

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel: 215.963.5000
Fax: 215.963.5001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

Anthony C. DeCusatis
Of Counsel
215.963.5034
adecusatis@morganlewis.com

January 26, 2012

VIA FEDERAL EXPRESS

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 an original and three copies of Pennsylvania-American Water Company's ("PAWC") **Second Prehearing Memorandum**. As evidenced by the Certificate of Service attached to the original and each copy of the Second Prehearing Memorandum, copies thereof have been served upon the Complainant and the presiding Administrative Law Judge. We have also enclosed an additional copy of the 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

RECEIVED

JAN 26 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

C. LESLIE PETTKO

v.

**PENNSYLVANIA-AMERICAN
WATER COMPANY**

:
:
:
:
:
:

DOCKET NO. C-2011-2226096

**SECOND PREHEARING MEMORANDUM
OF
PENNSYLVANIA-AMERICAN WATER COMPANY**

Thomas P. Gadsden
Attorney ID 28478
tgadsden@morganlewis.com
Anthony C. DeCusatis
Attorney ID 25700
adecusatis@morganlewis.com
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
215.963.5034
877.432.9652 (fax)

Seth A. Mendelsohn
Attorney ID 77063
seth.mendelsohn@amwater.com
Pennsylvania-American Water
Company
800 Hershey Park Drive
Hershey, PA 17033
717.531.3362

**Counsel for Pennsylvania-
American Water Company**

RECEIVED
JAN 26 2012
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dated: January 26, 2012

I. INTRODUCTION

Pennsylvania-American Water Company (“PAWC” or the “Company”) submits this Second Prehearing Memorandum in response to *Prehearing Order #3* issued by Administrative Law Judge Joel H. Cheskis on January 19, 2012. Pursuant to *Prehearing Order #3*, the Company is providing a proposed procedural schedule and, to the extent necessary, is supplementing or revising the information provided in the Prehearing Memorandum it served on the Administrative Law Judge and the Complainant on December 9, 2011 (hereafter, “First Prehearing Memorandum”).

II. BACKGROUND OF THIS CASE AND PROCEDURAL HISTORY

The background of this case and its procedural history up to December 9, 2011, are set forth in the Company’s First Prehearing Memorandum at pages 6-10 and are incorporated herein by reference. On December 9, 2011, PAWC filed and served, along with its First Prehearing Memorandum, a Motion Requesting Certification of a Material Question.

A telephonic Prehearing Conference was held on December 12, 2011. In the Prehearing Conference, the parties discussed with the Administrative Law Judge the procedural status of the case in light of PAWC’s then-outstanding Motion and the pending issuance by PAWC of responses to the Complainant’s document requests pursuant to the Administrative Law Judge’s *Prehearing Order #2* issued on December 7, 2011. (*Prehearing Order #2* granted in part and denied in part PAWC’s Objections the Complainant’s Request for Documents and Notice of Deposition.) The parties agreed, with the Administrative Law Judge’s approval, to schedule a further Prehearing Conference to be held on January 19, 2012, which was subsequently moved to January 30, 2012, at the Complainant’s request and with PAWC’s concurrence. In the course of the First Prehearing Conference, Complainant’s counsel asked if PAWC would produce certain

documents that were the subject of objections that the Administrative Law Judge granted. PAWC agreed to produce such documents to the extent available.

On December 21, 2011, PAWC produced the documents requested by Complainant pursuant to the terms of *Prehearing Order #2* and PAWC's agreement to voluntarily produce certain other documents in response to Complainant's oral request at the Prehearing Conference, as noted above. PAWC also provided the Complainant a log of all the documents that it produced, and a copy of that log is attached hereto as Appendix A to this Second Prehearing Memorandum.

On December 29, 2011, Complainant submitted his Brief in Opposition to Respondent's Motion Requesting Certification of a Material Question by the Administrative Law Judge. On January 6, 2012, the Administrative Law Judge issued his Order Denying Motion Requesting Certification of a Material Question by the Administrative Law Judge. As previously noted, on January 19, 2012, the Administrative Law Judge issued *Prehearing Order #3* directing the parties to submit further prehearing conference memoranda "setting forth a proposed procedural schedule for this matter, raising any other procedural issue that may need to be addressed at the Second Prehearing Conference and addressing all the issues identified in the November 16, 2011 Prehearing Conference Order." This Second Prehearing Memorandum responds to the Administrative Law Judge's *Prehearing Order #3*.

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 NOVEMBER 16, 2011 PREHEARING ORDER

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

PAWC's entry on the service list 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 can be reached at the number shown above.

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

The Company provided its response to this portion of the Prehearing Order in its First Prehearing Memorandum at pages 11-12. That response is incorporated herein by reference subject to a revision, namely, to make clear that the Company is prepared to enter into an appropriate stipulation of facts to the extent that doing so would narrow the range of contested factual issues in this case.

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

The current status of discovery has been addressed in Section I, above. The Company served its responses to the Complainant's relevant document requests on December 21, 2011, and, as previously noted, a log of the documents produced is attached as Appendix A.

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

The Company proposes the following procedural schedule for the submission of written testimony, hearings (if necessary) and briefs:

Complainant's Direct Testimony	March 15, 2012
PAWC's Direct Testimony	April 12, 2012
Complainant's Rebuttal Testimony	May 10, 2012
PAWC's Surrebuttal Testimony	June 7, 2012
Complainant's Rejoinder Testimony	June 21, 2012
Hearings (if necessary)	July 17, 2012 (with July 18, 2012 reserved)
Main Briefs	August 15, 2012
Reply Briefs	August 29, 2012

**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 upon the issue(s) Complainant intends to pursue and the nature and scope of the Complainant's case-in-chief. With that caveat, PAWC would expect to present testimony by Ms. Jo Anne Lontz: (1) to sponsor relevant portions of the Company's tariff, copies of relevant DSIC and STAS filings, relevant Orders and directives of the Commission, and Reports of the Commission's Bureau of Audits; (2) to explain the possible effect on periodic filings and annual reconciliation filings if

the Commission were to mandate a service-rendered application of changes the DSIC and STAS; and (3) 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 base rate and other proceedings before this Commission in which she testified 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, the Company believes that the possible 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 may want to express their views inasmuch as the Company's billing practices were in large part dictated by those Bureaus. Additionally, it may be advisable to obtain 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. These matters may have to be worked out at a latter point in this proceeding.

Finally, 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 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 set forth at length in PAWC's previously filed pleadings and other submissions, PAWC's application of changes in the DSIC and STAS on a bills-rendered basis is lawful, as been authorized and approved by the Commission and is entitled to the protection afforded by Section 316 of the Public Utility Code, 66 Pa.C.S. § 316, and the Commission-made rate doctrine.

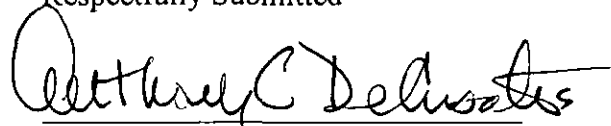
G. Evidence Proposed To Be Presented (Prehearing Order, ¶ 3.h.)

Subject to the conditions and qualifications set forth previously, PAWC would propose to present the documentary and testimonial evidence of the nature described generally in Section IV.E, above.

V. CONCLUSION

PAWC believes that the principal focus of the second Prehearing Conference will be to establish a procedural schedule. To that end, PAWC has offered its proposal in Section IV.D., above, and remains open to working with the Complainant and the Administrative Law Judge to develop an appropriate schedule.

Respectfully Submitted



Thomas P. Gadsden

tgadsden@morganlewis.com

Anthony C. DeCusatis

adecusatis@morganlewis.com

Morgan, Lewis & Bockius LLP

1701 Market Street

Philadelphia, PA 19103-2921

215.963.5234

877.432.9652 (fax)

Seth A. Mendelsohn

Attorney ID 77063

seth.mendelsohn@amwater.com

Pennsylvania-American Water

Company

800 Hershey Park Drive

Hershey, PA 17033

717.531.3362

Counsel for Pennsylvania-

American Water Company

Dated: January 26, 2011

APPENDIX A

LOG OF DOCUMENTS PRODUCED ON DECEMBER 21, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

C. LESLIE PETTKO :
 :
 :
 v. : **Docket No. C-2011-2226096**
 :
 :
 PENNSYLVANIA-AMERICAN WATER :
 COMPANY :

**DOCUMENTS PRODUCED BY
PENNSYLVANIA-AMERICAN WATER COMPANY
IN RESPONSE TO REQUEST FOR DOCUMENTS (SET I)
OF C. LESLIE PETTKO
PURSUANT TO PREHEARING ORDER #2**

VOLUME NO. 1

Tab No.	Title And/Or Description
1	Petition of Pennsylvania-American Water Company (PAWC) for Approval to Implement a Tariff Supplement Establishing a Distribution System Improvement Charge (DSIC) (including accompanying exhibits).
2	Supplementary Exhibit A to Petition of PAWC (with transmittal letter and certificate of service).
3	Order of the Pennsylvania Public Utility Commission (PUC or the Commission) entered August 26, 1996 at Docket No. P-00961031 approving PAWC's Petition for Approval to Implement a Tariff Supplement Establishing a Distribution System Improvement Charge including the PUC-approved pro forma tariff. (This document is provided as in slip opinion form and as published in the Pennsylvania Bulletin.)
4	Supplement No. 22 to Tariff Water-Pa. P.U.C. No. 4 filed in compliance with the PUC's August 26, 1996 Order (Tab 3) (with transmittal letter).
5	Order of the PUC entered August 14, 2007 at Docket No. P-00062241 approving an increase in the cap on the DSIC to 7.5%.
6	Supplement No 207 to Tariff Water-Pa. P.U.C. No. 4 filed in compliance with the PUC's August 14, 2007 Order (Tab 5) (with transmittal letter evidencing receipt by the Office of Consumer Advocate, the PUC's Bureau of Audits, the PUC's Bureau of Fixed Utility Service and Office of Trial Staff).
7	PAWC's Tariff Water-Pa. P.U.C. No. 4 as currently on file with the PUC.
8	PAWC's DSIC filings from January 1, 1997 to November 11, 2011. (PAWC has voluntarily acquiesced to the Complainant's request to produce copies beyond the scope of those authorized by Prehearing Order #2.)

9	PAWC's DSIC Reconciliation Statements and PUC Orders issued following public hearings on each for DSIC reconciliation periods 2007 through 2010.
---	--

VOLUME NO. 2

Tab No.	Title And/Or Description
10	<p>Six Reports of the PUC's Bureau of Audits, as approved and released by the PUC, containing the results of the financial and operational reviews of PAWC's use and application of the DSIC, as follows:</p> <ul style="list-style-type: none"> • March 5, 1999 – Docket No. D-97S023 (For the year ended December 31, 1997); • December 7, 2001 – Docket No. D-99DSC029 (For the two years ended December 31, 1999); • September 18, 2003 – Docket No. D-01DSC009 (For the two years ended December 31, 2001); • February 8, 2005 – Docket No. D-02DSC052 (For the year ended December 31, 2002); • June 2, 2006 – Docket No. D-04DSC036 (For the two years ended December 31, 2004); and • May 15, 2007 – Docket No. D-05DSC024 (For the year ended December 31, 2005).
11	PUC Order issued December 18, 1986 to Public Utilities Using the State Tax Adjustment Surcharge; PUC Order issued August 15, 1991 to All Fixed Utilities; and PUC Order issued June 2, 1992 to Fixed Utilities Having a State Tax Adjustment Surcharge (STAS) at a Rate Other Than Zero.
12	PAWC's STAS filings since 1997. (PAWC has voluntarily acquiesced to the Complainant's request to produce copies beyond the scope of those authorized by Prehearing Order #2.)
13	PAWC STAS filings (with computations and reconciliations) since January 1, 2005.
14	PUC Secretarial letters evidencing the PUC's acceptance of PAWC's STAS filings since 2000. (PAWC is voluntarily producing documents for more than four years.)
15	Pertinent STAS tariff pages.
16	Documents produced in response to Document Request No. 7.
17	Water bills of C. Leslie Pettko for the last four years (electronically stored versions from PAWC's records). (PAWC is voluntarily producing these documents notwithstanding Prehearing Order #2 granting its objection to Complainant's Document Request No. 8).

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

C. LESLIE PETTKO

v.

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

:
:
: **DOCKET NO. R-2011-2226096**
:
:

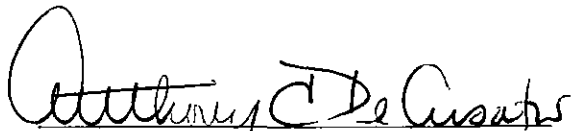
CERTIFICATE OF SERVICE

I hereby certify that I have, this 26th day of January, 2012, served true and correct copies of Pennsylvania-American Water Company's **Second Prehearing Memorandum** upon the following persons and in the manner indicated below:

BY ELECTRONIC MAIL AND FEDERAL EXPRESS

Patrick K. Cavanaugh, Esquire
Stephen J. Del Sole, Esquire
Del Sole Cavanaugh Stroyd LLC
The Waterfront Building, Suite 300
200 First Avenue
Pittsburgh, PA 15222
pcavanaugh@dscslaw.com
sdelsole@dscslaw.com
Counsel For C. Leslie Pettko

Hon. Joel H. Cheskis
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street (2 West)
Harrisburg, PA 17120
jcheskis@pa.gov



Anthony C. DeCusatis (Pa. No. 25700)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: 215.963.5034
Fax: 215.963.5001
E-mail: adecusatis@morganlewis.com
*Counsel for Pennsylvania-American
Water Company*

Dated: January 26, 2012

RECEIVED

JAN 26 2012

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

