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Anthony C. DeCusatis
Of Counsel
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RECEIVED

June 11, 2012

JUN 11 2012

VIA FEDERAL EXPRESS

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §§ 1.11(a), 1.56(b) and 5.343(f), enclosed for filing in the above-captioned matter are an unbound original and three copies of the **Objections of Pennsylvania-American Water Company to Notice of Deposition Issued By C. Leslie Pettko on June 1, 2012** (Objections to Deposition).

As provided in 52 Pa. Code § 1.11(a)(2), June 11, 2012, which is the date shown on the express delivery receipt attached to or included with the envelope containing this letter and enclosures, is the date of filing of Pennsylvania-American Water Company's (PAWC) Objections to Deposition, and the document should be date-stamped accordingly.

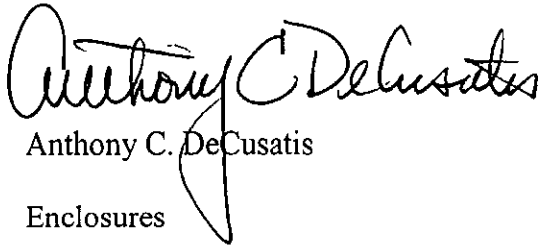
We are also enclosing one extra copy of this letter that we request be date-stamped as of June 11, 2012 and returned to us in the stamped, pre-addressed envelope provided for that purpose.

As evidenced by the original and three copies of the Certificate of Service enclosed herewith, copies of the enclosed documents have been served upon counsel for C. Leslie Pettko and upon the presiding Administrative Law Judge by electronic mail and Federal Express.

Rosemary Chiavetta
Secretary – Pennsylvania Public Utility Commission
June 11, 2012
Page 2

If there are any questions concerning the enclosures or any matters discussed herein, please feel free to contact the undersigned.

Very truly yours,



Anthony C. DeCusatis

Enclosures

c: Per Certificate of Service

RECEIVED

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JUN 11 2012

C. LESLIE PETTKO

v.

**PENNSYLVANIA-AMERICAN
WATER COMPANY**

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

DOCKET NO. C-2011-2226096

**OBJECTIONS OF PENNSYLVANIA-AMERICAN WATER COMPANY TO
NOTICE OF DEPOSITION
ISSUED BY C. LESLIE PETTKO ON JUNE 1, 2012**

Pursuant to 52 Pa. Code § 5.344, Pennsylvania-American Water Company ("PAWC" or the "Company") hereby objects to the Notice of Deposition served by C. Leslie Pettko by first class mail on June 1, 2012 and received by counsel for PAWC on June 5, 2012. A copy of the Notice of Deposition is attached hereto as Appendix A.

I. SUMMARY AND OVERVIEW

PAWC objects to Complainant's Notice of Deposition on two grounds. First, the "matters" for "inquiry" set forth in the Notice of Deposition are not appropriate for discovery. The Notice of Deposition seeks to inquiry into matters that are fundamentally legal in nature. Indeed, the only issue presented in this case at this juncture is whether PAWC's prior implementation of changes in the Distribution System Improvement Charge ("DSIC") and the State Tax Adjustment Charge ("STAS") on a "bills-rendered" basis was authorized by the Pennsylvania Public Utility Commission ("PUC" or the "Commission"). That is an entirely legal issue and should be decided as a matter of law pursuant to the Company's Motion for Summary Judgment (the operative averments of which are incorporated herein by reference). Complainant has a full and fair opportunity to present legal argument in response to that Motion in his Answer

to be filed on June 18, 2012. As evinced by the Notice of Deposition, the bulk of the “matters” for “inquiry” are attempts to probe legal issues that are dressed up as purported factual questions by couching them in terms of “Pennsylvania American Water Company’s understanding . . .” This case is not about what PAWC “understands,” it is about what the PUC **actually said and did**, which is entirely a legal issue. *See* PAWC Motion for Summary Judgment.

Second, the Complainant is seeking a deposition that would simply duplicate the extensive discovery he has **already** conducted in this case. This is evident from even a cursory comparison of the Notice of Deposition to the prior discovery that was issued by the Complainant in November 2011 and in January and March 2012, as more fully explained below.¹ And, as to the Company’s calculation of what Mr. Pettko’s bills would have been if his preferred “pro-rating” method has been used, the Company has already produced all of the information the Complainant could conceivably need to duplicate those calculations, which are a matter of simple arithmetic applied to Mr. Pettko’s own bills – bills that he is introducing into evidence.² A “deposition” is certainly not needed to understand those calculations. In summary, Complainant’s request for a deposition is duplicative of discovery regarding documents and

¹ Complainant issued a Request for Documents on November 9, 2011, informal discovery (in a letter from counsel dated January 30, 2012), and Interrogatories and Second Request for Documents on March 14, 2012. PAWC provided extensive documents and answers in response to each set of discovery. As previously noted, the documents already produced and information already provided overlap almost entirely with the stated “matters” for “inquiry” in the Notice of Deposition.

² Moreover, as the party with the burden of proof, Mr. Pettko had the burden of quantifying his claim for “refunds,” which he utterly failed to do. Simply stated, now that Complainant has submitted his direct testimony, it is evident that failed to make out a *prima facie* case on the most basic element of his claim, namely, how much he is purportedly seeking in “refunds.” As PAWC has demonstrated, Mr. Pettko cannot make that case because he was not harmed at all by the manner in which PAWC – with the Commission’s prior authorization – applied changes in the DSIC and STAS. *See* PAWC Motion for Summary Judgment, pp. 2, 18-20 and Exhibit 1.

subjects he has already conducted – only this time he wants the discovery to take the form of a “deposition” in addition to his prior interrogatories and requests for documents. Such repeated rounds of duplicative discovery are an improper use of the discovery process under the Commission’s regulations and, accordingly, the Administrative Law Judge (“ALJ”) should deny Complainant’s request to conduct a deposition. *See generally* 52 Pa. Code § 5.361.

II. OBJECTIONS TO NOTICE OF DEPOSITION

1. A detailed procedural history of this case is set forth in prior pleadings and in the prior Orders issued by the ALJ and, therefore, it is not necessary to repeat it here. For present purposes it suffices to note that Mr. Pettko filed his Complaint on February 8, 2011, in an effort to initiate a claimed “class action;” that the gravamen of Mr. Pettko’s Complaint is set forth in Paragraph Nos. 25 through 36 thereof where he alleged that PAWC’s application of changes in the DSIC and the 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); and he is seeking “refunds, “damages,” “penalties,” and “attorney’s fees” for himself and the putative “class” that he hopes to represent. On January 26, 2012, Mr. Pettko submitted a Further Prehearing Memorandum. Pursuant to the ALJ’s Prehearing Conference Order #3, Mr. Pettko was required to set forth the issues he intended to address. In his Further Prehearing Memorandum (pp. 4-5), Mr. Pettko reiterated that the fundamental issue he intends to pursue is whether PAWC “is permitted” to apply changes in the DSIC and STAS to the entire amount of a bill for which the service period straddles the effective date of those rate changes.

2. On November 9, 2011, Complainant issued: (1) a Notice of Deposition; and (2) Requests for Documents, copies of which are attached as Appendices B and C. PAWC filed

Objections to the Notice of Deposition and the Request for Documents. In Prehearing Order #2, issued on December 7, 2011, the ALJ granted PAWC's Objection to the Notice of Deposition. In the same Order, PAWC's Objections to the Request for Documents were, for the most part, denied, although the ALJ imposed certain limitations on the otherwise excessive scope of certain document requests. In denying the Complainant's request for depositions, the ALJ noted: "Certainly, for example, the majority of questions that could be asked of a witness during a deposition could be asked as written interrogatories in discovery." *Id.* at 17-19. The ALJ also explained:

Conducting a deposition may allow the Complainant to receive information faster than issuing interrogatories. There currently is no time constraint in this proceeding, however, that warrants incurring additional cost and expense by expediting the process through the use of a deposition since no procedural schedule has been established yet.

Id. at 18. As previously noted, Prehearing Order #2 was issued on December 7, 2011. And, under the litigation schedule adopted at the second Prehearing Conference, Complainant's direct testimony was not due until April 26, 2012, which, at Complainant's request, was extended to April 30, 2012. Additionally, as explained in Paragraph No. 16, *infra*, in this instance, the deposition that the Complainant wants to conduct is **not** the most expeditious form of discovery available to the Complainant.

3. The "matters" for "inquiry" in Complainant's Notice of Deposition issued in November 2011, which are numbered 1-9, are identical to the "matters" for "inquiry" numbered 1-9 in the Notice of Deposition issued on June 1, 2012. However, in the interim, PAWC has addressed all of those topics by its responses to the Complainant's Request for Documents. In fact, the Complainant's Request for Documents was, itself, largely duplicative of the "matters"

for “inquiry” in both the November 2011 and June 2012 Notices of Deposition. *Compare* Appendices A and B to Appendix C. More specifically, on December 21, 2011, PAWC provided voluminous documents, contained in two large ring binders, in response to Complainant’s Request for Documents. A copy of the narrative responses of PAWC to Complainant’s Request for Documents, together with a copy of the index of the documents PAWC produced, are provided as Appendix D hereto. As demonstrated by PAWC’s responses and accompanying index, PAWC produced documents that directly answered each of “matters” for “inquiry” listed in items 1-9 of both November 2011 and the June 2012 Notices of Deposition. These are the very same documents listed in Section III (p. 2) of the document captioned “Complainant C. Leslie Pettko’s Direct Testimony and Identification of Documentary Evidence” (hereafter “Complainant’s Identification of Documentary Evidence”), which was served on April 30, 2012.

4. On January 30, 2012, counsel for Mr. Pettko sent a letter to counsel for PAWC that contained various questions and follow-up requests with respect to the documents produced in response to the Complainant’s first Request for Documents. Although that letter was not in the form of a discovery request, PAWC treated it as if it were discovery and provided a detailed twenty-one page response, with three attachments, on February 29, 2012. PAWC can provide a copy of both Complainant counsel’s letter and PAWC’s response to the ALJ upon request. The Company’s response addressed a number of topics raised in Complainant counsel’s letter, including a direct response to the topic that appears as item 5 of the list of “matters” for “inquiry” in both the November 2011 and June 2012 Notices of Deposition. PAWC received no follow-up from Complainant with respect to its February 29, 2012 response to Complainant counsel’s letter.

5. PAWC did not hear from Complainant again until March 14, 2012, when Complainant propounded his Interrogatories and Second Request for Documents (hereafter “Interrogatories”) numbered 1 through 16. A copy of Complainant’s Interrogatories is provided as Appendix E. Many of the questions and lines of inquiry in Complainant’s interrogatories are the same questions and lines of inquiry listed as “matters” for “inquiry” in the Notice of Deposition. *See e.g.* Interrogatory Nos. 1, 2, 7, 10, 11, 12 and 13.

6. On March 26, 2012, PAWC served its Objections to Interrogatory Nos. 4, 7-9 and 15. PAWC objected to Interrogatory Nos. 4 and 7-9 because they sought information for historical periods that the ALJ, in Prehearing Order #2, had previously ruled are excessive. (As to Interrogatory Nos. 7-9, the information and documents within the historical periods not found to be excessive had already been produced in the response to Complainant’s first Request for Documents.) PAWC objected to Question No. 4 on the additional ground that Complainant sought a recalculation of DSIC revenues on a “pro-rated” basis for “all customers” despite the ALJ’s prior ruling that Mr. Pettko could only represent his own interests and not a “class” of “all customers.” Nonetheless, PAWC volunteered to provide such a calculation **for Mr. Pettko** if he so requested. He didn’t. PAWC also objected, in part, to Question No. 15 to the extent it requested privileged attorney-client communications or attorney work product. The Complainant did not file a Motion to Compel with respect to PAWC’s Objections.

7. On April 2, 2012, PAWC served full and complete answers to all of the Interrogatories to which it had not objected. PAWC can provide a copy of those responses to the ALJ upon request. PAWC did not hear from Complainant that there were any issues or problems with its responses, and it did not receive any follow-up discovery.

8. As previously indicated, direct testimony by Mr. Pettko and Mr. Radigan was served on PAWC on April 30, 2012, pursuant to the schedule extension Complainant requested. In that testimony, neither Mr. Pettko nor Mr. Radigan indicated any issues or problems with the Company's responses to the extensive discovery that had been conducted since November 2011.

A. Complainant Is Seeking A Deposition As To A Legal Issue, Which Is Not An Appropriate Subject For Discovery

9. As evidenced by the "statement of the matters for which the inquiry is being made" in the Notice of Deposition, the Complainant is trying to undertake "discovery" into matters that are fundamentally legal in nature. The "issues" that the Complainant himself listed in his Further Prehearing Conference Memorandum, filed on January 26, 2012 (Paragraph g. at pp. 4-5), clearly establish that this case presents a single, straight-forward question for decision, namely, whether PAWC's application of changes in the DSIC and the STAS without "pro-rating" for periods before and after the "effective date" was "authorized" by the Commission. *See also Complaint ¶¶ 27, 31, 32 and 34.* Even though the Complainant had the responsibility to do his own legal research necessary to ascertain the PUC's prior rulings on this issue -- all of which support the Company -- he did not do so. Instead, he undertook extensive prior rounds of discovery to have the Company produce the documents -- which he now concedes are **all** "public documents"³ -- that unambiguously establish PAWC was fully authorized to apply changes in the DSIC and STAS without "pro-rating." *See also Order Granting In Part and Denying In Part Motion for Judgment on the Pleadings*, pp. 4-5.

³ The Complainant made this concession in Complainant's Identification of Documentary Evidence (p. 2, Section III), before he decided that a deposition was necessary with respect to those very same documents.

10. On its face, the Notice of Deposition makes plain that if the requested “deposition” is permitted, the Complainant intends to ask questions about the legal import of Commission Orders and other Commission pronouncements. Such an exercise is entirely improper because the documents speak for themselves; their legal import is not an appropriate subject for “discovery;” and any argument about the legal significance of those documents should be reserved for legal argument, which the Complainant has ample opportunity to present in his Answer to the Company’s Motion for Summary Judgment, which is due on June 18, 2012.

11. Moreover, the Complainant has couched many of the subjects of his improper inquiries in terms of “Pennsylvania American Water Company’s understanding of . . .” This is a thinly veiled effort to try to convert fundamentally legal issues into purportedly factual issues, which they clearly are not. The issue in this case is not what PAWC “understands,” it is what the Commission has **said and done**. See Motion for Summary Judgment, ¶¶ 41-52. If there is any disagreement about the Commission’s pronouncements, the proper means of disposition is legal argument. As previously noted, contrary to his protestations, the Complainant is being provided a full and fair opportunity to present his legal argument in answer to the Company’s Motion for Summary Judgment. Indeed, at this point, the Complainant has already availed himself of the opportunity to present direct testimony. And, as explained in the Company’s Motion for Summary Judgment (¶¶ 41-49), Complainant’s direct testimony does not engage the fundamental issue in this case because it says nothing about the Commission’s prior rulings and pronouncements that authorize the implementation of changes in the DSIC and STAS without “pro rating.”

B. Complainant's Notice Of Deposition Seeks Discovery That Is Duplicative, Unreasonable and Unnecessary

12. As discovery, the “deposition” Complainant seeks would unquestionably plow old ground. Virtually everything noted as a “matter” for “inquiry” in the Notice of Deposition has been the subject of prior document requests, interrogatories and informal discovery (many of which were, themselves, repetitive) that were fully answered by PAWC months ago. This is apparent from the Complainant’s prior discovery, chronicled in Paragraph Nos. 2-8, above, which are incorporated herein by reference, and from the lengthy list of “public documents” listed in Complainant’s Identification of Documentary Evidence. The Complainant is apparently taking the approach that if he asks for something and does not get the answer he desires, he should keep asking the same questions over and over again in the hope that he might get a different response at some point. That is not a proper use of discovery under the Commission’s regulations. *See generally* 52 Pa. Code § 5.361.

13. Furthermore, the reason PAWC has provided the same answers (and documents) to Complainant’s repeated rounds of discovery is because: (1) the matter at issue is a legal one; (2) the issue is controlled by the Commission’s prior rulings and pronouncements; (3) those rulings and pronouncements have been set forth in documents that affirm the Company’s position; and (4) those documents – in addition to having already been produced by the Company – are “public documents,” as the Complainant has conceded.

14. Finally, as part of its Motion for Summary Judgment, PAWC presented calculations of Mr. Pettko’s bills employing the “pro-rating” method he prefers. Those calculations show that Mr. Pettko would have paid more – not less, as he claims – if his preferred method had been used by the Company. At the outset, it should be emphasized that Mr. Pettko,

as the Complainant and the party with the burden of proof (*see* 66 Pa.C.S. § 332(a)), had the obligation to evidence quantifying the amount of the “refund” he is claiming. He already presented his direct case, failed to offer any quantification of his claimed “refund” and, thereby, failed to state a *prima facie* case. More importantly, the bill calculations presented by PAWC, while nominally “factual” are, in reality, simple arithmetic applied to Mr. Pettko’s own bills (which he is introducing in evidence through his own direct testimony). The Company has already provided all of the information – including the Affidavit of Ms. Lontz – that could conceivably be needed to allow the Complainant or his expert, Mr. Radigan, to reproduce all of those calculations.⁴ There is nothing more needed to duplicate those calculations, and any information that Ms. Lontz might provide in a deposition has already been provided in her Affidavit accompanying the Company’s Motion for Summary Judgment. If the Complainant has any issue with those calculations – although it is not possible to see how he could – he is permitted to offer his own affidavit (or that of Mr. Radigan) with his Answer to the Motion for Summary Judgment to identify any specific changes he contends are necessary and explain the impact such changes might have on the overall result, *i.e.*, the simple arithmetic determination that Complainant actually paid less than he would have paid if his “pro rating” method had been used.

15. Items 10 and 11 of the Notice of Deposition indicate the Complainant seeks to inquire into, respectively, “[t]he facts alleged in the written testimony of Jo Anne Lontz” and

⁴ As previously noted in Paragraph No. 6, *supra*, PAWC offered to provide those calculations back in March 2012, *i.e.*, well before Mr. Pettko submitted his direct case, and the Complainant did not accept PAWC’s offer. Moreover, Complainant already had all of his bills (dating back to 2004), which PAWC produced on December 21, 2011 in response to his first Request for Documents. Consequently, he, or Mr. Radigan, could have produced the same calculations at any time during the intervening five months.

“[t]he facts alleged in the May 29, 2012 affidavit of Ms. Lontz.” To the extent such “facts” relate to the calculation of what Mr. Pettko would have paid if the DSIC and STAS had been applied in the “pro-rated” manner he prefers, it is clear that a “deposition” is certainly not needed, for the reasons set forth in the preceding paragraph. As to the rest of Ms. Lontz’s testimony, any claim that a “deposition” is needed simply does not pass the blush test. No reasonable reading of Ms. Lontz’s testimony would support the need for a “deposition” as an appropriate means of discovery at this point.

16. In Prehearing Order #2, the ALJ admonished the Complainant to make a good faith effort to obtain discovery by other available means (such as written interrogatories, requests for admissions or requests for documents) **before** resorting to “depositions.” Despite that admonition, since he was served with PAWC’s Motion for Summary Judgment and direct testimony, Complainant has made **no effort** to obtain discovery by any means other than a deposition. (Notably, for the reasons previously explained, it is impossible to discern why additional discovery, in **any** form, could be needed or would be reasonable at this point in light of the discovery that has already taken place.) Moreover, answers to written interrogatories could have been provided in twenty days pursuant to the Commission’s regulations (or less, which PAWC would have been willing to do if the Complainant had asked to shorten the response time), which would have provided any additional information Complainant allegedly seeks before his rebuttal testimony is due. Instead, the Complainant is seeking a deposition that, even if it is permitted – and it should not be – would not occur until **after** the due dates for his Answer to the Motion for Summary Judgment (June 18) and rebuttal testimony (June 22).

17. Additionally, PAWC identified Ms. Lontz as its witness in this case in its **first** Prehearing Memorandum, which was submitted on December 9, 2011 (p. 13) and again in its

Second Prehearing Memorandum, which was submitted on January 26, 2012 (p. 4). It is simply inexplicable that Complainant would wait until now – after his direct case has already been submitted – to notice the deposition of Ms. Lontz in order to make the identical inquiries that he sought in the Notice of Deposition issued on November 9, 2011 and in the multiple rounds of discovery that have already taken place since then. Complainant simply cannot make a case that there is any valid, credible reason that a deposition is necessary or should be permitted at this time.

18. For all of the foregoing reasons, Complainant's request for a deposition should be denied. However, if a deposition were to be permitted, it should not be held in a hotel room in Harrisburg as the Complainant requests. The deposition should be scheduled in an available hearing or conference room at the Commission's offices in the Commonwealth Building so that the parties can have access to the ALJ for rulings on issues as to scope and permissibility of questions asked in the course of the deposition. Accordingly, the date for the deposition should also be one on which the ALJ – or another Administrative Law Judge who might be assigned for such a purpose – is available to address contested issues and rule on issues of scope and propriety of questions. If it is necessary to do so, PAWC asks for the opportunity to repeat his request in a Motion for Protective Order pursuant to 52 Pa. Code § 5.362. To reiterate, the need for a Protective Order would be obviated by either denying the Complainant's request for a deposition and/or granting the Company's Motion for Summary Judgment.

WHEREFORE, for the foregoing reasons, the ALJ should issue an Order granting these Objections and denying Complainant's request to conduct a deposition.

Respectfully Submitted



Thomas P. Gadsden

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Anthony C. DeCusatis

adecusatis@morganlewis.com

Morgan, Lewis & Bockius LLP

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Seth A. Mendelsohn

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Pennsylvania-American Water
Company

800 Hershey Park Drive

Hershey, PA 17033

717.531.3362

Counsel for Pennsylvania-
American Water Company

Dated: June 11, 2012

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JUN 11 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

APPENDIX A

Complainant's Notice of Deposition Issued June 1, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

C. LESLIE PETTKO, on behalf of himself)	
and all others similarly situated,)	
)	
Complainant,)	
)	
v.)	Docket No. C-2011-2226096
)	
PENNSYLVANIA AMERICAN WATER)	
COMPANY,)	
)	
Respondent.)	

NOTICE OF DEPOSITION OF PENNSYLVANIA AMERICAN WATER COMPANY

To: Pennsylvania American Water Company
c/o Anthony C. DeCusatis, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

Please take notice that on Thursday, June 28, 2012 at 10:00 a.m., pursuant to 52 Pa. Code § 5.343, the undersigned shall take the deposition of Pennsylvania American Water Company at the Holiday Inn, 4021 Union Deposit Road, Harrisburg, PA 17109, before an officer duly authorized by law to take depositions. The deposition will take place on the designated date and may continue from day to day until completed.

Under § 5.343(c), Complainant makes the following brief statement of the matters for which the inquiry is being made:

1. Pennsylvania American Water Company's implementation, billing, collection, and reconciliation of the DSIC and STAS charges.
2. Pennsylvania American Water Company's understanding of the meaning of "bills rendered" and "services rendered."
3. Pennsylvania American Water Company's understanding of whether or not the

DSIC and STAS charges should be prorated so that a new rate is not applied to services rendered before the effective date.

4. Pennsylvania American Water Company's understanding of whether or not it 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.

5. Pennsylvania American Water Company's understanding of any changes during the past three years in the language that appears on customers' bills to inform them of increases or decreases in DSIC or STAS rates.

6. The exhibits attached to Pennsylvania American Water Company's Answer and New Matter.

7. The exhibits attached to Pennsylvania American Water Company's Motion for Judgment on the Pleadings.

8. Pennsylvania American Water Company's understanding of any documents produced in response to Complainant's Requests for Documents.

9. The location of all documents requested in Complainant's Requests for Documents, whether or not they have been produced.

10. The facts alleged in the written testimony of Jo Anne Lontz.

11. The facts alleged in the May 29, 2012 affidavit of Jo Anne Lontz.

Under § 5.343(e), you have ten (10) days from the service of this Notice to designate the person(s) who will testify on behalf of Pennsylvania American Water Company. The deponent(s) should be the person(s) most knowledgeable on the matters set forth above.

DEL SOLE CAVANAUGH STROYD LLC

By:



Stephen J. Del Sole, Esquire
Counsel for Complainant

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Complainant,)

v.)

Docket No. C-2011-2226096

PENNSYLVANIA AMERICAN WATER)
COMPANY,)

Respondent.)

**PROPOSED ORDER PURSUANT TO 53 PA. CODE § 5.344 ON COMPLAINANT'S
NOTICE OF DEPOSITION OF PENNSYLVANIA AMERICAN WATER COMPANY**

Application granted. So Ordered this _____ day of _____, 2012.

BY THE PRESIDING OFFICER:

Administrative Law Judge Joel H. Cheskis

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of June, 2012, a true and correct copy of the foregoing *Notice of Deposition of Pennsylvania American Water Company* was served on the following by first class, U.S. mail:

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

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



Stephen J. Del Sole

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JUN 11 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

APPENDIX B

Complainant's Notice of Deposition Issued November 9, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

C. LESLIE PETTKO, on behalf of himself)	
and all others similarly situated,)	
)	
Complainant,)	
)	
v.)	Docket No. C-2011-2226096
)	
PENNSYLVANIA AMERICAN WATER)	
COMPANY,)	
)	
Respondent.)	

**NOTICE OF DEPOSITION OF
PENNSYLVANIA AMERICAN WATER COMPANY**

To: Pennsylvania American Water Company
c/o Anthony C. DeCusatis, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

Please take notice that on Monday, December 19, 2011 at 10:00 a.m., pursuant to 52 Pa. Code § 5.343, the undersigned shall take the deposition of Pennsylvania American Water Company at the law offices of Del Sole Cavanaugh Stroyd LLC, The Waterfront Building, Suite 300, 200 First Avenue, Pittsburgh, PA 15222, before an officer duly authorized by law to take depositions. The deposition will take place on the designated date and may continue from day to day until completed.

Under § 5.343(c), Complainant makes the following brief statement of the matters for which the inquiry is being made:

1. Pennsylvania American Water Company's implementation, billing, collection, and reconciliation of the DSIC and STAS charges.
2. Pennsylvania American Water Company's understanding of the meaning of "bills rendered" and "services rendered."

3. Pennsylvania American Water Company's understanding of whether or not the DSIC and STAS charges should be prorated so that a new rate is not applied to services rendered before the effective date.

4. Pennsylvania American Water Company's understanding of whether or not it 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.

5. Pennsylvania American Water Company's understanding of any changes during the past three years in the language that appears on customers' bills to inform them of increases or decreases in DSIC or STAS rates.

6. The exhibits attached to Pennsylvania American Water Company's Answer and New Matter.

7. The exhibits attached to Pennsylvania American Water Company's Motion for Judgment on the Pleadings.

8. Pennsylvania American Water Company's understanding of any documents produced in response to Complainant's Requests for Documents.

9. The location of all documents requested in Complainant's Requests for Documents, whether or not they have been produced.

Under § 5.343(e), you have ten (10) days from the service of this Notice to designate the person(s) who will testify on behalf of Pennsylvania American Water Company. The deponent(s) should be the person(s) most knowledgeable on the matters set forth above.

DEL SOLE CAVANAUGH STROYD LLC

By: _____

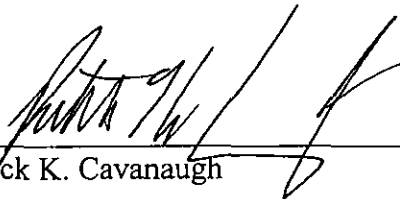
Patrick K. Cavanaugh, Esquire
Counsel for Complainant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of November, 2011 a true and correct copy of the foregoing *Notice of Deposition of Pennsylvania American Water Company* was served on the following by first class, U.S. mail:

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

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



Patrick K. Cavanaugh

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JUN 11 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

APPENDIX C

Complainant's first Request for Documents

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Complainant,)

v.)

PENNSYLVANIA AMERICAN WATER)
COMPANY,)

Respondent.)

Docket No. C-2011-2226096

**REQUESTS FOR DOCUMENTS DIRECTED TO
PENNSYLVANIA AMERICAN WATER COMPANY**

Pursuant to 52 Pa. Code § 5.349, Complainant requests that Respondent Pennsylvania American Water Company produce copies of the following documents:

1. Any documents referencing the meaning of the terms “bills rendered,” “bills issued,” or “services rendered.”
2. Any 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.
3. Any 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.
4. Any documents containing information on computer programs relating to retroactive or prorated billing.
5. Any correspondence between Respondent and the PUC addressing the reconciliation of DSIC charges from January 1, 1997 (the inaugural year of the DSIC charge) to

the present.

6. Any correspondence between Respondent and the PUC using the terms “bills rendered,” “bills issued,” or “services rendered” in relation to the DSIC charge from January 1, 1997 to the present.

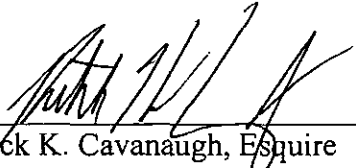
7. Any documents relating to any change in the language that appears on customers’ bills to inform them of increases or decreases in DSIC or STAS rates in the past three years.

8. Any billing records for Complainant C. Leslie Pettko for the past six years, including exact copies of billing invoices sent to Mr. Pettko.

9. Any documents sent by Respondent to Complainant C. Leslie Pettko for the past six years.

DEL SOLE CAVANAUGH STROYD LLC

By: _____

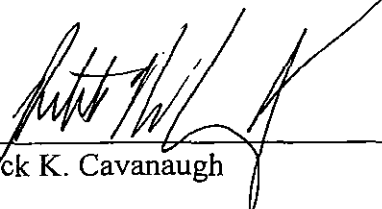

Patrick K. Cavanaugh, Esquire
Counsel for Complainant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of November, 2011 a true and correct copy of the foregoing *Requests for Documents Directed to Pennsylvania American Water Company* was served on the following by first class, U.S. mail:

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

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



Patrick K. Cavanaugh

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

APPENDIX D

Narrative Responses to Complainant's first Request for Documents and Index of Documents Produced

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PENNSYLVANIA-AMERICAN WATER COMPANY'S
RESPONSE TO REQUEST FOR DOCUMENTS (SET I)
OF C. LESLIE PETTKO**

Pennsylvania-American Water Company (PAWC) is submitting herewith two three-ring binders (marked as Volumes 1 and 2) containing documents arranged by Tabs numbered 1 through 17 and also containing an index providing the title and/or description of the document(s) at each Tab. The narrative responses below identify the documents that are responsive to each Document Request.

Document Request No. 1 [Produce] [a]ny documents referencing the meaning of the terms “bills rendered,” “bills issued,” or “services rendered.”

Response: Refer to the documents produced at Tabs 1-4, 7, 8, 10 and 15. Please note that the Public Utility Commission has issued orders involving other utilities that address the application of changes in rates on a “bills rendered” and “service rendered” basis. PAWC is producing documents specific to PAWC that are within the scope of the request.

Document Request No. 2 [Produce] [a]ny 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.

Response: Refer to the documents produced at Tabs 1-15. Complainant is specifically referred to the documents at Tabs 1-4, 7-8, 10, 11 and 15. PAWC is producing documents specific to PAWC that are within the scope of the request.

Document Request No. 3 [Produce] [a]ny 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.

Response: This is fundamentally the same request made in Document Request No. 3. Refer to the response to Document Request No. 3.

Document Request No. 4 [Produce] [a]ny document containing information on computer programs relating to retroactive or prorated billing.

Response: PAWC's objection to this interrogatory was granted by the Administrative Law Judge in Prehearing Order #2.

Document Request No. 5 [Produce] [a]ny correspondence between Respondent and the PUC addressing the reconciliation of DSIC charges from January 1, 1997 (the inaugural year of the DSIC charge) to the present.

Response: PAWC's objection to this Document Request was granted, in part, by the Administrative Law Judge. Refer to the documents produced at Tab 9. (The reconciliation statement for 2011 will not be filed until 2012.)

Document Request No. 6 [Produce] [a]ny correspondence between Respondent and the PUC using the terms "bills rendered," "bills issued", or "services rendered" in relation to the DSIC charge from January 1, 1997 to the present.

Response: PAWC's objection to this Document Request was granted, in part, by the Administrative Law Judge. However, PAWC has voluntarily acquiesced to provide documents for more than four years. Refer to the documents produced at Tabs 1-4 and 7-10.

Document Request No. 7 [Produce] [a]ny documents relating to any change in the language that appears on customers' bills to inform them of increases or decreases in DSIC or STAS rates in the past three years.

Response: Refer to the documents produced at Tab 16, which are representative of bills issued to customers.

Document Request No. 8 [Produce] [a]ny billing records for Complainant C. Leslie Pettko for the past six years, including exact copies of billing invoices sent to Mr. Pettko.

Response PAWC's objection to this interrogatory was granted by the Administrative Law Judge in Prehearing Order #2. However, PAWC has voluntarily acquiesced to provide screen shots of the electronically stored copies of Mr. Pettko's water bills for the period requested in the form in which they appear on PAWC's system. These documents are provided at Tab. 17.

Document Request No. 9 [Produce] [a]ny documents sent by Respondent to Complainant C. Leslie Pettko for the past six years.

Response: PAWC's objection to this interrogatory was granted by the Administrative Law Judge in Prehearing Order #2.

Dated: 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.
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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).

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JUN 11 2012

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

APPENDIX E

Complainant's Interrogatories Issued March 14, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

C. LESLIE PETTKO, on behalf of himself)	
and all others similarly situated,)	
)	
Complainant,)	
)	
v.)	Docket No. C-2011-2226096
)	
PENNSYLVANIA AMERICAN WATER)	
COMPANY,)	
)	
Respondent.)	

**COMPLAINANT'S INTERROGATORIES AND SECOND REQUEST
FOR DOCUMENTS DIRECTED TO
PENNSYLVANIA AMERICAN WATER COMPANY**

Pursuant to 52 Pa. Code §§ 5.341 and 5.349, Complainant submits the following Interrogatories and requests that Respondent Pennsylvania American Water Company ("PAWC") produce copies of the following documents:

1. State whether the Commission has issued an order permitting the collection of the DSIC on a "bills-rendered basis."

ANSWER:

2. If Your answer to the previous Interrogatory is in the affirmative, Identify the Order by title and/or date.

ANSWER:

3. Produce all orders identified in the preceding Interrogatory.

ANSWER:

4. For each year from 1997 (the first year for the DSIC charge) to the present, state the following:

- a. The number of customers You had for each year;
- b. The amount collected for each year of the DSIC;
- c. Calculate the amount that would have been collected each year had PAWC pro-rated the DSIC on its customers' bills;
- d. The amount collected each year for the STAS;
- e. The effective date for any and all positive STAS;
- f. Calculate the amount that would have been collected each year had PAWC pro-rated the DSIC on its customers' bills

ANSWER:

5. For the period of January 1, 2004 through the present, state the exact dates (month, day and year) in which PAWC was authorized to collect (as opposed to refund) a STAS and the amount of the STAS rate for each of those periods.

ANSWER:

6. For each of the STAS collection periods identified in the previous Interrogatory state the exact effective date for the application of the STAS.

ANSWER:

7. Produce any audits or reviews by the PUC of PAWC's application of the STAS for the time period of 1986 (reference the December 18, 1986, PUC order produced by PAWC at Tab 11) to the present.

ANSWER:

8. Produce PAWC's STAS annual reconciliations for the time period of 1992 (reference the June 2, 1992, memo from the PUC produced by PAWC at Tab 11) to the present.

ANSWER:

9. State all dates since 1992 in which PAWC "rolled-in" the STAS into its base rate (reference the June 2, 1992, memo from the PUC produced by PAWC at Tab 11).

ANSWER:

10. State whether You believe that Your Tariff permits you to charge an increased DSIC rate prior to the effective date of that increase.

ANSWER:

11. If Your answer to the preceding Interrogatory is in the affirmative, please identify specifically the language of the Tariff that supports Your position.

ANSWER:

12. Do you contend that, if following a year end section 1307(e) audit of Over/Under Collections it is determined that PAWC *over* collected an annual DSIC charge, individual water customers are provided a refund of the amount that individual customer paid in excess of what was allowed.

ANSWER:

13. If your answer to the previous Interrogatory was “yes”, produce all documents reflecting payment of a refund to individual water customers for any over collection of a DSIC.

ANSWER:

14. State whether PAWC has the technical ability to generate bills to its customers that pro-rate the DSIC and STAS.

ANSWER:


15. For the time period beginning on January 1, 2009 to the present, state whether You, your attorneys or anyone acting on Your behalf has had any discussions or communications with the PUC, or any person associated with the PUC regarding or relating to the claims raised in this case.

ANSWER:

16. If the answer to the previous Interrogatory is yes, identify the person on Your behalf who had the discussions or communications, the individual(s) at the PUC with whom the discussions or communications were held, when the discussions or communications occurred, and the substance of each and every discussion or communication.

ANSWER:

DEL SOLE CAVANAUGH STROYD LLC

By: 
Patrick K. Cavanaugh, Esquire
Counsel for Complainant

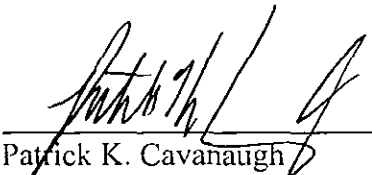
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of March, 2012 a true and correct copy of the foregoing *Complainant's Interrogatories and Second Request for Documents Directed to Pennsylvania American Water Company* was served on the following:

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17101
(Via prepaid First Class U.S. Mail only)

Administrative Law Judge Joel H. Cheskis
P.O. Box 3265
Harrisburg, PA 17105
(Via prepaid First Class U.S. Mail and electronic mail)

Anthony C. DeCusatis, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
Attorney for Respondent
(Via prepaid First Class U.S. Mail and electronic mail)


Patrick K. Cavanaugh

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

JUN 11 2012

C. LESLIE PETTKO

v.

PENNSYLVANIA-AMERICAN WATER
COMPANY

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKET NO. R-2011-2226096

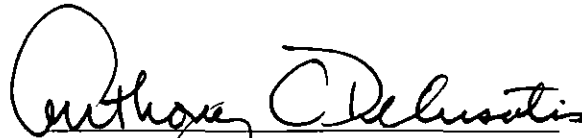
CERTIFICATE OF SERVICE

I hereby certify that I have, this 11th day of June, 2012, served a true and correct copy of Pennsylvania-American Water Company's **Objections to the Complainant's Notice of Deposition** upon the following persons and in the manner indicated below:

BY ELECTRONIC MAIL AND FEDERAL EXPRESS

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

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
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Phone: 215.963.5034
Fax: 215.963.5001
E-mail: adecusatis@morganlewis.com
*Counsel for Pennsylvania-American
Water Company*

Dated: June 11, 2012

