

COMMONWEALTH OF PENNSYLVANIA



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IRWINA. POPOWSKY
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February 10, 2009

VIA FED EX OVERNIGHT MAIL

Honorable Marlane R. Chestnut
Administrative Law Judge
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
Broad & Spring Garden Streets
Philadelphia, PA 19130

Re: Susan K. Pickford, et al.
v.
Pennsylvania-American Water Company
Docket No. C-20078029

Dear Judge Chestnut:

Pursuant to 52 Pa. Code § 5.408(c) and the Presiding Officer's instructions by the February 2, 2009 Notification to the Parties of the Taking of Official Notice, the OCA submits the enclosed Motion for Clarification Regarding Official and Judicial Notice of Fact.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to be 'D. Wong'.

Darlene R. Wong
Assistant Consumer Advocate
PA Attorney I.D. #87381

Enclosures

cc: Secretary McNulty
Certificate of Service

108930

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Susan K. Pickford, et al.	:	C-20078029
Robert F. and Nancy L. Cox, et al.	:	C-20078030
Anthony F. Davis	:	C-20078031
Lisa M. Walker	:	C-20078034
Victoria Millard	:	C-20078035
Christine and Erik Bish	:	C-20078036
David and Jessica Sears	:	C-20078037
Matt and Tricia J. Coniglio	:	C-20078038
Barbara Stern	:	C-20078041
William V. Bottonari	:	C-20078042
Kelly L. Houpt	:	C-20078043
Arthur J. Sconing	:	C-20078044
Gerard E. and Barbara Martin	:	C-20078045
Carl L. Crone	:	C-20078046
Ann Marie Judson	:	C-20078051
Adele Wilcox and John Kirk	:	C-20078052
Danielle Oakes	:	C-20078061
Missak Sisserian,	:	C-2008-2044004
	:	
Complainants	:	
	:	
v.	:	
	:	
Pennsylvania-American Water Company,	:	
	:	
Respondent	:	

MOTION FOR CLARIFICATION OF
OFFICIAL AND JUDICIAL NOTICE OF FACT

Pursuant to 52 Pa. Code § 5.408(c) and the Presiding Officer’s instructions on February 2, 2009 in the Notification to the Parties of the Taking of Official Notice (“Notification”), the OCA requests that a clarification be made in the official and judicial notice of fact. In relevant part, the Notification states:

I have determined that the following uncontested facts, while not strictly materially to the issues to be addressed in the initial decision, are helpful in providing a background and therefore intend to reference them in my

decision. **This information, as set out in the Findings of Facts in my September 27, 2007 Initial Decision, is contained in the attachments to the various Preliminary Objections filed by PAWC to the Complaints.**

During the period 2003 to 2006, PAWC sought and received all necessary construction and operating permits from DEP in connection with the construction of the West Shore Regional Treatment Plant and modification of the Silver Springs Water Treatment Plant. This approval included the use of chloraminated water, intended to address **future drinking water standards** and reduce the taste and odor of chlorine. DEP approved the various applications upon being satisfied that approval will achieve public health goals and produce water that meets all applicable state and federal standards as contained in the Pennsylvania Safe Drinking Water Act, 35 P.S. §§721.1 et seq. and Federal Safe Drinking Water Act, 42 U.S.C. §§ 300j – 300j-10.

Notification at 1-2 (emphasis added).

In referring to approval of construction and operating permits, the current language of the Notification states that the permit approvals “intended to address future drinking water standards.” Notification at 2. To the extent that the reference in the Notification to “future drinking water standards” can be read to encompass *all* future permit and regulatory approvals based upon as yet unforeseen drinking water standards, including those regarding chloramination, the OCA submits that such this statement requires clarification. The current reference to “future drinking water standards” should be modified to state, “current and anticipated drinking water standards.” *See* Initial Decision, Pickford et al. v. Pennsylvania-American Water Co., Docket C-20078029 et al. at 7 (specific terminology used in Finding of Fact No. 16 is “current and anticipated drinking water standards”). While the Commission’s March 20, 2007 Order may have incorporated the Presiding Officer’s finding that DEP’s “current and anticipated standards” were met, the Commission did not find it appropriate to make a blanket determination that therefore that all “future standards” were met. *See* PUC Order, Pickford et al. v. Pennsylvania-American Water Co., Docket C-20078029 et al. at 7-8 (Findings

of Fact are incorporated into Commission's decision unless modified or reversed as by express or necessary implication; Commission allowing Complaints to proceed to hearing).

Therefore, the OCA respectfully requests the following clarification to be consistent with previous rulings in this case regarding Findings of Fact, such that the official and judicial notice of fact would read (relevant part highlighted in bold):

During the period 2003 to 2006, PAWC sought and received all necessary construction and operating permits from DEP in connection with the construction of the West Shore Regional Treatment Plant and modification of the Silver Springs Water Treatment Plant. This approval included the use of chloraminated water, intended to address **current and anticipated drinking water standards** and reduce the taste and odor of chlorine. DEP approved the various applications upon being satisfied that approval will achieve public health goals and produce water that meets all applicable state and federal standards as contained in the Pennsylvania Safe Drinking Water Act, 35 P.S. §§721.1 et seq. and Federal Safe Drinking Water Act, 42 U.S.C. §§ 300j – 300j-10.

Respectfully Submitted,



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February 9, 2009
105108

CERTIFICATE OF SERVICE

Re:	Susan K. Pickford, et al.	:	Docket Nos.	C-20078029
	Robert F. and Nancy L. Cox, et al.	:		C-20078030
	Anthony F. Davis	:		C-20078031
	Lisa M. Walker	:		C-20078034
	Victoria Millard	:		C-20078035
	Christine & Erik Bish	:		C-20078036
	David & Jessica Sears	:		C-20078037
	Matt & Tricia J. Coniglio	:		C-20078038
	Barbara Stern	:		C-20078041
	William V. Bottonari	:		C-20078042
	Kelly L. Houpt	:		C-20078043
	Arthur J. Sconing	:		C-20078044
	Gerard E. & Barbara Martin	:		C-20078045
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	Ann Marie Judson	:		C-20078051
	Adele Wilcox & John Kirk	:		C-20078052
	Danielle Oakes	:		C-20078061
	Missak Sisserian	:		C-2008-2044004
	Complainants	:		
	v.	:		
	Pennsylvania-American Water Company,	:		
	Respondent	:		

I hereby certify that I have this day served a true copy of the foregoing document, Motion for Clarification Regarding Official and Judicial Notice of Fact, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 10th day of February 2009.

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