COMMONWEALTH OF PENNSYLVANIA

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWIN A. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

March 16, 2010

Secretary's Office
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17105

Re: Pa. Public Utility Commission
v.
Clean Treatment Sewage Co.
Docket No. R-2009-2121928

Dear Secretary:

Enclosed for filing are the Exceptions of the Office of Consumer Advocate in the above-referenced proceeding.

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

Sincerely yours,

Erin L. Gannon

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. # 83487

Enclosures
cc: Honorable Ember S. Jandebeur
Office of Special Assistants
Certificate of Service
123538

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	Docket No. R-2009-2121928
	:	
CLEAN TREATMENT SEWAGE COMPANY	:	

EXCEPTIONS OF THE OFFICE OF CONSUMER ADVOCATE

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. #83487

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. #89891

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101
Phone: (717) 783-5048
Fax: (717) 7823-7152

DATED: March 16, 2010

TABLE OF CONTENTS

I. INTRODUCTION 1

II. EXCEPTIONS 5

OCA Exception No. 1: The Commission Should Exercise Its Discretion Under Section 526 to Reject Any Rate Increase For CTSC Because the Company Continues to Provide Inadequate Service. 5

A. Introduction 5

B. Legal Basis for Denial of Any Rate Increase 7

C. CTSC Should Be Held to the Regulatory Bargain 8

D. Conclusion 12

OCA Exception No. 2: The Commission Must Reject the Recommendation to Impute Revenues Based on 192 Availability Customers and Impute Revenues Based on the Actual Number of Availability Customers, Which Is 367 13

A. Introduction 13

B. It Is Not Appropriate to Require Usage Customers to Compensate CTSC for Availability Revenues That CTSC Was Ordered to Cease Collecting. 13

C. All of the Availability Revenues Should Be Imputed to the Company 15

D. Conclusion 17

OCA Exception No. 3: The Commission Must Reject the Recommendation to Accept the Company's Proposed Claim for Plant Maintenance Expense. 18

OCA Exception No. 4: The Commission Must Reject the Recommendation to Allow the Company to Collect Expenses Incurred in Relation to the *Sutter* Case That Are Outside the Test Year When a Deferral Was Not Properly Requested or Granted. 20

OCA Exception No. 5: The Commission Must Reject the Recommendation to Disallow a Refund to the Sinatras for Their Payment of a Prior Lot Owner's Bill. 23

OCA Exception No. 6: The Commission Must Reject the Failure to Take Affordability Into Consideration in Denying the Rate Increase. 26

III. CONCLUSION 28

TABLE OF AUTHORITIES

Cases

Colonial Products Co. v. Pa. P.U.C., 188 Pa. Super. 163, 146 A.2d 657 (1959) 3, 8, 9

D.C. Transit Sys., Inc. v. Washington Metro. Area Transit Comm'n, 466 F.2d 394 (D.C. Cir. 1972), cert. denied, 409 U.S. 1086 10

Market Street Rwy. Co. v. Railroad Comm'n of Ca., 324 U.S. 548 (1945) 2, 3, 8, 9

National Util. Inc. v. Pa. P.U.C., 709 A.2d 972 (Pa. Commw. 1998) 3, 8, 9

Popowsky v. Pa. P.U.C., 164 Pa. Commw. 338, 642 A.2d 648 (1994) 21

Administrative Decisions

Ely v. Pennsylvania American Water Co., 2006 PaPUC LEXIS 74 25

Pa. P.U.C. v. City of Lancaster – Sewer Fund, 2005 PaPUC LEXIS 44 19

Pa. P.U.C. v. National Util., Inc., 1997 PaPUC LEXIS 100, aff'd 709 A.2d 972 (1998) 14

Pa. P.U.C. v. Pennsylvania-American Water Co., 1989 PaPUC LEXIS 170 ..... 10, 12, 15

Pa. P.U.C. v. Pennsylvania Gas & Water Co., 1993 PaPUC LEXIS 118 12

Pa. P.U.C. v. Pennsylvania Gas & Water Co., 61 PaPUC 409, 74 PUR4th 238 (1986) 7, 12, 14

Pa. P.U.C. v. Pennsylvania Gas & Water Co., 68 PaPUC 191 (1988) ..... *passim*

Petition of Columbia Gas of Pa., Inc., 1996 PaPUC LEXIS 123 21

Petition of Metropolitan Edison Co. and Pennsylvania Electric Co. for Authority to Modify Certain Accounting Procedures, P-00052143, Order (May 5, 2006) 20, 21

Petition of Pennsylvania Power & Light Co. for a Declaratory Order, 1982 PaPUC LEXIS 75 21

Petition of the Newtown Artesian Water Co. for a Declaratory Order Re Accounting Treatment for Costs of its Linton Hill Water Storage Tank and Transmission Main, 1994 PaPUC LEXIS 13 21

Policy Statement Re: Incentives for the Acquisition and Merger of Small, Nonviable Water and Waste Water Systems, 168 PUR4th 45 (PaPUC 1996) 27

Rulemaking to Establish a Universal Service Funding Mechanism, 1996 PaPUC LEXIS 212 ... 27

Scutching v. Philadelphia Gas Works, 2004 PaPUC LEXIS 30 25

Stephen Sutter *et al.* v. Clean Treatment Sewage Co., C-20078197, Initial Decision (Jan. 2, 2009) 23, 24, 26

Stephen Sutter *et al.* v. Clean Treatment Sewage Co., C-20078197, Order (May 15, 2009) ..... *passim*

Statutes

66 Pa. C.S. § 523 ..... 3, 7, 9

66 Pa. C.S. § 526 ..... 3, 5, 9

66 Pa. C.S. § 526(a) 7, 8

66 Pa.C.S. § 1312(a) 23

66 Pa. C.S. § 1501 ..... *passim*

66 Pa. C.S. § 1701 20

Regulations

52 Pa. Code § 5.41 20

52 Pa. Code § 5.42 20

52 Pa. Code § 69.711(a)(6) 27

I. INTRODUCTION

On May 15, 2009, the Commission sustained complaints by 29 customers that Clean Treatment Sewage Company (CTSC or Company) was providing inadequate service in violation of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501. Stephen Sutter *et al.* v. Clean Treatment Sewage Co., C-20078197, Order (May 15, 2009) (Sutter).[1] Two months after the Commission's Order in Sutter, on July 29, 2009, the Company filed Supplement No. 12 to Tariff Sewer - Pa. P.U.C. No. 2 (Supplement No. 12), to become effective October 1, 2009. In this filing, CTSC asked the Commission to approve an increase in the rates charged to usage customers for wastewater service. The Company proposed an estimated annual increase in base rate revenues of $221,317 or a 72.7% increase in the Company's annual revenues at present rates. Of this amount, $156,034, or 70.5%, represents the revenues CTSC can no longer recover from availability customers since the entry of the Commission's Order in Sutter. CTSC Exh. 1, Sec. A-5. The other 30%, or $65,283, relates to claimed increases to utility expenses. Under CTSC's proposal, the proposed rates for residential usage customers would increase from a flat monthly rate of $68.00 to a flat monthly rate of $116.64 per month, or by 72%. A complete procedural history of the case is provided on pages 4 to 6 of the OCA's Main Brief (M.B.) in this proceeding.

The OCA's Main and Reply Briefs (R.B.) set forth its position that CTSC's proposed rate increase should be denied in its entirety because of the Company's failure to provide adequate service. OCA M.B. at 9-17, 36-37; OCA R.B. at 3-21, 38. Specifically, the OCA calculated a revenue requirement of $13,380 that would be reasonable if CTSC were providing adequate

[1] CTSC filed a Petition for Review of the Commission's Order but requested and received approval to stay the appeal pending the outcome of the Section 529 proceeding. Clean Treatment Sewage Co. v. Pa. P.U.C., 1146 C.D. 2009.

service. Because CTSC is not providing adequate service, the OCA recommends that the stipulated cost of capital of 8.03% be adjusted to 6.63%, which is a rate of return that considers the inadequacy of service and is necessary to produce a revenue requirement of zero.

The OCA's recommendation is supported by the testimony provided in this proceeding by thirty-two customers, a Delaware Township supervisor, and the OCA's two expert witnesses; numerous exhibits sponsored by the customers, OCA and CTSC; and the findings of fact and legal conclusions adopted by the Commission in the Sutter case. All of this record evidence shows that CTSC has not met the requirements of its regulatory bargain – where a utility does not provide adequate service, it should not receive the level of rates that would be just and reasonable for a utility that is providing adequate service. Pa. P.U.C. v. Pennsylvania Gas & Water Co., 68 PaPUC 191 (1988) (PG&W 1988); Market Street Rwy. Co. v. Railroad Comm'n of Ca., 324 U.S. 548, 563-64 (1945) (Market Street); 66 Pa. C.S. § 1501.

On March 2, 2010, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of ALJ Jandebeur. The R.D. recommended rejecting the Company's proposed Supplement No. 12 because the rates contained therein are not just and reasonable or otherwise in accordance with the Public Utility Code and applicable regulations. The R.D. further recommended, *inter alia*, that the Commission issue an Opinion and Order directing the Company to file a tariff allowing for recovery of no more than $78,526 in additional base rate revenue. ALJ Jandebeur's recommendation adopts the OCA's expense adjustments to Material & Supplies and depreciation. Consistent with Commission precedent, ALJ Jandebeur also rejected the Company's claim for one of its two officers' salaries and reduced the Company's administrative services claim, in recognition that CTSC failed to provide sufficient evidence to support its claims for these expenses.

While the OCA supports a number of the specific determinations made in the R.D., the ALJ failed to make *any* adjustment to CTSC's cost of service to reflect that wastewater service is unavailable to half of the Company's customers and inefficient, unsafe and unreasonable to all of its customers. Consistent with the factual record in this proceeding and Sutter, the ALJ did not find that CTSC is providing adequate service – the moratorium continues (for five years now) and CTSC has made no capital improvements to the pumping stations that cause sewage spills and odors in the collection system. OCA M.B. at 9-17. It is consistent with the Public Utility Code, appellate case law and this Commission's prior orders for the Commission to adjust cost of service when service is inadequate, even where the utility claims financial hardship. See 66 Pa. C.S. §§ 523, 526, 1501; Market Street; PG&W 1988; Colonial Products Co. v. Pa. P.U.C., 188 Pa. Super. 163, 172-73, 146 A.2d 657, 663 (1959) (Colonial Products); National Util. Inc. v. Pa. P.U.C., 709 A.2d 972, 977-80 (Pa. Commw. 1998) (NUI 1998). Accordingly, the OCA recommends that the Commission adjust the stipulated cost of capital to reach an allowed rate of return that provides $0 increase in revenues. OCA M.B. at 36-37; OCA R.B. at 38.

The R.D. also fails to make a warranted adjustment to the Company's revenues to impute $156,034 of revenue that is attributable to the availability class, which has 367 customers. Instead, the ALJ recommended that only $81,631 of the availability revenues be imputed. This revenue amount is calculated using 192 customers. As explained in the OCA's briefs, and below, it is reasonable and appropriate to impute revenue from the entire availability class rather than a portion of it. OCA M.B. at 24-25; OCA R.B. at 32-33. This is consistent with the Company's admission that, if the moratorium were lifted tomorrow, CTSC would begin charging availability fees to the entire class. See Tr.2 at 78-79.

The ALJ also permitted the Company to recover its entire claim for Plant Maintenance expense, which is based on 2008 costs that were 55% higher than in 2007, rather than allowing a normalized four-year average of actual expenses. Additionally, ALJ Jandebeur failed to reject the portion of CTSC's claim for outside services expense related to costs incurred for the 2007 Sutter complaint case, which are outside the test year in this rate case. CTSC did not seek or receive approval by the Commission to defer these costs and, thus, allowing recovery would be impermissible retroactive ratemaking. Further, the ALJ rejected the Sinatras' claim for a refund of the amount they paid to CTSC to satisfy a prior owner's delinquent account. ALJ Jandebeur recommended rejection of this claim because she determined that it was not an issue to be raised in a rate case and was untimely. In light of the Commission's Order in Sutter, Section 1312 of the Public Utility Code and the ample evidence produced by the Sinatras, a refund to the Sinatras is appropriate in this matter. Each of these determinations should be reversed.

The OCA respectfully submits the following Exceptions to the Recommended Decision of ALJ Jandebeur.

II. EXCEPTIONS

OCA Exception No. 1: The Commission Should Exercise Its Discretion Under Section 526 to Reject Any Rate Increase For CTSC Because the Company Continues to Provide Inadequate Service. (R.D. at 15-16; OCA M.B. at 9-17, 36-37; OCA R.B. at 3-21, 38.)

A. Introduction

On May 15, 2009, based on five days of evidentiary hearings held in February 2008, the Commission entered an Order finding that CTSC is providing inadequate service to usage and availability customers. The inadequate service continues. CTSC is still unable to provide service to half its customer base because there is a moratorium on new connections. The Company has made no capital improvements or changes to the pumping stations since the 2008 evidentiary hearings. As a result, there continue to be sewage overflows in the collection system.

Where, as here, the Commission has found after hearings that the quantity and quality of service rendered by a utility is inadequate, the Commission may reject a public utility's request to increase rates, in whole or in part. 66 Pa. C.S. § 526. The OCA recommends that CTSC's proposed revenue increase be denied in its entirety.

It is important to consider that CTSC already charges usage customers $68 per month for service. Now, CTSC is asking the Commission to allow it to increase rates for usage customers to *$117 per month* so that it can continue to collect the revenues it is prohibited from billing to availability customers for service it has not been able to provide since 2005. Moreover, the Company makes this request while it continues to provide inadequate service to usage customers.

Seventy percent (70%) of CTSC's proposed revenue increase of $216,947 represents the revenues that CTSC is prohibited from charging to availability customers. When this claim is eliminated and the remaining 30% of the Company's claims are adjusted, the OCA calculates a revenue requirement increase of $13,380, or 2.9%. Given the inadequate quantity and quality of

service rendered by CTSC, the OCA respectfully recommends that the Commission exercise its authority under Section 526 to deny CTSC's increase in its entirety.

While recognizing that the Commission has statutory authority to deny CTSC's increase in whole or part, ALJ Jandebeur opined that CTSC should have a "modest" rate increase in order to avoid "micromanaging" or "hamstringing" the utility and to recognize the age of the collection system and "the customers' desire to have the moratorium lifted." R.D. at 16. The OCA respectfully disagrees. Denying a rate increase to this utility is consistent with Commission precedent and appropriate because it holds CTSC to its regulatory bargain. As explained in the OCA's briefs and below, the *quid pro quo* is that a utility is only entitled to rates sufficient to earn a fair return if it provides adequate service. As to the ALJ's other concerns, the OCA submits that the age of the collection system is not particularly relevant. The condition of the collection system (poor) is the direct consequence of the Company's failure to make necessary capital improvements. Moreover, CTSC's requested rate increase is not intended to – and would not – be utilized for capital improvements and thus would not accomplish the goal of improving service or lifting the moratorium. Last, the OCA submits that the ALJ's recommended 25% increase in rates is not "modest," particularly where customers already pay a flat rate of *$68 per month*. R.D. at 16. The problems underlying the ALJ's reasoning – that regardless of its performance, CTSC is entitled to a "cost of doing business increase" – are addressed in detail below.

Respectfully, the Commission should adopt the OCA's recommendation to deny any rate increase for CTSC while the utility continues to provide inadequate service because it is supported by the facts and law.

B. Legal Basis for Denial of Any Rate Increase

Section 523 of the Public Utility Code, 66 Pa. C.S. § 523, requires the Commission to "consider ... the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates. . .." OCA M.B. at 9-11. In exchange for customers paying tariffed rates for service, which include the cost of used and useful utility plant in service and a rate of return, a public utility is obligated to provide safe, adequate and reasonable service. Pa. P.U.C. v. Pennsylvania Gas & Water Co., 61 PaPUC 409, 415-16, 74 PUR4th 238 at 244-45 (1986) (PG&W 1986); 66 Pa. C.S. § 1501. Accordingly, the General Assembly has given the Commission discretionary authority to deny a proposed rate increase, in whole or in part, if the Commission finds "that the service rendered by the public utility is inadequate." 66 Pa. C.S. § 526(a). Thus, for example, where quality of service is inadequate, rates of return may be set that might be below the rate indicated by the market. In the OCA's briefs, it has explained how the stipulated rate of return can be adjusted to reflect CTSC's inadequate service and to produce a zero revenue requirement. OCA M.B. at 36-37; see OCA M.B., App. C.

A complete discussion of the statutory, appellate and Commission precedent for denying a rate increase where a utility fails to meet the regulatory bargain is provided on pages 9 to 11 of the OCA's Main Brief. For purposes of this exception, it is worth repeating the Commission's holding in a 1988 base rate case, where it denied a utility's rate increase in its entirety based on its failure to demonstrate on the record that its ratepayers were currently receiving adequate service. PG&W 1988. In its Order, the Commission stated:

> In support of our decision herein, we note that judicial precedents state that a utility is not *guaranteed* rate increases necessary for a return on its property; it is only entitled to rates sufficient to earn a fair return if it provides adequate service. This is the essence of the regulatory bargain. The Legislature has specifically made it part of the Public Utility Code [in 66 Pa. C.S. § 1501], which we are bound to administer...

Id. at 197; see also Market Street at 563-64; Colonial Products, 188 Pa. Super. at 172-73, 146 A.2d. at 663 (in proper cases repairs and improvements needed to render reasonable and adequate service may be ordered though the immediate result thereof would be a financial loss to the utility); NUI 1998 at 977-80.

Consistent with this legal precedent, the OCA recommends that because this Commission found the quality of CTSC's service to be inadequate in May 2009 and because the evidence in this case shows that the inadequate service continues, the applicable constitutional and legal standards establish this Commission's authority and obligation to set rates which reflect that inadequacy.

C. CTSC Should Be Held to the Regulatory Bargain.

On pages 11 to 17 of its Main Brief, the OCA provides a thorough discussion of the evidence in this proceeding, which demonstrates that CTSC continues to provide inadequate service to customers and that the Commission has ample basis to exercise its discretion pursuant to Section 526 of the Public Utility Code, 66 Pa. C.S. § 526(a), to reject the Company's proposed rate increase. For purposes of this exception, the major points are that (1) in May 2009, the Commission found that CTSC is providing inadequate service, (2) the Company has made no capital improvements to the collection system, (3) sewage overflows and the moratorium continue, and (4) the Company has no current plan before the Township or the Department of Environmental Protection (DEP) to lift the moratorium or make capital improvements to the collection system. OCA M.B. at 11-17.

The ALJ recognized that the Commission has determined that the current moratorium is evidence of inadequate service and a violation of Section 1501. R.D. at 15; see Sutter at 15-17. The Commission also determined in Sutter that CTSC's service was inadequate due to repeated

and ongoing sewage overflows and CTSC's failure to make necessary repairs, alterations, or improvements. Id. at 19. Despite the Commission's prior order and the evidence in this case showing that the moratorium and sewage overflows in the collection system continue, the ALJ declined to recommend that the Commission exercise its discretion under Section 526 of the Public Utility Code to deny CTSC's proposed increase in its entirety. R.D. at 15-16. Instead, she recommended that CTSC be allowed to recover her calculated revenue requirement of $78,526 without any adjustment to reflect inadequate service. Id. The ALJ reasoned that the Commission would "hamstring" or "micromanage" the Company if it reduced CTSC's revenues to a lesser amount. Id. at 16. The OCA respectfully disagrees.

CTSC is legally required to provide adequate service. 66 Pa. C.S. § 1501. In exchange, for adequate service, it has the opportunity to earn a reasonable rate of return. Conversely, if CTSC fails to provide adequate service, it is not entitled to a reasonable rate of return. As recognized by this Commission, "this is the essence of the regulatory bargain." PG&W 1988 at 197; see, e.g., Market Street at 563-64; Colonial Products, 188 Pa. Super. at 172-73, 146 A.2d at 663; NUI 1998 at 977-80.

Holding CTSC to its regulatory bargain is not micromanaging or hamstringing; it is enforcing the requirements of Section 1501 and is explicitly authorized by Section 526.

> The commission may reject, in whole or in part, a public utility's request to increase its rates where the commission concludes, after hearing, that the service rendered by the public utility is inadequate in that it fails to meet quantity or quality for the type of service provided.

66 Pa. C.S. § 526. Similarly, Section 523 of the Public Utility Code *requires* the Commission to consider the efficiency, effectiveness, and adequacy of service when determining just and reasonable rates and to make appropriate adjustments to cost of service. 66 Pa. C.S. § 523. In

PG&W 1988, this Commission cited a D.C. Circuit case that specifically rejected the ALJ's reasoning here:

> If [the utility] is correct, it may disregard its public responsibilities at will ... and yet insist that the public respond to its demands for higher rates. We cannot accept that position. We do not believe the Constitution left the Commission impotent to deal with the situation confronting it in a reasonable manner.

PG&W 1988 at 197 (citing D.C. Transit Sys., Inc. v. Washington Metro. Area Transit Comm'n, 466 F.2d 394, 422 (D.C. Cir. 1972), cert. denied, 409 U.S. 1086). Soon after PG&W 1988, the Commission upheld an ALJ's recommendation to deny any rate increase for customers in one division of a utility, where that division was not receiving adequate service. Pa. P.U.C. v. Pennsylvania-American Water Co., 1989 PaPUC LEXIS 170 at *15-16 (PAWC). In response to the Company's exceptions, the Commission stated:

> The Company seems to view the ALJ's recommendation as one constituting the imposition of a penalty. This is not the case, in our view. We view the ALJ's recommendation as an acknowledgement that a lesser price is appropriate for a lesser and inadequate quality of service. We agree.

Id. at *16.

It is significant that in PG&W 1988, the utility had made "substantial progress towards" improvement projects following a 1986 Commission determination that service was inadequate. PG&W 1988 at 196. In PAWC, the utility "anticipated" that customers might receive adequate service within the year when a new filtration plant came on-line. PAWC at *12-13. Despite the utilities' actions, the Commission still ordered zero increase because the service being received by customers remained inadequate. PG&W 1988 at 196; PAWC at *15-16. Here, CTSC has made no capital improvements to its collection system, and is no closer to getting the moratorium lifted than it was when the record closed in Sutter. See OCA M.B. at 15-17; Sutter at 15-19.

The ALJ's other rationales for recommending a "cost of doing business increase" are similarly unsupported by the evidence and legal precedent. She suggests that some amount of rate increase is necessary to recognize the age of the collection system and the customers' desire to have the moratorium lifted. R.D. at 16. As noted above, the condition of the collection system is the direct consequence of CTSC's failure to make necessary capital improvements. The Company made no capital improvements to the collection system since the hearings in Sutter, even while it was recovering the revenue from availability fees. OCA St. 2 at 5; OCA St. 2S at 3-4; OCA St. 1 at 14-15. There is no basis for the conclusion that, if CTSC is permitted to recover a portion of those revenues again, it would use them for capital improvements. Moreover, the plan espoused by CTSC to address the collection system and lift the moratorium would require replacement of the gravity portion of the collection system with a low pressure sewer system at a cost of $3.3 million that it proposes to fund with PennVest financing. CTSC M.B. at 52. Thus, the $78,526 increase recommended by ALJ Jandebeur would not address the age or condition of the collection system or help to lift the moratorium.

On the other hand, the impact of a $78,000 increase on the customers' rates is anything but "modest." That level of revenue increase would produce a 25% increase in rates, increasing the flat monthly rate for service from $68 to approximately $85 per month, *or $1020 per year*, for sewage service that the Commission has determined to be inadequate.

For all of these reasons, the ALJ's recommendation to allow a cost of business increase for CTSC should be reversed. As in PG&W 1988, the evidence supports the conclusion that no rate increase should be permitted for CTSC until it is providing adequate service to all of its availability and usage customers.

D. Conclusion

As discussed in the OCA's Main Brief, ratepayers should not be required to provide funds to a utility so that the utility may, at some future time, provide adequate service. OCA M.B. at 17. The Public Utility Code places on the utility the specific obligation to provide adequate service. The Code provides:

> 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.*

66 Pa. C.S. § 1501 (emphasis added). Thus, under the Code it is the utility which has the obligation to make all improvements which may be necessary to provide such service. It is only after these improvements are used and useful in providing utility service that the ratepayers have the obligation to pay for those improvements. PG&W 1986; PG&W 1988; PAWC. Until such time, and as long as service remains inadequate, CTSC's usage customers should not be required to pay the rates which might be appropriate if service were adequate.

To the extent that the Commission does not adopt the OCA's recommendation and allows more than $0 increase, the OCA recommends that the increase be tied to demonstrable improvements in quality of service. In this manner, the impact of higher rates would be phased-in for customers, which would help to address affordability concerns, and no increase would be permitted while service continues to be inadequate. See OCA St. 1 at 12; see, e.g., Pa. P.U.C. v. Pennsylvania Gas & Water Co., 1993 PaPUC LEXIS 118; PG&W 1986; PG&W 1988; PAWC.

OCA Exception No. 2: The Commission Must Reject the Recommendation to Impute Revenues Based on 192 Availability Customers and Impute Revenues Based on the Actual Number of Availability Customers, Which Is 367. (R.D. at 9-11; OCA M.B. at 22-25; OCA R.B. at 26-33).

A. Introduction

In her Recommended Decision, ALJ Jandebeur notes the accuracy of the Commission's conclusion in Sutter that CTSC is in violation of Section 1501 for its failure to provide reasonably continuous service to its customers and rejected CTSC's excuse that the Township's failure to update its Act 537 plan was the reason that CTSC could not hook up new customers to its system for a period of more than three years. R.D. at 10-11, citing Sutter at 16. However, ALJ Jandebeur determined that it would be reasonable and conservative to impute revenues of only a portion of the availability customers in this matter. R.D. at 11. The ALJ recommended that the revenues of only 192 out of the 367 actual availability customers be imputed to the Company. Id.

The ALJ's recommendation is not supported by law or evidence in this matter. In fact, the recommendation rewards the Company for its continued inadequate service by shifting nearly one-half of the availability revenues that the Company is not permitted to collect pursuant to Sutter to the usage class. The OCA's recommendation to impute the revenues from all of the availability customers to the Company should be accepted.

B. It Is Not Appropriate to Require Usage Customers to Compensate CTSC for Availability Revenues That CTSC Was Ordered to Cease Collecting.

In its Sutter Order, the Commission ordered CTSC to cease billing availability customers who could not lawfully connect to the system. See Sutter at 28. In this rate case, the Company proposed to shift the lost revenues of the availability customers onto the usage customers. The OCA submits that such revenue shift would be analogous to charging customers for a fine

imposed on Company management by a regulatory body and that "[i]t is unconscionable in this case to require the usage customers to compensate the Company for the portion of the revenue requirement related to the availability class." See OCA M.B. at 22-25, citing OCA St. 1 at 5.

Allowing the Company to shift the revenues from the availability class to the usage class would essentially permit the Company to circumvent the Sutter Order resulting in absolutely no incentive for the Company to perform the capital improvements necessary to lift the moratorium and provide service to the availability customers. In such case the availability customers would be left with lots that are essentially worthless because they would have little, if any, hope of ever being able to build on their lots. Yet, they would still be required to pay taxes and property owners association fees indefinitely.

As is discussed at length in Exception No. 1, *supra*, and in the OCA's Main and Reply Briefs, the Commission may allow less than the indicated cost of capital where service does not meet the requirements of Section 1501 of the Public Utility Code. See OCA M.B. at 9-11, citing PG&W 1988 at 197 ("A utility is not *guaranteed* rate increases necessary for a return on its property; its only entitled to rates sufficient to earn a fair return if it provides adequate service"); see also OCA M.B. at 36-37, citing PG&W 1986, 61 PaPUC 409 at 415-16, 425, 427, 74 PUR4th 238 at 244-45, 254, 256; PG&W 1988 at 195-96; Pa. P.U.C. v. National Util., Inc., 1997 PaPUC LEXIS 100, aff'd NUI 1998 at 979 (Commission has authority to deny rate increases because of inadequate service, even where the utility asserts that it will not have enough revenue to continue operating without the rate increase); OCA R.B. at 4-21, 32.

It is the Company's responsibility to maintain and improve its system to justify imposition of availability charges. Having failed to do so, the Company lost its statutory right to charge those fees until it improves service and has the moratorium lifted in order to allow

additional connections to the system. Sutter at 17. Allocating this foregone revenue to current usage customers would essentially reward the Company for mismanagement and failure to satisfy its statutory obligation to provide reasonably continuous service. See, e.g., PAWC at *16 ("In our view, the risk of an inability to provide adequate service properly rests upon the Company and its stockholders, not upon the customers.")

In her Recommended Decision, the ALJ indicated that the OCA averred that the availability revenues should be imputed to the Company because of its "bad behavior." R.D. at 10. To be clear, the OCA is not requesting that the Commission impose a punishment on the Company in the nature of imputing availability revenues. Instead, the OCA is requesting the Commission to uphold its Order in Sutter. In the Sutter Order, the Commission found that the Company was not providing adequate service. See Sutter at 19-20. The record in this matter shows that the Company *continues* to provide inadequate service. See OCA Exception No. 1. Surely, when the Commission sustained the formal complaints of usage customers in Sutter and found inadequate service, it did not intend that their rates should *increase* as a result of its decision to provide rate relief to availability customers. This absurd result must be avoided by imputing the revenues of all 367 availability customers to CTSC in this rate case.

C. All of the Availability Revenues Should Be Imputed to the Company.

The ALJ recommended that the revenues of 192 out of the 367, or roughly one-half, actual availability customers be imputed to the Company. R.D. at 11. The number 192 arose from OCA witness Fought's opinion that the treatment plant could serve at least 570 connections (570 – 378 usage customers = 192).[2] See OCA M.B. at 24-25; OCA R.B. at 33. It is important

[2] This opinion was offered in response to CTSC's argument that its system only has capacity to serve the existing 378 usage customers. OCA St. 2 at 11-14. Rather, Mr. Fought explained that the treatment plant was "rated" to serve 378 customers but the evidence indicates that the treatment plant is physically capable of serving substantially

to note that OCA witness Fought stated *at least* 570 total customers – he explained that this number was conservative and calculated using a relatively high *assumed* flow per household, *i.e.* it was likely that the actual flow would be less and would mean that CTSC's existing treatment plant could serve more than 570 customers. OCA St. 2 at 14. Thus the 570 number was taken somewhat out of context and used by CTSC to argue that the imputed revenues for availability fees should be based on fewer than 367 availability customers. But this argument is discredited by the fact that CTSC admitted that it would begin charging all the availability customers once the moratorium is lifted, regardless of the position it has taken in this rate case that it may not be able to serve some or all of them. Tr.3 at 78-79. Subject to a change in the actual number of lots due, for example, to combining lots or movement into tax sale, the number of availability customers will be the same when the moratorium was lifted as it was in May 2009 when CTSC stopped charging availability fees. Id. Also, as discussed by OCA witness Kraus:

> for years, the lot owners comprising the availability class paid the availability fee, all lots within the development were purchased under the assumption that structures could be built, connected to the system and receive service upon request.

OCA St. 1 at 9-10. The collection system is extended throughout the entire Marcel Lake Estates development, and CTSC has an exclusive franchise to provide wastewater service to the entire development. Id. at 9; CTSC Exh. 1, A-11. For all of these reasons, there is no factual basis for imputing revenues from only a portion of the availability customers.

---

more customers and the DEP anticipated re-rating the plant for a greater number of customers if the Company reduced infiltration/inflow in the collection system. Id.; OCA Exhs. TLF-6, TLF-7, TLF-8.

D. Conclusion

Given all of the above it would not be proper to impute revenues from only a portion of the availability customers. The ALJ's recommendation should be rejected, and the OCA's recommendation to impute $156,034 in revenue to CTSC for ratemaking purposes should be accepted.

OCA Exception No. 3: The Commission Must Reject the Recommendation to Accept the Company's Proposed Claim for Plant Maintenance Expense. (R.D. at 13; OCA M.B. at 31-32; OCA R.B. at 35-36).

In her Recommended Decision, ALJ Jandebeur recommended allowing CTSC's entire proposed expense for plant maintenance because the "need for jetting services may arise again," and therefore, she did not see the jetting expense as unusual. R.D. at 13.

The OCA asserted that because the Company's plant maintenance expense claim, which was based on the 2008 expense claimed, was 55% higher than it had been for the prior year, a four-year average of the plant maintenance expense should be used. See OCA M.B. at 31, citing OCA St. 1 at 8. A four-year average of plant maintenance expense reduces the Company's claim from $8,255 to $5,324. Id.

OTS also recommended that a downward adjustment be made based, in part, upon the same reasoning as OCA. See OTS St. 2 at 18. OTS also stated that the Company's sharp increase to plant maintenance expense in 2008 was due to required jetter services, an unusual expense. See OTS M.B. at 26-27; see also OTS St. 2 at 17-18. The Company failed to rebut or otherwise address OTS's argument in its Main or Reply Briefs. See CTSC M.B. at 34-36; CTSC R.B. at 16-18.

Instead, the Company claimed that the age of the system warranted a higher expense amount than the normalized average proposed by OCA and OTS. See CTSC M.B. at 35, citing CTSC St. DMK-1R at 17. The Company also asserted that it would be inappropriate and unreasonable to adopt the OCA's and OTS's approach because the proposed normalization period includes a "period of time in which the Company [was] criticized for having mismanaged and improperly maintained the plant." See CTSC R.B. at 17.

The proper measure for a plant maintenance expense is the actual amount spent in recent years, not Company witness Kalbarczyk's "opinion" on what the amount should be. See OCA M.B. at 32, citing OCA St. 1S at 4; see also Pa. P.U.C. v. City of Lancaster – Sewer Fund, 2005 PaPUC LEXIS 44, *120-21. Moreover, CTSC's actual expenses for plant maintenance have not steadily increased over the last four years. Id. For these reasons, using the 2008 test year or even a two-year normalization period is inappropriate and inconsistent with ratemaking principles. Furthermore, as discussed at length in these Exceptions (at Exception No. 1) and in OCA's Main (at 9-17) and Reply (at 3-21) Briefs, the Company continues to mismanage its system and currently fails to provide adequate service. Therefore, the Company's assertions regarding the sharp rise in its proposed plant maintenance expenses are unsupported.

The Company has failed to meet its burden of proof with regard to plant maintenance expense. Likewise, the ALJ's recommendation should not be adopted. Instead, as recommended by OCA, a four-year normalization adjustment should be used, and the claimed plant maintenance expense should be reduced by $2,931 to $5,324.

OCA Exception No. 4: The Commission Must Reject the Recommendation to Allow the Company to Collect Expenses Incurred in Relation to the *Sutter* Case That Are Outside the Test Year When a Deferral Was Not Properly Requested or Granted. (R.D. at 13-14; OCA M.B. at 33-35; OCA R.B. at 36-37).

In her Recommended Decision, ALJ Jandebeur recommended that the Company be permitted to recover its entire claim for outside services ($12,073 per year for five years), which includes the actual expenses incurred for the Sutter complaint case. R.D. at 14. However, the ALJ failed to take into account the OCA's recommended disallowance of the amount of the Sutter case expenses that are outside the test year ending March 31, 2009, because the Company did not at any time request or receive permission for a deferral of such expenses. Id. See OCA M.B. at 33-35, citing OCA St. 1 at 10. The OCA recommended reduction of the Company's outside services expense claim to a total of $11,013 to be normalized over five years. Id.

As discussed at length in the OCA's Main Brief, the Commission has the authority to regulate the accounting procedures for all utilities under its jurisdiction, and therefore, if a company wishes to modify an accounting procedure, it must petition the Commission for approval to do so. 66 Pa. C.S. § 1701; 52 Pa. Code §§ 5.41, 5.42. Such is the case when a company wishes to obtain approval of deferred accounting treatment. See, e.g., Petition of Metropolitan Edison Co. and Pennsylvania Electric Co. for Authority to Modify Certain Accounting Procedures, P-00052143, Order at 2 (May 5, 2006) (seeking authorization to defer, for accounting and financial reporting purposes, certain incremental electric transmission charges approved by the Federal Energy Regulatory Commission) (MetEd).[3] When a utility seeks approval to defer costs in the context of a petition, the reasonableness of deferring those costs is

[3] Copies of all unpublished Orders cited in OCA's briefs are provided in appendices to the briefs.

not resolved in the declaratory proceeding. MetEd at 6-7.[4] Instead, the purpose of the petition is to determine whether the utility should be allowed to defer costs, without regard as to how the costs will be treated for ratemaking purposes. Id. at 7.

As noted by the OCA, the Company should have requested a deferral of the Sutter expenses in order to seek recovery of expenses that fell outside the test year of a rate case. CTSC had at least 18 months during the pendency of the Sutter case to request a deferral of the costs of the case via a petition. The Company has failed to provide a viable excuse for not properly requesting a deferral of the expenses, and it would be impermissible retroactive ratemaking to allow CTSC to recover these costs that were incurred before the test year in this proceeding. See, e.g., Popowsky v. Pa. P.U.C., 164 Pa. Commw. 338, 344, 642 A.2d 648, 651 (1994) (ratemaking in Pennsylvania is prospective, based on use of a test year).

Contrary to CTSC's arguments (CTSC R.B. at 14-15), the complaint case expenses do not satisfy the exception to retroactive ratemaking because they are neither unanticipated nor nonrecurring. It cannot reasonably be considered unanticipated for CTSC's customers to file complaints when there are chronic moratoriums and sewage spills. Nor can it reasonably be considered nonrecurring when there is an ongoing moratorium, strongly contested grinder pump issue and pending Commission investigation regarding the potential forced sale of the Company. CTSC has also argued that it could not petition for deferral sooner than when the final order was entered in Sutter. CTSC R.B. at 15. This position assumes that CTSC would not be seeking recovery of the costs if it had won the complaint case, which makes no sense. The resolution of the case should not be relevant.

---

[4] See also Petition of Columbia Gas of Pa., Inc., 1996 PaPUC LEXIS 123 (approving deferral of costs of temporary conversion to alternative energy sources); Petition of Pennsylvania Power & Light Co. for a Declaratory Order, 1982 PaPUC LEXIS 75 (approving deferral of certain costs related to the Susquehanna nuclear generating plant); Petition of the Newtown Artesian Water Co. for a Declaratory Order Re Accounting Treatment for Costs of its Linton Hill Water Storage Tank and Transmission Main, 1994 PaPUC LEXIS 13.

In her Recommended Decision in this matter, the ALJ states that CTSC's "customers presumably would not be in favor of providing less recovery of the expenses." R.D. at 14. Given the evidence submitted into the record by customers in this proceeding and in the Sutter case, there is absolutely no support for this statement. See generally Tr.1. Regardless, the customers' feelings with regard to full recovery of the out-of-test-year expenses is not the standard that must be met.

The Company failed to request a deferral of the Sutter case expenses, and therefore, those expenses that fall outside the test-year must be disallowed. Consequently, the Company's outside services expense claim should be reduced to a total of $11,013 to be normalized over five years.

OCA Exception No. 5: The Commission Must Reject the Recommendation to Disallow a Refund to the Sinatras for Their Payment of a Prior Lot Owner's Bill. (R.D. at 15; OCA M.B. at 40-43; OCA R.B. at 40-41).

In her Recommended Decision, ALJ Jandebeur recommended that the Commission decline to provide a refund to the Sinatras of the money their attorney forwarded to CTSC as payment of the prior owner's delinquent account. R.D. at 15. The ALJ indicated that it is not appropriate to request such a refund in the context of a base rate case. Id. Also, the ALJ stated that the request was untimely. Id.

The Sinatras properly made their claim as part of this base rate case by providing evidence at the public input hearing in response to the Commission's Order in the Sutter case regarding another customer being "improperly charged for [a former owner's] past due balance and this must be refunded to her." Sutter at 8; see also Stephen Sutter *et al.* v. Clean Treatment Sewage Co., C-20078197, Initial Decision at 31-32 (Jan. 2, 2009) (Sutter I.D.). ALJ Jandebeur's Initial Decision in Sutter stated: "[t]o the extent that CTSC has done this to any other customer, those charges must also be refunded." Sutter I.D. at 32. Furthermore, Section 1312 of the Public Utility Code specifically states that the Commission has the power and authority to order a refund "[i]f, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable." 66 Pa.C.S. § 1312(a). Therefore, this base rate case is a proper avenue for the Sinatras to request a refund of an amount improperly demanded and received by CTSC.

As discussed at length in OCA's Main Brief, the Sinatras provided ample evidence that they paid to CTSC the delinquent account of the previous owner of their lot in Marcel Lake Estates. See OCA M.B. at 40-43; OCA R.B. at 40-41. At public input hearings in this proceeding, Mario Sinatra, provided a copy of a check that he said was paid to Clean Treatment

to settle the balance on the prior owner's account. The amount of the check was $1,116. See Sinatra Exhs. 1 and 2.

Mr. Sinatra also produced a letter from his attorney that accompanied the check to CTSC. See OCA M.B. at 41, citing OCA St. 1S at 12; see also Exh. Sinatra 1. The letter is addressed to Debbie Sorchik's attention and states:

> Pursuant to our telephone conversation yesterday afternoon, **our firm represents the new owners of Lot 51 in Marcel Lake Estates, Mario and Elaine Sinatra.** Enclosed please find **our** check no. 9793 payable to your order in the amount of $1,116.00 for the delinquent sewer charges for Lot 51.

Exh. Sinatra 1. (Emphasis added). The letter clearly indicates that the payment is made by the Sinatras – the check was sent by the Sinatras' attorney on their behalf pursuant to a conversation she had with Ms. Sorchik at CTSC. The check to CTSC is from the portion of the attorney's escrow account maintained on behalf of the Sinatras, which is evidenced by "30,023 – Sinatra" in the memo portion of the check. See Exh. Sinatra 1.

Mrs. Sinatra also provided testimony regarding the payment. Mrs. Sinatra provided testimony that Ms. Sorchik from CTSC had called her about the past due amount prior to settlement and offered to reduce the amount from $3,000 to $1,116 "as a favor." See Tr.1 at 149-150. This collection call from Ms. Sorchik to Mrs. Sinatra is very similar to the collection call described by Mrs. Stoddard in the Sutter case, which evidence resulted in a refund of the improperly paid amount to Mrs. Stoddard. See Sutter I.D. at 18-19 (Findings 118-120).

The Company had not provided a scintilla of evidence to rebut the evidence presented by the Sinatras on this matter. Although CTSC certainly had access to the type of evidence that could rebut the Sinatras' claim, such as Ms. Sorchik's notes of the transaction, copies of correspondence with the Sinatras, their attorney or the former owner of the property, or even Ms.

Sorchik's recollection of events, the Company did not come forward with any evidence that the balance was not paid by the Sinatras.

As for the timeliness of the refund request, the OCA submits that there are two alternate reasons to allow the refund. First, it would be proper to consider May 15, 2009 – the day these charges were specifically found to be illegal by the Commission in the Sutter Order – as the day when the statute began running. See Scutching v. Philadelphia Gas Works, 2004 PaPUC LEXIS 30, at *6 (holding that the statute of limitations is measured from the time a billing abnormality is discovered). Using the date the charges were officially declared illegal would ensure all improperly charged CTSC customers were made whole, while maintaining the integrity of the statute of limitations.

Second, CTSC's conduct with respect to these charges merits application of the doctrine of equitable estoppel:

> The doctrine of equitable estoppel serves to toll the statute of limitations and is based on the theory of estoppel. It provides that a defendant may not invoke the statute of limitations if through fraud or concealment he causes the plaintiff to relax his vigilance or deviate from his right of inquiry into the facts. The doctrine does not require fraud in the strictest sense, but rather, fraud in the broadest sense, which includes an unintentional deception.

Ely v. Pennsylvania American Water Co., 2006 PaPUC LEXIS 74, at *3-4. In this case, CTSC's initial act of demanding illegal charges, coupled with its failure to rectify the situation when brought to its attention constitutes unintentional deception within the meaning of the doctrine. Thus, the doctrine of equitable estoppel serves as yet another reason why the Sinatras' claim should not be barred by the statute of limitations.

The Commission should reject the recommendation to disallow a refund to the Sinatras in the amount of $1,116. Instead, the Commission should direct CTSC to provide a full refund to the Sinatras within thirty days of the date of its Order in this matter.

OCA Exception No. 6: The Commission Must Reject the Failure to Take Affordability Into Consideration in Denying the Rate Increase. (R.D. at 17; OCA M.B. at 38-39; OCA R.B. at 39-40).

In her Recommended Decision, ALJ Jandebeur stated that her recommended changes to the Company's proposal adequately addressed the necessity of the Company to raise sufficient revenues to provide adequate service and the need for a rate increase to be manageable for customers. R.D. at 17. Currently, CTSC's customers pay $68 per month, which are very high rates. OCA M.B. at 38, citing OCA St. 1 at 12, Sutter I.D. at 26. In this proceeding, the ALJ recommended that the Company be permitted to raise its rates by 25%. See R.D. at Table I. As discussed above, the ALJ did not find that the Company has corrected the problems underlying the Commission's determination in Sutter that service is inadequate.

There is ample basis in the record for the Commission to deny any increase in rates by adjusting cost of service/rate of return to reflect inadequate service, imputing the revenues for the entire availability class, and adopting the OCA's recommended adjustments to CTSC's rate base and expense claims. Affordability is another issue to be considered in setting rates.

Many customers testified during the public input hearings in this case that higher rates would be unaffordable because they have fixed or limited incomes – a situation made worse by the current economy. See, e.g., Tr.1 at 54, 58 (Cappiello), 109 (Algozzini), 167 (Green), 170-71 (M. Hanel), 181-83 (Hill), 189 (Heady), 282-83 (Sutter). At the same time, CTSC customers continue to pay taxes and property owner's association dues with a frozen base of customers due to the moratorium, which has been in place since February 2005. See OCA M.B. at 38, citing OCA St. 1 at 12. CTSC is no closer to lifting the moratorium than it was during the Sutter hearings in February 2008, and therefore, CTSC's customers have been in this situation for more

than five years without any relief on the horizon. Also, increasing already high sewer rates by any amount will lead to higher uncollectibles. Id., citing OCA St. 1 at 15.

The Commission has recognized affordability as an issue to be considered in setting rates. See e.g., 52 Pa. Code § 69.711(a)(6) (regarding setting rates in acquired systems); Rulemaking to Establish a Universal Service Funding Mechanism, 1996 PaPUC LEXIS 212, at *23, n.7 ("Affordability has always been a critical element considered by the Commission in evaluating the justness and reasonableness of utility rates and is implicitly a necessary consideration in exercise of the Commission's ratemaking authority."); Policy Statement Re: Incentives for the Acquisition and Merger of Small, Nonviable Water and Waste Water Systems, 168 PUR4th 45 (PaPUC 1996) ("[W]e are of the opinion that affordability concerns are indeed a relevant consideration of the Commission in fulfilling our statutory obligation to establish just and reasonable rates").

Allowing CTSC a 25% rate increase to its already high rate of $68 per month is inappropriate given the circumstances, especially in light of the Company's continued failure to provide adequate service, as discussed at length in OCA Exception No. 1, *supra*. Therefore, the OCA's recommendation of a $0 rate increase because of inadequate service should be adopted.

III. CONCLUSION

For all of the reasons discussed above and in its Main and Reply Briefs, the Office of Consumer Advocate submits that Clean Treatment Sewage Company's proposal to increase rates for usage customers should be denied. CTSC should be held responsible for its ongoing failure to provide inadequate service. If CTSC does not or cannot provide adequate service to usage and availability customers by charging usage customers $68 per month, its efforts should be directed to finding capable new ownership. Respectfully, the Commission should deny the proposed rate increase and move forward with the Section 529 investigation to transfer this utility to more financially, managerially and technically capable ownership.

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. #83487

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. #89891

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101
Phone: (717) 783-5048
Fax: (717) 783-7152

DATED: March 16, 2010
123694

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission
v.
Clean Treatment Sewage Company
Docket No. R-2009-2121928

I hereby certify that I have this day served a true copy of the Office of Consumer Advocate's Exceptions 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 16th day of March 2010.

SERVICE BY ELECTRONIC MAIL and IN PERSON

Adeolu A. Bakare, Esquire
Office of Trial Staff
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17105

SERVICE BY ELECTRONIC and FIRST CLASS MAIL, POSTAGE PREPAID

Thomas T. Niesen, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

David Roberts
108 Martine Court
Dingmans Ferry, PA 18328

Kenneth Green
Catherine Green
148 Michele Lane
Dingmans Ferry, PA 18328

Frank Gerage
Carmela Gerage
119 Colette Lane
Dingmans Ferry, PA 18328

Peter Palmadessa
167 Marcel Drive
Dingmans Ferry, PA 18328

Edgardo Caraballo
171 Bernadette Drive
Dingmans Ferry, PA 18328

Philip J. Walsh
70 Eastern Ave.
Revere, MA 02151

Dawn Schmidt
105 Maria Lane
Dingmans Ferry, PA 18328

Marie DeSaro
152 Marcel Drive
Dingmans Ferry, PA 18328

Eric Martino
112 Yvonne Lane
Dingmans Ferry, PA 18328

Laureen Gatto
229 Lake Drive
Dingmans Ferry, PA 18328

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. #83487
Email: EGannon@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. #50026
Email: CHoover@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
119645