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March 4, 2011

BY FEDERAL EXPRESS

Rosemary Chiavetta, Secretary
Secretary's Bureau
Pennsylvania Public Utility Commission
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Harrisburg, PA 17120
(717) 772-7777

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MAR 04 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Elison v. Pennsylvania American Water Company
Docket No. C-2010-2175673

Dear Secretary Chiavetta:

Attached for filing please find one (1) original and three (3) copies of the *Answer of Pennsylvania American Water Company to the Office of Trial Staff Motion to Compel* in the above-captioned proceeding.

Should you have any questions, please do not hesitate to contact the undersigned.
Thank you.

Sincerely,


Michael D. Klein

Enclosure

cc: Administrative Law Judge Salapa
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAR 04 2011

SHANE & MELISSA ELISON)
Complainant)
v.)
PENNSYLVANIA AMERICAN WATER)
COMPANY)
Respondent)

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. C-2010-2175673

ANSWER OF PENNSYLVANIA AMERICAN WATER COMPANY
TO THE OFFICE OF TRIAL STAFF MOTION TO COMPEL
ANSWERS TO INTERROGATORIES OTS-10 AND OTS-11

Pursuant to 52 Pa. Code §5.342(g)(1), the Respondent, Pennsylvania American Water Company ("PAWC" or "Company" or "Respondent"), by and through its undersigned attorneys, hereby submits its Answer to the Office of Trial Staff Motion to Compel in the above-captioned proceeding. In support thereof, PAWC avers as follows:

1. On February 14, 2011, Office of Trial Staff ("OTS") submitted Interrogatories OTS-8 through OTS-11. Interrogatories OTS-10 and OTS-11 set forth the following requests:

10. Have any of the Company's affiliates in other states encountered similar problems with the T-10 model Neptune water meter?

11. Please provide a summary of any complaints filed with the Company's affiliates regarding the T-10 model Neptune water meter in other jurisdictions.

2. On February 18, 2011, PAWC entered its objections with respect to OTS-10 and OTS-11. PAWC asserted that Interrogatories OTS-10 and OTS-11 are objectionable pursuant to 52 Pa. Code § 5.361(a)(2), (3) and (4) as unreasonably burdensome, unreasonably expensive, relating to certain information which is privileged and requiring unreasonable investigation. In addition, the Company's affiliates in other states are not subject to PAWC's control. The

information that would be required for PAWC to provide a response to OTS Interrogatories OTS-10 and OTS-11 is not within PAWC's custody or control. Finally the information sought is irrelevant to the underlying complaint.

Custody and Control

3. OTS-10 and OTS-11 impermissibly seek information that is not within the Company's custody or control. The Company's affiliates are not subsidiaries of PAWC. PAWC is in no way superior to its sister affiliates in other states in the corporate hierarchy. Rather, PAWC and its affiliates in other states are all subsidiaries of a single parent, American Water Works Company, Inc. ("American Water"), which is not a party to the instant proceeding. Simply put, PAWC is without the authority to obtain the information requested by OTS.

4. The cases cited by OTS in support of its assertion that PAWC can be compelled to provide information from its affiliates in other states are inapplicable to the present circumstances. In any case, the cited cases do not require the relief that OTS seeks.

5. OTS cites *Pennsylvania Public Utility Commission v. T. W Phillips Gas and Oil Company*, 1978 Pa. PUC LEXIS 64 (Sept. 21, 1978), as an example in which the Commission ordered a company to provide information regarding its parent and affiliates as relevant and discoverable. OTS's characterization of this case is incomplete. OTS failed to note that the legal context of this case was a rate proceeding, not a complaint proceeding. The information that the respondent company failed to provide was the consolidated capital structure of its parent (not a sister affiliate), *T. W Phillips Gas* at *13, which information is affirmatively required to be provided in a rate proceeding where a general rate increase in excess of \$1 million is sought by the filing utility. 52 Pa. Code § 53.53. Also, the Commission did not order the respondent company to answer interrogatories pursuant to a motion to compel. In fact, the Commission did

not order the respondent company to provide any answer in the matter before it. Rather, the Commission simply found that the respondent company had not met its burden of proof of establishing an appropriate capital structure in the rate making case and directed the respondent, “in future rate filings,” to complete all interrogatories “in connection with [its] capital structure” or that of its affiliates. *T. W Phillips Gas* at *14 (emphasis added). Read in the full light of the facts, the holding in *T.W. Philips Gas* is extremely narrow. OTS has stated that this case illustrates that “data from a parent or affiliate of a jurisdictional utility [is] relevant and discoverable.” OTS Motion to Compel at ¶ 6. This may be so in the narrow circumstances of a rate making proceeding where an appropriate capital structure is an essential issue. The case does not stand for the much broader proposition that a respondent in a complaint proceeding can be compelled to produce information (1) that is not directly related to or required by statute or regulation in the underlying complaint, (2) that the respondent must first obtain from a parent company or sister affiliates that are not parties and are in no way interested in the proceedings before the Commission, and (3) where such sister affiliates are independent operating companies regulated by public utility commissions of other states.

6. OTS also cites *Pennsylvania Public Utility Commission. v. Equitable Gas Company*, No. R-860315, 1986 Pa PUC LEXIS 110 (May 16, 1986) to argue that PAWC has sufficient control over its non-jurisdictional sister affiliates that the Commission may compel discovery of information. Again, OTS’s incomplete characterization of the case obscures the fact that it is not directly applicable to the present facts, and is in fact, extremely narrow. Like the previous case, *Equitable Gas* arises in the rate making context. Importantly, the information being sought was in the custody of a subsidiary of a subsidiary of Equitable Gas – an entity *inferior* to Equitable Gas in the corporate hierarchy. Indeed, the Commission observes in

footnote 7 of its decision that Equitable's Annual Report stated that the subsidiary in question was "directly controlled" by Equitable Resources, which was "directly controlled" by respondent Equitable Gas. The information sought related to the gas sales of the subsidiary and whether they were transported by Equitable Gas, which the Commission considered "necessary" to an evaluation of Equitable's gas purchase and transportation activities. In determining that unique factual and legal circumstances justified an extension of its authority and "piercing the corporate veil," the Commission specifically cited a concern that such transactions with subsidiaries could be used as a tactic to avoid the legislative intent of Act 74 to encourage purchase of least cost gas. *Equitable Gas*, at *9. In the present case, there are no similarly unique factual circumstances. OTS is not seeking to compel the production of information from subsidiaries of PAWC, and even seems to recognize that PAWC itself cannot compel its sister affiliates, but must solicit the cooperation of its parent, American Water. OTS Motion to Compel at ¶ 9. There are no threatened circumventions of legislative intent. *Equitable Gas*, in law or fact, simply does not apply to the present case.

7. Finally, OTS encourages the Commission to adopt its interpretation of the legal principles of *Brunswick v. Suzuki Motor Co., LTD*, 96 F.R.D. 684 (E.D. Wisc. 1983) and *Perini American Inc. v. Paper Converting Machinery Company*, 559 F. Supp. 2d 552 (E.D. Wisc. 1983), two cases cited by the Commission in *Equitable Gas*. It must be noted that these federal district court cases from Wisconsin, in and of themselves, are not binding on the Commission. OTS claims that these cases "clearly establish that corporate structure will not indemnify a jurisdictional utility from its duty to furnish relevant data." OTS Motion to Compel at ¶ 8. With respect to *Brunswick*, that case stands only for the proposition that in certain circumstances a parent corporation that is party to a proceeding may be compelled to produce documents in the

possession of a subsidiary. OTS appears to acknowledge the limitation of the holding, *id.*, but fails to acknowledge the obvious fact that PAWC is not a parent to its sister affiliates. OTS then asks the Commission to make a substantial leap and break new ground in applying the *Perini* opinion to the instant case, which OTS claims addresses similar circumstances. In *Perini*, the Wisconsin federal district court concluded that an American corporation could be compelled under the unique circumstances of the case to provide information in the custody of its Italian sister affiliate. Without further elaboration, the case would seem to apply to the instant proceeding. However, before the court determined that the American corporation had custody and control over information in the Italian subsidiary's possession (and what OTS fails to properly recognize in its motion), the *Perini* court had first to establish that the American and Italian subsidiaries were both "alter egos" of a common parent. The common parent was a man named Fabio Perini. Mr. Perini owned 100% of the stock of the American corporation and 99.5% of the stock in the Italian corporation. Mr. Perini was the President and Chairman of the Board of the American corporation and had recently been the President of the Italian corporation. Finally, each of the American and Italian companies shared a common director. On these facts, the federal district court determined that the subsidiaries were each "alter egos" of Mr. Perini, that legal conclusion stemming from an extensive body of law on corporate liability. OTS, in a single conclusory statement and without the support of the extensive legal analysis that such a determination deserves, facilely claims PAWC and its sister affiliates are "alter egos" of American Water. As with the case previously cited by OTS, neither the facts nor the law apply to the present circumstances. PAWC has no authority to obtain the information that OTS has requested, and the cases cited by OTS do not establish otherwise.

Unreasonable Burden, Expense and Investigation

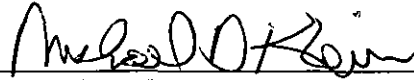
8. Even if the Commission determines that PAWC has custody or control over information held by its sister affiliates, OTS-10 and OTS-11 impose unreasonable burden and expense on PAWC and its sister affiliates and require unreasonable investigation. In order to provide information related to customer complaints received by PAWC, the Company already has had to make a substantial investment in time and resources. The records of the Company are not kept in the regular course of business in a way that is conducive to producing readily the information that has been requested to date. It is certainly not kept in a manner that can be easily converted into a chart as OTS has requested. In fact, PAWC already has gone to considerable expense, allocating significant resources to parse its own records to determine whether T-10 Neptune meters have been implicated in customer complaints. OTS should be well aware of this fact, as PAWC has had to supplement its responses to the Office of Consumer Advocate interrogatories to accommodate the laborious process of reviewing and formatting relevant complaint data from customers in Pennsylvania. PAWC can only assume that its sister affiliates, which provide service to over 2,000,000 customers across the country, would face, at a minimum, the same expense and allocation of resources. It is additionally unreasonable to demand the same of its sister affiliates in connection with a proceeding concerned only with Pennsylvania. Moreover, these sister affiliates are regulated by other state public utility commissions, and it is unclear how the information sought by OTS would be relevant to the underlying customer complaint in Pennsylvania. The cost of responding to OTS's interrogatories would divert time, money and other resources from operations and be paid for by ratepayers outside of Pennsylvania. In addition, the Company's ability to provide relevant responses has relied on the cooperation of Neptune to provide serial numbers that can be cross-

referenced against Company records, and PAWC cannot guarantee Neptune's cooperation on a continuing basis, especially as OTS attempts to expand its investigations into other states.

9. The "sophistication of modern communication networks" notwithstanding, OTS fails to understand that the data maintained by PAWC and its sister affiliates cannot so easily be manipulated to provide the information requested. OTS wants a chart summarizing all complaints that implicate T-10 Neptune meters, including the dates of complaint, dates of incident, customer class, and a determination that the complaint may have something to do with backflow. Customer complaint records would have to be gathered from each of the 20 sister affiliates and cross-referenced against serial numbers associated with T-10 Neptune meter purchases made by the various districts within the sister affiliates. These serial numbers are not in the custody or control of PAWC or its sister affiliates and must be supplied by Neptune. Duplicates must be removed. Each complaint would then have to be reviewed individually to determine whether "backflow" was implicated. Although OTS has limited its request so that customer information would not be included, all data, once organized, must be further reviewed and redacted as appropriate to address customer privacy concerns. None of this can be done at the mere touch of a button. Even as limited as proposed in its Motion to Compel, the information requested by OTS, especially in light of its limited relevance to the instant proceeding, would impose excessive burden, cost and investigation on PAWC and its sister affiliates and is impermissible under the Commission's rules regarding discovery.

WHEREFORE, Respondent respectfully requests that this Honorable Commission sustain PAWC's objections to OTS Interrogatories OTS-10 and OTS-11 and deny Office of Trial Staff's Motion to Compel.

Respectfully submitted,

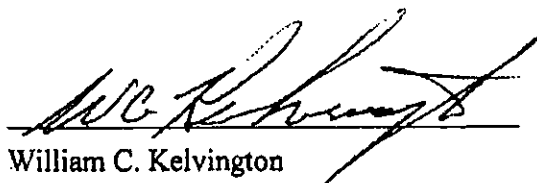


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**Attorneys for
Pennsylvania American Water Company**

VERIFICATION

I, William C. Kelvington, Vice President of Operations for Pennsylvania American Water, 800 West Hersheypark Drive, Hershey, PA 17033, hereby state that the facts above set forth 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).


William C. Kelvington

Dated: 3/3/11

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SHANE & MELISSA ELISON

v.

PENNSYLVANIA AMERICAN WATER
COMPANY

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) Docket No. C-2010-2175673
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the *Answer of Pennsylvania American Water Company to the Office of Trial Staff Motion to Compel* upon the persons and in the manner indicated below in accordance with the requirements of § 1.54 (relating to service by a party):

By Electronic and First-Class U.S. Mail:

Honorable David A. Salapa
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
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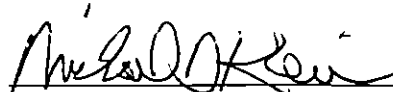
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DATED: 3/4/11



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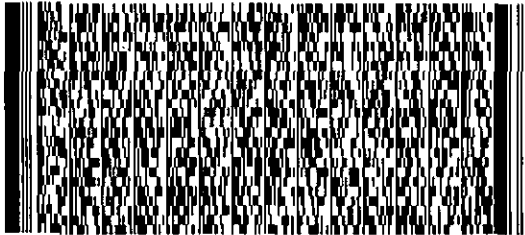
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