1 In this example, which illustrates the situation in which rate  
2 regulators usually find themselves, there is an overlap between  
3 the interests of consumers and investors. That is, there is  
4 a range of rates that consumers are willing and able to pay  
5 (ranging from zero at the low end to a rate which is so high  
6 that they can no longer afford utility service) and a range of  
7 rates which will provide investors with what they consider to  
8 be a reasonable return on their investment (presumably ranging  
9 from something more than the risk-free rate of return up to a

1 return well above that which the market provides to similar-risk  
2 investments). In this illustration, these two ranges overlap.

3 This provides the Commission with a range within which it can  
4 set rates that still meet the needs of both consumers and  
5 investors. The size and relative position of the range may  
6 change, but we are used to having at least a partial convergence  
7 of these ranges.

8 However, it is possible that, for a variety of reasons, the  
9 interests of investors and consumers might diverge. This  
10 divergence is illustrated in Figure 2.

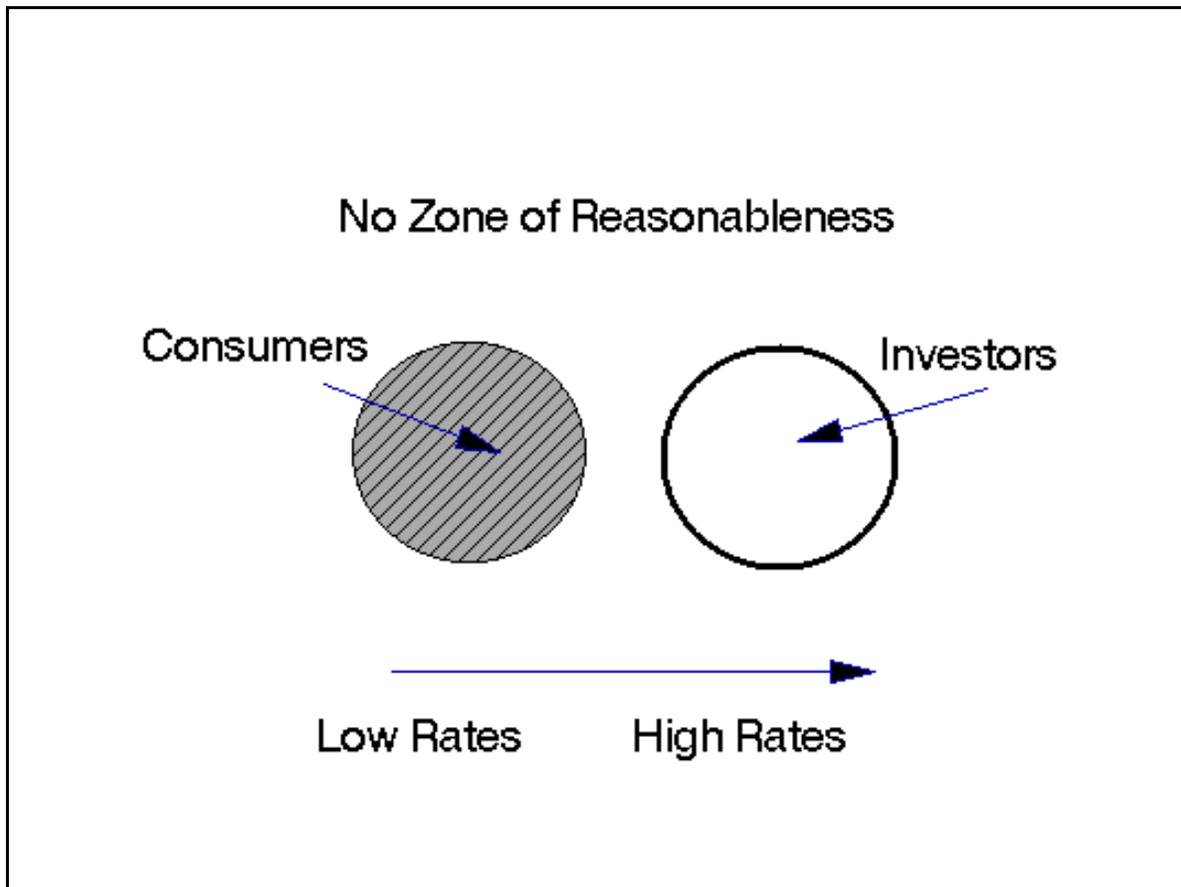


Figure 2: Divergent Interests -- A Null Zone of Reasonableness

1 For example, if a utility is providing poor service (or a service  
2 which is becoming obsolete), the highest price which consumers  
3 are willing to pay may be very small, thereby falling below the  
4 low end of the investors' range. Similarly, if interest rates  
5 or the levels of investment become very high, investors' minimum  
6 return requirements may become so high as to fall above the range  
7 of rates which consumers can afford to pay. When this happens,  
8 the rate regulators may have to set rates which fall outside  
9 of the normal zone of reasonableness, but which still attempt  
10 to fairly balance the interests of all parties to the extent  
11 possible.

12 It also must be remembered that while these concepts can be easily  
13 illustrated using circles on a diagram, the real world is not  
14 so simple. There is no bright line delineating any of these  
15 interests. The Commission is forced to discern the relative  
16 interests of the parties from the arguments and evidence which  
17 is placed on the record.

18  
19 Q.HAVE THERE BEEN INSTANCES WHERE IT APPEARS THAT RATES WERE SET WHERE  
20 THERE WAS NO "ZONE OF REASONABLENESS"?

21 A.As I said, it's very hard to tell whether or not that is actually  
22 happening. It is possible, though, that this was the case for  
23 several electric utilities which had massive increases in their  
24 investment, leading investors' return requirements to become  
25 very high. I think that in some instances that led rate

1 regulators to set rates which were above the range of  
2 reasonableness from the consumers' perspective; particularly  
3 the perspective of low-income consumers. This has resulted in  
4 electric rates which are unaffordable for some segments of the  
5 population. Some responses to that problem have been energy  
6 assistance funds, customer assistance programs, lifeline rates,  
7 and the like which effectively reduce rates for low-income  
8 consumers so that they lie within their range of affordable rates.  
9 On the other end of the spectrum, when rate regulators have denied  
10 or greatly reduced rate increases (for example, because of poor  
11 quality of service, imprudence, or excess capacity), this may  
12 have resulted in rates which were insufficient to meet investors'  
13 expectations. The result of such actions may be a reduction  
14 in the utility's dividend payment, a down-grading of the  
15 utility's securities, or even bankruptcy.

16  
17 Q.ARE YOU SAYING THAT THE COMMISSION SHOULD NOT SET RATES OUTSIDE  
18 THE ZONE OF REASONABLENESS?

19 A.No, I am not saying that. In fact, in certain instances it may  
20 be impossible for the Commission to simultaneously satisfy all  
21 aspects of the public interest. As I view the role of rate  
22 regulators, they must act within the broad public interest.  
23 Sometimes, that may mean setting rates which fail to meet the  
24 needs of a certain segment of the public. However, I believe

1 that whenever it sets rates, the Commission must attempt to  
2 determine whose needs are being met and whose are not.

3  
4 Q.ISN'T THAT USUALLY DONE IN THE TRADITIONAL RATEMAKING PROCESS?

5 A.Unfortunately, it is not usually done. In most cases, the  
6 investors' interest becomes a central focus of the case, by  
7 attempting to determine the return on capital which investors  
8 require in order to continue to invest money in the utility.  
9 This is usually examined in great detail, with each side spending  
10 thousands of dollars on attorneys and expert witnesses skilled  
11 in the presentation of this subject. Very rarely, though, do  
12 commissions or parties place as much emphasis on attempting to  
13 define the consumers' interest. While consumers are often  
14 represented in rate cases by offices such as mine, we tend to  
15 concentrate on attempting to redefine the utility's interest,  
16 rather than on affirmatively defining the consumers' interest.

17  
18 Q.CAN YOU GIVE US AN EXAMPLE OF HOW THE CONSUMERS' INTEREST MIGHT  
19 BE IDENTIFIED?

20 A.There are several ways in which this could happen. One of them,  
21 which is becoming more common, is to closely examine the quality  
22 of service which consumers are receiving. The range of rates  
23 which consumers are willing to pay will be affected by their  
24 perceptions of the value of the service which they receive.  
25 For example, if a water consumer must purchase bottled water

1 for drinking, the consumer will be willing to pay less to the  
2 water utility for water service.

3  
4 Q.HOW DOES YOUR RECOMMENDATION REFLECT A BALANCING OF THESE INTERESTS?

5 A.My recommendation begins by focusing on the consumers' interest.

6 In the case of Colony, consumers are receiving water produced  
7 by FTWA, passing through a middle man (Colony). It also must  
8 be remembered that these consumers are also residents of Fairview  
9 Township who should be entitled to the same type of water service  
10 as other township residents. Stated differently, these township  
11 residents receive township water, but it passes through a few  
12 hundred yards of pipe owned by Colony. I believe that the  
13 interests of consumers would be served by charging these  
14 customers no more than other township residents pay for FTWA  
15 water.

16 From the utility's perspective, my recommendation would  
17 immediately provide Colony with enough revenue to recover the  
18 direct cost of purchasing and distributing the water. It also  
19 would provide an additional margin above that to cover some  
20 administrative expenses and/or profit. If FTWA's rates increase  
21 in the future, I am proposing below a simplified ratemaking  
22 mechanism which would permit Colony to increase its rates at  
23 minimal expense. As a reseller, I do not believe that it is  
24 in the public interest for Colony to charge customers more than  
25 they would pay as retail customers of FTWA.

1 Finally, I would reiterate that my recommendation results in  
2 a 125% rate increase. I do not propose an increase of this  
3 magnitude lightly. I believe, though, that this large of an  
4 increase is necessary at the present time in order to fairly  
5 balance the interests of Colony and its customers.

6  
7 Q.UNDER YOUR RECOMMENDATION WHICH TIES COLONY'S RATES DIRECTLY TO  
8 FTWA'S RATES, WHAT WOULD HAPPEN IF FTWA CHANGES ITS RATES?

9 A.In the event that FTWA changes its rates, I would recommend that  
10 the Commission institute a simplified filing requirement for  
11 Colony to change its rates. I recommend that a procedure be  
12 established which would permit Colony to provide the Commission  
13 with the following information:

14 1.A copy of FTWA's new rate schedule;

15 2.A calculation showing the application of FTWA's new rate  
16 schedule to the average Colony customer usage (similar  
17 to my Schedule 2);

18 3.A simple income statement which would show that the new  
19 rates would not result in Colony's revenues greatly  
20 exceeding its costs; and

21 4.Certification that all customers received 60 days' notice  
22 of the rate change.

23 I would emphasize that, if a rate change would be a general rate  
24 increase under Section 1308(d) of the Public Utility Code, Colony  
25 still would be required to provide notice of the proposed increase

1 to its customers and the customers would retain the right to  
2 challenge the increase. It is my belief that this type of  
3 procedure would continue to protect Colony's customers, yet  
4 permit Colony to change its rates without spending exorbitant  
5 amounts on rate case expense.

6

7 Q.HAS THE COMMISSION USED SUCH A PROCEDURE IN OTHER INSTANCES?

8 A.I am aware of one instance which is similar to this case. The Borough  
9 of Kutztown provides service to approximately 1500 water and  
10 sewer customers. About 35 sewer customers and 110 water  
11 customers reside outside of the Borough limits and, thus, are  
12 subject to regulation by the Commission. In July 1991, the  
13 Borough filed a petition with the Commission seeking a simplified  
14 procedure for changing the rates for the customers subject to  
15 the Commission's jurisdiction. The Borough committed to  
16 charging exactly the same rates for customers within the Borough  
17 and those outside of the Borough. It sought permission to change  
18 its rates by filing a certified copy of its ordinance (including  
19 the new rate schedule) with the Commission. The Commission

20 approved this procedure, with some modifications, as follows:

21 That the Borough of Kutztown shall maintain on file with the  
22 Commission a certified copy of its effective local  
23 ordinances, and rules and regulations pertaining to  
24 water and sewer rates and service, as changes occur.

25  
26 That the Borough of Kutztown is not to construe this waiver as  
27 permission to forego the filing of Annual Reports  
28 already required by the Commission which includes an  
29 annual accounting of the number of customers located  
30 inside and outside the Borough limits ....

1  
2 That the sixty (60) day plain language notice of proposed changes  
3 in water and sewer rates shall be provided to outside  
4 customers and to the Commission in accordance with  
5 our regulations. ...  
6

7 That the granting of the Petition shall not be construed as  
8 granting a waiver of the Borough's burden of proof  
9 in any proceeding before the Commission ....  
10

11 In re: Petition of the Borough of Kutztown, P-910529 (Feb. 5, 1992),  
12 slip op. at 2-3.  
13

14 Q.PLEASE SUMMARIZE YOUR RECOMMENDATIONS.

15 A.I recommend that Colony's rates be set equal to the rates which  
16 its customers would pay if they were direct, retail customers  
17 of Fairview Township Water Authority. In the present case, this  
18 would result in a 125% rate increase for Colony's customers,  
19 in lieu of the 385% increase proposed by Colony. I also recommend  
20 that the Commission waive its filing requirements to authorize  
21 Colony to use a simplified procedure to change its rates in the  
22 future if FTWA changes its retail rates. It is my belief that  
23 this is a fair result for both Colony and its customers.  
24

25 Q.DOES THIS CONCLUDE YOUR TESTIMONY?

26 A.Yes, it does.

# PWSA Exh. JHC-3

## WISCONSIN POWER &amp; LIGHT CO. v. CITY OF БЕЛОIT

pal field before the utilities law was enacted. As to cities which had not obtained such vested right, the state may restrict their rights to operate in that field as it sees fit.

It has seen fit, as declared in the Chilton Case, to restrict their rights of operation in that field where an existing utility is so operating under an indeterminate permit by requiring them to procure a certificate of convenience and necessity before they can

so operate. If the existing utility does not provide adequate service or does not provide service at reasonable rates, the city may apply to the Public Service Commission for relief and procure it.

The order of the circuit court is reversed with direction to enter an order sustaining the demurrer and for further proceedings according to law.

Owen, J., took no part.

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 PENNSYLVANIA PUBLIC SERVICE COMMISSION

## Re Utility Rates During Economic Emergency

*Return, § 20 — Emergency return during economic depression.*

1. The Commission unanimously adopted a resolution during a period of economic depression that so long as emergency conditions continue to exist an annual rate of return of 6 per cent to utilities operating within the state would be regarded as a fair and reasonable return on the value of property used in rendering service to the public, p. 123.

*Rates, § 644 — Informal procedure for statewide reductions — Economic depression.*

2. Pursuant to a resolution unanimously adopted by the Commission to restrict all utilities in the state to 6 per cent return during an economic emergency period, the Commission's bureau of accounts, rates, and statistics was instructed to base its rate studies on annual reports filed by utilities with the Commission—and to report the results of such studies to the Commission for use as the basis for informal conferences with the representatives of all utilities showing a return in excess of 6 per cent with a view to obtaining a rate reduction in such cases, p. 123.

[April 2, 1934.]

**R**ESOLUTION adopted by the Commission on motion of one of the Commissioners declaring the policy of the Commission affecting future procedure and principles controlling utility rate fixing throughout the state.

By the COMMISSION: [1, 2] day of April, 1932, adopted the following resolution:  
Whereas, this Commission on the 5th

## PENNSYLVANIA PUBLIC SERVICE COMMISSION

"Now, therefore, be it *resolved*: That the Chairman of the Public Service Commission be and is hereby requested to appoint a committee of two Commissioners who shall hold conferences with electric utility companies in Harrisburg and at other places in the commonwealth designated by the Chairman, and utilize in the conduct of these conferences information and assistance from the records, bureaus, and personnel of the Commission, and shall promptly report to the Commission the results of their investigation concerning the reasonableness of the rate schedules and structures, with particular emphasis upon domestic rates, and advise the Commission with respect to the means of making such rate schedules and structures just and reasonable. To that end the designated Commissioners shall promptly hold conferences with the electric companies of Pennsylvania, and the Chairman and the secretary of the Commission are authorized and directed to request the attendance of accredited representatives of the electric utilities at these conferences."

and,

*Whereas*, pursuant to said resolution, the Commission has engaged continuously in conferences not only with the electric utility companies, but with companies rendering other forms of public service; and,

*Whereas*, under the rules and practice of this Commission, all public service companies under its jurisdiction were required and did file their annual reports for the year 1933 on or before March 31, 1934; and,

*Whereas*, this Commission should take cognizance of the present economic conditions prevailing in the United States and as such economic conditions particularly affect the welfare of the people of this commonwealth; and,

*Whereas*, this Commission has given deep study to the proposition of what is a fair return to the utilities of Pennsylvania, giving consideration to the rate of return prudent investors may expect upon securities represented by all types of businesses, to the fact that the allowed fair return bears directly upon the rates charged every consumer and is, therefore, of vital importance to practically the entire population of Pennsylvania, and to every other factor necessarily involved; and,

*Whereas*, the Supreme Court of the United States has laid down the following rule (Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 U. S. 679, 692, 67 L. ed. 1176, P.U.R.1923D, 11, 20, 43 S. Ct. 675, quoted in United R. & Electric Co. v. West, 280 U. S. 234, 74 L. ed. 390, P.U.R.1930A, 225, 228, 50 S. Ct. 123, and Los Angeles Gas & E. Corp. v. California R. Commission, 289 U. S. 287, 319, 77 L. ed. 1180, P.U.R.1933C, 229, 249, 53 S. Ct. 637):

"A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; . . ."

and has further declared (Dayton-

## RE UTILITY RATES DURING ECONOMIC EMERGENCY

Goose Creek R. Co. v. United States [1924] 263 U. S. 456, 481, 68 L. ed. 388, 44 S. Ct. 169, 33 A.L.R. 472:

“By investment in a business dedicated to the public service the owner must recognize that, as compared with investment in private business, he cannot expect either high or speculative dividends. . . .”

Now, therefore, April 2, 1934, be and it is hereby *resolved*: That so long as the present economic conditions of the country exist, this Commission believes that an annual rate of return of 6 per centum to public service companies in its jurisdiction is a fair and reasonable return on the value of the property used and useful in the rendition of the service to

the public; and further, that the Commission confer with representatives of the public service companies earning more than a fair return upon this basis for the purpose of having them revise their rate structures to conform to this annual rate of return; and further, that the bureau of accounts, rates, and statistics be directed to use this basis for its study and analysis of the annual reports for the year 1933 filed by the public service companies on or before March 31, 1934, in accordance with the policy of the Commission adopted on the 5th day of April, 1932, and to report to the Commission the result of the study for such further action as the Commission may determine.

## INDIANA PUBLIC SERVICE COMMISSION

## Re Discounts and Penalties

[No. 11683.]

*Payment, § 53 — Gross and net rates — Penalties.*

1. The practice should be discontinued of providing in rate schedules for so-called gross and net rates and penalties for default in the payment of service bills, p. 126.

*Rates, § 171 — Schedules — Uniformity for utilities.*

2. There should be substantial uniformity in rate tariffs of the utilities of the state, p. 126.

*Service, § 162 — Rules and regulations — Uniformity for utilities.*

3. There should be substantial uniformity in rules, regulations, and practices of the utilities of the state, p. 126.

*Payment, § 2 — Uniform regulations.*

4. There should be more uniformity in the practices of public utilities of the state with respect to the collection of patrons' service bills, and with respect to penalties, charges, and/or discounts, p. 126.

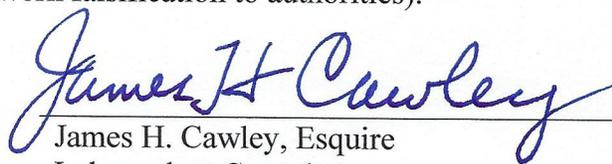
*Payment, § 53 — Discount for promptness — Collection or deferred payment charges.*

5. Utilities should be permitted to provide by appropriate tariff provisions

VERIFICATION

I, James H. Cawley, hereby state that: (1) I am an independent consultant and attorney;  
(2) I am presenting testimony on behalf of The Pittsburgh Water and Sewer Authority  
("PWSA"); (3) the facts set forth in my testimony are true and correct (or are true and correct to  
the best of my knowledge, information and belief); and, (4) I expect to be able to prove the same  
at a hearing held in this matter. I understand that the statements herein are made subject to the  
penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 8/18/20



James H. Cawley, Esquire  
Independent Consultant  
The Pittsburgh Water and Sewer Authority