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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

December 9, 2011

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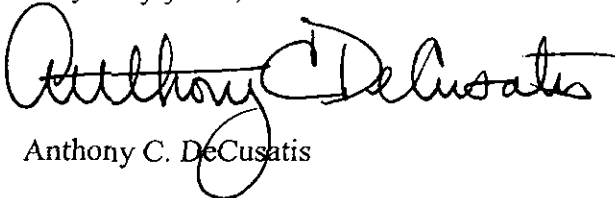
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: C. Leslie Pettko v. Pennsylvania-American Water Company – Docket No. C-2011-2226096

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned matter are (1) an original and three copies of Pennsylvania-American Water Company's ("PAWC") **Prehearing Memorandum**; and (2) an original and three copies of PAWC's **Motion Requesting Certification Of A Material Question By The Administrative Law Judge**. As evidenced by the enclosed original and three copies of the Certificate of Service, copies thereof have been served upon the Complainant and the presiding Administrative Law Judge. We have also enclosed an additional copy of document, which we request that you date-stamp and return to us in the stamped, pre-addressed envelope we are providing.

Very truly yours,



Anthony C. DeCusatis

cc: Per Certificate of Service
Seth A. Mendelsohn

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

C. LESLIE PETTKO

v.

PENNSYLVANIA-AMERICAN
WATER COMPANY

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DOCKET NO. C-2011-2226096

PREHEARING MEMORANDUM
OF
PENNSYLVANIA-AMERICAN WATER COMPANY

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Counsel for Pennsylvania-
American Water Company

Dated: December 9, 2011

I. INTRODUCTION, OVERVIEW AND REQUEST FOR CERTIFICATION OF MATERIAL QUESTION

Pennsylvania-American Water Company (“PAWC” or the “Company”) submits this Prehearing Memorandum in response to the *Prehearing Conference Order* issued by Administrative Law Judge Joel H. Cheskis on November 16, 2011.

PAWC is the Respondent in this proceeding. As such, it is not in a position to furnish some of the information requested in Paragraph No. 3 of the *Prehearing Conference Order*. That information would have to come, at least initially, from the Complainant (e.g. a list of the issues and sub-issues that Mr. Pettko intends to pursue including the “Commission Order or regulation” the Complainant alleges PAWC has violated. *See Prehearing Order #2*, p. 11). Similarly, PAWC cannot furnish definitive responses to certain sub-parts of Paragraph No. 3 of the *Prehearing Conference Order* (e.g., its position on the issues, the evidence it envisions presenting and the witnesses it would need to call) until the Complainant specifies what, if anything, he contends PAWC has done in violation of the regulations or Orders of the Public Utility Commission (“PUC” or the “Commission”). *Id.*

The gravamen of Mr. Pettko’s Complaint is set forth in Paragraph Nos. 25 through 36 of his Complaint. Specifically, Mr. Pettko alleges that PAWC’s application of changes in the Distribution System Improvement Charge (“DSIC”) and the State Tax Adjustment Surcharge (“STAS”) was not “authorized” (Complaint ¶ 32) because such changes were “levied for the entire billing period” (Complaint ¶¶ 27 and 34) instead of being “pro-rated” based on service rendered before and after the “effective date” (Complaint ¶¶ 31 and 34).

PAWC filed a Motion for Judgment on the Pleadings in which it cited, discussed and provided copies of the Commission Orders that authorized PAWC to apply changes in the DSIC

and STAS on a “bills-rendered” basis and without “pro-rating” for service rendered before and after the “effective date.” See Motion for Judgment on the Pleadings, pp. 6-12, and Appendices A-D. In addition, PAWC provided the Bureau of Audits’ Report that the Commission approved and issued on March 5, 1999 at Docket No. D-97S023, which states, at pages 5 and 9 thereof, as follows:

The DSIC is to be expressed as a percentage carried to two decimal places and is applied to the effective portion of the total amount billed to each customer under the Company’s otherwise applicable rates and charges . . .

The Commission approved DSIC was on a “bills rendered” basis. Subsequent testing verified that the DSIC was in fact applied as properly approved . . .

On October 5, 2011, the Administrative Law Judge issued the *Order Granting In Part And Denying In Part Motion For Judgment On the Pleadings* (the “October 5 Order”). As a result of discovery issued by the Complainant (“Pettko Discovery”) and PAWC’s Objections to that discovery, the Administrative Law Judge issued *Prehearing Order #2* on December 8, 2011, which provided the following explanation of his prior ruling granting in part and denying in part judgment on the pleadings (pp. 10-11):

The Complainant will not be permitted to re-litigate issues that have already been litigated by the Commission. The Complainant, however, is entitled to the opportunity to demonstrate whether PAWC’s implementation of the DSIC and the STAS violate other provisions of the Public Utility Code that the Commission may not have previously considered. If the Company believes that an issue has already been decided by the Commission, it must indicate in its objection to any future discovery when and how the Commission ruled on that particular issue. Therefore, with regards to any issue pertaining to “bills rendered” versus “service rendered,” for example, the Commission may have already determined that a particular bill method complies with certain Commission Orders or regulations. That does not, however, preclude the Complainant

from arguing, and taking discovery of, the issue of whether that particular billing method *does not comply with another Commission Order or regulation*. (Emphasis added.)

The Company respectfully submits that the issue of whether its application of changes in the DSIC and STAS on a bills-rendered basis, while in conformity with the Commission Orders it furnished with its Motion for Judgment on the Pleadings, might, nonetheless, “not comply with another Commission Order or regulation” is a material question of law that most appropriately – and most expeditiously – can be resolved by certification to the Commission for interlocutory review pursuant to 52 Pa. Code §5.305. The Commission is in the best position to explain what its prior Orders authorizing bills-rendered application mean and to determine if such bills-rendered application “does not comply” with any other of its *own* Orders or regulations. Because this is fundamentally a legal issue that only the Commission can decide with finality, it meets the criteria for certification applied by the Commission, namely, to “prevent prejudice to the parties and expedite the conduct of the proceeding.” *E.g. Application Of City Of Lebanon For A Certificate Of Public Convenience*, Docket No. A-220010, 2006 Pa. PUC LEXIS 39 (April 6, 2006); *Application Of Columbia Gas Of Pennsylvania For A Restructuring Plan*, Docket No. R-00994781, 1999 Pa. PUC LEXIS 68 (October 18, 1999).

Under Section 5.305, the Commission must act within 30 days of receiving a certified question. Therefore, certification of a material question will not cause an undue delay in this proceeding. Moreover, a decision by the Commission could substantially shorten subsequent litigation.

Additionally, a Commission decision on the material question would eliminate the prejudice to PAWC of trying to defend itself against alleged violations of unspecified Commission Orders and regulations, which would contravene dictates of due process as applied

in administrative proceedings. *Armour Transportation Co. v. Pa. P.U.C.*, 138 Pa. Super. 243, 248, 10 A.2d 86, 89 (1939) (Due process of law applies to proceedings before administrative tribunals, and “the right to be informed of the nature of the charge [against a utility] is fundamental.”); *West Penn Power Co. v. Pa. P.U.C.*, 174 Pa. Super. 123, 128, 100 A.2d 110, 113 (1953) (“As an administrative body, the Commission is bound by the due process provisions of constitutional law and by fundamental principles of fairness.”) *See also* 66 Pa. C.S. § 701, requiring complaints to set forth “in writing” “any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.”

Certification will also prevent prejudice, expedite the proceeding and eliminate a possible procedural hurdle by assuring that the Commission’s Bureaus of Audits and Technical Utility Services (as successor to the Bureau of Fixed Utility Services) will be able to provide input to the Commission on the prospective implications for auditing, review and annual reconciliation of applying changes in the DSIC and STAS on a “bills-rendered” versus “service-rendered” basis. As previously explained, the Commission’s Bureau of Audits has set forth its views on this matter. No decision should be made on the propriety of PAWC’s application of changes in the DSIC and STAS without that Bureau being afforded the opportunity to provide its input. Certification of a material question will allow the Commission to solicit the views of the Bureaus of Audits and Technical Utility Services in their advisory capacities. If certification is not authorized and, instead, a litigated proceeding is the forum for exploring this issue, special arrangements would have to be made to obtain the participation of those Bureaus without, thereby, casting them in a prosecutory role or having them appear as witnesses on behalf of a particular party.

Finally, there is a further compelling reason to grant certification. Precisely the same legal issue that would be certified in this case is also present in another complaint proceeding before the Commission (*Walter and Donna Painter v. Aqua Pennsylvania, Inc.*, Docket No. C-2011-2239556), where a Motion for Judgment on the Pleadings is currently awaiting decision, as explained in greater detail in Section II, *infra*.

For all of the of the foregoing reasons, PAWC requests that the Administrative Law Judge certify the following question to the Commission for interlocutory review pursuant to 52 Pa. Code §5.305¹:

Is PAWC's application of changes in the DSIC and STAS to the effective portion of the total amount billed to each customer under the Company's otherwise applicable rates and charges, without pro-rating such rate changes for service rendered before and after the effective date of such change: (1) in accordance with prior Commission Orders authorizing how changes in DSIC and STAS rates should be applied to customers' bills; and (2) if so, does PAWC's application of changes in such rates in that manner nonetheless violate some other Commission Order or regulation such that the manner in which PAWC applies changes in DSIC and STAS rates is not protected from retrospective review and refund by Section 316 of the Public Utility Code and the doctrine of Commission-made rates?

Upon certification, this proceeding should be temporarily stayed pending a Commission decision on the certified material question. As previously explained, such a stay would not unduly delay this proceeding. To the contrary, certification will expedite a reasonable resolution of this case by giving the Commission the opportunity to clarify and decide the controlling issues of law. After the Commission's decision is rendered, and assuming that the PUC's decision does not dispose of this case, a second prehearing conference could be held to determine what further

¹ PAWC is simultaneously filing a Motion Requesting Certification Of A Material Question By The Administrative Law Judge Pursuant To 52 Pa. Code § 5.305.

proceeding might be required, to establish a schedule and to obtain more definitive responses to the requests for information set forth in Paragraph No. 3 of the Prehearing Order.

II. BACKGROUND OF THIS CASE AND PROCEDURAL HISTORY

On March 19, 2010, Mr. Pettko filed a putative “class action” civil complaint in the Court of Common Pleas of Washington County alleging that the way PAWC had implemented changes in the DSIC and STAS in the past was improper and contrary to law. By his Complaint, he sought to recover, *inter alia*, “refunds, “damages,” “penalties,” and “attorney’s fees” on behalf of a “class” consisting of all of PAWC’s water customers for alleged historical violations of the law.²

The Court of Common Pleas, in granting PAWC’s Preliminary Objections, held that Mr. Pettko’s Complaint challenged PAWC’s rates and billing practices and, therefore, was within the primary and exclusive jurisdiction of the PUC. *See* Order of the Court of Common Pleas of Washington County, August 27, 2010. (A copy of this Order is attached as Appendix A to PAWC’s Answer to the Pettko Complaint in this case.)

On or about February 8, 2011, Mr. Pettko filed his Complaint with the PUC in this case. That Complaint is a virtual carbon copy of the putative “class action” civil Complaint he had filed previously with the Court of Common Pleas. The gravamen of Mr. Pettko’s Complaint –

² On March 24, 2010, Walter and Donna Painter, represented by the same counsel representing Mr. Pettko, filed a Complaint in the Court of Common Pleas of Lawrence County making essentially the same allegations against Aqua Pennsylvania, Inc. (“Aqua PA”). The Court of Common Pleas granted Aqua PA’s Preliminary Objections and found that the Painters’ Complaint raised issues within the primary jurisdiction of the PUC. On or about April 21, 2011, the Painters filed a Complaint with the Commission at Docket No. C-2011-2239556 containing the same averments set forth in their civil Complaint. On July 22, 2011, Aqua PA filed with the Commission a Motion for Judgment on the Pleadings. Aqua PA’s Motion is pending before Administrative Law Judge Conrad A. Johnson.

like the one he filed in civil court – is that PAWC’s implementation of changes in the DSIC and STAS on a “bills rendered” basis has not been authorized by the PUC and, therefore, he and the “class” he purports to represent are entitled to pursue the same panoply of “refunds, “damages,” “penalties,” and “attorney’s fees” sought in his previously-rejected civil action.

On March 9, 2011, PAWC filed its Answer to the Pettko Complaint that denied the Complainant’s material averments. On March 23, 2011, PAWC filed a Motion for Judgment on the Pleadings on the principal grounds that prior Commission Orders: (1) had authorized the “bills rendered” implementation of changes in the DSIC and STAS; and (2) as to the DSIC, had specifically directed all water utilities that employed a DSIC to implement changes in that rate on a “bills rendered” basis.³ (Copies of the relevant Orders were provided as Appendices A – D to PAWC’s Motion for Judgment on the Pleadings.) Consequently, PAWC sought a judgment on the pleadings finding and determining that the fundamental averments underlying Mr. Pettko’s Complaint regarding PAWC’s historical application of changes in DSIC and STAS rates are contrary to Orders of the Commission, which were affirmed and applied by the Commission’s Bureaus of Audits and Fixed Utility Services in auditing and reviewing PAWC’s DSIC and STAS. *See* Motion for Judgment on the Pleadings, pp. 6-12 and Appendices A, C, D, G and H. Additionally, PAWC explained that the Commission had expressly addressed the bills-rendered application of changes in rates under rate mechanisms that provide for mandatory reconciliation of costs and revenues – as is the case with the DSIC and STAS – and held that it “does not place any customer at a disadvantage.”⁴

³ All other water utilities that have implemented the DSIC apply changes in DSIC rates on a bills-rendered basis. *See, e.g., Walter and Donna Painter v. Aqua Pennsylvania, Inc., supra.*

⁴ *Petition of Nat’l Fuel Gas Distrib. Corp. Requesting Permission To File A Tariff Supplement To Become Effective On One Day’s Notice Establishing A Recoupment*

In response to PAWC's Motion and the Complainant's response, the Administrative Law Judge issued the *October 5 Order*, which described the legal issue presented for resolution by the Complaint and PAWC's Motion for Judgment on the Pleadings, as follows (p. 4):

PAWC has responded [to the Complaint] that its implementation of both the DSIC and the STAS is compliant with all applicable Commission Orders and regulations. PAWC attached to both its Answer and its Motion documents evidencing Commission approval of its implementation of the DSIC and STAS. In particular, PAWC contends that the DSIC and STAS are appropriately issued on a "bills-rendered" basis, not a "service-rendered" basis, and are appropriately not pro-rated based on service rendered before and after the effective date, as the Commission has directed. PAWC concludes that the Complaint should be dismissed based on the pleadings alone.

In what PAWC perceives to be the pertinent part of the *October 5 Order*, the Administrative Law Judge held as follows (p. 5):

PAWC has identified in its Motion some issues which warrant granting the Motion in part. There are other reasons, however, why the Complainant should be allowed to proceed to a hearing and warrant that the Motion be denied in part. As such, as discussed further below, PAWC's Motion will be granted in part and denied in part.

PAWC has demonstrated in its Motion that the Commission has approved its implementation of the DSIC and the STAS by Commission Orders as well as letters of approval from the Commission's Bureau of Audits and Fixed Utility Services. PAWC has demonstrated that the process for its collection of the *total amount allowed through the DSIC and the STAS* has been approved by the Commission.

Surcharge, Docket No. P-850075, 1986 Pa. PUC LEXIS 132 (February 28, 1986). *See also* PAWC's Answer to the Motion to Compel Discovery of C. Leslie Pettko, pp. 2-3 (Citing and discussing other instances where the PUC has approved the bills-rendered application of changes in rates.)

The *October 5 Order* did not, however, dismiss the Complaint because, in the Administrative Law Judge's view, Mr. Pettko should be afforded the opportunity to follow-up on his allegation that "there are incorrect charges on my bill":

The Complainant alleges that "there are incorrect charges on my bill." While PAWC has provided extensive discussion demonstrating that its implementation of the DSIC and the STAS comply with existing Commission Orders and regulations with regard to certain issues, the Complainant should be allowed to proceed to a hearing to determine whether PAWC's existing DSIC and the STAS rates are reasonable and comply with all applicable laws and regulations. The Complainant can challenge these rates by a complaint against an existing rate or tariff pursuant to Section 1309 of the Public Utility Code.

Thereafter, the permissible scope of this proceeding became a matter of dispute because of the Pettko Discovery, which was deemed served on November 7, 2011. On November 17, 2011, PAWC issued Objections to the Pettko Discovery. On November 29, 2011, the Complainant filed and served a Motion to Compel Discovery. On December 5, the Company filed and served its Answer to the Motion to Compel.

In its Objections and Answer to the Motion to Compel, PAWC argued that the Pettko Discovery was directed at PAWC's historical application of changes in DSIC and STAS rates on a bills-rendered basis and, as such, was relevant only in the context of a retrospective review of PAWC's historical and current application of changes in DSIC and STAS rates and associated refund claims. PAWC argued further that such a retrospective review is foreclosed by the Commission's prior authorization of the manner in which PAWC implemented changes in DSIC

and STAS rates and by the preclusive effect of Section 316 of the Public Utility Code and the doctrine of Commission-made rates.⁵

As previously explained, in response to the discovery dispute, *Prehearing Order # 2* was issued, which granted certain of PAWC's Objections, denied others and included the following elaboration on the holding of the *October 5 Order*:

The Complainant will not be permitted to re-litigate issues that have already been litigated by the Commission. The Complainant, however, is entitled to the opportunity to demonstrate whether PAWC's implementation of the DSIC and the STAS violate other provisions of the Public Utility Code that the Commission may not have previously considered. If the Company believes that an issue has already been decided by the Commission, it must indicate in its objection to any future discovery when and how the Commission ruled on that particular issue. Therefore, with regards to any issue pertaining to "bills rendered" versus "service rendered," for example, the Commission may have already determined that a particular bill method complies with certain Commission Orders or regulations. That does not, however, preclude the Complainant from arguing, and taking discovery of, the issue of whether that particular billing method does not comply with another Commission Order or regulation.

On October 21, 2011, a Notice was issued that an Initial Telephonic Hearing would be held in this case on December 12, 2011. With the agreement of the parties, the hearing was changed to an Initial Telephonic Prehearing Conference. The *Prehearing Conference Order* was issued on November 16, 2011, which directed the filing of Prehearing Memoranda by the parties.

⁵ PAWC also objected to the Pettko Discovery on other grounds, as set forth in detail in its Objections and discussed in its Answer to the Motion to Compel.

III. BURDEN OF PROOF

This case involves a Complaint against existing rates of PAWC. As such, the Complainant has the burden of proof and the burden of going forward with the evidence. 66 Pa. C.S. §§ 315(a) and 332(a).

IV. RESPONSES TO PARAGRAPH NO. 3 OF THE PREHEARING ORDER

A. Contact Information For Service List (Prehearing Order, ¶¶ 3.a.)

PAWC's entry on the service should be as follows:

Anthony C. DeCusatis
adecusatis@morganlewis.com
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
215.963.5034
877.432.9652 (fax)

PAWC requests that any communication via e-mail also be sent to Seth A. Mendelsohn, Corporate Counsel for the Company, at seth.mendelsohn@amwater.com. For purposes of the telephonic Prehearing Conference, Mr. Mendelsohn can be reached at 717.531.3362 and Mr. DeCusatis at the number shown above.

B. Settlement Or Stipulation (Prehearing Order, ¶ 3.b.)

The issue presented is not amenable to a "settlement" with the Complainant because (1) in PAWC's view, the manner in which changes in the DSIC and STAS are to be applied to customers' bills has been authorized and prescribed by the Commission; (2) under these circumstances, providing any form of "refund" or remuneration to the Complainant, which is the only relief the Complainant requests, would contravene applicable provisions of the Public Utility Code that prohibit the non-uniform application of a utility's rates among customers and

customer classes; and (3) any prospective deviation from the authorized manner of applying changes in DSIC and STAS rates would be contrary to valid Commission Orders and directives including the Bureau of Audits' PUC-approved Audit Report on the operation of PAWC's DSIC.

Additionally, for the reasons set forth in Section I, *supra*, PAWC believes it would be premature to address whether a stipulation of facts (or evidentiary hearings) should be undertaken until the Commission provides the necessary guidance on the material legal issue that the Company requests the Administrative Law Judge to certify for interlocutory review. If certification is granted, stipulations may be in order if the Commission's decision is not dispositive and further litigation is required.

C. Plan And Schedule Of Discovery And Other Discovery Orders (Prehearing Order, ¶¶ 3.c. and d.)

The plan and schedule for discovery should await a clear articulation by the Complainant of the issues he intends to pursue and a determination of whether such issues are within the permissible scope of this proceeding, following a decision on the question PAWC asks be certified for interlocutory review. PAWC has admitted that it applied changes in its DSIC and STAS on a bills-rendered basis. Accordingly, the issue of whether PAWC's application of changes in the DSIC and STAS violates any "Commission Order or regulation" is fundamentally a legal one. Certifying the proposed material question for interlocutory review will be a far more effective and efficient means of deciding that issue than pursuing discovery, which is appropriate for disputed issues of fact.

D. Litigation Schedule (Prehearing Order, ¶ 3.e.)

As discussed in Section I, *supra*, PAWC proposes that, if the material question is certified for interlocutory review, this proceeding be temporarily stayed pending a Commission

decision thereon. As previously explained, such a stay would not unduly delay this proceeding and, in fact, would expedite a reasonable resolution of the case by allowing the Commission to decide the controlling issues of law. After the Commission's decision is rendered, and if the FUC's decision is not dispositive, a second prehearing conference could be held to determine what further proceeding might be required, establish a schedule and obtain more definitive responses to the requests for information set forth in Paragraph No. 3 of the *Prehearing Conference Order*. Although the foregoing is PAWC's proposal on how to proceed, in compliance with the *Prehearing Conference Order*, PAWC is providing in Appendix A hereto a *pro forma* litigation schedule that would be appropriate if certification does not occur.

**E. List Of Witnesses And Subject Matter To Be Addressed
(Prehearing Order, ¶ 3.f.)**

The witness or witnesses PAWC would call will depend in large part on (1) the Commission's decision on the material question, if it is certified for interlocutory review; and (2) if the material question is not certified or the Commission's action with respect to it is not dispositive, the issue(s) Complainant intends to pursue that are within the permissible scope of this proceeding. With that caveat, if this case were to continue as a litigated proceeding, PAWC would expect to present testimony by Ms. Jo Anne Lontz to sponsor the relevant portions of the Company's tariff and copies of relevant DSIC and STAS filings; to explain the possible effect on such filings and annual reconciliation filings if the Commission were to mandate a service-rendered application of changes the DSIC and STAS; and to address related bill calculations and bill impacts, if any. Ms. Lontz is employed by PAWC as a Senior Financial Analyst. She has been qualified as an expert in numerous base rate and other proceedings before this Commission in which she submitted testimony on behalf of the Company and its corporate predecessors. Ms. Lontz's business address is: Pennsylvania-American Water Company, 800 West Hershey Park

Drive, Hershey, Pennsylvania 17033. While the Company could foresee calling Ms. Lontz as the Company's witness, its final list of witnesses cannot be determined until it obtains and reviews the Complainant's direct testimony, assuming a fully litigated proceeding is required. Consequently, PAWC reserves the right to amend its list of witnesses after obtaining Complainant's case-in-chief if this case proceeds to litigation.

In addition, and as previously indicated, the Company believes that the issue of whether the Commission should mandate a change from PAWC's current bills-rendered application of the DSIC and STAS to a service-rendered application has policy implications, including the effect on subsequent audits and subsequent reviews of reconciliation filings, on which the Commission's Bureaus of Audits and Technical Utility Services should be entitled to express their views. Additionally, if the material question is not certified for interlocutory review, it would be essential to PAWC's defense to present testimony from those Bureaus to explore what they (with the Commission's affirmation) have approved in the past with respect to the application of changes in the DSIC and STAS, the scope of their periodic reviews and approvals of those changes, and the annual reconciliation of costs and revenues under each rate mechanism. Accordingly, PAWC would propose that one or more witnesses from the Bureau of Audits and/or Bureau of Technical Utility Services be asked to testify. Those witnesses could be called by PAWC. Alternatively, they could be called by the Administrative Law Judge so that they would not be deemed witnesses of either party in this proceeding. These matters would have to be addressed at this or a subsequent Prehearing Conference.

Finally, if this case proceeds to litigation, PAWC expects that Mr. Pettko, as the Complainant in this case, will submit direct testimony and be subject to cross-examination. If, for any reason, that is not the case, PAWC would call Mr. Pettko, request that he be declared a

hostile witness, and cross-examine Mr. Pettko on matters pertinent to his claims and the averments of his Complaint, all of which he verified.

F. Issues And Sub-Issues And PAWC's Position On Each (Prehearing Order, ¶ 3.g.)

In Sections I and II, *supra*, and in its Objections to the Pettko Discovery and Answer to the Motion to Compel, PAWC has addressed the issues it believes are presented by the Complaint. In summary, PAWC submits that the Pettko Complaint raised a single issue, namely, whether PAWC had been authorized by the Commission to implement changes in the DSIC and STAS on a bills-rendered basis. Moreover, the Complaint's averments and the relief requested therein demonstrate that the Complainant's perspective is entirely historical – he hopes to show that PAWC has already done something that contravenes the Public Utility Code or the Commission's Orders and regulations, which he could then offer as the basis for claiming “refunds,” “damages,” “penalties” and “attorney's fees.” For the reasons previously discussed, there are compelling reasons why this issue should be certified for interlocutory review.

As previously explained, *Prehearing Order #2* would permit the Complainant to argue that, notwithstanding the Commission Orders and directives discussed in PAWC's Motion for Judgment on the Pleadings, “the issue of [PAWC's] . . . particular billing method does not comply with *another* Commission Order or regulation.” (Emphasis added.) The latitude provided the Complainant by *Prehearing Order #2* would not be an issue if either (1) the material question proposed by PAWC is certified for interlocutory review; or (2) the Complainant provides in his Prehearing Memorandum or otherwise a clear articulation of the other “Commission Order or regulation” that he alleges PAWC's “billing method” fails to comply with. Unless one or the other of these conditions is satisfied, PAWC would be seriously prejudiced by being forced to try to defend itself against alleged violations of unspecified Commission Orders and regulations,

which would contravene dictates of due process as applied in administrative proceedings, as explained in Section I, *supra*.

G. Evidence Proposed To Be Presented (Prehearing Order, ¶ 3.h.)

Subject to the conditions and qualifications set forth previously, PAWC would propose to present the documentary and testimonial evidence described in Section IV.E, above, and would seek the input of the Commission's Bureaus of Audits and Technical Utility Services, as also discussed in Section IV.E., above.

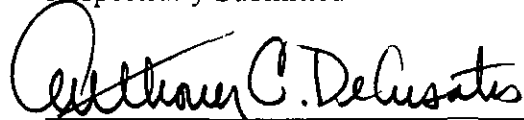
V. CONCLUSION

WHEREFORE, for the reasons set forth above, the Administrative Law Judge should:

(1) certify the material question proposed by PAWC for interlocutory review by the Commission, pursuant to 52 Pa. Code §5.305; (2) temporarily stay this proceeding pending a decision by the Commission on the certified question; (3) following the entry of a decision by the Commission on the certified question, schedule a second Prehearing Conference, if necessary; and (4) notify the Commission's Bureau of Audits and Bureau of Technical Utility Services

of this proceeding and advising them that their views may be solicited through requests for personnel from those Bureaus to present testimony in this case directing them to begin to take appropriate procedural steps to make that possible.

Respectfully Submitted



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Counsel for Pennsylvania-
American Water Company

Dated: December 9, 2011

SUGGESTED SCHEDULE

(Assumes That A Material Question Is Not Certified To The Commission)

Initial Prehearing Conference	December 12, 2011
Second Prehearing Conference (if necessary)	January 4, 2012
Complainant's service of written direct testimony and accompanying exhibits, if any	February 3, 2012
Company's service of written direct testimony and accompanying exhibits	February 23, 2012
Complainant's service of written rebuttal testimony, if any, and accompanying exhibits, if any	March 8, 2012
Company's service of written surrebuttal testimony, if any, and accompanying exhibits, if any	March 22, 2012
Complainant's service of written rejoinder testimony, if any, and accompanying exhibits, if any	April 2, 2012
Evidentiary hearing (subject to the availability of the Administrative Law Judge)	April 26, 2012
Main and Reply Briefs	May 21, 2012 and June 4, 2012, respectively

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

C. LESLIE PETTKO	:	
	:	
v.	:	DOCKET NO. R-2011-2226096
	:	
PENNSYLVANIA-AMERICAN WATER	:	
COMPANY	:	

CERTIFICATE OF SERVICE

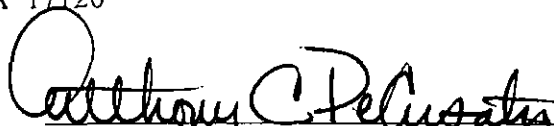
I hereby certify that I have, this 9th day of December, 2011, served true and correct copies of Pennsylvania-American Water Company's *Prehearing Memorandum* and *Motion Requesting Certification Of A Material Question By The Administrative Law Judge Pursuant To 52 Pa. Code § 5.305* upon the following persons and in the manner indicated below:

BY ELECTRONIC MAIL AND FEDERAL EXPRESS

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Hon. Joel H. Cheskis
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Harrisburg, PA 17120


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Dated: December 9, 2011

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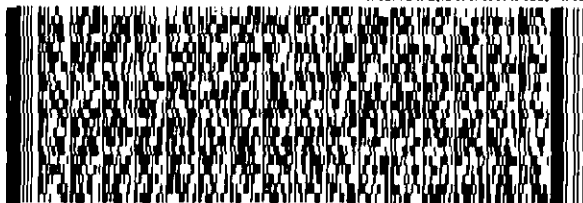
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PA PUBLIC UTILITY COMMISSION
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HARRISBURG PA 17120

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