

# DEL SOLE CAVANAUGH STROYD LLC

The Waterfront Building Suite 300  
200 First Avenue Pittsburgh, PA 15222

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January 26, 2012

## VIA FEDERAL EXPRESS

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor North  
Harrisburg, PA 17101

Re: Pettko vs. Pennsylvania American Water Company  
Docket No.: C-2011-2226096

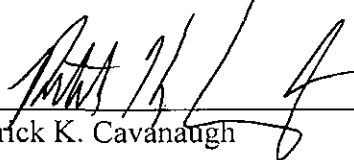
Dear Ms. Chiavetta:

Enclosed is Complainant's Further Prehearing Conference Memorandum. I have also enclosed a copy of the cover sheet of the Memorandum. Kindly date-stamp the copy and return it to me in the self-addressed, stamped envelope I have provided.

Thank you for your prompt attention to this matter.

Very truly yours,

DEL SOLE CAVANAUGH STROYD LLC

  
Patrick K. Cavanaugh

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JAN 26 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Enclosures

cc: Anthony C. DeCusatis, Esq., (w/enclosure) **VIA FEDERAL EXPRESS**  
The Honorable Joel H. Cheskis (w/enclosure) **VIA UNITED STATES POSTAL SERVICE**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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C. LESLIE PETTKO, on behalf of himself )  
and all others similarly situated, )

JAN 26 2012

Complainant, )

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

v. )

Docket No. C-2011-2226096

PENNSYLVANIA AMERICAN WATER )  
COMPANY, )

Respondent. )

**FURTHER PREHEARING CONFERENCE MEMORANDUM**

Pursuant to the Prehearing Conference Order #3, dated January 19, 2012, Complainant, by and through undersigned counsel, presents this Further Prehearing Conference Memoranda in advance of the Further Prehearing Conference scheduled for January 30, 2012 at 10:00 a.m.:

a) Attorneys Stephen J. Del Sole and Patrick K. Cavanaugh will participate in the Further Prehearing Conference on behalf of Complainant. They will be available at 412-261-2393. Complainant's requested entry on the service list is:

Patrick K. Cavanaugh, Esquire  
DEL SOLE CAVANAUGH STROYD LLC  
The Waterfront Building, Suite 300  
200 First Avenue  
Pittsburgh, PA 15222  
(412) 261-2393  
[pcavanaugh@dscslaw.com](mailto:pcavanaugh@dscslaw.com)

b) Complainant is willing to discuss a possible settlement of the case.

c) Complainant proposes a plan of discovery that would include (1) written interrogatories and requests for admissions directed to Respondent to be submitted by Complainant by February 13, 2012; and (2) following receipt of written discovery responses, deposition of Respondent's employee(s) as requested in Complainant's Notice of Deposition,

and/or any other third party witness that may possess information reasonably calculated to lead to the discovery of admissible information, to be completed by March 12, 2012.

Respondent has identified Ms. Jo Anne Lontz, a Senior Financial Analyst at PAWC, as an individual who will purportedly testify regarding: “the relevant portions of the Company’s tariff”; “DSIC and STAS filings”; to explain the effect of a “service-rendered” application of the DSIC and STAS; and billing calculations. Certainly Claimant will be entitled to depose Ms. Lontz to inquire into such broad areas of testimony.

Additionally, the documents produced by PAWC identify various individuals who served as Director and/or Manager of Rates & Regulations for the Company. The individual who held this position when the DSIC charge went in effect and through the first 2 PUC audits, for the years ended December 31, 1997 through December 31, 1999, needs to be identified and deposed.

Further, the documents produced also reflect discussion between the PUC and PAWC regarding PAWC’s failure to comply with its tariff regarding its application of the DSIC and PAWC’s assertion of issues with its customer billing system. Complainant will depose a PAWC representative who can testify with respect to the alleged issues with its billing system.

Respondent also anticipates a deposition of a representative or former representative of the PUC knowledgeable with respect to the DSIC and STAS charges.

d) Complainant requests that the Commission enter an Order approving the proposed plan of discovery set forth above. Additionally, the documents that have been produced by PAWC fail to fully respond to the discovery requests in the following manner:

- a. The Bureau of Audit reports to the PUC do not contain audits for the years ending December 31, 2006 through the present. See tab 10.
- b. Other than the bills themselves, PAWC has not produced documents relating to

changes in language on customer bills concerning the DSIC and STAS. See document request No. 7 and tab 16.

- c. No correspondence between the PUC and PAWC regarding the terms “bills rendered”, “services rendered” or “bills issued” was produced, nor was correspondence or communications between the PUC and PAWC produced regarding the reconciliation of DSIC charges. See document requests 5 & 6.
- d. The DSIC reconciliation statements only go back to 2007. See tab 9.
- e. No internal documents (including but not limited to email communication) referencing the meaning of the terms “bills rendered,” “bills issued,” or “services rendered” were produced, nor were documents containing information as to whether or not DSIC and STAS charges must be prorated so that a new rate is not applied to services rendered before the effective date or documents supporting the position that Pennsylvania American Water Company is allowed to bill its customers a new DSIC or STAS rate for an entire billing cycle even where part of the billing cycle occurs before the new rate’s effective date. See document requests 1,2,3.

e) Complainant proposes the following procedural schedule:

Completion of fact discovery.	March 12, 2012
Complainant’s Direct Testimony And Exhibits	April 16, 2012
PAWC Direct Testimony And Exhibits	May 14, 2012
Hearings	June 18 & 19, 2012.
Main Briefs	July 9, 2012
Reply Briefs	July 23, 2012

f) Complainant expects to call the following witnesses:

C. Leslie Pettko  
118 Berkshire Drive  
McMurray, PA 15317  
724-255-1272

Subject matter: The amounts he was billed by Respondent for DSIC and STAS charges.

Employee(s) of Respondent to be identified by Respondent

Subject matter: The amounts Respondent billed Complainant for DSIC and STAS charges; the

effective dates of DSIC and STAS rate increases; whether DSIC and STAS charges were

prorated; other issues as set forth in Complainant's Notice of Deposition and as may come to light during the discovery process.

Expert witness to testify regarding the tariff, specifically the DSIC and STAS charges.

Any other witnesses whose relevance becomes known during the discovery process.

g) Complainant intends to address the following issues related to whether Respondent improperly charged him increased DSIC and STAS rates before the increased rates' effective dates. The issues include:

- a. Whether Respondent is permitted to charge the authorized DSIC rate as to dates that precede the Tariff-approved "effective date" for the DSIC rate change;
- b. The plain meaning of "effective date" in Penn American's Tariff and its bills as it relates to the date on which the DSIC rate goes into effect;
- c. Whether Respondent is required to pro-rate the DSIC charge on its customer bills when the DSIC rate changes on the authorized "effective dates";
- d. Whether the term "bills-rendered" is interpreted under Pennsylvania law to mean that Respondent does not have to pro-rate the DSIC charge in months where the rate changes;
- e. Whether charges made on a "services rendered" basis means that Respondent must pro-rate the charge when the charge increases;
- f. Whether Respondent is billing its customers for DSIC and STAS in a manner that violates its Tariff and/or the PUC Code in that it collects charges from its customers on an unequal and arbitrary basis;

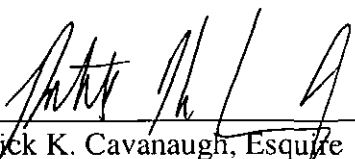
Complainant's position is that DSIC and STAS rate increases are approved by the PUC with an explicit effective date, but that Respondent sent him bills charging him increased DSIC and

STAS rates for water services that occurred before the approved effective dates. Complainant's position is that this practice is improper, in violation of the Public Utility Code including, 66 PaCS 1301, 1303 & 1304, and other laws, and resulted in Complainant being overbilled.

Complainant's position is that Respondent should have prorated the DSIC and STAS charges to avoid overbilling, but failed to do so. For a more detailed explanation of Complainant's position, he incorporates by reference his Complaint, his Opposition to Respondent's Motion for Judgment on the Pleadings, and his Motion to Compel Discovery. Complainant reserves the right to raise other issues as this litigation continues.

h) Complainant plans to present PUC-approved tariffs setting forth the effective dates of increases in DSIC and STAS rates, as well as Complainant's own water bills showing that Respondent billed him increased DSIC and STAS rates before the increased rates' effective dates. Complainant plans to present his own testimony to authenticate his own water bills and documents and testimony from Respondent's employees to explain the proper application and Respondent's improper billing practices for DSIC and STAS rates. Complainant contends that this evidence will show that Respondent failed to prorate the DSIC and STAS charges and that Complainant reserves the right to present other evidence. Complainant cannot make a definitive determination of what evidence he will present until the discovery process is completed.

DEL SOLE CAVANAUGH STROYD LLC

By:   
Patrick K. Cavanaugh, Esquire

*Counsel for Complainant*

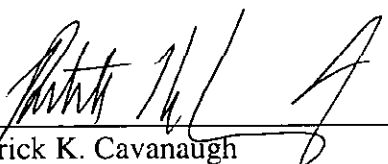
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 26<sup>th</sup> day of January, 2012 a true and correct copy of the foregoing *Further Prehearing Conference Memorandum* was served on the following by first class, U.S. mail:

Administrative Law Judge Joel H. Cheskis  
P.O. Box 3265  
Harrisburg, PA 17105

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor North  
P.O. Box 3265  
Harrisburg, PA 17101

Anthony C. DeCusatis, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103  
*Attorney for Respondent*

  
\_\_\_\_\_  
Patrick K. Cavanaugh

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From: (412) 261-2393  
Patrick K. Cavanaugh, Esquire  
DEL SOLE CAVANAUGH STROYD  
The Waterfront Building  
200 First Avenue  
Pittsburgh, PA 15222

Origin ID: BTPA



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SHIP TO: (800) 692-7380

BILL SENDER

Rosemary Chiavetta  
PA Public Utility Commission  
400 NORTH ST FL 2ND

HARRISBURG, PA 17120

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