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June 25, 2012

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**VIA FEDERAL EXPRESS OVERNIGHT**

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

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

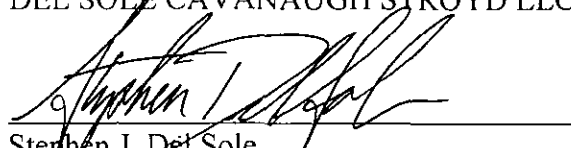
Dear Ms. Chiavetta:

Enclosed for filing is an original and three copies of Complainant's Opposition to Respondent's Motion for Summary Judgment accompanied with an original and three copies of the corresponding Appendix of Exhibits. I have also enclosed a copy of the both the cover sheet of the Opposition and the Appendix. Kindly date-stamp the copies and return them 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

  
\_\_\_\_\_  
Stephen J. Del Sole

Enclosures



tariff that the term “rendered” really means “no pro-ration” is its defense argument, but is not an established fact. Indeed, as explained herein, Penn American cannot point to a single PUC Order, Tariff, or any other document that defines the language of the tariff such that Penn American is permitted to collect an increased DSIC or STAS prior to the PUC-approved “effective date” of the increase. Penn American’s repeated assertion that it was authorized to bill a rate before the rate even became effective does not make it so. The documents establish that at a minimum, there is a genuine issue of material fact as to whether Penn American wrongfully billed DSIC and STAS increases prior to the specific “effective dates” of the increase. Indeed, when viewed in context and given a plain reading, the tariff and documents show that, in fact, Penn American was clearly required to pro-rate the DSIC and STAS rate increases. Additionally, Complainant has adduced the testimony of a public utilities expert who opines that Penn American’s position is simply wrong, and that it was not permitted to charge the increased rates prior to the approved effective date.<sup>1</sup>

In addition, the contention that when his bills are viewed over a limited time period Mr. Pettko was not damaged and, therefore, cannot put forth a claim, is not grounds for summary judgment. This argument is based on a testimonial affidavit of a Penn American witness who claims that over a certain period of time Mr. Pettko paid less under Penn American’s billing method than he would have if Penn American pro-rated. This contention is based on calculations set forth in an exhibit which the witness prepared. Penn American’s “calculations” are disputed, not established facts and cannot give rise to summary judgment. Thus, on a purely procedural basis, Summary Judgment should be denied. Penn American’s argument is based on contentions

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<sup>1</sup> Additionally, claimant has twice tried to take the deposition of Respondent to question it as to its basis for its “bills-rendered” defense. Claimant has yet to be permitted to conduct this inquiry (either at a deposition or, now, at a hearing).

of fact (which are essentially an expert opinion) that Mr. Pettko must have the opportunity to explore and test under cross examination.

Moreover, Penn American's argument is legally infirm. The fact that because over one period of time that Penn American had been misapplying the DSIC and STAS, Mr. Pettko may (under Penn American's argument) benefit from decreases in DSIC and STAS rates on some occasions, does not excuse Penn American from wrongfully charging increased rates before the PUC-approved effective date on other occasions.

Because there are genuine issues of material fact as to whether Penn American was permitted to charge Mr. Pettko increased DSIC and STAS rates prior to the PUC-approved effective date of the increase under the tariff, and that doing so also results in a discriminatory rate practice, Penn American's Motion For Summary Judgment should fail and Mr. Pettko should be afforded a full and fair hearing on the merits of this case.

## **II. ARGUMENT**

### **A. Standard of Review**

The standard for the grant of summary judgment in a proceeding before the Public Utility Commission is the same as utilized by the courts of this Commonwealth. 52 Pa.Code §5.102(d)(1) provides that "the [summary] judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law." Further, in reviewing a motion for summary judgment, the record must be viewed in a light most favorable to the non-moving party. Grandelli v. Methodist Hospital, 777 A.2d 1138, 1143-44 (Pa.Super. 2001). In this case, summary judgment is not

warranted because, when viewed in a light most favorable to Mr. Pettko, there are genuine issues of material fact and Penn American is not entitled to judgment as a matter of law.

**B. There are genuine issues of material fact as to whether PAWC improperly billed Mr. Pettko for both the DSIC and STAS charges.**

Throughout its Motion for Summary Judgment, Penn American acts as though it is an undeniable fact that it was authorized to collect both the DSIC and STAS charges on what it has defined as a “bills rendered basis,” although that phrase is not used in Penn American’s Tariff. Penn American argues that it was permitted to charge the full amount of a rate increase even for portions of a customer’s billing cycle that occurred prior to the date of the increase. Neither arguments are established “facts.” As explained herein, despite its firm suggestions to the contrary, there is not a single document from the PUC that defines the DSIC tariff to read “no need to prorate.” Indeed, such an interpretation is contrary to the very nature of a usage-based charge. Moreover, as to the STAS, Penn American’s contention that it was a “bills rendered” charge (as Penn American defines the term) is undercut by its very argument on the DSIC because the STAS tariff clearly states “services rendered.” Additionally, Penn American has never addressed the code violation that results from the discriminatory effect on rate payers based on its billing practice. Penn American’s Motion for Summary Judgment should be denied.

**1) Penn American’s Motion must fail because there are genuine issues of material fact regarding the interpretation of its tariff.**

The very documents submitted in support of Penn American’s Motion demonstrate that it is not established that it was “authorized” to charge consumers increased DSIC and STAS rates before the PUC-approved effective date of the rate change. Indeed, a full review of the documentary record suggests just the opposite.

In support of its argument, Penn American references the 1996 Order of the PUC permitting it to charge a DSIC. The 1996 Order does not support Penn American's position. There is *nothing* in that Order that can be construed to provide the definition for "bills rendered" advocated by Penn American. To the contrary, as clearly reflected in the Order, the PUC's understanding of the DSIC was that it was to be a service or usage-based charge.

By way of background, in Penn American's petition for approval to implement the DSIC, it proposed that the *initial* implementation of the charge be effective for: "bills rendered on and after July 1, 1996, and will be updated quarterly thereafter." (See paragraph 33 of Petition dated March 15, 1996 attached as Exhibit A.) However, Penn American's proposed tariff supplement also states that the DSIC will be applied to "services rendered." (See exhibit A to Penn American's March 15, 1996 Petition). The Petition further states, at paragraph 4, that "the charge would become *effective*, with Commission approval, as of July 1, 1996." There can be no legitimate dispute that "services rendered" must be read in the context of, and in conjunction with, the entire tariff so as to give meaning to the "effective date."

Penn American then supplemented its Petition on March 22, 1996 to include a proposed tariff. (A copy of the supplement is attached as Exhibit B.) The proposed tariff represented that the charge will, in fact, be applied to "services rendered" after the specific quarterly effective dates.

In its Order approving the implementation of the DSIC the Commission noted that: "*the company proposes that the DSIC become effective for services rendered on and after July 1, 1996.*" Certainly, this reflects the Commission's logical understanding that a usage-based rate would be applied after the specific "effective date" of that change. With this in mind, the Commission set forth sample tariff language that is identical to the approved tariff. (See

Respondent's Appendix A at page 13 and attachment A thereto.) Thus, the only logical reading of the tariff when viewed in the context of the petition and Order approving the DSIC is that the Commission intended rate changes to be applied to services after the effective date of the change.

Although they are not statutes, it is well established that when interpreting a Tariff the canons of statutory construction apply, including the provisions of the Statutory Construction Act. PPL Electric Utilities Corp. v. PUC, 912 A.2d 386, 400-403 (Pa.Cmwlth. 2006). Under these canons of interpretation, "it is well settled that public utility tariffs must be applied consistently with their language." Id. at 402. As such, "a tariff, like a statute, must be construed to give effect to all of its terms, and when the words are clear and free from ambiguity, they are not to be disregarded under the pretext of pursuing its spirit." Id. at 403. Thus, "*without regard to what the utility may have intended*, the utility is required to apply the language in the existing tariff as approved by the Commission." Id. at 402 (emphasis added); See also United States Steel Corp. v. PUC, 850 A.2d 783 (Pa.Cmwlth. 2004) (same).

Contrary to the basic principles of interpretation, Penn American's interpretation completely ignores the plain language of the tariff that sets forth specific "effective" dates for DSIC rate increases. Throughout the Order, the term "effective date" is prominently used on multiple occasions in the PUC's approved sample tariff language:

**Effective Date:** The DSIC will become **effective** for bills rendered on and after January 1, 1997.

\* \* \*

**Calculation:** The initial charge, **effective** January 1, 1997, shall be calculated to recover the fixed costs of eligible plant additions that have not previously been reflected in the Company's base rate and will have been placed in service between September 1, 1996, and November 30, 1996. Thereafter, the DSIC will be updated on a quarterly basis to reflect eligible plant additions placed in service during the three-month periods ending one month prior to the **effective date** of each DSIC update.

August 22, 1996 Order, PUC Docket No. P-00961031 (emphasis added). There is nothing in this language that as much as suggests that an “effective date” permits a rate change to be charged **prior** to the effective date of the change.

Complainant has presented direct testimony of an expert that states unequivocally that Penn American is not complying with its tariff and that their interpretation disregards the plain meaning of “effective date”. Complainant’s expert states:

Under Penn American’s position, the *effective date of change* set forth in the governing Tariff is rendered meaningless. In actual practice, Penn American begins charging the increased amount for some of its customers nearly a month *before* the effective date which was approved by the Commission. By disregarding the effective date, Penn American’s billing practices create an inherently inequitable system whereby some customers will *always* bear the increased rates more than others.

(See direct testimony of Frank W. Radigan attached as Exhibit C). The Bills to Mr. Petko also support the plain reading of the language “effective date.” The bills sent to customers do not say, as Penn American argues, that: “the DSIC (or STAS) has been increased retroactively as of the first day of your billing cycle.” Rather, the bills state, for example:

Effective January 1, 2010, the State Tax Adjustment Surcharge (STAS) increased from 0% to 0.45%.  
Effective April 1, 2010, Distribution System Improvement Charge (DSIC) increased from 0% to 0.4%

(See representative sample of bill attached as Exhibit D). The clear representation to the customer is that the rates changed on the specific effective date. There would be no way for a customer to know that, according to Penn American, they can’t rely on the plain meaning of the term “effective date”. Rather, the rate actually changed weeks before then.

The language of the bill and use of the term “effective date” is deliberate and intended to state the meaning of the tariff. That is, the rate change occurs on the effective date, not prior thereto.

As stated by Complainant’s expert:

Penn American could have used language indicating that the increased DSIC charge applied to all dates represented in the billing cycle (i.e., on the entire billing cycle), it did not do so because it was not so authorized by its Tariff. In fact, the notice language regarding the increase is consistent with the Tariff language and the concept of a usage-based charge. Penn American just fails to perform its DSIC calculation consistent with its Tariff.

Moreover, Penn American’s argument is further confounded by the provisions governing quarterly updates in the DSIC tariff. The tariff requires Penn American to provide the Commission, the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate with supporting data for each quarterly update. Obviously, the purpose of doing so is to approve the appropriate rate adjustment for the following quarter. That information is required to be filed “at least ten (10) days prior to the *effective date* of the update.” (see Exhibit E at page 12 B 3). But under Penn American’s interpretation it can start charging the new rate *before* the supporting data for the rate change is even filed. For example, for the DSIC rate change effective January 1, a customer with a billing period that runs from December 2 to January 2, will be charged the increased DSIC rate beginning on December 2<sup>nd</sup>, even though the supporting data for the rate change is not even filed for review by the Commission until December 23. Such an interpretation renders the quarterly update provision of the tariff meaningless.

Penn American’s argument relies heavily upon so-called “pronouncements” of the PUC Bureau of Audits. Penn American asserts that the Bureau of Audits and the PUC are one in the same. They are not. The Pennsylvania Code makes clear that statements in an audit are not legal determinations. Section 1.96 states:

Statements contained in formal opinions of the Commission or in decisions of a presiding officer which are not necessary in resolving the case, and informal opinions, whether oral or written, expressed by Commissioners, presiding officers, legal counsel, employees or representatives of the Commission *and reports drafted by Commission bureaus are only considered as aids to the public, do not have the force and effect of law or legal determinations, and are not binding upon the Commonwealth or the Commission.*

52 Pa. Code § 1.96. [emphasis added]

Accordingly, Penn American's assertion that statements of the Bureau of Audits sets forth the "approval" of the PUC is simply wrong. Indeed, the Auditor's report states that: "Our responsibility is to express an *opinion* on the [Penn American DSIC] statements based on our audit."

Moreover, on a substantive basis the audits raise more questions than answers. For example, the December 1999 DSIC Audit for the year ending December 31, 1997, states:

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, excluding amounts billed for public fire protection services and the State Tax Adjustment Surcharge (STAS).

(1999 Audit Attached as Exhibit F, Section 3, p. 5). Likewise, the same Audit discusses the collection of the DSIC:

Distribution System Improvement Charge revenue is derived by multiplying the respective quarterly DSIC rate by **the applicable portion** of the total amount billed to each customer (excluding public fire protection service customers) exclusive of any STAS in effect.

(1999 Audit, Section 4, p. 5 (emphasis added)). The "effective" and "applicable" portion of the total amount billed suggests pro-ration. That is, the new rate is only applied to that portion of the total amount billed after the effective date. This language dispels the contention that Penn

American is permitted to apply the increased DSIC charge to its customers for portions of their bills falling *before* the effective date of the authorized rate increase.

Additionally, in the findings in the 1999 DSIC audit, the Bureau recognized that Penn American's own filings contained wording: "which had the DSIC charge to be applied on a 'services rendered' basis." The auditor, without any reasoning, opined that the DSIC was approved on a so-called "bills rendered" basis. As noted previously herein, this opinion of the auditor is inconsistent with the PUC Order authorizing the DSIC on a "services rendered" basis. Nevertheless, it is telling evidence of Penn American's understanding of how the DSIC was intended to be applied that its initial filings contained wording that properly interpreted the DSIC as a services-rendered charge.

Thereafter, in subsequent audits the confusion about Penn American's application of the DSIC only grew. In the December 7, 2001, audit report for the two years ended December 31, 1999, the auditor expressed further opinions that Penn American was misapplying the DSIC. (A copy of the December 7, 2001 audit report is attached as Exhibit G). The report notes that in response to the findings of the prior audit, Penn American simply attempted to change the wording of its quarterly filings to now state that application of the DSIC is on a "bills rendered" basis. It is noteworthy that nowhere in the tariff does it state that "application is on a bills rendered basis" as suggested in the audit.

Moreover, despite the finding in the 1999 audit report, the 2001 report states directly that Penn American is still **not** following its tariff. The report states: "Our audit testing disclosed that the Company is not totally applying its DSIC on a 'bills rendered' basis." (See Exhibit G at page

16.) The report attributes this to Penn American's assertion that it had issues with its billing system.<sup>2</sup> In any event, the report further notes that:

"The Company, however, is not totally applying its DSIC on a 'services rendered' basis either. The Company does not pro rate its bills when the DSIC rate changes."

As a result, contrary to Penn American's assertions, the Bureau of Audits did not "approve" of how the DSIC was applied. Indeed, as noted in the report, the Bureau of Audits could not figure out how Penn American was applying the DSIC. The Bureau essentially threw up its hands and recommended that the Penn American tariff be changed to "wording which describes how the company is actually billing its DSIC surcharge." That is hardly the pronouncement suggested by Penn American that the Bureau found it in compliance with the tariff.

Thereafter, the audit report of September 18, 2003, for the two years ended December 31, 2001, reflects more concerns with Penn American's application (or mis-application) of the DSIC. (A copy of the December 2003 report is attached as Exhibit H). Finding No. 2 of that report states:

*For PA-American, the DSIC is applied to bills rendered with an ending read date equal to or greater than the effective date of the DSIC tariff supplement, and the new base rates become effective with service rendered. When the base rate changes on a date other than the ending read date, the Company prorates the base rates. However, when the DSIC changes on a date other than the ending read date, the Company does not prorate the DSIC. This inconsistent application could result in billing inequities, specifically charging for fixed costs and depreciation for the same distribution plant in base rates and the DSIC at the same time. It is important to note that this DSIC tariff wording concern is not unique to PA-American, but generic to all companies utilizing the DSIC.*

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<sup>2</sup> The alleged billing system issue is one of the areas of inquiry in Complainant's request for a deposition.

After reviewing the tariff and based upon his extensive experience in distribution improvement charges for utilities, Complainant's expert has presented testimony that Penn American's billing violates the tariff and is inconsistent with the concept of distribution improvement charges. He states:

There is no support for this reasoning and it is a twisted interpretation of a fundamental principle of how utility rates are charged. First, as noted, the plain language of the tariff means what it says. "Effective date" in the context of utility rate adjustments means that any rate adjustment is only effective as of that particular date. Penn American's interpretation would emasculate the meaning of "effective date" set forth in the computation of the DSIC language in the tariff. The common practice applied to all usage based charges, in addition to the plain language of both the governing tariff and Penn American's billing statements, demonstrates that there is a specific effective date of the rate increases. This would be expected given that it is a usage based charge. Penn American, however, applies the increased rate even to those portions of a customer's bill which predate the approved effective date.

\* \* \* \*

There is a presumption that in interpreting a tariff it should be read in favor of the customer, not the utility. In addition, tariffs are not to be read so as to be contrary to legal principles and so as to not have a discriminatory result. In this case, the only interpretation of Penn American's tariff that favors the customer, that is consistent with standard rate calculation practice, and that does not result in discriminatory rates is that the DSIC must be prorated. Conversely, reading the tariff in the manner suggested by Penn American results in discriminatory rates being charged to customers based upon the random billing cycles. That is why a usage based fee has a very specific effective date so all customers are billed consistently. The PUC could not have intended such a clearly improper and inequitable practice. Indeed, all other states that I am familiar with that have infrastructure improvement charges that are usage based, like the DSIC, *prorate the charge on customer bills.*

Thus, even though the tone of Penn American's Motion for Summary Judgment suggests that it is an established fact that it was permitted to bill Mr. Pettko the increased DSIC charge for periods prior to the approved effective date of the increase, there is no documentary support for that position. On the contrary, the documents submitted by Penn American and Complainant's expert support the opposite contention—that "effective date" means just that, and that Penn American was required to pro-rate so as to only charge the increased rate *after* the effective date.

At the very least, there is a genuine issue of material fact which renders summary judgment inappropriate.

- 2). **Penn American's reliance on the Commission's approval of National Fuel Gas ("NFG") Distribution's Recoupment Surcharge on a "Bills Rendered" basis is inapposite, but more importantly, demonstrates the complete fallacy of Penn American's position that it is authorized to bill the DSIC on a "Bills Rendered" basis.**

Penn American cites to the Commission's Order dated February 20, 1986 approving NFG's request for a one-time recoupment charge on a bills-rendered basis in support of its argument that the Commission has approved the DSIC charge on a bills-rendered basis. That reliance is misplaced. To demonstrate the fallacy of their argument a full analysis of the NFG petition is appropriate.

**A. NFG Requested a one-time "Recoupment Charge"**

In 1979, NFG filed a Petition with the Commission seeking recoupment of \$872, 978, plus interest, arising from the Commission's refusal to allow NFG to collect increased rates in that amount for the period August 29, 1980 to October 3, 1980. The dispute which gave rise to this request had its origins in a November 28, 1979 request by NFG to increase its rates to produce an increase of \$21,390,527 in NFG's annual operation revenues. (See NFG Petition, ¶ 1; attached as Exhibit I). The Commission invoked a seven-month suspension which was to end on August 28, 1980 during which time the Commission investigated NFG's rate increase proposal. See NFG Petition, ¶ 2. The seven-month suspension was authorized under the Public Utility Code, 66 Pa.C.S.A. §1308(d). Following its investigation, the Commission authorized a rate increase of \$8,549,761 for services rendered on or after October 4, 1980. NFG disputed the Commission's decision that the rate increase should be effective only beginning October 4, 1980,

but rather, argued that the rate increase should be effective August 29, 1980 (i.e., immediately following the expiration of the seven-month suspension). Had the rate increase gone into effect on August 29, 1980 (instead of October 4, 1980), NFG would have collected the additional \$872,978 in dispute. *See* NFG Petition, ¶ 5.

NFG challenged this ruling at the Commonwealth Court and won. *See* NFG Petition, ¶ 6. Additionally, the same issue was addressed by the Pennsylvania Supreme Court in *Bell Telephone Company of Pennsylvania v. Pa. P.U.C.*, 482 A.2d 1272 (Pa. 1984), and the Supreme Court agreed that rate increases should go into effect immediately following the expiration of the seven-month investigation period. *See* NFG Petition, ¶ 8. Thus, NFG ultimately filed a Petition for recoupment of the \$872,978 (plus interest) for rate increases the Commission did not permit NFG to collect during the period August 29, 1980 through October 3, 1980. NFG proposed that this one-time recoupment charge be collected on a “bills-rendered” basis during a one-year period beginning November 4, 1985. *See* NFG Petition, ¶ 12. The Commission agreed with this proposal and signed an Order on February 20, 1986.

As set forth above, the type of charge sought by NFG was not an “automatic adjustment” charge on a recurring, quarterly basis. Rather, it was a one-time “recoupment surcharge” to recover a rate increase period that the Commission did not originally permit. Of course, once the issue was resolved in the appellate courts, the Commission granted permission for NFG to collect the rate increase amount for the August 29, 1980 through October 3, 1980 period. This type of charge and the genesis of this one-time charge are inapposite to the circumstances of the DSIC charge presently in dispute. Moreover, the nature of the dispute arose from Section 1308(d) and the Commission’s interpretation of a notice provision following a seven-month suspension of a rate increase request. Here, the DSIC is a regular, quarterly charge that has been

charged by Penn American since 1997. This type of charge is commonly known as an “automatic adjustment” charge and has never been in the nature of a one-time recoupment. Accordingly, from a purely procedural standpoint, Penn American cannot point to the NFG recoupment surcharge as being equivalent to the DSIC charge.

But most importantly, and as discussed below, NFG’s proposal of its “bills-rendered” collection efforts underscores that what Penn American argues is “bills-rendered” is not what NFG (and, apparently, its counsel who are now Penn American’s counsel) believes is “bills-rendered.”

**B. NFG’s Description of its “bills-rendered” charge in its Petition is exactly what “bills-rendered” should be and *IS NOT* what Penn American suggests it is.**

In its Petition seeking recoupment of the \$872,978 (plus interest), NFG proposed that it collect the total amount owed on a “bills-rendered” basis. In doing so, NFG proposed that it charge a flat rate for each of its 5 customer classes for a one-year period. See NFG Petition, ¶ 12. For example, NFG’s Petition clearly shows that, if approved on a bills-rendered basis, NFG would collect a *flat rate* of 29 cents to be applied to each customer’s bill for a twelve month period. See NFG Petition, ¶ 12. No residential customer would pay more or less than 29 cents because it was a flat rate that was not based on usage. Claimant agrees that charging a flat-rate per customer is what “bills-rendered” means. No residential customer pays anything different than any other residential customer. Thus, when NFG stated in its Petition and the Commission agreed in its Order that no customer is placed at a disadvantage by virtue of the bills-rendered method of a flat fee for twelve months, it is quite plain to see why they both so concluded. Simply put, NFG added up the amount it needed to recoup, divided it across its customer base, then divided that number by twelve months and put a flat-rate surcharge on every customer’s

bill. To the extent that there is a "bills-rendered" billing method used by the Commission, Claimant agrees that what NFG proposed was "bills-rendered."

By stark contrast, Penn American *does not* issue a flat-rate charge on each customer's bill every month. That is, Penn American does not divide the total cost of its annual infrastructure charge by the number of its customers, then by twelve (months) and place a flat-rate charge on every customer's bill where every customer is paying the *exact same* charge, month in and month out. To the contrary, Penn American charges a percentage of each customer's usage per month such that those customers who use more water are going to pay a higher monthly DSIC charge. That is not "bills-rendered" and NFG and its counsel would have to agree. Penn American's reliance on the National Fuel Gas case demonstrates the very fact that Penn American does not bill its customers on a "bills-rendered" basis, but rather does so on a services-rendered basis. Moreover, the fact that Penn American was able to cite only one case (National Fuel Gas) in the last 25 years that addressed what "bills-rendered" means is quite telling. But then to have that single case clearly demonstrate that "bills-rendered" is not what Penn American even proposes it is, speaks volumes. The NFG case makes clear that "bills-rendered" means a flat fee on each bill where no customer pays more than the other (and where no pro-ration is needed) and that "services-rendered" means that the charge is usage-based and, to ensure billing fairness and equality, should be prorated.

**3) The STAS is a "services rendered" charge, which requires pro-ration.**

Penn American not only claims that it was permitted to charge the DSIC increases on a "bills rendered basis," allowing it to bill the changed rate before the effective date, it also claims that it was permitted to do the same for the STAS. The problem with this contention is that

under Penn American's interpretation, the PUC documents make clear that the STAS is a "services rendered" charge, which requires pro-ration.

The documents submitted by Penn American demonstrate that the STAS is to be collected on a usage basis following the effective date of an increase. For example, its Tariff specifically states, in regard to the STAS, that "*In addition to the net charges provided for in this Tariff, a surcharge of 0.45% will apply to all services rendered.*" (See attached as Exhibit E). The language has remained consistent each time the Tariff has been supplemented to reflect changes in the STAS rate. Although Complainant disputes Penn American's self-serving interpretation of "bills-rendered," that same interpretation directly undercuts its argument with respect to the STAS. Penn American's attempt to subscribe meanings to these terms in its argument on the DSIC (meanings which are not set forth in any actual evidence) establishes their liability for violating the tariff with respect to the STAS. In recognition of this fact, Penn American advances a twisted argument to essentially argue that both "bills rendered" and "services rendered" mean the same thing. Penn American's assertion has no factual or legal support.

This is demonstrated by the December 18, 1986 Secretarial Letter from the Commission which Penn American submitted in support of its Motion. It states:

Section D of our order of March 10, 1970, further provides that: "Every tariff or supplement filed pursuant to this order shall carry an effective date which shall be ten days after its filing with this Commission *and be applicable for service rendered on or after the effective date.*"

(December 18, 1986 Secretarial Letter, p. 1-2.) Thus, not only does the PUC's tariff specify that the STAS is a "services rendered" charge, but the PUC secretarial letter actually provides a definition—that the charges are applicable for "*service rendered on or after the effective date.*"

Further, the application of the STAS to services following the effective date of a rate increase is consistent with representations made by Penn American's own appellate counsel before the Commonwealth Court. Following the Commonwealth Court's rejection of Penn American's argument that the PUC had exclusive jurisdiction over claims related to their wrongful billing, Penn American, through its counsel, conceded that "services rendered" requires the utility to pro-rate: "in a 'services rendered' scenario, a rate change is 'pro-rated,' meaning that service rendered before the 'effective' date is priced at the old rate and service rendered after the 'effective' date is priced at the new (higher or lower) rate." (See, Penn American's Application for Reargument, 1061 C.D. 2011 (Commonwealth Court, Jan. 27, 2012) attached as Exhibit J).

Arguably, Penn American is now judicially stopped from assuming a position inconsistent with its prior assertion in the Commonwealth Court. Towbridge v. Scranton Artificial Limb Co., 747 A.2d 862 (Pa. 2000). The purpose of judicial estoppel is to uphold the integrity of the courts by preventing litigants from "playing fast and loose" with the judicial system by changing position to suit their legal needs. Gross v. City of Pittsburgh, 686 A.2d 864, 867 (Pa.Cmwlt. 1996). Morris v. South Coventry Township Board of Supervisors, 898 A.2d 1213, 1218 (Pa.Cmwlt. 2006). It is simply disingenuous for Penn American to now claim that the STAS is a "bills rendered" charge and that, as such, it is permitted bill increased rates prior to the PUC-approved effective date of the increase.

Penn American's Motion also takes a single phrase of the 1986 Secretarial Letter out of context. Specifically, Penn American cites the following: "[f]or utilities with billing cycles of more than one month, the tax shall be applied on a pro-rata basis." From that, Penn American argues that where a utility sends out bills once a month, the STAS is a "bills rendered" charge.

The language cited does not support this tortured interpretation. Taken in context the language cited by Penn American simply means that where, as here, a utility's billing cycle does not correspond to the calendar month (and thus spans more than one calendar month), the bill is to be pro-rated so that the customer would only be required to pay the increased rate for the amount falling after the effective date. There is nothing in the Secretarial Letter which gives Penn American permission to charge the STAS prior to its effective date.

Penn American's interpretation would nullify both the purpose and the language of the Tariff. The 1986 Secretarial Letter specifically states that the STAS change will *be applicable for service rendered on or after the effective date*. There is no limiting language which would suggest that for a billing period straddling the effective date, Penn American is entitled to bill for the entire period, so long as the billing period is not more than one month. Further, there would be no need to limit pro-rating to that circumstance because, since the STAS changes only periodically, a multi-month bill would not cause the customer to pay for any more of the pre-effective date period than a customer with a 30 day cycle that straddles the effective date.

Penn American cannot have it both ways. It cannot set forth a theory whereby its interpretation of the phrase "bills rendered" as opposed to "services rendered" as to the DSIC justifies its collection of increased rates prior to the effective date of the increase, but at the same time claim that it can do so for the STAS where the Tariff language specifically states "services rendered." As such, although Mr. Pettko vehemently disagrees with Penn American's argument regarding the nature of "bills rendered" and its ability to collect increases of the DSIC prior to the effective date, even if Penn American prevails on that theory, it cannot prevail as to the STAS. As such, Penn American's Motion for Summary Judgment must be denied.

3) **Penn American's billing methods for the DSIC and STAS create an inherently inequitable billing scheme in violation of 66 Pa.C.S. 1304.**

Penn American's interpretation—that it is permitted to bill customers increased DSIC and STAS rates for their entire billing cycle, including those portions of the cycle which occurred prior to the PUC-approved effective date of the rate increase—creates a system where some customers will *always* bear the burden of the rate increase to a greater degree than other customers. Application of the tariff in this fashion would violate Section 1304 of the Public Utility Code, which states:

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage.

66 Pa.C.S.A. §1304 (in relevant part). Penn American's billing practices violate the provisions of this section in that (as illustrated below) they accrue to the disadvantage of some customers over others—determined only on the basis of the running dates of the customer's billing cycle.

By way of illustration, Mr. Pettko's billing cycle for June of 2009 ran from June 18 to July 16. Therefore, even though the **effective date** of the DSIC increase was July 1, Mr. Pettko, and all others with his billing cycle, was forced to pay the increased rate for the portion of his bill encompassing twelve days in June—more than one-third of the month. For customers who have billing cycles which begin and end in the first week of the month, those customer were forced to pay the increased rate for nearly an entire month prior to its effective date. Contrast this with the customer whose billing cycle runs from the first of the month or immediately before, who will pay the increased rate for only days, if at all, before the effective date. Because of the regularity of billing periods, the same customers will always end up paying proportionally more each time the DSIC rate is increased—based only on when their billing period falls in the month. This is inherently inequitable and is in violation of Section 1304 of the Public Utility Code.

It is black-letter-law under the Statutory Construction Act, 1 Pa.C.S.A. §1922, that a statute is presumed to be legal (in a statutory context, not contrary to the constitution) and that it does not call for an absurd or impossible result. Consistent with these presumptions, Penn American's tariff cannot be given an interpretation that violates the Public Utility Code. Penn American's interpretation does just that. To do so would be to accept an interpretation that discriminates against certain customers based on the period of their billing cycle. This runs contrary to both 66 Pa.C.S.A. §§ 1303 and 1304. Such an interpretation would be both absurd and illegal.

**4) Penn American's arguments relating to the periodic reconciliation of the DSIC is not applicable to the claims set forth by Mr. Pettko.**

Finally, Penn American claims that because the DSIC is reconciled on an annual basis, it *cannot* collect more than it is permitted. While this may be true in the aggregate *as to Penn American*, there is no mechanism by which the *individual aggrieved customers* are refunded their pro-rata share of the amounts they paid prior to the effective date of a DSIC rate increase. Indeed, even if DSIC rates are lowered *as a whole*, there is no mechanism to pay back the specific amounts that each customer was prematurely billed. As Penn American surely knows, in the event that a reconciliation of the DSIC shows an over collection in the aggregate, there is no refund to customers. Rather, the over collection is factored into the calculation for the following quarter's rate. For example, in the December 2001 audit report, the Bureau found that due to an over statement by Penn American of DSIC – eligible property there was an overcollection of \$166,234 for the two-year period ending December 31, 1999. (See Exhibit G, Finding No. 1 at pp 12-13). As a result, the overcollection, plus interest, was “refunded” through

an adjustment to the “E” factor of the DSIC calculation formula.<sup>3</sup> Accordingly, Penn American’s assertions that the yearend reconciliation makes whole any customer who over paid as a result of Penn American’s implementation of a rate increase prior to the effective date of the increase is false. Indeed, following the recalculation of the DSIC rate after adjustment to the “E” factor, these same customers will still be prematurely billed.

Likewise, as to the STAS, Penn American cannot justify its actions in contravention of the Tariff language (see Section C below) by pointing out that on occasion, the STAS rate decreases or is a credit. Even in those circumstances, Penn American is still violating the provisions of its Tariff by prematurely applying a change in rate prior to the effective date. Moreover, it would also be in violation of Section 1304 because the failure to pro-rate would lead to some customers getting the benefit of the rate decrease or credit more than others—again, based only on the period of their billing cycle. As such, this defense proffered by Penn American must fail.

**C. Summary Judgment is not proper on Penn American’s argument that Mr. Pettko was not “harmed” by Penn American’s billing of the DSIC and STAS charges because it is based on substantive testimony that Mr. Pettko has not had an opportunity to confront and cross-examine. Moreover, it is a legally infirm theory.**

Penn American’s second argument in favor of summary judgment is that, even if it illegally charged the DSIC and STAS increases prior to their PUC-approved effective dates, Mr. Pettko was not “harmed.” Indeed, Penn American makes the audacious claim that he actually

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<sup>3</sup> Under the tariff, the formula for the DSIC surcharge is:  $DSIC = (DSI * PTRR) + Dep + E/PQR$ . E= the amount calculated under the annual reconciliation. See Exhibit E.

came out ahead. This argument is based upon the Affidavit of Jo Anne Lontz<sup>4</sup> and an accompanying exhibit, which purports to set forth her calculations and to give credence to her conclusions. Ms. Lontz claims that, according to her calculations, the failure of Penn American to pro-rate when it changed the DSIC and STAS charge benefited Mr. Pettko when such costs decreased. As explained herein, Penn American cannot obtain summary judgment based on testimonial evidence which Mr. Pettko has not had the opportunity to confront and cross examine. This would violate the basic tenets of due process, even in the comparatively more relaxed administrative setting.

- 1) **The Affidavit of Ms. Lontz is not merely a documentary affidavit, but rather, sets forth substantive testimonial evidence that Mr. Pettko has not been afforded the opportunity to cross examine. It cannot support the grant of summary judgment**

Recognizing that permitting summary judgment based on evidence adduced in unexamined affidavits is contrary to the basic tenets of fairness and due process recognized by our Supreme Court in Nanty-Glo Borough v. American Surety Co., 163 A.2d 523 (Pa. 1932), Penn American attempts to argue that the affidavit of Ms. Lontz is merely “documentary,” not testimonial. As such, Penn American argues that they fall under a narrow exception to the Nanty-Glo rule. This position is factually and legally infirm.

A merely “documentary” affidavit does not adduce substantive evidence, or (as here) testimony akin to an expert opinion. This is demonstrated by the very case that Penn American cites in its brief in support of the documentary affidavit exception. In Kirby v. Kirby, 687 A.2d 385, 388-89 (Pa.Super. 1997), the Superior Court described the documentary affidavit which was presented by the defendant in support of summary judgment: “the affidavit is not testimonial, but

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<sup>4</sup> Mr. Pettko has attempted, on several occasions, to notice and schedule the deposition of a Penn American representative, particularly Ms. Lontz. Penn American has resisted on every occasion. It now submits her Affidavit in support of summary judgment. To the extent that Penn American is relying upon Ms. Lontz’ testimony to support its defense, Mr. Pettko should be permitted to take her deposition to explore and test her positions.

documentary, *it authenticates the documents attached to it.*” (emphasis added). This language makes clear that a merely documentary affidavit does not set forth affirmative evidence, but rather, merely authenticates documents. In such a case, it is the documents that have substantive import, and the affidavit does not itself adduce any evidence. Here, there can be no legitimate argument that the Affidavit of Ms. Lontz is merely documentary. It clearly and unequivocally sets forth substantive testimony in support of Penn American’s legal argument. Although it does attach documents, these documents are not merely the existing evidentiary documents of Mr. Pettko’s billing history, but are variously (and selectively) highlighted in support of Ms. Lontz’ calculations. Indeed, far from merely authenticating documents, Ms. Lontz’s Affidavit sets forth substantive testimony, akin to expert testimony, in support of Penn American’s substantive legal argument. Basic tenet of fairness and due process dictate that Mr. Pettko should be permitted to explore and cross examine Ms. Lontz and her conclusions at a hearing.

Penn American additionally supports its attempt to use a substantive affidavit in support of summary judgment without affording Mr. Pettko the opportunity to cross examine the witness by claiming that Nanty-Glo does not apply to administrative proceedings because the administrative judge is the fact finder. It is true that administrative agencies do not strictly apply the rule of Nanty-Glo, however, summary judgment may nevertheless not be granted where there is any dispute of fact. In this case, the testimonial affidavit of Ms. Lontz is not of the type from which its credibility is readily apparent. Indeed, as explained below, it is not credible on either a factual or legal basis. Further, as to the affiant’s credibility, there are real questions of bias that should be permitted to be raised on cross examination. Although the Nanty-Glo rule does not rigidly apply to administrative proceedings, the principles underlying the rule apply to this case, making the grant of summary judgment improper.

2) **Mr. Pettko has a due process right to cross examine Ms. Lontz about the calculations and conclusions of her opinion.**

Although administrative proceedings typically follow a more relaxed procedure than trials in the Courts of Common Pleas, the constitutional principals of due process are nevertheless applicable. Indeed, the Commonwealth Court recently held:

Due process principles apply to administrative proceedings, and require an opportunity, among other things, to hear the evidence adduced by the opposing party, cross examine witnesses, introduce evidence on one's own behalf, and present argument. As our Supreme Court explained, there must be notice, an opportunity to present one's cause and proceeding appropriate to the character of the particular case, and an adjudication in the same nature as is present in other causes. Where these things are present there is due process of law.

D.Z. v. Bethlehem Area School District, 2 A.3d 712 (Pa.Cmwlth. 2010), citing Kowenhoven v. Allegheny County, 901 A.2d 1003 (Pa. 2006); Petition of Kariher, 131 A. 265, 270 (Pa. 1925).

Indeed, even 2 Pa.C.S. §505 which liberalizes the rules of evidence for administrative proceedings states:

Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and all evidence of reasonably probative value may be received.  
***Reasonable examination and cross examination shall be permitted.***

2 Pa.C.S. §505 (emphasis added).

In this case, there can be no reasonable argument that the Affidavit of Ms. Lontz does not merely authenticate documents, but rather, introduces substantive testimony and a substantive defense on behalf of Penn American. Indeed, the theory set forth by Ms. Lontz, and its supporting calculations, are in the nature of an expert opinion. Under well-established law of this Commonwealth, Mr. Pettko has a fundamental due process right to confront the evidence presented by Ms. Lontz and to cross examine her about her conclusions and calculations—as

well as issues such as credibility and bias. Penn American cannot protect its witness from the scrutiny of cross-examination by presenting her testimony in the form of an Affidavit in support of summary judgment. Mr. Pettko must be afforded the right to cross examine Ms. Lontz and introduce rebuttal evidence and argument. To grant summary judgment would be a violation of Mr. Pettko's right to due process and, hence, legally untenable.

**3) The assertion that Complainant was not "harmed" by Penn American's improper application of the DSIC and STAS is irrelevant to the claims set forth by Mr. Pettko.**

Ms. Lontz' claim—that Mr. Pettko has benefited from Penn American's failure to pro-rate increases of the DSIC and STAS—is factually inapplicable but, moreover, does not exonerate Penn American from violation of its PUC-approved tariff. Even if Ms. Lontz is right and Mr. Pettko, individually, has not been financially harmed when his bills for a limited period of time are viewed collectively, it would still demonstrate Penn American's violation of the Public Utility Code.

Ms. Lontz' argument presupposes that different customers of Penn American either are harmed by an increase, or benefit from a decrease of the DSIC and STAS to different degrees based on the dates of their billing cycle. For example, where the PUC-approved date of increase of the DSIC is June 1, and Mr. Pettko's billing cycle runs from May 15-June 14, he will be forced to (prematurely) pay the increased DSIC rate for 16 additional days than someone whose billing cycle begins on June 1. Conversely, if there was a decrease in the DSIC effective June 1, Mr. Pettko would pay the decreased rate for 16 additional days than the person whose billing cycle begins on June 1—but for less time than those whose billing cycle runs, for example, from May 4 to June 2. This is why the analysis of whether Penn American is improperly billing cannot be based upon a customer by customer analysis. This is inherently inequitable and runs

contrary to the unequivocal language of Section 1303 of the Utility Code, which requires billing to be equitable amongst customers. Plaintiff's expert will confirm that Ms. Lontz' contentions demonstrate a clear violation of the Utility Code and Penn American's Tariff.

But more importantly, the foundation of Penn American's argument on this point is that its periodic violations of its Tariff are of no moment. Penn American has cited no authority that would permit them to regularly violate its Tariff where its customers are economically harmed without any resulting adverse consequences.

Penn American's argument is without legal merit and its Motion for Summary should be denied.

**D. Penn American's issues with Mr. Pettko's expert witness go to the credibility and weight of his opinion and, therefore, are properly raised upon cross examination at a hearing—not on a Motion for Summary Judgment.**

Finally, Penn American raises arguments against the testimony offered by Frank W. Radigan, Mr. Pettko's expert. (Exhibit G) Penn American attempts to undermine the opinions that he offers and essentially argues that this tribunal should not even give cognizance to his testimony. As in any case, this is not a proper position for summary judgment.

Mr. Radigan has presented direct testimony that explains the nature of the DSIC and STAS and gives a reasoned opinion that Penn American has wrongfully billed for both when it charges customers, like Mr. Pettko, the increased rates prior to the PUC-approved effective date of increase. Mr. Radigan further explained that Penn American's billing practices render the term "effective date," used prominently in PUC tariffs and other documents, meaningless. He also opines that the practice violates Section 1304 Utility Code by requiring some customers to pay more than others.

The attacks that Penn American levies against Mr. Radigan go to the weight of his testimony and the credibility of his conclusions. These may be proper topics for cross-examination and/or rebuttal testimony, but not a Motion for Summary Judgment. If Penn American believes that Mr. Radigan's opinion is faulty, it will have the opportunity to demonstrate that at a hearing. It cannot simply attack his testimony on the papers. Summary Judgment is improper and should be denied.

### III. CONCLUSION

In this case, at a minimum, there are genuine issues of material fact as to whether Penn American improperly charged Mr. Pettko the full increased DSIC and STAS rates for portions of his bills prior to the PUC-approved effective date of the increase. Penn American's Motion does not establish that it is entitled to judgment as a matter of law. The Motion should be dismissed.

DEL SOLE CAVANAUGH STROYD LLC

By:

  
\_\_\_\_\_  
Stephen J. DeSole, Esquire  
*Counsel for Complainant*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 22<sup>nd</sup> day of June, 2012, a true and correct copy of the foregoing *Complainant's Opposition to Respondent's Motion for Summary Judgment* was served on the following by electronic mail and first class, U.S. mail:

The Honorable Judge Joel H. Cheskis  
P.O. Box 3265  
Harrisburg, PA 17105

**RECEIVED**

JUN 25 2012

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

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

  
\_\_\_\_\_  
Stephen J. Del Sole

IN THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

C. LESLIE PETTKO, )  
 ) Docket No. C-2011-2226096  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 PENNSYLVANIA AMERICAN WATER )  
 COMPANY, )  
 )  
 Respondent. )

**RECEIVED**

JUN 25 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**APPENDIX OF EXHIBITS TO COMPLAINANT'S OPPOSITION TO  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

A

2000 One Logan Square  
Philadelphia, PA 19103-6993  
215-963-5000  
Fax: 215-963-5299

Morgan, Lewis  
& Bockius LLP  
C O U N S E L O R S   A T   L A W

Anthony C. DeCusatis  
215-963-5034

March 15, 1996

VIA HAND DELIVERY

Mr. John G. Alford, Secretary  
Pennsylvania Public Utility Commission  
New Filing Section, Room B-18  
North Office Building  
Commonwealth and North Streets  
P.O. Box 3265  
Harrisburg, PA 17120

RECEIVED

JUN 25 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Petition of Pennsylvania-American Water Company  
For Approval To Implement A Tariff Supplement  
Establishing A Distribution System Improvement Charge

Dear Secretary Alford:

Enclosed for filing are an original and seven (7) copies of the Petition of Pennsylvania-American Water Company For Approval To Implement A Tariff Supplement Establishing A Distribution System Improvement Charge ("Petition"), together with supporting data as specified in 52 Pa. Code § 53.52. As noted in the Petition, PAWC requests approval to file the proposed tariff supplement, submitted as Exhibit A to the Petition, to become effective as of July 1, 1996.

As evidenced by the attached certificate of service, copies of the Petition and supporting data have been served upon the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate.

An additional copy of this letter, the Petition and supporting data are enclosed, which we request that you date stamp as evidence of filing.

Very truly yours,

  
Anthony C. DeCusatis

ACD/lms

Encl.

cc: Per Certificate of Service (w/encl)

Philadelphia   Washington   New York   Los Angeles   Miami   Harrisburg   Princeton   London   Brussels   Frankfurt   Tokyo

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RE: PETITION OF PENNSYLVANIA-AMERICAN :  
WATER COMPANY FOR APPROVAL TO :  
IMPLEMENT A TARIFF SUPPLEMENT : Docket No. \_\_\_\_\_  
ESTABLISHING A DISTRIBUTION :  
SYSTEM IMPROVEMENT CHARGE :

CERTIFICATE OF SERVICE

I hereby certify that I have, this 15th day of March, 1996, served a true and correct copy of the aforementioned Petition and supporting data specified in 52 Pa. Code § 53.52 upon the persons and in the manner indicated below:


BY HAND DELIVERY

Irwin A. Popowsky, Esq.  
Consumer Advocate  
Dianne E. Dusman, Esq.  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Charles F. Hoffman, Esq.  
Wayne T. Scott, Esq.  
Pennsylvania Public Utility  
Commission  
Pitnick Building, 3rd Floor  
901 North 7th Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Bernard A. Ryan, Esq.  
Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17120

DATED: March 15, 1996

  
Thomas P. Gadsden  
Anthony C. DeCusatis  
Counsel for Pennsylvania-  
American Water Company

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RE: PETITION OF PENNSYLVANIA-AMERICAN :  
WATER COMPANY FOR APPROVAL TO :  
IMPLEMENT A TARIFF SUPPLEMENT : Docket No. \_\_\_\_\_  
ESTABLISHING A DISTRIBUTION :  
SYSTEM IMPROVEMENT CHARGE :

PETITION

Pursuant to Section 1307(a) of the Public Utility Code, 66 Pa.C.S. § 1307(a) and the regulations of the Pennsylvania Public Utility Commission (the "Commission") at 52 Pa. Code § 5.41, Pennsylvania-American Water Company ("PAWC" or the "Company") hereby requests approval to implement the tariff supplement attached hereto as Exhibit A to be effective for service rendered on and after July 1, 1996. Approval of the proposed tariff supplement is proper and in the public interest for the reasons set forth fully below.

I. INTRODUCTION AND OVERVIEW

1. PAWC requests the Commission's approval to establish a Distribution System Improvement Charge ("DSIC"), pursuant to Section 1307(a) of the Public Utility Code, to recover the fixed costs (depreciation and pre-tax return) of certain non-revenue producing, non-expense-reducing distribution system improvement projects completed and placed in service between base rate cases. The DSIC will not apply initially to customers located within the authorized service territory formerly served by the Pennsylvania

Gas and Water Company ("PG&W") that was acquired by PAWC as of February 16, 1996. Likewise, the Company's investment in infrastructure improvements made within the service territory acquired from PG&W are not included in the initial calculation of the surcharge under the DSIC. All references made hereafter in this Petition to the Company's number of customers, rate base, revenues, expenses, investment in public utility property and similar data shall exclude the effect of the Company's acquisition of PG&W's water business, unless expressly stated otherwise.

2. The DSIC is designed to provide the Company with the resources it needs to accelerate its investment in new utility plant to replace aging water distribution infrastructure, comply with evolving regulatory requirements imposed by the Safe Drinking Water Act ("SDWA"), develop and implement solutions to regional water supply problems and participate in the costs of extending facilities to serve new customers.

Innovative alternatives to traditional base rate filings are essential if the Company is to meet the challenge of infrastructure replacement and rehabilitation. The magnitude of this problem is formidable. To illustrate, the Company has approximately 5,600 miles of mains and is currently replacing between 25 and 30 miles of main each year. At this pace, it would require between 185 and 225 years to make all of the needed improvements in existing facilities. Significantly, the

Company's total investment in mains has an average remaining life of approximately 75 years. Obviously, the Company must find a way to significantly increase the rate at which it will make improvements to its distribution system in order to prevent the degradation of water quality and reliability and to avoid saddling customers in the not too distant future with an enormous liability for deferred improvements. In this regard, it must be kept in mind that water is the only utility service that is ingested and, consequently, a degradation of water quality could present unique public health and safety concerns. The DSIC is designed to address this mounting problem by giving the Company the resources it needs to make improvements in a timely and orderly fashion.

3. The Company proposes that the DSIC become effective for bills rendered on and after July 1, 1996. The initial charge will be calculated to recover the fixed costs of eligible plant additions that have not previously been reflected in the Company's rate base and will have been placed in service between August 1, 1995<sup>1/</sup> and May 31, 1996. Thereafter, the DSIC will be updated on a quarterly basis to reflect eligible plant additions placed in service during the three-month periods ending one month prior to the effective date of each DSIC update.

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<sup>1/</sup> The Company's currently-effective base rates were established in a rate proceeding at Docket No. R-00943231 on the basis of data for a future test year ending July 31, 1995.

4. The DSIC will be expressed as a percentage and will be applied to the total amount billed to each customer under the Company's otherwise applicable rates and charges, excluding amounts billed for public fire protection service. In Exhibit B to this Petition, the Company has set forth a sample calculation of the DSIC reflecting actual DSIC-eligible additions through January 31, 1996 and projected additions of DSIC-eligible plant through May 31, 1996.<sup>2/</sup> The cost elements (depreciation and pre-tax return) included in the calculation of the DSIC are explained in detail in Section VI., infra. Based on the calculations in Exhibit B, the charge that would become effective, with Commission approval, as of July 1, 1996, would be 1.01%. This would add approximately 28 cents to the monthly bill for an average residential customer of the Company.

5. The DSIC will be capped at 5% of the amount billed to customers under otherwise applicable rates and charges. If the cap were reached, no further increases in the DSIC would be permitted.

6. The DSIC will be subject to an annual reconciliation, whereby the revenue received under the DSIC for the reconciliation period will be compared to the Company's eligible costs for that period. The difference between such revenues and

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<sup>2/</sup> If the DSIC is approved, this calculation will be updated with actual data as of May 31, 1996 in a filing to be made not less than 10 days prior to the proposed implementation date.

costs will be recouped or refunded, as appropriate, in accordance with Section 1307(e). In addition, the DSIC will be subject to audit at intervals determined by the Commission.

7. The DSIC will be reset at zero as of the effective date of new base rates that provide for prospective recovery of the annual costs that had theretofore been recovered under the DSIC. Thereafter, only the fixed costs of new eligible plant additions would be reflected in the quarterly updates of the DSIC.

8. The DSIC will also be reset at zero if, in any quarter, data filed with the Commission in the Company's then most recent Annual and Quarterly Earnings Reports show that the Company will earn a rate of return that would exceed the rate of return used to calculate its fixed costs under the DSIC.

## II. THE NEED FOR THE DSIC

9. For many years, it was assumed that the water utility business was a relatively risk-free endeavor, particularly in comparison with other fixed utilities. Sources of supply were abundant, water quality concerns were few and capital requirements were minimal and largely attributable to requests for new service. Unfortunately, that is no longer the case.

10. Due to a variety of legislative and regulatory initiatives, PAWC, along with other major water companies, has been required to make a very significant investment in new utility plant in recent years. Such projects have included the

filtration of surface water supplies in compliance with the SDWA, the replacement of aging water distribution system infrastructure, the implementation of meter replacement programs and the active participation in the development of solutions to regional water supply problems. Notwithstanding this substantial undertaking, PAWC does not expect its capital attraction needs to abate. Indeed, capital expenditures are projected to exceed \$97 million in 1997 alone. Moreover, this figure does not take into account the potential ramifications of Act 27, which authorizes the Commission to require "capable public utilities" to acquire small troubled water systems under certain specified conditions (see 66 Pa.C.S. § 529). As evidenced by its recently adopted Policy Statement (Incentives For Acquisition And Merger Of Small Nonviable Water Utilities, Docket No. M-00950686 (February 22, 1996)), the Commission is encouraging larger water companies to help deal with the problem of small, troubled water systems.<sup>3/</sup>

As noted in Paragraph No. 1, supra, and as more fully discussed in Section III, infra, the Company faces a large and growing challenge to make improvements to its distribution system before that property reaches the end of its service life and begins to create serious, adverse effects on water quality and service reliability. Simply stated, the integrity of the

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<sup>3/</sup> PAWC has been particularly active in this area, as evidenced by its recent acquisition of a number of small, troubled systems such as Skyline Water Company, Hickory Water Company, Silver Water Company, A Country Place Water Company and Pocono Farms East Water Company.

Company's distribution system and its future viability may be put at risk if PAWC is not given the necessary regulatory flexibility to deal with this problem.

11. Apart from the sheer magnitude of the future capital investment facing PAWC, it must be kept in mind that most of the projects involved will not produce any additional sales. For example, responsible water utilities typically replace, on average, 5% of their existing meters each and every year. Similarly, the replacement or cleaning and lining of an aging distribution main does not increase a water utility's available water supply -- it simply enables the utility to provide a safer, more reliable and more environmentally acceptable product.

12. When a utility is engaged in a relatively large capital program consisting of many smaller revenue neutral projects (i.e. non-revenue producing and non-expense reducing), each completed project places a strain on earnings until the utility next seeks and is granted rate relief. This is currently the case for PAWC as it allocates more of its capital resources to small revenue neutral projects. As shown by the data in Exhibit C, revenue-neutral infrastructure replacement projects, while relatively small on an individual basis, are a large and increasing component of the Company's total construction budget.

13. If sales to existing customers grew at a rate sufficient to offset the Company's mounting capital costs, the lag in recognition of new plant additions would obviously pose a

far less serious problem. Unfortunately, that has not been the experience of PAWC or of most water utilities in Pennsylvania. To the contrary, due to an aging population, new plumbing codes, conservation and other factors, average residential customer usage has been flat in many parts of the Commonwealth and has actually declined in some areas. To illustrate, despite the addition of approximately 38,200 customers since 1989, PAWC's total sales of water for 1995 were 328 million gallons less than such sales in 1989. At the same time, PAWC has worked hard to keep its expenses in check. During the 6-year period from 1989 to 1995, the Company's total per-customer operating and maintenance expenses, excluding depreciation, have increased by less than the rate of inflation. In other words, in real dollar terms, total per-customer operating and maintenance expenses have declined.

14. In light of the mounting challenges described above, it is critically important that PAWC maintain access to the capital markets on reasonable terms. While this task would be formidable under normal circumstances, it has been made all the more difficult by Standard and Poor's ("S&P") tightening of the ratings benchmarks for water utilities. Those revisions, which, amongst other things, increased coverage requirements and decreased acceptable debt leverage levels, underscore the investment community's growing concern over the risks facing the water utility industry today. Particularly insightful in this

regard are the following excerpts from the June 15, 1992 edition of Creditweek in which S&P published the new benchmarks:

S&P has revised its public financial benchmarks for investor-owned water utilities. The more stringent standards . . . were implemented as a result of S&P's conclusion that credit risk has escalated in the water utility industry in recent years due to significant challenges related to developing future water supplies and assuring the quality of existing supplies

\* \* \*

Poor internal cash generation along with modest demand growth of under 1% will require state utility regulators to play an even more significant role in the future financial well-being of the industry. Traditional ratemaking policy has not provided sufficient credit support during the construction cycle of the electric industry over the past 15 years. To avoid a repeat in the water industry, regulators must be aware of the increased challenges the industry faces. With large rate-base additions, along with increasing nonrevenue-producing assets to meet future and current water needs and mandated water quality standards, regulators will need to implement innovative regulatory policy to allow for reasonable financial measures. (Emphasis added.)

15. The adoption of the DSIC represents the type of "innovative regulatory policy" that is needed if PAWC is to have a meaningful opportunity to recover its capital costs on revenue-neutral distribution system improvement projects and thereby remain in a position to attract needed capital at the lowest possible cost for all of its construction requirements.

**III. THE KINDS OF PLANT ADDITIONS THAT  
WILL BE ELIGIBLE FOR THE DSIC**

16. Under the Company's proposal, only specified and limited categories of plant additions will be eligible for cost recovery under the DSIC. Specifically, eligible property additions will consist of revenue-neutral infrastructure replacement projects and Company-funded main extensions.

17. Revenue-neutral infrastructure replacement projects will be limited to services and meters installed as replacements for existing customers and mains installed as replacements for existing facilities that have worn out, are in deteriorated condition, or are otherwise at the end of their service lives.

18. Company-funded main extensions consist of facility extensions installed at the request of bona fide applicants for service, less the cost advanced or contributed by the applicant. Under the Company's existing tariff rules, PAWC is required to fund a main installation to the extent that the annual revenue to be received from the customer(s) served therefrom is sufficient to cover the Company's annual incremental operating and maintenance expenses associated with serving the customer(s) and depreciation expense on that investment. This currently amounts to approximately \$11,000 for each residential customer. The formula for determining the Company's funding obligation leaves the capital costs on the Company's investments subject to

inclusion in rates at some future date, thereby defining that portion of the investment as non-revenue supported.

19. As discussed in Section II, supra, the DSIC-eligible property additions are individually small but represent a very substantial investment in aggregate. By way of comparison, the Company's annual investment in this kind of property could equal, or exceed, the cost of a large water treatment plant. Moreover, the construction of DSIC-eligible property creates uniquely difficult attrition problems.

20. When the Company constructs one or a few large projects, such as water treatment plants, there are several factors that help to mitigate the effects of attrition. First, although the projects take a long time to complete and require large expenditures, AFUDC can be accrued on the Company's investment, so that earnings are not affected by capital costs incurred during construction. Second, because these projects have long lead times and known completion dates, the Company has some flexibility in timing a base rate case to synchronize rate recognition with the estimated in-service dates of the projects. In this way, the period between the cessation of AFUDC accruals and the recovery of the projects' capital costs in base rates can be minimized.

21. In contrast, similar attrition-mitigating factors are not available for DSIC-eligible property for two principal reasons. First, because hundreds of such projects are completed

throughout the year, it is impossible to synchronize rate recognition with placement in service. Consequently, even for a water utility that files for rate relief on an annual basis, there is, on average, a six to seven month gap when its investment in revenue neutral, replacement plant is earning neither a paper (i.e., AFUDC) nor a cash return.

Secondly, PAWC does not even accrue AFUDC on projects that are expected to take less than one month to complete or fail to meet a certain dollar threshold. Unfortunately, most jobs involving the replacement of distribution mains, meters and services fall into this category because they typically take only a few days to complete. Even larger projects of similar nature are often completed in a few weeks. As to these projects, even if AFUDC were accrued for a month or less, there would be little offset to the major cause of attrition, which occurs after the projects are placed in service.

22. Without the DSIC, the cost recovery and attrition problems created by infrastructure replacement and main extension projects will only get worse, given the magnitude of the future investment those projects will demand. As shown by the data in Exhibit C, these types of projects are an increasing proportion of the Company's total capital spending. This increasing level of expenditures is fully justified given the daunting size of the task facing the Company.

23. As discussed in Paragraph No. 1, supra, the Company has approximately 5,600 miles of mains, which it is currently rehabilitating at a rate of 25-30 miles per year. At this pace, total rehabilitation will require between 185 and 225 years or approximately 110 to 150 years more than the remaining life of these facilities. However, these data do not tell the whole story. Of the Company's existing mains, over 2,200 miles are less than 6" in diameter. While these mains are adequate in some applications for providing domestic water service, they are smaller than the Commission's minimum diameter requirement of 6 inches for new installations and, in many instances, do not provide sufficient fire flows. Replacement of these mains is a high priority item.

24. The Company's current rate of infrastructure rehabilitation must be accelerated to avoid a serious shortfall between the end of the service lives of existing property and the replacement or rehabilitation of that property. However, to achieve a meaningful acceleration in the rate of performing this work, it is imperative that the Company have the resources to increase its investment above current levels. Traditional base rate filings, even on an annual basis, cannot keep pace with the increase in investment which this program demands. For example, the Company projects that it will approximately double its rate base over the next 10 years from infrastructure rehabilitation projects. By way of comparison, this level of new investment as a proportion of rate base is similar to the growth in rate base

which electric utilities experienced from expenditures (exclusive of AFUDC) for nuclear plant construction.

However, a comparison of financial ratios for the water and electric industries shows that water utilities face significant obstacles to sustaining such a high rate of investment:<sup>4/</sup>

- Pennsylvania water utilities have significantly higher fixed cost ratios than in-state electric companies (58.5% vs. 28.0%).
- Water utilities' achieved rates of return on equity are materially lower than those of electric utilities.
- Internally generated funds, cash flow from depreciation and the ratio of capital expenditures to total revenues are all significantly less favorable for water utilities than electric utilities.

25. What are the likely consequences if the Company cannot increase its rate of infrastructure rehabilitation? In the Company's view, there will be significant adverse consequences for itself, its customers and, ultimately, for the economic vitality of the Commonwealth as a whole. Unless steps are taken now to provide the necessary resources for a greater amount of distribution system improvement work, water quality, reliability and customer service in general will suffer and potentially degrade to unacceptable levels.

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<sup>4/</sup> See The Financial Challenge Of Water Utilities, A. Kaloko (1994).

26. Infrastructure rehabilitation cannot be deferred indefinitely. A day of reckoning will come, as it already has for some large municipally-owned systems that tried to keep rates low, in the short term, by deferring maintenance, replacement and rehabilitation of essential facilities. The result has been the need for those systems to make enormous investments over short time horizons without the flexibility to manage either the construction or the financing of these improvements in an orderly fashion. And, at the same time customers are being hit with significantly higher rates to finance these improvements, they are experiencing the leading edge of the serious service problems that are the inevitable result of neglecting the need for consistent, timely rehabilitation of their water systems. Customers are understandably displeased when demands for higher rates are accompanied by poor service.

To avoid these kinds of disasters for Pennsylvania's investor-owned utilities, the Commission, in cooperation with the water utility industry and other stakeholders, must take a forward-looking approach and resist the pressure for short-term rate minimization at the cost of long-term rate stability and high quality water service. This can best be accomplished by reappraising traditional cost recovery mechanisms in light of current funding requirements and aggressively seeking out innovative approaches to provide water utilities with the tools they need to deal with the task of making distribution system improvements.

#### IV. BENEFITS OF THE PROPOSED DSIC

27. There are numerous reasons why approval of the proposed DSIC would advance the public interest. The major benefits are summarized below.

a. Enhanced Service Quality. Establishment of the DSIC would enable the Company to address, in an orderly and comprehensive manner, the problems presented by aging transmission and distribution systems. This work will have a direct effect upon service reliability and water quality. In addition to physical debilitation, in many instances distribution facilities must also be upgraded to provide adequate fire flows. If the work that should be undertaken today is deferred because of financial or other constraints, those problems will only get worse and, ultimately, will jeopardize the Company's ability to provide high quality water service.

b. Accelerated Pace Of Service Improvements. To a very large extent, the kinds of projects eligible for DSIC cost recovery are likely to effect a direct and immediate improvement in the service provided to customers through increased pressures and flows, increased reliability or fewer perturbations in water quality. Approving a mechanism for prompt and reasonable cost recovery for these kinds of projects will give the Company the

financial flexibility to accelerate the pace at which these projects are undertaken and completed.<sup>5/</sup>

c. Potential Avoidance Of Increased Risk And Higher Capital Costs. When Standard and Poor's tightened the ratings benchmarks for water utilities in the Spring of 1992, it specifically cited the industry's increasing dependence on "nonrevenue-producing assets to meet future and current water needs and mandated water quality standards" and urged regulators to implement "innovative regulatory policy to allow for reasonable financial protection measures" (see discussion supra). Adoption of the DSIC would send a very positive signal to the investment community and, over time, could avoid increased perceptions of risk and higher capital costs. This is particularly important for PAWC in light of the recent decision by Standard and Poor's to downgrade the Company's debt rating from A- to BBB+. A copy of Standard and Poor's most recent credit report explaining the downgrading is attached as Exhibit D.

d. Potential Decrease In The Frequency Of Rate Filings. As the Commission is well aware, the placement in service of new plant additions is one of the major factors driving the need for water utilities to seek increases in base

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<sup>5/</sup> If the Commission desires, the Company would agree to provide periodic reports on the progress of its infrastructure rehabilitation program and document the extent to which that work has been accelerated by reason of the DSIC.

rates. With the approval of the DSIC, PAWC would be in a better position to absorb increases in other categories of costs for a longer period, particularly during times of relatively low inflation. Customers would obviously benefit from the reduction in rate case frequency and the resulting reduction in associated costs. In addition, the DSIC would provide for small, gradual increases and would avoid the potential for "rate shock" that could occur from reflecting large amounts of infrastructure investment in rate base only as part of periodic base rate filings. The avoidance or mitigation of rate shock could be particularly important for low income customers and elderly customers living on a fixed income.

e. Long-Term Viability Of The Water System. As previously explained, the consequences of deferring infrastructure rehabilitation implicate water quality and reliability concerns. If this work is deferred too long, the Company will lose the ability to perform infrastructure rehabilitation in an orderly, gradual manner. At that point, it simply may not be possible to finance all of the work that needs to be done to maintain reasonable service to customers, and the viability of the system would be put in jeopardy. This analysis is not mere hyperbole, as the Commission is aware from the experience of some municipally-owned and investor-owned water utilities in Pennsylvania.

V. THE AUTOMATIC ADJUSTMENT CLAUSE PROVISIONS OF SECTION 1307 MAY LAWFULLY BE EMPLOYED TO RECOVER THE FIXED COSTS OF DSIC-ELIGIBLE PROPERTY

28. Under Section 1307(a) of the Public Utility Code (66 Pa.C.S. §1307(a)), a public utility, subject to certain limited exceptions, ". . . may establish a sliding scale of rates or such other method for the automatic adjustment of the rates of the public utility as shall provide a just and reasonable return on the rate base of such public utility, to be determined upon such equitable or reasonable basis as shall provide such fair return." As discussed infra, the Commission has utilized the discretion provided it under Section 1307(a) to authorize the use of adjustment clauses, similar to the proposed DSIC, to recover a variety of costs.

29. In proposing the DSIC, the Company is mindful of the fact that, in another proceeding, certain parties sought to restrict the use of Section 1307 adjustment clauses to the recovery of fuel expenses and taxes. Investigation Into Demand Side Management By Electric Utilities: UNIFORM COST RECOVERY MECHANISM, 127 PUR4th 516, 522 (1991) (hereafter, the "1991 DSM Order"). In that case, the Commission held that Section 1307(a) is not so restrictive and that it may lawfully be used to recover a variety of costs, including a return on and of utility investments in demand side management measures and improvements

designed to upgrade coal-fired generating units.<sup>6/</sup> 127 PUR4th at 525. See also Investigation Into Demand Side Management By Electric Utilities: UNIFORM COST RECOVERY MECHANISM, Docket No. I-900005 (December 13, 1993) (Order, p. 39). The Commission's interpretation of Section 1307(a) was affirmed by the Commonwealth Court in Pennsylvania Industrial Energy Coalition v. Pa. P.U.C., 653 A.2d 1336, 1349 (1995) ("PIEC v. Pa. P.U.C."), which held as follows:

Although we agree that Section 1307 should have limited application and the PUC should not use it to disassemble the traditional rate-making process, the General Assembly did not limit the allowance of automatic adjustment to only fuel costs and taxes which are generally beyond the control of the utility. Instead, the General Assembly specifically allowed the recovery of fuel costs and also allowed the PUC or the utilities to initiate the automatic adjustment of costs within specific procedures.<sup>7/</sup>

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<sup>6/</sup> The Commission's regulations regarding upgrading coal-fired generating units and the use of a Section 1307(a) clause to recover the associated capital costs are set forth at 52 Pa. Code § 57.124 and provide for relief virtually indistinguishable from that requested here.

<sup>7/</sup> The Commission rejected similar efforts to restrict the use of Section 1307(a) adjustment clauses in Re West Penn Power Co., 76 Pa. P.U.C. 183 (1992) ("West Penn"). In that case, West Penn Power Company sought approval to establish an annual surcharge under Section 1307(a) to recover a return on and of its construction work in progress ("CWIP") expenditures to comply with Phase I of the Clean Air Act Amendments of 1990 ("CAAA"). The Administrative Law Judge recommended that the Commission deny West Penn's request on the grounds that Section 1307 "does not authorize a surcharge for the purpose of a return on rate base." The Commission did not agree with the Judge's interpretation of Section 1307(a): "[W]ith respect to the application of Section 1307(a) to justify a surcharge, we are not swayed

30. In addition to demand side management costs and coal-fired generating unit upgrade costs, the Commission has authorized the use of Section 1307(a) adjustment clauses to recover a wide array of expenses, depreciation and capital costs, including:

- "Take-or-pay" liability of natural gas local distribution companies ("LDCs"). 52 Pa. Code § 69.181.
- "Gas supply realignment costs" and "stranded costs" resulting from FERC Order 636. 52 Pa. Code § 69.341(b).<sup>8/</sup>
- Principal and interest due on PennVest obligations. 52 Pa. Code § 69.363.<sup>9/</sup>

31. In view of the foregoing, PAWC respectfully submits that the Commission has the lawful discretion to provide for the

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one way or the other that it should or should not apply." 76 Pa. P.U.C. at 203.

<sup>8/</sup> In that regulation, the Commission also noted that "costs related to new facilities to implement restructuring brought about by FERC Order 636 may be natural gas costs subject to recovery through gas cost rate procedures." 52 Pa. Code § 69.341(b)(4).

<sup>9/</sup> The Commission's Policy Statement on recovery of PennVest loan obligations was issued after the Commonwealth Court's decision in Masthope Rapids Property Owners Council v. Pa. P.U.C., 135 Pa. Cmwlth. 437, 581 A.2d 994 (1990), which rejected a water utility's attempt to use Section 1307(a) as an after-the-fact justification for a rate increase to cover principal and interest due on a PennVest loan. See 135 Pa. Cmwlth at 443, 581 A.2d at 997-98. In West Penn, the Commission distinguished the Masthope decision and concluded that it could not be viewed as foreclosing the use of Section 1307(a) for the recovery of PennVest principal and interest.

76 Pa. P.U.C. at 203.

recovery of DSIC-eligible costs through a Section 1307(a) clause and should exercise its discretion in this case by approving the Company's request. As noted previously, the costs in question are related to specific, narrow categories of plant additions that are vitally important to the Company's ability to continue to provide safe, reliable water service. Moreover, the need for these plant additions is well-established and, in fact, the Commission has encouraged increased levels of investment in these types of distribution system improvement projects. See Pa. P.U.C. v. Pennsylvania Gas and Water Co., Docket No. R-00922482 (June 23, 1993) (granting a rate increase for the primary purpose of funding distribution system improvements). Additionally, base rate filings -- even if made on an annual basis -- are not adequate to provide timely cost recovery for distribution system improvement investment at the ever increasing levels necessary to address this serious and mounting problem.

32. Simply stated, the only way that unacceptable deferrals of necessary distribution system improvements can be avoided is to provide an alternative to traditional base rate filings that recognizes the Company's need to sustain increased levels of investment. The DSIC is the best available mechanism to deal with this problem.

VI. THE ELEMENTS AND OPERATION OF THE DSIC

33. As explained in Section I, supra, the DSIC will recover the fixed costs, as hereafter defined, of DSIC-eligible plant additions placed in service between base rate cases. As proposed by the Company, the DSIC will become effective for bills rendered on and after July 1, 1996 and will be updated quarterly thereafter.

34. The initial DSIC will be calculated to recover the fixed costs of eligible plant additions that have not previously been reflected in the Company's rate base and will have been placed in service between August 1, 1995 and May 31, 1996. Thereafter, the DSIC will be updated on a quarterly basis to reflect eligible plant additions placed in service during the three-month periods ending one month prior to the effective date of each DSIC update. Thus, changes in the DSIC rate will occur as follows:

<u>Effective Date Of Change</u>	<u>Date To Which DSIC-Eligible Plant Additions Reflected</u>
July 1	May 31
October 1	August 31
January 1	November 30
April 1	February 28/29

35. Supporting data for each quarterly update will be filed with the Commission and served upon the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA") and the Office

of Small Business Advocate ("OSBA") at least 10 days prior to the effective date of the update.

36. The fixed costs of DSIC-eligible plant additions will be calculated separately for distribution system improvement projects and Company-funded main extensions, as follows:

a. The fixed costs of distribution system improvement projects will consist of depreciation and pre-tax return. The depreciation expense will be calculated by applying to the original cost of DSIC-eligible property the annual accrual rates employed in the Company's last base rate case for the plant accounts in which each retirement unit of such DSIC-eligible property is recorded. The pre-tax return will be calculated using the state and federal income tax rates and authorized return rates approved by the Commission's final order in PAWC's most recent fully litigated rate case unless, on a pro forma basis, PAWC's capital costs are less than that amount. The pro forma determination will be made using the Company's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day of the three-month period ending one month prior to the effective date of the DSIC. The cost of equity will be the equity return rate approved in the Company's last fully-litigated base rate proceeding for which a final order was entered not more than two years prior to the effective date of the DSIC. If more than two years shall have elapsed between the entry of such a final order and the effective

date of the DSIC, then the equity return rate used in the calculation will be the equity return rate approved by the Commission in a final order entered at the conclusion of the most recent fully litigated proceeding for an investor-owned water utility having annual revenues in excess of \$10.0 million.

b. The fixed costs of Company-funded main extensions to be recovered under the DSIC will consist solely of a pre-tax preferred stock and equity return calculated in the same manner as set forth in the preceding subparagraph. Thus, the Company will not seek to recover through the DSIC either depreciation or a return on the debt component of its investment in Company-funded main extensions.

37. The DSIC to be applied to customers' bills will be expressed as a percentage or its decimal equivalent. To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC will be divided by the Company's projected revenue from sales of water for the quarterly period during which the charge will be collected, exclusive of revenues from public fire protection service. The DSIC will be applied to the total amount billed to each customer, exclusive of amounts billed for public fire protection service. Public fire protection customers will not be subject to the surcharge, because the Company's existing rates for this service cannot be increased by reason of Section 1328 of the Code (66 Pa.C.S. § 1328).

38. The DSIC will be capped at 5% of the amount billed to customers under otherwise applicable rates and charges, exclusive of revenues derived from public fire protection service.

39. The DSIC will be subject to audit at intervals determined by the Commission. It will also be subject to annual reconciliation based on a reconciliation period consisting of the 12 months ending March 31 of each year. Of course, the first reconciliation after the implementation of the DSIC will be for the shorter period from July 1, 1996 to March 31, 1997. The revenue received under the DSIC for the reconciliation period will be compared to the Company's eligible costs for that period. The difference between revenue and costs will be recouped or refunded, as appropriate, in accordance with Section 1307(e), over a one year period commencing on July 1. Overcollections will be refunded with interest.

40. The DSIC will be reset at zero as of the effective date of new base rates that provide for prospective recovery of the annual costs that had theretofore been recovered under the DSIC. Thereafter, only the fixed costs of new eligible plant additions would be reflected in the quarterly updates of the DSIC.

41. The DSIC would also be reset at zero if, in any quarter, data filed with the Commission in the Company's then most recent Annual or Quarterly Earnings Reports show that the Company will earn a rate of return that would exceed the rate of return used to calculate its fixed costs under the DSIC.

42. Notice of the filing of this Petition, in the form set forth in Exhibit E, will be provided to all customers by bill insert such that notices will have been mailed to all customers within 30 days of the date this Petition is filed.

VII. CONCLUSION

For the reasons set forth above, the Commission is requested to enter an order granting its approval for PAWC to implement the tariff supplement, attached hereto as Exhibit A, establishing a Distribution System Improvement Charge to be effective for bills rendered on and after July 1, 1996.

Respectfully submitted,



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DATED: March 15, 1996

EXHIBIT A

TARIFF SUPPLEMENT ESTABLISHING  
SECTION 1307 DISTRIBUTION  
SYSTEM IMPROVEMENT CHARGE

PENNSYLVANIA-AMERICAN WATER CO.

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DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

EXCEPT PUBLIC FIRE PROTECTION

In addition to the net charges provided for in this Tariff, a charge of 1.01% will apply to all service rendered under Rate Zone 1, through Rate Zone 5 and Rate Zone S.

The above charge will be recomputed, using the elements prescribed by the Commission in its order dated \_\_\_\_\_ at Docket No. \_\_\_\_\_.

The Company will submit, with such recomputation a Tariff or Supplement to reflect such recomputed charge, the effective date of which shall be 10 days after filing.

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Issued: March 15, 1996

Effective: July 1, 1996

EXHIBIT B

SAMPLE CALCULATION OF DSIC  
REFLECTING ACTUAL DSIC-ELIGIBLE PLANT  
ADDITIONS THROUGH JANUARY 31, 1996 AND PROJECTED  
ADDITIONS THROUGH MAY 31, 1996

**PENNSYLVANIA-AMERICAN WATER COMPANY  
DISTRIBUTION SYSTEM IMPROVEMENT CHARGE  
PAGE 1**

DESCRIPTION	SURCHARGE EFFECTIVE 7/1/96
APPLICABLE NET ADDITIONS LESS NEW CUSTOMER EXTENSIONS	6,322,832
LESS: ACCUMULATED DEPRECIATION	(95,586)
NET RATE BASE INCLUDED IN DISTRIBUTION SYSTEM IMPROVEMENT CALCULATIONS	6,227,046
ANNUAL REVENUE REQUIREMENT RATE	13.10%
QUARTERLY REVENUE REQUIREMENT RATE	3.28%
APPLICABLE ADDITIONS FOR NEW CUSTOMER EXTENSIONS	11,627,436
LESS: ACCUMULATED DEPRECIATION	(86,794)
NET RATE BASE INCLUDED IN DISTRIBUTION SYSTEM IMPROVEMENT CALCULATIONS	11,538,643
ANNUAL REVENUE REQUIREMENT RATE	8.20%
QUARTERLY REVENUE REQUIREMENT RATE	2.05%
QUARTERLY CAPITAL COST RECOVERY	440,789
QUARTERLY DEPRECIATION EXPENSE	48,794
TOTAL QUARTERLY DISTRIBUTION SYSTEM IMPROVEMENT CHARGE REVENUE REQUIREMENT	489,583
 BASE RATE REVENUE TO BE COLLECTED DURING JULY THROUGH SEPTEMBER	 48,531,224
 DISTRIBUTION SYSTEM IMPROVEMENT CHARGE	 1.01%

WEIGHTED COST OF CAPITAL BASED UPON PUC ORDER AT DOCKET NO. R-943231 ENTERED ON JULY 24, 1995

TYPE	AMOUNT (\$000)	CAPITAL STRUCTURE	COST RATE	WEIGHTED AVERAGE COST RATE	REVENUE MULTIPLIER	REVENUE REQUIREMENT
DEBT	\$325,525	57.48%	6.53%	4.90%		4.90%
PREFERRED	18,326	3.24%	7.70%	0.25%	1.75476	0.44%
EQUITY	222,442	39.28%	11.25%	4.42%	1.75476	7.76%
TOTAL	\$566,293	100.00%		9.57%		13.10%

**PENNSYLVANIA-AMERICAN WATER COMPANY  
DISTRIBUTION SYSTEM IMPROVEMENT CHARGE  
PAGE 2**

BUDGET ITEM	STATE ACCOUNT	DESCRIPTION	ADDITION BREAKDOWN			TOTAL
			1995 ACTUAL AUGUST THROUGH DECEMBER	1996 JANUARY THROUGH MARCH	1996 APRIL THROUGH MAY	
1-B	323	REPLACEMENT SERVICES	\$923,878	383,699	669,096	\$1,976,673
1-C	324	REPLACEMENT METERS	\$680,768	408,432	257,450	\$1,346,650
BP 96-14	322	NEW CUSTOMER EXTENSIONS	\$9,994,103	300,000	1,333,333	\$11,627,436
1-A-5	322	MAIN REPLACEMENTS	\$1,445,973	842,375	992,550	\$3,280,898
BP 96-13	322	REPLACE SMALL DIAMETER MAINS	\$357,000	81,000	486,667	\$924,667
		ESTIMATED ADDITIONS	\$13,401,722	2,015,506	3,739,096	\$19,156,324
		ESTIMATED RETIREMENTS	(\$794,129)	(171,551)	(240,576)	(\$1,206,256)
		NET ADDITIONS	\$12,607,593	1,843,955	3,498,520	\$17,950,068

PENNSYLVANIA-AMERICAN WATER COMPANY  
 DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

PAGE 3

BUDGET ITEM	STATE ACCOUNT	DESCRIPTION	DEPRECIATION RATE	1995 ACTUAL AUGUST THROUGH DECEMBER	1996 JANUARY THROUGH MARCH	1996 APRIL THROUGH MAY	TOTAL
1-B	323	REPLACEMENT SERVICES	1.89%	\$4,614	\$5,272	\$7,759	\$17,645
1-C	324	REPLACEMENT METERS	8.03%	7,659	17,780	24,464	49,903
	322	NEW CUSTOMER EXTENSIONS	1.18%	26,534	29,925	32,334	88,793
1-A-5	322	MAIN REPLACEMENTS	1.18%	3,839	5,508	8,215	17,562
	322	SMALL MAIN REPLACEMENTS	1.18%	948	1,173	2,010	4,131
		APPLICABLE DEPRECIATION EXPENSE		43,594	59,658	74,782	178,033
		CALCULATED ACCUMULATED DEPRECIATION AT QUARTER END		43,594	103,252	178,033	
		PLUS ADDITIONAL HALF QUARTER CHARGE ON CURRENT QUARTER				6,347	
		APPLICABLE ACCUMULATED DEPRECIATION AT QUARTER END		\$43,594	\$103,252	\$184,380	

EXHIBIT C  
REVENUE-NEUTRAL DISTRIBUTION SYSTEM  
IMPROVEMENT PROJECTS

# INFRASTRUCTURE HISTORY

1991-1995

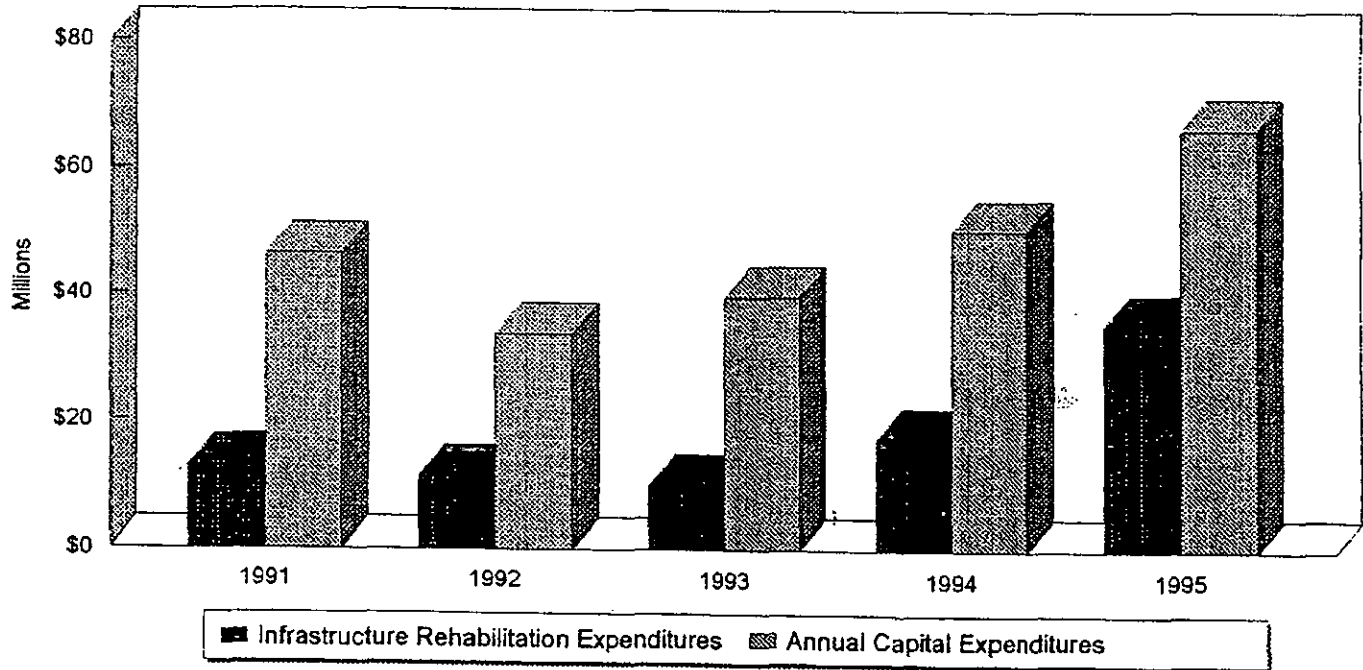


EXHIBIT D

CREDIT REPORT EXPLAINING DOWNGRADE  
OF COMPANY'S DEBT RATING

## CREDITWATCH

aircraft. Other activities include supplying air traffic control radars, electronic countermeasures, and electronics for undersea applications.

**OUTLOOK** The firm's good program diversity and priority, coupled with improving operating efficiencies, should support current credit qual-

ity. However, ratings assume that operations will meet healthy financial performance measures over the next three years. Material shortfalls from expectations or debt-financed acquisitions could result in lower ratings.

### PENNSYLVANIA-AMERICAN WATER CO.

Analyst: Alberto J. Santos, New York (212) 208-1375

#### DOWNGRADED

	TO	FROM
Sr. debt	BBB+	A-

#### OUTLOOK: STABLE

The rating on Pennsylvania-American Water Co.'s (PAWC) senior debt is lowered and removed from CreditWatch, where it was placed April 28, 1995, following PAWC's announcement that it was acquiring the water assets of Pennsylvania Gas & Water (PGW).

The CreditWatch placement reflects the utility's weak financial profile for the former rating, owing to the additional debt used to finance the acquisition of PGW's water assets. In addition, an aggressive capital spending program will be further heightened by the investment needed to modernize the distribution system of PGW. Moreover, management will be challenged to successfully integrate the new facilities with the existing operations.

PAWC's credit rating is strongly influenced by the qualitative and quantitative fundamentals of the parent company. AWW has 23 operating water utilities, of which PAWC is the largest. Management's strategy is to manage the cash flows and cash needs of all subsidiaries in a way such as to maintain a 60% debt leverage.

Upon acquiring the water assets of Pennsylvania Gas & Water, the utility will become the largest investor-owned operating company in the U.S., second only to its parent company in the number of customers served. PAWC's business position reflects the generally low business risk in the water utility industry. Also recognized is the company's dominant position in Pennsylvania, a supportive regulatory environment, a diverse geographic service area, adequate water operations, and 1% projected sales growth. These factors are offset by the utility's weak financial profile and an aggressive capital spending program.

**OUTLOOK** The outlook reflects PAWC's stable customer base, continued regulatory support, and greater operating efficiency in the expanded water operations. Moreover, management is expected to improve the utility's financial profile and maintain a 60% debt to capital structure.

### PROFIT SHARING & SAVINGS PLAN FOR DARDEN RESTAURANTS INC. (EMPLOYEE STOCK OWNERSHIP PORTION) (FORMERLY KNOWN AS THE PROFIT SHARING & SAVINGS PLAN OF GENERAL MILLS RESTAURANTS INC.)

Analysts: Donald Wong, New York (212) 208-1660,  
Dawn Hu, New York (212) 208-8008

#### DOWNGRADED

	TO	FROM
\$50 mil. remarketed ESOP nts. due 2007	BBB+/A-2	A+/A1

The rating of the Employee Stock Ownership Portion (ESOP) of the Profit Sharing & Savings Plan for Darden Restaurants Inc. (formerly known as the Profit Sharing & Savings Plan of General Mills Restaurants Inc.) is lowered and removed from CreditWatch, where it was placed Dec. 21, 1995.

At the same time, Standard & Poor's removes the rating from CreditWatch, where it was placed Dec. 21, 1995.

The downgrade reflects the substitution of Darden Restaurants for General Mills as the guarantor of these ESOP notes effective Feb. 14, 1996. Darden Restaurants' senior debt rating is 'BBB+' and commercial paper rating is 'A-2'.

Darden Restaurants was spun off from General Mills in May 1995.

EXHIBIT E

NOTICE OF THE FILING OF PETITION FOR  
APPROVAL TO IMPLEMENT TARIFF SUPPLEMENT ESTABLISHING  
DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

## Proposed Rate Change

Pennsylvania-American Water Company replaces 25 to 30 miles of older water mains as well as meters, services, valves, and hydrants each year. The costs of replacing these facilities are part of the rates we charge for service.

Over the years, we took all replacement costs, and made them part of rate increase requests before the Pennsylvania Public Utility Commission (PUC). On March 15, 1996, we filed a request with the PUC to allow us to recover the costs of replacing old water mains, meters, fire hydrants and similar improvements as we incur them. If the PUC approves our request, we will place a small charge on each customer's water bill beginning July 1, 1996. The charge, which will initially be \$0.28 for a typical \$28 water bill, could be adjusted every three months as additional improvements are made.

Reducing the delay between making improvements and collecting the costs of these improvements will allow us to replace more of our aging system. This should lead to better water pressure, better water quality, and improved fire flows. It can also lead to more stable costs for water losses and leak repairs.

To find out more, call the customer service number shown on your water bill.

If you wish to give your comments on this charge to the PUC, please do so no later than May 15, 1996 by:

- calling toll free 800-782-1110 or
- writing to PUC, PO Box 3265, Harrisburg, PA 17105-3265.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RE: PETITION OF PENNSYLVANIA-AMERICAN :  
WATER COMPANY FOR APPROVAL TO :  
IMPLEMENT A TARIFF SUPPLEMENT : Docket No. \_\_\_\_\_  
ESTABLISHING A DISTRIBUTION :  
SYSTEM IMPROVEMENT CHARGE :

RESPONSES TO FILING REQUIREMENTS

§ 53.52. APPLICABILITY; PUBLIC UTILITIES OTHER THAN  
CANAL, TURNPIKE, TUNNEL, BRIDGE AND WHARF COMPANIES

(a) Whenever a public utility, other than a canal, turnpike, tunnel, bridge or wharf company files a tariff, revision or supplement effecting changes in the terms and conditions of service rendered or to be rendered, it shall submit to the Commission, with the tariff, revision or supplement, statements showing all of the following:

(1) The specific reasons for each change.

Refer to the Petition of Pennsylvania-American Water Company For Approval To Implement A Tariff Supplement Establishing A Distribution System Improvement Charge (the "PAWC Petition").

(2) The total number of customers served by the utility.

At December 31, 1995, Pennsylvania-American Water Company ("PAWC" or the "Company") provided water service to 392,147 customers.

(3) A calculation of the number of customers, by tariff subdivision, whose bills will be affected by the change.

The proposed Distribution System Improvement Charge ("DSIC") will apply to all customers except those accounts receiving public fire protection service. Additionally, the DSIC will not initially apply to customers located in the service territory previously served by the former Pennsylvania Gas & Water Company ("PG&W"), which was acquired by PAWC. Accordingly, as of December 31, 1995, the DSIC would apply to 391,894

customers, consisting of customers in all of the classifications, excluding public fire protection service, shown below:

Residential	359,838
Commercial	28,078
Industrial	605
Municipal	1,809
Sales for Resale	31
Private Fire Protection	1,533
Public Fire Protection	<u>253</u>
Total	392,147

- (4) The effect of the change on the utility's customers.

Refer to the PAWC Petition, Paragraph Nos. 4 and 5 (pp. 3-4) and Exhibit B.

- (5) The direct or indirect effect of the proposed change on the utility's revenue and expenses.

Refer to the PAWC Petition, Paragraph Nos. 4 and 5 (pp. 3-4) and Exhibit B.

- (6) The effect of the change on the service rendered by the utility.

Refer to the PAWC Petition, Paragraph Nos. 2 and 23-27 (pp. 2-3 and 12-18).

- (7) A list of factors considered by the utility in its determination to make the change. The list shall include a comprehensive statement about why these factors were chosen and the relative importance of each. This subsection does not apply to a portion of a tariff change seeking a general rate increase as defined in 66 Pa.C.S. § 1308 (relating to voluntary changes in rates).

Refer to the PAWC Petition.

- (8) Studies undertaken by the utility in order to draft its proposed change. This paragraph does not apply to a

portion of a tariff change seeking a general rate increase as defined in 66 Pa.C.S. § 1308.

The PAWC Petition contains a description of the factors considered by the Company in designing the proposed DSIC, including the results of studies conducted by others (see Paragraph No. 24).

- (9) Customer polls taken and other documents which indicate customer acceptance and desire for the proposed change. If the poll or other documents reveal discernible public opposition, an explanation of why the change is in the public interest shall be provided.

No customer polls were conducted.

- (10) Plans the utility has for introducing or implementing the changes with respect to its ratepayers.

Notice of the filing of the PAWC Petition is being provided to all customers by bill insert (see Paragraph No. 42 and Exhibit E).

- (11) FCC, FERC or Commission orders or rulings applicable to the filing.

Refer to Section V. of the PAWC Petition.

- (b) Whenever a public utility other than a canal, turnpike, tunnel, bridge or wharf company files a tariff, revisions or supplement which will increase or decrease the bills to its customers, it shall submit in addition to the requirements of subsection (a), to the Commission, with the tariff, revision or supplement, statements showing all of the following:

- (1) The specific reasons for each increase or decrease.

Refer to the PAWC Petition, which provides a detailed explanation of the reasons why the Company is requesting approval to implement the DSIC.

- (2) The operating income statement of the utility for a 12-month period, the end of which may not be more than 120 days prior to the filing. Water and sewer utilities with annual revenues under \$100,000 and municipal

corporations subject to Commission jurisdiction may provide operating income statements for a 12-month period, the end of which may not be more than 180 days prior to the filing.

An operating income statement for the twelve months ending December 31, 1995 is attached as Exhibit A.

- (3) A calculation of the number of customers, by tariff subdivision, whose bills will be increased.

Refer to the response to § 53.52(a)(3).

- (4) A calculation of the total increases, in dollars, by tariff subdivision, projected to an annual basis.

Based upon the calculation of the initial DSIC set forth in Exhibit B to the PAWC Petition, the total increase projected on an annual basis, by customer classification, is shown below:

Residential	\$1,215,171
Commercial	341,995
Industrial	142,245
Municipal	85,684
Sales for Resale	22,357
Private Fire Protection	15,589
Public Fire Protection	-0-

As explained in Paragraph No. 4 of the PAWC Petition, based on the calculations in Exhibit B to the Petition, the DSIC would increase an average residential customer's monthly bill by 28 cents.

- (5) A calculation of the number of customers, by tariff subdivision, whose bills will be decreased.

No customers will receive a decrease.

- (6) A calculation of the total decreases, in dollars, by tariff subdivision, projected to an annual basis.

Not applicable.

- (c) If a public utility files a tariff, revision or supplement which it is calculated will increase the bills of a customer or a group of customers by an amount, when projected to an

annual basis, exceeding 3.0% of the operating revenues of the utility -- subsection (b)(4) divided by the operating revenues of the utility for a 12-month period as defined in subsection (b)(2) -- or which it is calculated will increase the bills of 5.0% or more of the number of customers served by the utility -- subsection (b)(3) divided by subsection (a)(2) -- it shall submit to the Commission with the tariff, revision or supplement, in addition to the statements required by subsections (a) and (b), all of the following information:

- (1) A statement showing the utility's calculation of the rate of return earned in the 12-month period referred to in subsection (b)(2), and the anticipated rate of return to be earned when the tariff, revision or supplement becomes effective. The rate base used in this calculation shall be supported by summaries of original cost.

Refer to the data supplied in Exhibits A and B. A detailed calculation of the Company's rate of return will be supplied as part of its Annual Report for 1995 to be filed with the Commission on or before April 30, 1996. Upon filing, the Company's Annual Report will be incorporated herein by reference.

- (2) A detailed balance sheet of the utility as of the close of the period referred to in subsection (b)(2).

A balance sheet as of December 31, 1995 is attached as Exhibit B.

- (3) A summary, by detailed plant accounts, of the book value of the property of the utility at the date of the balance sheet required by paragraph (2).

A summary of the original cost of utility plant in service at December 31, 1995 is provided in Exhibit C.

- (4) A statement showing the amount of the depreciation reserve, at the date of the balance sheet required by paragraph (2), applicable to the property, summarized as required by paragraph (3).

Refer to the data supplied in Exhibit B.

- (5) A statement of operating income, setting forth the operating revenues and expenses by detailed accounts for the 12-month period ending on the date of the balance sheet required by paragraph (2).

Refer to the income statement supplied as Exhibit A. A statement of operating expenses by detailed account for the twelve months ended December 31, 1995 will be supplied in the Company's Annual Report for 1995, which, upon filing, will be incorporated herein by reference.

- (6) A brief description of a major change in the operating or financial condition of the utility occurring between the date of the balance sheet required by paragraph (2) and the date of transmittal of the tariff, revision or supplement. As used in this paragraph, a major change is one which materially alters the operating or financial condition of the utility from that reflected in paragraphs (1)-(5).

As noted in the PAWC Petition, PAWC acquired the water utility business of PG&W as of February 16, 1996. As explained in Paragraph No. 1 of the Petition, the DSIC will not apply initially to customers in the former PG&W service area, and data used to calculate the initial DSIC exclude the effects of that acquisition.

**EXHIBIT A**  
**INCOME STATEMENT**

## 200C. INCOME ACCOUNT

- Classify in Columns (e) to (n), lines 1 to 14, the operating income derived by respondent from each class of utility service, listing the services according to their predominance.
- If respondent's operations are confined to one utility service, only the total column (c) and (d) need be completed.
- If the increases or decreases are anywise inconsistent with previously reported figures, explain in a footnote.

Line No.	Account (a)	Sched. Page Ref. (b)	- TOTAL		WATER	
			Current Year (c)	Increase or Decrease From Preceding Year (d)	Current Year (e)	Increase or Decrease From Preceding Year (f)
1	<b>OPERATING INCOME</b>					
2	501 Operating Revenues		180,947,927	8,329,109	180,438,420	7,819,602
3	Operating Revenue Deductions			0		
4	502 Operating Expenses		84,309,952	1,655,560	83,915,176	1,260,784
5	503.1 Depreciation		18,964,910	2,476,027	18,924,812	2,435,929
6	503.2 Amort. & Dep. Prod. Nat. Gas Ld.&Rght*		0	0		
7	504 Amort. of Regulatory Asset		61,548	0	61,548	
8	505 Amort. of Utility Plant Acquisition Adj.		0	0		
9	506 Property Losses Charged to Operations		0	0		
10	507 Taxes*	403	25,765,312	1,203,444	25,765,312	1,203,444
11	<b>Total Operating Revenue Deductions</b>		129,101,722	5,335,031	128,666,848	4,900,157
12	<b>Net Operating Revenues</b>		51,846,205	2,994,078	51,771,572	2,919,445
13	508 Income from Util. Plant Lsd. to Oths.	301				0
14	Utility Operating Income		51,846,205	2,994,078	51,771,572	2,919,445
15	<b>EXPLORATION AND DEVELOPMENT COSTS*</b>					
16	510 Delay Rentals					
17	511 Non-Prod. Well Drilling Expenses					
18	512 Abandoned Leases	715				
19	513 Other Exploration Costs	711				
20	<b>Total Exploration &amp; Dev. Costs</b>		0	0		
21	<b>Net Utility Income</b>		51,846,205	2,994,078	51,771,572	2,919,445
22	<b>OTHER INCOME</b>					
23	520 Income from Mdsing. Job. & Contract Work	302	51,536	(3,480)	51,536	(3,480)
24	521 Income from Non-Utility Oper.	303	0			0
25	522 Revenues from Lease of Oth. Phy. Property	303	0			0
26	523 Dividend Revenues		0			0
27	524 Interest Revenues		0	(63,108)		(63,108)
28	525 Revenue from Sinking and Other Funds	303	0			0
29	526 Miscellaneous Non-Operating Revenues	303	98,016	(141,848)	98,016	(141,848)
30	527 Non-Operating Revenue Deductions	303	36,702	(372,535)	36,702	(372,535)
31	<b>Total Other Income</b>		186,254	(580,971)	186,254	(580,971)
32	<b>Gross Income</b>		52,032,459	2,413,107	51,957,826	2,338,474
33	<b>INCOME DEDUCTIONS</b>					
34	530 Interest on Long-Term Debt		26,352,518	194,379	26,352,518	194,379
35	531 Amortization of Debt Discount & Expenses		220,273	(228)	220,273	(228)
36	532 Amort. of Premium on Debt -- Credit		0			0
37	533 Taxes	403	(1,637)	(320,543)	(1,637)	(320,543)
38	534 Interest on Debt to Affiliated Cos.	304	0			0
39	535 Other Interest Charges	304	1,667,950	1,398,046	1,667,950	1,398,046
40	536 Int. Charged to Constr. -- Credit		(861,543)	(256,813)	(861,543)	(256,813)
41	537 Miscellaneous Amortization	304	(270,360)	(274,211)	(270,360)	(274,211)
42	538 Miscellaneous Income Deductions	304	131,056	(42,588)	131,056	(42,588)
43	<b>Total Income Deductions</b>		27,238,257	698,042	27,238,257	698,042
44	<b>Net Income</b>		24,794,202	1,715,065	24,719,569	1,640,432
45	<b>DISPOSITION OF NET INCOME</b>					
46	540 Miscellaneous Reservation of Net Income	304				
47	Balance Transferred to Earned Surplus		24,794,202	1,715,065	24,719,569	1,640,432

\*Applicable to natural gas only.

200C. INCOME ACCOUNT (continued)

SEWER								
Line No.	Current Year (g)	Increase or Decrease From Preceding Year (h)	Current Year (i)	Increase or Decrease From Preceding Year (j)	Current Year (k)	Increase or Decrease From Preceding Year (l)	Current Year (m)	Increase or Decrease From Preceding Year (n)
1								
2	509,507	509,507						
3								
4	394,776	394,776						
5	40,098	40,098						
6								
7								
8								
9								
10								
11	434,874	434,874						
12	74,633	74,633						
13								
14	74,633	74,633						

EXHIBIT B  
BALANCE SHEET

**200. COMPARATIVE BALANCE SHEET  
ASSETS AND OTHER DEBITS**

Balances at Beginning of Year must be consistent with balances at end of previous year.

Line No.	Title of Account (a)	Sched. Page No. (b)	Balance Beginning of Yr. (c)	Balance End Of Year (d)	Increase/ Decrease (e)
1	<b>UTILITY PLANT</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
2	100 Utility Plant	203	740,624,007.79	817,894,777.34	77,270,769.55
3	107 Utility Plant Adjustments	202			0.00
4	Total Utility Plant		740,624,007.79	817,894,777.34	77,270,769.55
5	<b>INVESTMENT AND FUND ACCOUNTS</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
6	110 Other Physical Property		1,264,808.45	1,054,307.87	(210,500.58)
7	111 Investments in Affiliated Companies	208			0.00
8	112 Other Investments	208	0.00		0.00
9	113 Sinking Funds				0.00
10	114 Miscellaneous Special Funds				0.00
11	Total Investment and Fund Accounts		1,264,808.45	1,054,307.87	(210,500.58)
12	<b>CURRENT AND ACCRUED ASSETS</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
13	120 Cash		(0.00)	(0.00)	0.00
14	121 Special Deposits		73,500.00	111,850.00	38,350.00
15	122 Working Funds		114,285.00	14,505.94	(99,779.06)
16	123 Temporary Cash Investments	208	0.00		0.00
17	124 Notes Receivable	209			0.00
18	125 Accounts Receivable	209	13,486,047.99	15,680,956.83	2,194,908.84
19	126 Receivables from Affiliated Companies	209 - 10	66,288.27	12,886.57	(53,401.70)
20	127 Subscriptions to Capital Stock				0.00
21	128 Interest and Dividends Receivable		0.00		0.00
22	129 Rents Receivable				0.00
23	130 Accrued Utility Revenues		9,294,544.00	9,156,363.40	(138,180.60)
24	131 Materials and Supplies	211	1,284,206.90	1,371,712.50	87,505.60
25	132 Prepayments		1,440,345.00	1,261,898.50	(178,446.50)
26	133 Other Current and Accrued Assets		2,494,724.48	2,581,920.45	87,195.97
27	134 Gas Stored Underground*	212A			0.00
28	Total Current and Accrued Assets		28,253,941.64	30,192,094.19	1,938,152.55
29	<b>DEFERRED DEBITS</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
30	140 Unamortized Debt Discount and Exp.	213	1,839,368.45	1,763,745.74	(75,622.71)
31	141 Extraordinary Property Losses	214			0.00
32	142.1 Prel. Natural Gas Surv. & Inv. Charg.*	214			0.00
33	142.2 Other Prel. Surv. & Investgat. Charg. #	214			0.00
34	143 Clearing Accounts	215			0.00
35	144 Retirement Work In Progress	215	279,189.86	404,757.81	125,567.75
36	145 Other Work In Progress		15,410.55	34,538.37	19,127.82
37	146 Other Deferred Debits	216	101,777,951.53	99,618,370.37	(2,159,581.16)
38	Total Deferred Debits		103,911,920.39	101,821,412.09	(2,090,508.30)
39	<b>CAPITAL STOCK DISCOUNT AND EXPENSES</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
40	150 Discount on Capital Stock				0.00
41	151 Capital Stock Expense		116,754.86	108,562.27	(8,192.59)
42	Total Capital Stock Discount & Expenses		116,754.86	108,562.27	(8,192.59)
43	<b>REACQUIRED SECURITIES</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
44	152 Reacquired Capital Stock	218	0.00	0.00	0.00
45	153 Reacquired Long-term Debt	219			
46	Total Reacquired Securities				
47	<b>TOTAL ASSETS AND OTHER DEBITS</b>		874,171,433.13	951,071,153.76	76,899,720.63

\*Applicable to natural gas utilities only

**200. COMPARATIVE BALANCE SHEET  
LIABILITIES AND OTHER CREDITS**

Balances at Beginning of Year must be consistent with balances at end of previous year

Line No.	Account Title (a)	Sched. Page No.(b)	Balance Beginning Of Year (c)	Balance End of Year (d)	Increase/ Decrease (e)
1	<b>CAPITAL STOCK</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
2	200 Common Capital Stock	218	19,548,199.00	21,506,886.50	1,958,687.50
3	201 Preferred Capital Stock	218	18,499,100.00	18,267,000.00	(232,100.00)
4	202 Stock Liability for Conversion				0.00
5	203 Premiums and Assessments on Capital Stock		68,661,299.54	86,702,612.04	18,041,312.50
6	204 Capital Stock Subscribed				0.00
7	205 Installments Received on Capital Stock				0.00
8	Total Capital Stock		106,708,598.54	126,476,498.54	19,767,900.00
9	<b>LONG-TERM DEBT</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
10	210 Bonds	219	285,520,000.00	299,510,000.00	13,990,000.00
11	211 Receivers' Certificates	219			0.00
12	212 Advances from Affiliated Companies	220			0.00
13	213 Miscellaneous Long-Term Debt	219			0.00
14	Total Long-Term Debt		285,520,000.00	299,510,000.00	13,990,000.00
15	<b>CURRENT AND ACCRUED LIABILITIES</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
16	220 Notes Payable		19,121,279.00	34,098,964.00	14,977,685.00
17	222 Current Portion of Long-Term Debt		16,010,000.00	10,010,000.00	(6,000,000.00)
18	222 Accounts Payable		7,726,526.39	7,496,666.16	(229,860.23)
19	223 Payable to Affiliated Companies	220-1	34,352.66	341,062.89	306,710.23
20	224 Dividends Declared	206	354,785.05	348,810.85	(5,974.20)
21	225 Matured Long-Term Debt				0.00
22	226 Matured Interest				0.00
23	227 Customers' Deposits		1,173.25	1,173.25	0.00
24	228 Taxes Accrued	222-3	1,062,955.83	107,230.43	(955,725.40)
25	229 Interest Accrued		7,248,684.61	7,064,987.97	(181,696.64)
26	230 Other Current and Accrued Liabilities		5,601,035.35	5,246,227.58	(354,807.77)
27	Total Current and Accrued Liabilities		57,158,792.14	64,715,123.13	7,556,330.99
28	<b>DEFERRED CREDITS</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
29	258 Deferred Income Taxes		118,202,412.00	120,942,979.00	2,740,567.00
30	241 Customers' Advances for Construction	226	41,871,106.67	43,929,026.37	2,057,919.70
31	242 Other Deferred Credits	226	17,741,589.51	16,199,932.56	(1,541,656.95)
32	242 Investment Tax Credit		10,278,004.00	10,044,412.00	(233,592.00)
33	<b>RESERVES</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
34	250.1 Reserve for Depreciation of Utility Plant #1	203	95,000,404.36	112,838,980.85	17,838,576.49
35	250.2 Res. for Amort. & Depl. Prod. Nat. Gas	203			0.00
36	250.3 Reserve for Abandoned Leases*	203			0.00
37	251 Res. for Amort. of Other Limited-Term Ut. Invest.#		3,420.61	3,420.61	0.00
38	252 Res. for Amort. of Ut. Plant Acq. Adj.				0.00
39	253 Res. for Dep. and Amort. of Other Prop.		271,522.28	196,571.42	(74,950.86)
40	254 Reserve for Uncollectible Accounts	226	181,131.98	150,390.13	(30,741.85)
41	255 Insurance Reserve	227			0.00
42	256 Injuries and Damages Reserve	227			0.00
43	257 Employees' Provident Reserve	227			0.00
44	258 Other Reserves	227			0.00
45	Total Reserves		95,456,479.23	113,189,363.01	17,732,883.78
46	<b>CONTRIBUTIONS IN AID OF CONSTRUCTION</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
47	265 Contributions in Aid of Construction	228	32,551,900.12	41,342,683.64	8,790,783.52
48	<b>SURPLUS</b>		XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
49	270 Capital Surplus	228	7,452,325.88	7,452,325.88	0.00
50	271 Earned Surplus	207	101,230,225.04	107,268,809.63	6,038,584.59
51	Total Surplus		108,682,550.92	114,721,135.51	6,038,584.59
52	<b>TOTAL LIABILITIES AND OTHER CREDITS</b>		874,171,433.13	951,071,153.76	76,899,720.63

EXHIBIT C  
DETAILED PLANT ACCOUNTS

800. WATER PLANT IN SERVICE (Account 100-1)

1. Report by prescribed accounts the original cost of water plant in service and the additions and retirements of such plant during the year.
2. Do not include as adjustments, corrections of additions and retirements for the current or preceding year. Such items should be included in appropriate column (c) or (d).
3. Credit adjustments in column (e) should be shown in red, or in black enclosed in parenthesis. \*State in a footnote the general character of any adjustments in column (e).
4. Submit, in a footnote, an explanation of amounts included in columns (c) and/or (d), line 45 for lowering or changing the location of mains.

Line No.	Account (a)	Balance Begin of Year (b)	Additions (c)	Retirements (d)	Adjustments (e)	Balance End of Year (f)
1	I. INTANGIBLE PLANT	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
2	301 Organization	230,987	0	0	0	230,987
3	302 Franchises and consents	234,273	318,509	0	0	552,782
4	303 Miscellaneous Intangible plant	56,181	1,372,978	0	0	1,429,159
5	Total Intangible plant	521,441	1,689,487	0	0	2,210,928
6	II. TANGIBLE PLANT	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
7	311 Land and Land Rights	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
8	311.1 Source of supply land and water rights	0	0	0	0	0
9	311.11 Water rights	291,470	0	0	0	291,470
10	311.12 Reservoir land	202,415	0	0	0	202,415
11	311.13 Other source of supply land	406,213	27,263	7,975	0	425,501
12	311.2 Power and pumping land	574,274	65,053	41,498	0	597,831
13	311.3 Purification land	1,060,909	81,415	0	0	1,142,324
14	311.4 Transm. & dist. land and rights of way	3,391,935	115,945	863	0	3,507,017
15	311.5 Distribution res. and standpipe land	601,930	37,086	0	0	639,016
16	311.6 General land	0	0	0	0	0
17	311.61 Office land	1,293,572	0	3,161	0	1,290,411
18	311.62 Stores, shop and garage land	423,983	0	0	0	423,983
19	311.63 Miscellaneous land	0	0	0	0	0
20	Total Land and Land Rights	8,246,701	326,762	53,495	0	8,519,968
21	312 Structures and Improvements	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
22	312.1 Source of supply structures	0	0	0	0	0
23	312.11 Collecting and impounding reservoirs	5,531,922	1,890,756	15,551	0	7,407,127
24	312.12 Lake, river and other intakes	3,965,878	1,968,448	6,427	0	5,927,897
25	312.13 Wells and springs	2,525,880	203,814	14,702	0	2,714,992
26	312.14 Infiltration galleries and tunnels	0	0	0	0	0
27	312.15 Other water source structures	703,230	137,132	14	0	840,348
28	312.2 Power and pumping structures	11,022,066	2,232,079	63,881	0	13,190,264
29	312.3 Purification buildings	40,090,785	2,681,956	417,728	0	42,355,013
30	312.5 Distribution reservoirs and standpipes	25,907,204	1,063,958	172,176	0	26,798,986
31	312.6 General structures and improvements	0	0	0	0	0
32	312.61 Office Buildings	12,875,857	259,365	97,179	0	13,038,043
33	312.62 Stores, shop and garage buildings	7,237,084	35,413	12,929	0	7,259,568
34	312.63 Misc. structures and improvements	125,674	0	0	0	125,674
35	Total Structures and Improvements	109,985,580	10,472,919	800,587	0	119,657,912

## 800. WATER PLANT IN SERVICE (Account 100.1) (Continued)

Line No.	Account (a)	Balance Begin of Year (b)	Additions (c)	Retirements (d)	Adjustments (e)	Balance End of Year (f)
36	313 Boiler plant equipment	0	0	0	0	0
37	314 Other power production equipment	257,096	0	0	0	257,096
38	315 Steam pumping equipment	0	0	0	0	0
39	316 Electric pumping equipment	22,336,670	3,236,983	352,305	0	25,221,348
40	317 Oil engine pumping equipment	320,682	922	1,795	0	319,809
41	318 Hydraulic pumping equipment	0	0	0	0	0
42	319 Other power pumping equipment	14,855	0	0	0	14,855
43	320 Purification system	99,147,364	9,185,442	1,311,743	0	107,021,063
44	321 Laboratory equipment	1,774,997	269,613	29,312	0	2,015,298
45	322 Mains and accessories	330,909,706	43,102,098	491,515	0	373,520,289
46	323 Services	77,396,760	10,976,493	329,444	0	88,043,809
47	324 Meters	34,164,070	3,781,384	489,273	0	37,456,181
48	325 Fire hydrants	13,804,212	1,263,219	46,201	0	15,021,230
49	326 Other fire protection plant	0	0	0	0	0
50	327 Fountains and basins	0	0	0	0	0
51	328 Office furniture and equipment	12,365,096	1,074,728	78,707	0	13,381,117
52	329 Transportation equipment	98,446	120,439	259	0	218,626
53	330 Stores equipment	222,389	0	1,104	0	221,285
54	331 Shop equipment	0	0	0	0	0
55	332 Tools and work equipment	4,033,670	354,179	42,289	0	4,345,560
56	333 Communication equipment	847,820	617,302	21,801	0	1,443,321
57	334 Miscellaneous equipment	2,527,807	247,920	27,058	0	2,748,669
58	335 Other tangible property	0	0	0	0	0
59	Total Tangible Plant	718,453,921	85,030,403	4,076,888	0	799,407,435
60	Total Water Plant in Service	718,975,362	86,719,890	4,076,888	0	801,618,363

B



# Pennsylvania-American Water Company

800 West Hershey Park Drive • P.O. Box 888 • Hershey, PA 17033-0888  
(717) 533-5000

March 22, 1996

**HAND DELIVERED**

John Alford, Secretary  
Pennsylvania Public Utility Commission  
North Office Building, Room B-18  
P.O. Box 3265  
Harrisburg, PA 17120

**RECEIVED**

JUN 25 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Petition of Pennsylvania-American Water Company  
For Approval To Implement A Tariff Supplement  
Establishing A Distribution System Improvement Charge

Dear Secretary Alford:

Pennsylvania-American Water Company filed the above mentioned petition on March 15, 1996. Exhibit A contained one page of the Company's tariff concerning the Distribution System Improvement Charge. After discussion with Commission personnel, it was recommended that an entire tariff supplement accompany the petition. Enclosed please find Exhibit A (Revised) to be included in the Company's original petition.

If you have any questions, please let me know.

Sincerely,

Robert L. Robowski  
Director of Rates & Revenue

RLR/ptd

Attachments

cc: Certificate of Service



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RE: PETITION OF PENNSYLVANIA-AMERICAN :  
WATER COMPANY FOR APPROVAL TO :  
IMPLEMENT A TARIFF SUPPLEMENT : Docket No. \_\_\_\_\_  
ESTABLISHING A DISTRIBUTION :  
SYSTEM IMPROVEMENT CHARGE :

CERTIFICATE OF SERVICE

I hereby certify that I have, this 22nd day of March, 1996, served a true and correct copy of the aforementioned Exhibit A ( Revised) in the manner indicated below:


BY HAND DELIVERY

Irwin A. Popowsky, Esq.  
Consumer Advocate  
Dianne E. Dusman, Esq.  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Charles F. Hoffman, Esq.  
Wayne T. Scott, Esq.  
Pennsylvania Public Utility Commission  
Pitnick Building  
901 North 7th Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Bernard A. Ryan, Esq.  
Small Business Advocate  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17120

DATED: March 22, 1996

  
Robert L. Robowski  
Director of Rates  
and Revenues

**DRAFT**

Supplement No.       to  
Tariff Water-PA P.U.C. No. 4

PENNSYLVANIA-AMERICAN WATER COMPANY  
(Hereinafter referred to as the "Company")

**RATES AND RULES**

GOVERNING THE DISTRIBUTION AND SALE OF WATER  
IN CERTAIN MUNICIPALITIES AND TERRITORIES LOCATED  
THERETO IN ALLEGHENY, ARMSTRONG, BEAVER, BUCKS, BUTLER,  
CENTRE, CLARION, CLEARFIELD, COLUMBIA, CUMBERLAND,  
DAUPHIN, FAYETTE, INDIANA, JEFFERSON, LACKAWANNA,  
LAWRENCE, LEBANON, LUZERNE, MCKEAN, MONROE, MONTGOMERY,  
NORTHAMPTON, NORTHUMBERLAND, PIKE, SCHUYLKILL, SUSQUEHANNA,  
UNION, WASHINGTON, WARREN, WAYNE, AND YORK COUNTIES.

ALL IN THE COMMONWEALTH OF PENNSYLVANIA

This Tariff establishes a Distribution System Improvement Charge in  
accordance with Section 1307(a) of the Pennsylvania Public Utility Code.

Issued:

Effective:

BY: R. M. Ross, President  
Pennsylvania-American Water Company  
800 West Hersheypark Drive  
Hershey, PA 17033

PENNSYLVANIA-AMERICAN WATER COMPANY

LIST OF CHANGES

This Tariff establishes a Distribution System Improvement Charge.

(I) Indicates Increase, (D) Indicates Decrease, (C) Indicates Change

Issued:

Effective:

**PENNSYLVANIA-AMERICAN WATER COMPANY**

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DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

(C)

EXCEPT PUBLIC FIRE PROTECTION

In addition to the net charges provided for in this Tariff, a charge of 0.00% will apply to all service rendered under Rate Zone 1, through Rate Zone 5 and Rate Zone S.

The above charge will be recomputed, using the elements prescribed by the Commission in its order dated \_\_\_\_\_ at Docket No. \_\_\_\_\_.

The Company will submit, with such recomputations a Tariff or Supplement to reflect such recomputed charge, the effective date of which shall be 10 days after filing.

Issued:

Effective:

PENNSYLVANIA-AMERICAN WATER COMPANY

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

(C)

1. General Description

Purpose: To recover the fixed costs (depreciation and pre-tax return) of certain non-revenue producing, non-expense reducing distribution system improvement projects completed and placed in service between base rate cases and to provide the Company the resources to accelerate the replacement of aging water distribution infrastructure, comply with evolving regulatory requirements imposed by the Safe Drinking Water Act, develop and implement solutions to regional water supply problems and participate in the costs of extending facilities to serve new customers.

Effective: The DSIC will become effective for bills rendered on and after July 1, 1996.

Calculation: The initial charge will be calculated to recover the fixed costs of eligible plant additions that have not previously been reflected in the Company's rate base and will have been placed in service between August 1, 1995 and May 31, 1996. Thereafter, the DSIC will be updated on a quarterly basis to reflect eligible plant additions placed in service during the three-month periods ending one month prior to the effective date of each DSIC update. Thus, changes in the DSIC rate will occur as follows:

<u>Effective Date of Change</u>	<u>Date To Which DSIC-Eligible Plant Additions Reflected</u>
July 1	May 31
October 1	August 31
January 1	November 30
April 1	February 28/29

The fixed costs of distribution system improvement projects will consist of depreciation and pre-tax return. The depreciation expense will be calculated by applying to the original cost of DSIC-eligible property the annual accrual rates employed in the Company's last base rate case for the plant accounts in which each retirement unit of DSIC-eligible property is recorded. The pre-tax return will be calculated using the state and federal income tax rates and authorized return rates approved by the Commission's final order in PAWC's most recent fully litigated rate case unless, on a pro forma basis, PAWC's capital costs were less than that amount. The pro forma determination will be made using the Company's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day of the three-month period ending one month prior to the effective date of the DSIC. The cost of equity will be the equity return rate approved in the Company's last fully-litigated base rate proceeding for which a final order was entered not more than two years prior to the effective date of the DSIC. If more than two years shall have elapsed between the entry of such a final order and the effective date of the DSIC, then the equity return rate used in the calculation will be the equity return rate approved by the Commission in a final order entered at the conclusion of the most recent fully litigated proceeding for an investor-owned water utility having annual revenues in excess of \$10.0 million.

Issued:

Effective:

PENNSYLVANIA-AMERICAN WATER COMPANY

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

(C)

The fixed costs of Company-funded main extensions to be recovered under the DSIC will consist solely of a pre-tax preferred stock and equity return. Thus, the Company will not seek to recover through the DSIC either depreciation or a return on the debt component of its investment in Company-funded main extensions.

The charge will be expressed as a percentage and will be applied to the total amount billed to each customer under the Company's otherwise applicable rates and charges, excluding amounts billed for public fire protection service. To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC will be divided by the Company's projected revenue for sales of water for the quarterly period during which the charge will be collected, exclusive of revenues from public fire protection service.

2. Formula

$$\frac{[(DSI \times PTRR) + Dep] + (CFME \times PTRR^{\sim}) + e}{PQR}$$

Where:

- DSI = the original cost of eligible distribution system improvements projects.
- PTRR = The pre-tax return rate applicable to eligible distribution system improvements projects.
- Dep = Depreciation expense related to eligible distribution system improvement projects.
- CFME = The Company's investment in Company-funded main extensions.
- PTRR<sup>~</sup> = The pre-tax return rate applicable to Company-funded main extensions.
- e = The amount calculated under the annual reconciliation feature as described in Section 3, below.
- PQR = Projected quarterly revenue

Supporting Data for each quarterly update will be filed with the Commission and served upon the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate at least ten (10) days prior to the effective date of the update.

Issued:

Effective:

PENNSYLVANIA-AMERICAN WATER COMPANY

3.           Safeguards

Cap: The DSIC will be capped at 5% of the amount billed to customers under otherwise applicable rates and charges.

Audit/Reconciliation:     The DSIC will be subject to audit at intervals determined by the Commission. It will also be subject to annual reconciliation based on a reconciliation period consisting of the 12 months ending March 31 of each year. The revenue received under the DSIC for the reconciliation period will be compared to the Company's eligible costs for that period. The difference between revenue and costs will be recouped or refunded, as appropriate, in accordance with Section 1307(e), over a one year period commencing on July 1. Overcollections will be refunded with interest.

New Base Rates:           The charge will be reset at zero as of the effective date of new base rates that provide for prospective recovery of the annual costs that had theretofore been recovered under the DSIC. Thereafter, only the fixed costs of new eligible plant additions would be reflected in the quarterly updates of the DSIC.

Earning Reports:         The charge will also be reset at zero if, in any quarter, data filed with the Commission in the Company's then most recent Annual or Quarterly Earnings Reports show that the Company will earn a rate of return that would exceed the rate of return used to calculate its fixed costs under the DSIC.

C

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

JUN 25 2012

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

Complainant, )

v. )

PENNSYLVANIA AMERICAN WATER )  
COMPANY, )

Respondent. )

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Docket No. C-2011-2226096

DIRECT TESTIMONY OF  
FRANK W. RADIGAN  
ON BEHALF OF COMPLAINANT  
STATEMENT NO.1

1 **INTRODUCTION**

2 **Q. WOULD YOU PLEASE STATE YOUR FULL NAME, OCCUPATION AND**  
3 **BUSINESS ADDRESS.**

4 A. My name is Frank W. Radigan. I am a principal in the Hudson River Energy Group, a  
5 consulting firm providing services regarding utility industries and specializing in the  
6 fields of rates, planning and utility economics. My office address is 237 Schoolhouse  
7 Road, Albany, New York 12203.

8  
9 **Q. WOULD YOU PLEASE SUMMARIZE YOUR EDUCATION AND BUSINESS**  
10 **EXPERIENCE?**

11 A. I received a Bachelor of Science degree in Chemical Engineering from Clarkson College  
12 of Technology in Potsdam, New York (now Clarkson University) in 1981. I received a  
13 Certificate in Regulatory Economics from the State University of New York at Albany in  
14 1990. From 1981 through February 1997, I served on the Staff of the Department of  
15 Public Service, the staff arm of the New York State Public Service Commission. I served  
16 in the Rates and System Planning sections of the Power Division and in the Rates Section  
17 of the Energy and Water Division. My responsibilities included resource planning and the  
18 analysis of rates, depreciation rates and tariffs of electric, gas, water and steam utilities in  
19 the State and encompassed rate design and performing embedded and marginal cost of  
20 service studies, as well as depreciation studies.

21  
22 *Before leaving the Commission, I was responsible for directing all engineering staff*  
23 *during major proceedings, including those relating to rates, integrated resource planning*

1 and environmental impact studies. In February 1997, I left the Commission and joined  
2 the firm of Louis Berger & Associates as a Senior Energy Consultant. In December 1998,  
3 I formed my own company.  
4

5 In my 30 years of experience, I have testified as an expert witness in utility rate  
6 proceedings on more than 100 occasions before various utility regulatory bodies,  
7 including the Arizona Corporation Commission, the Connecticut Public Utilities  
8 Regulatory Authority, the Delaware Public Service Commission, the Illinois Commerce  
9 Commission, the Maryland Public Service Commission, the Massachusetts Department of  
10 Telecommunications and Energy, the Michigan Public Service Commission, the New  
11 York State Public Service Commission, the New York State Department of Taxation and  
12 Finance, the Nevada Public Utilities Commission, the North Carolina Utilities  
13 Commission, the Public Service Commission of the District of Columbia, the Public  
14 Utilities Commission of Ohio, the Rhode Island Public Utilities Commission, the  
15 Vermont Public Service Board and the Federal Energy Regulatory Commission.  
16

17 I currently advise a variety of regulatory commissions, consumer advocates, municipal  
18 utilities and industrial customers concerning rate matters, including wholesale electricity  
19 rates and electric transmission rates. I am frequently called upon to perform analysis of  
20 rate adequacy, rate unbundling, cost-of-service studies, rate design, rate structure and  
21 multi-year rate agreements. A summary of my qualifications and experience is included  
22 as Pettko Exhibit B.  
23

1 Q: **DO YOU BELONG TO ANY PROFESSIONAL ORGANIZATIONS?**

2 A: I am a member of the Municipal Electric Utility Association, Northeast Public Power  
3 Association and New York State ISO.

4

5 Q: **HAVE YOU WRITTEN ON ANY AREAS EFFECTING WATER UTILITIES?**

6 A: I recently authored a paper that discusses the issues and problems associated with  
7 existing and potential new small water systems and proposes a menu of regulatory,  
8 legislative, local government and other stakeholder options and tools to begin to address  
9 those problems. The paper presents, at a practical level and with a recognition of the  
10 commission resources available, a series of processes, techniques and tools for state  
11 regulatory commissions directed toward the types of problems, issues, and special needs  
12 of small water systems, which go well beyond setting rates and protecting ratepayers.

13

14 Q: **WHAT IS THE SCOPE OF YOUR TESTIMONY IN THIS PROCEEDING?**

15 A: In this preceding the Complainant, C. Leslie Pettko, is challenging how Pennsylvania  
16 American Water Company ("Penn American") is charging the Distribution System  
17 Improvement Charge ("DSIC") and the State Tax Adjustment Surcharge ("STAS") to its  
18 customers. Specifically, Mr. Pettko, whose water billing cycle runs from the middle of  
19 each month, contends that Penn American failed to pro-rate increases in the DSIC and  
20 STAS to the portion of the bill following the effective date of the increase—the effective  
21 date which was approved by the Commission and represented to customers. Mr. Pettko  
22 further contends that by failing to pro-rate he is being overcharged and is overpaying on

1 his water bill. I have been asked to review the means by which Penn American is billing  
2 Mr. Pettko and render my opinion on the reasonableness of its actions.

3

4 **Q: COULD YOU PLEASE SUMMARIZE YOUR FINDINGS?**

5 A: Yes. Mr. Pettko is correct that he is being overcharged and is subsidizing other  
6 customers. The failure to pro-rate constitutes charges in violation of the Tariff and PUC  
7 regulations and is unlawful, in that Penn American is collecting the increased rate for  
8 portions of Mr. Pettko's billing periods which occur before that increased rate is  
9 permitted.

10

11 **Q: COULD WE BEGIN WITH AN EXPLANATION OF WHAT THE**  
12 **PENNSYLVANIA DISTRIBUTION SYSTEM IMPROVEMENT CHARGE**  
13 **("DSIC") IS?**

14 A: Yes, infrastructure improvement charges are commonplace in the utilities industry. The  
15 DSIC at issue in this case is used for infrastructure improvements to water and sewer  
16 delivery systems and to fund the replacement of water distribution facilities. The Public  
17 Utilities Commission has authorized the water utilities to apply a DSIC to all customer  
18 bills based on usage, so as to spread the cost of infrastructure improvements among all  
19 customers. The total amount of annual revenue that can be collected by Penn American  
20 from the DSIC, as well as the appropriate DSIC rate to achieve that amount, is approved  
21 by the Commission based upon intricate accounting calculations.

22

23

1 **Q: EXPLAIN HOW THE DSIC IS CALCULATED.**

2 A: Under the terms of the tariff, the total amount of the DSIC surcharge is derived from a  
3 formula which takes into account various factors, including: the original cost of eligible  
4 distribution system improvement projects net of accrued depreciation; the pre-tax return  
5 rate applicable; depreciation expenses; the amount calculated under an annual  
6 reconciliation and projected quarterly revenues.

7

8 The DSIC surcharge is, under the tariff, expressed as a percentage carried to two decimal  
9 places and applied to the applicable portions of each customer's water bill. The charge is  
10 usage based, meaning that it is not a set dollar amount that is charged to each customer.  
11 Rather, the DSIC surcharge is applied against each individual customer's water usage or  
12 service.

13

14 **Q: EXPLAIN HOW THE DSIC RATE CHANGES.**

15 A: The rate is updated quarterly based upon data from the prior three month period. Data to  
16 support a quarterly DSIC rate increase must be provided by Penn American and served  
17 on the Commission at least 10 days prior to any quarterly change. Under Section 2 of  
18 Penn American's tariff entitled "Computation of the DSIC" it states:

19

20

21

22

23

24

25

26

27

*... the DSIC will be updated on a quarterly basis to reflect eligible plant addition placed in service during the three-month periods ending one month prior to the effective date of each DSIC update. Thus, changes in the DSIC rate will occur as follows:*

Effective Date of Change:

*April 1*

*July 1*

1                    *October 1*  
2                    *January 1*  
3  
4

5                    Under the standard and accepted way that rates can appropriately be adjusted, the rate  
6                    change can only occur on the “effective date.” Under the tariff, those dates are the  
7                    specific quarterly dates identified.  
8

9                    **Q.    PLEASE EXPLAIN HOW THE DSIC IS APPLIED?**

10                    A.    The calculation of the rate and the application of that rate to individual customer’s usage  
11                    is very precise. Distribution improvement charges can only be increased as of a specific  
12                    date approved by the Commission. The Tariff governing Penn American’s billings  
13                    specifically states that increases in the DSIC charged to its customers have a definite  
14                    effective date. Specifically, the Tariff states that the DSIC is to be updated quarterly with  
15                    an “*Effective Date of Change*” set at April 1, July 1, October 1, and January 1. Penn  
16                    American specifically advertised DSIC rate increases in the bills that it sends to its  
17                    customers. For example, the bill immediately following the July 1, 2009 DSIC increase  
18                    stated: “*Effective July 1, 2009*, the Distribution System Improvement Charge (DSIC)  
19                    increased...” Penn American could have used language indicating that the increased  
20                    DSIC charge applied to all dates represented in the billing cycle (i.e., on the entire billing  
21                    cycle), it did not do so because it was not so authorized by its Tariff. In fact, the notice  
22                    language regarding the increase is consistent with the Tariff language and the concept of  
23                    a usage-based charge. Penn American just fails to perform its DSIC calculation  
24                    consistent with its Tariff.

1 **Q. IS THERE A MECHANISM IN PLACE TO ENSURE THAT THE UTILITY**  
2 **ONLY COLLECTS THE MONEY ALLOWED FOR BY THE COMMISSION?**

3 A. Yes, there is an annual reconciliation of allowed versus collected monies under the DSIC.  
4 The reconciliation only reviews whether the utility over or under collected the DSIC in  
5 the aggregate. It does not review whether the utility over-charged individual customers.  
6 Also, in the event that the utility is found to have over-collected the approved  
7 infrastructure improvement revenue from the DSIC, the amount of the over-collection is  
8 not refunded to individual customers. Rather, the amount of the over-collection is  
9 factored into the DSIC rate calculation through an adjustment to the "E" factor of the  
10 DSIC formula set forth in the tariff.

11

12 **Q: PLEASE EXPLAIN HOW THE UTILITY BILLS ITS CUSTOMERS.**

13 A: Penn American advertises that it has in excess of two million customers, but it has only a  
14 limited number of personnel who go out and read the meters and record the customer's  
15 consumption. These meter readers work every day reading meters. Thus, if the meter  
16 reader is working on the first of the month, the usage recorded is for consumption of all  
17 30 or 31 days of the previous month. If the meter reader is reading meters on the 15<sup>th</sup> of  
18 the month, then the usage recorded is for half of the month in question and one half of the  
19 previous month. Finally, if the meter reader is reading meters on the 30<sup>th</sup> of the month,  
20 then all usage recorded is for usage in the current month. By reading meters once a  
21 month, the utility has a mix of meter cycles where usage is a mix of the current month  
22 and previous months. The utility takes all the meter readings and bills customers its  
23 effective tariff rate and this is the heart of the problem.

1

2 **Q. PLEASE EXPLAIN.**

3 A. The plain language of both the governing Tariff and Penn American's billing statements  
4 demonstrate that there is a specific effective date of the rate increases. Penn American's  
5 billing practices, however, applied the increased rate even to those portions of a  
6 customer's bill which occurred before the approved effective date. Depending on the  
7 billing cycle of the customer, it is possible that the majority (or nearly all) of the billing  
8 period occurred prior to effective date of increase. Penn American nevertheless charges  
9 the customer the increased rate for the entire period.

10

11 Under Penn American's position, the *effective date of change* set forth in the governing  
12 Tariff is rendered meaningless. In actual practice, Penn American begins charging the  
13 increased amount for some of its customers nearly a month *before* the effective date  
14 which was approved by the Commission. By disregarding the effective date, Penn  
15 American's billing practices create an inherently inequitable system whereby some  
16 customers will *always* bear the increased rates more than others.

17

18 **Q. WHAT IS PENN AMERICAN'S REASON FOR DOING THIS?**

19 A. Penn-American claims that it is permitted to charge the increased rate for portions of a  
20 customer's bill which occur prior to the effective date because they assert that the DSIC  
21 is permitted on a so-called "bills rendered" rather than "services rendered" basis. Penn  
22 American asserts that, under this theory, they are allowed to retroactively apply a DSIC

1 rate increase to an entire billing period even though the new rate is not effective until a  
2 specific date, so long as the bill is sent out following the effective date.

3  
4 **Q: DO YOU AGREE?**

5 A: No. There is no support for this reasoning and it is a twisted interpretation of a  
6 fundamental principle of how utility rates are charged. First, as noted, the plain language  
7 of the tariff means what it says. "Effective date" in the context of utility rate adjustments  
8 means that any rate adjustment is only effective as of that particular date. Penn  
9 American's interpretation would emasculate the meaning of "effective date" set forth in  
10 the computation of the DSIC language in the tariff. The common practice applied to all  
11 usage based charges, in addition to the plain language of both the governing tariff and  
12 Penn American's billing statements, demonstrates that there is a specific effective date of  
13 the rate increases. This would be expected given that it is a usage based charge. Penn  
14 American, however, applies the increased rate even to those portions of a customer's bill  
15 which predate the approved effective date.

16  
17 Penn American's argument ignores that the DSIC charge is calculated by multiplying the  
18 authorized DSIC surcharge rate *by the amount of water used by each customer*. This  
19 demonstrates that the DSIC is a usage-based charge that is based on the type of service  
20 rendered to its customers, i.e., water supply and delivery. Moreover, it is usage-based to  
21 ensure that customers pay their proportional share of the infrastructure charge based on  
22 how much they "participate" (i.e., use water) in the use of the infrastructure. This is the

1 typical approach that utilities are to charge for an infrastructure charge in my  
2 experience.

3  
4 Penn American's position—that it is permitted to bill customers increased DSIC rates for  
5 their entire billing cycle, including those portions of the cycle which occurred prior to the  
6 effective date of the rate increase—creates a system where some customers will *always*  
7 bear the burden of the rate increase to a greater degree than other customers. This is  
8 contrary to standard rate making practice. Additionally, such an application violates  
9 Section 1304 of the Public Utility Code states, in relevant part:

10 *No public utility shall, as to rates, make or grant any unreasonable*  
11 *preference or advantage to any person, corporation, or municipal*  
12 *corporation, or subject any person, corporation, or municipal corporation*  
13 *to any unreasonable prejudice or disadvantage. 66 Pa.C.S.A. §1304.*  
14

15 Penn American's billing practices violate the provisions of this section in that they accrue  
16 to the disadvantage of some customers over others—determined only on the basis of the  
17 running dates of the customer's billing cycle. There is a presumption that in interpreting  
18 a tariff it should be read in favor of the customer, not the utility. In addition, tariffs are  
19 not to be read so as to be contrary to legal principles and so as to not have a  
20 discriminatory result. In this case, the only interpretation of Penn American's tariff that  
21 favors the customer, that is consistent with standard rate calculation practice, and that  
22 does not result in discriminatory rates is that the DSIC must be prorated. Conversely,  
23 reading the tariff in the manner suggested by Penn American results in discriminatory  
24 rates being charged to customers based upon the random billing cycles. That is why a  
25 usage based fee has a very specific effective date so all customers are billed consistently.

1 The PUC could not have intended such a clearly improper and inequitable practice.  
2 Indeed, all other states that I am familiar with that have infrastructure improvement  
3 charges that are usage based, like the DSIC, prorate the charge on customer bills.  
4

5 **Q. CAN YOU SHOW HOW MR. PETTKO IS HARMED BY PENN-AMERICAN'S**  
6 **BILLING PRACTICE?**

7 A. Yes. By way of illustration, Mr. Pettko's billing cycle for June of 2009 ran from June 18  
8 to July 16, 2009. Therefore, even though the effective date of the DSIC increase was  
9 July 1, Mr. Pettko, and all others with his billing cycle, was over billed and forced to pay  
10 the increased rate for the portion of his bill encompassing twelve days in June—more  
11 than one-third of the month. For customers who have billing cycles which begin and end  
12 in the first week of the month, those customers were forced to pay the increased rate for  
13 nearly an entire month prior to its effective date. Contrast this with the customer whose  
14 billing cycle runs from the first of the month or immediately before, who will pay the  
15 increased rate for only days, if at all, before the effective date. Because of the regularity  
16 of billing periods, the same customers will always end up paying proportionally more  
17 each time the DSIC rate is increased—based only on when their billing period falls in the  
18 month. This is inherently inequitable and is in violation of Section 1304 of the Public  
19 Utility Code.

20  
21 The error of Penn American's position is also demonstrated by the fact that because Penn  
22 American does not pro-rate upon the increase of the DSIC, it ends up collecting *more*  
23 than twelve months of the DSIC fee because it is charging certain customers the

1 increased fee prior to the effective date up to four times per year. This “over-collection”  
2 may be accounted for in the annual reconciliation, but it is never returned to the  
3 customers who paid it because the reconciliation process does not involve the actual  
4 payment of refunds to those who paid the increased fee prior to the authorized effective  
5 date.

6  
7 **Q: DO YOU HAVE AN OPINION WITH RESPECT TO HOW PENN AMERICAN**  
8 **APPLIES THE STAS CHARGE TO CUSTOMER BILLS?**

9 A: From time to time, Penn American has been (and is) authorized to charge a State Tax  
10 Adjustment Surcharge (“STAS”) in accordance with its approved Tariff. The Penn  
11 American tariff states on page 12:

12 *In addition to the net charges provided for in this tariff, a surcharge of*  
13 *[percentage] will apply to all services rendered.*

14 For the same reasons previously discussed with respect to the DSIC, the application of a  
15 usage based charge to individual customers can only be effective as of the specific  
16 effective date that was authorized. As with the DSIC, the STAS must be pro-rated based  
17 upon its very nature.

18  
19 Moreover, the very argument proffered by Penn American to support its practices under  
20 the DSIC—that increased rates may be collected on the entire billing period under Penn  
21 American’s interpretation of a “bills rendered” rather than “services rendered” system—  
22 undermines Penn American’s position as to the STAS rate increases. Specifically, even  
23 taking for granted Penn American’s strained interpretation of the respective terms, the

1 Tariff documents specifically state that the STAS is to be applied in a “services rendered”  
2 manner. Indeed, from a review of Penn American’s legal pleadings, it admits that a  
3 charge that is billed on “services rendered” must be pro-rated (*See* Penn American’s  
4 Application for Reargument before the Pennsylvania Commonwealth Court, dated  
5 January 27, 2012).

6  
7 Effective January 1, 2010, Penn American was authorized under its Tariff to charge a  
8 STAS of .45% (an increase from 0.0%) on services rendered effective January 1, 2010.

9 Penn American failed to pro-rate the STAS charge of .45% to reflect the effective date of  
10 January 1, 2010 for those customers whose billing cycles straddled the effective date of  
11 January 1, 2010. Penn American’s failure to pro-rate, as it admits it must, the STAS for  
12 that month is a violation of its Tariff regarding the STAS.

13  
14 **Q: ARE ALL OF THE OPINIONS THAT YOU HAVE TESTIFIED TO IN THIS**  
15 **PROCEEDING BEEN OFFERED WITHIN A REASONABLE DEGREE OF**  
16 **PROFESSIONAL CERTAINTY?**

17 **A:** Yes.

18  
19 **Q: DOES THIS CONCLUDE YOUR INITIAL TESTIMONY?**

20 **A:** Yes.

21  
22

D

\*\* DUPLICATE BILL \*\*

Date Printed 12/12/11  
Time Printed 12:16 pm  
Printed By LONTZJA

Pennsylvania American Water  
PO Box 371412  
Pittsburgh, Pa. 15250-7412  
For Service To: 118 Berkshire Dr

Account Number: 24-1559799-2  
Amount Due \$43.34  
Due Date May 17, 2010

ELECTRONIC

C LESLIE PETTKO  
118 Berkshire Dr  
Canonsburg PA 15317-2774

Pennsylvania American Water  
PO Box 371412  
Pittsburgh, Pa. 15250-7412

Customer Account Information  
Service To: C LESLIE PETTKO  
118 Berkshire Dr  
Account #: 24-1559799-2  
Premise #: 24-0684094

Billing Summary	
-----Prior Balance-----	
Prior Water Balance	28.91
Payments prior to Apr 26, 201	-28.91
Total prior balance, Apr 26,	
-----Current Water Charges-----	
Service Charge	13.00
Water Volume (\$.007890 x 3,80	29.98
STAS PAWC Water 0.45%	.19
DSI - PAWC Charge 0.40%	.17
Total water charges, Apr 26,	43.34
-----AMOUNT DUE -----	43.34

Billing Period & Meter Information  
Billing Date: Apr 26, 2010  
Billing Period: Mar 19 to Apr 20  
Next reading: Dec 22, 2011  
Rate Type: Residential

Meter reads in current period:  
Meter Number N077765471  
Present-actual 427100  
Last-actual 423300  
Gallons used 3800

\* Approximately 4.57 percent, or \$1.98, of State taxes are included in your current bill.  
\* Effective January 1, 2010, the State Tax Adjustment Surcharge (STAS) increased from 0% to 0.45%.  
\* Effective April 1, 2010, the Distribution System Improvement Charge (DSIC) increased from 0% to 0.4%.  
The DSIC funds the replacement of water distribution facilities.  
\* Follow us on Twitter for real-time updates on Pennsylvania American Water news, activities and water-related alerts in your area at [Twitter.com/paamwater](http://Twitter.com/paamwater).

RECEIVED

JUN 25 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**E**

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## Pennsylvania-American Water Company

800 West Hershey Park Drive • P.O. Box 888 • Hershey, PA 17033-0888  
(717) 533-5000 • FAX (717) 531-3213

Velma A. Redmond  
Corporate Counsel and Secretary

October 24, 1996

### HAND-DELIVERED

Mr. John G. Alford, Secretary  
Pennsylvania Public Utility Commission  
New Filing Section, Room B-18  
North Office Building  
PO Box  
Harrisburg, PA 17120

# RECEIVED

JUN 25 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Pennsylvania-American Water Company  
Supplement No. 22 to Tariff Water-PA P.U.C. No. 4

Dear Secretary Alford:

Attached are three (3) copies of Supplement No. 22 to Tariff Water-PA P.U.C. No. 4 for Pennsylvania-American Water Company, which bears the issue date October 24, 1996 and the effective date January 1, 1997. The above-referenced tariff supplement is being filed in accordance with the Order adopted by the Pennsylvania Public Utility Commission on August 22, 1996 at Docket No. P-00961031.

Also enclosed, are responses to the filing requirements at 52 Pa. Code §53.52, detailing the reasons for the tariff supplement and supporting information.

Sincerely,

Velma A. Redmond

eth

Enclosures



PENNSYLVANIA-AMERICAN WATER COMPANY  
(Hereinafter referred to as the "Company")

RATES AND RULES

GOVERNING THE DISTRIBUTION AND SALE OF WATER  
IN CERTAIN MUNICIPALITIES AND TERRITORIES LOCATED  
THEREIN IN ALLEGHENY, ARMSTRONG, BEAVER, BUCKS, BUTLER,  
CENTRE, CLARION, CLEARFIELD, COLUMBIA, CUMBERLAND,  
DAUPHIN, FAYETTE, INDIANA, JEFFERSON, LACKAWANNA,  
LAWRENCE, LEBANON, LUZERNE, MCKEAN, MONROE, MONTGOMERY,  
NORTHAMPTON, NORTHUMBERLAND, PIKE, SCHUYLKILL, SUSQUEHANNA,  
UNION, WASHINGTON, WARREN, WAYNE, AND YORK COUNTIES.

ALL IN THE COMMONWEALTH OF PENNSYLVANIA

This Tariff establishes a Distribution System Improvement Charge in  
accordance with Section 1307 (a) of the Pennsylvania Public Utility Code and  
Order docketed at P-00961031 entered on August 26, 1996

Issued: October 24, 1996

Effective: January 1, 1997

R. M. Ross, President  
Pennsylvania-American Water Company  
800 West Hersheypark Drive  
Hershey, PA 17033

LIST OF CHANGES

This tariff supplement establishes a Distribution System Improvement Charge of .37% in accordance with Commission Order docketed at P-00961031 entered on August 26, 1996.

Indicates Increase, (D) Indicates Decrease, (C) Indicates Change

Issued: October 24, 1996

Effective: January 1, 1997

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**DISTRIBUTION SYSTEM IMPROVEMENT CHARGE**

**(C)**

**EXCEPT PUBLIC FIRE PROTECTION**

In addition to the net charges provided for in this Tariff, a charge of .37 % will apply to all service rendered under Rate Zone 1 through Rate Zone 5 and Rate Zone S.

The above charge will be recomputed quarterly, using the elements prescribed by the Commission in its Order dated August 26, 1996 at Docket No. P-00961031.

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

(C)

1. General Description

**Purpose:** To recover the fixed costs (depreciation and pre-tax return) of certain non-revenue producing, non-expense reducing distribution system improvement projects completed and placed in service and to be recorded in the individual accounts, as noted below, between base rate case and to provide the Company with the resources to accelerate the replacement of aging water distribution infrastructure, to comply with evolving regulatory requirements imposed by the Safe Drinking Water Act and to develop and implement solutions to regional water supply problems. The costs of extending facilities to serve new customers are not recoverable through the DSIC. Also, Company projects receiving PENNVEST funding are not DSIC-eligible property.

**Eligible Property:** The DSIC-eligible property will consist of the following:

- services (account 323), meters (account 324) and hydrants (account 325) installed as in-kind replacements for customers;
- mains and valves (account 322) installed as replacements for existing facilities that have worn out, are in deteriorated condition, or upgraded to meet Chapter 65 regulations of Title 52;
- main extensions (account 322) installed to eliminate dead ends and to implement solutions to regional water supply problems that have been documented as presenting significant health and safety concern for customers currently receiving service from the Company or the acquired Company;
- main cleaning and relining (account 322) projects and;
- unreimbursed funds related to capital projects to relocate Company facilities due to highway relocations.

**Effective Date:** The DSIC will become effective for bills rendered on and after January 1, 1997.

2. Computation of the DSIC

**Calculation:** The initial charge, effective January 1, 1997, shall be calculated to recover the fixed costs of eligible plant additions that have not previously been reflected in the Company's rate base and will have been placed in service between September 1, 1996, and November 30, 1996. Thereafter, the DSIC will be updated on a quarterly basis to reflect eligible plant addition placed in service during the three-month periods ending one month prior to the effective date of each DSIC update. Thus, changes in the DSIC rate will occur as follows:

<u>Effective Date of Change</u>	<u>Date to which DSIC-Eligible Plant Additions Reflected</u>
April 1	February 28
July 1	May 31
October 1	August 31
January 1	November 30

PENNSYLVANIA-AMERICAN WATER COMPANY

The fixed costs of eligible distribution system improvements projects will consist of depreciation and pre-tax return, calculated as follows:

**Depreciation:** The depreciation expense will be calculated by applying to the original cost of DSIC-eligible property the annual accrual rates employed in the Company's last base rate case for the plant accounts in which each retirement unit of DSIC-eligible property is recorded.

**Pre-tax return:** The pre-tax return will be calculated using the state and federal income tax rates, the Company's actual capital structure and actual cost rates for long-term debt and preferred stock as of the 1st day for the three-month period ending one month prior to the effective date of the DSIC and subsequent updates. The cost of equity will be the equity return rate approved in the Company's last fully litigated base rate proceeding for which a final order was entered not more than two years prior to the effective date of the DSIC. If more than two years shall have elapsed between the entry of such a final order and the effective date of the DSIC, then the equity return rate used in the calculation will be the equity return rate calculated by the Commission Staff in the latest Quarterly Report on the Earnings of Jurisdictional Utilities released by the Commission.

**DSIC Surcharge Amount:** The charge will be expressed as a percentage carried to two decimal places and will be applied to the total amount billed to each customer under the Company's otherwise applicable rates and charges, excluding amounts billed for public fire protection service and the State Tax Adjustment charge (STAS). To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC will be divided by the Company's projected revenue for sales of water for the quarterly period during which the charge will be collected, exclusive of revenues from public fire protection service and the STAS.

**Formula:** The formula for calculation of the DSIC surcharge is as follows:

$$DSIC = \frac{(DSI \times PTRR) + Dep + e}{PQR}$$

Where:

- DSI = the original cost of eligible distribution system improvement projects.
- PTRR = the pre-tax return rate applicable to eligible distribution system improvement projects.
- Dep = Depreciation expense related to eligible distribution system improvement projects.
- e = the amount calculated under the annual reconciliation feature as described below.
- PQR = Projected quarterly revenues including any revenue from acquired companies that are now being charged the rates of the acquiring company.

**Quarterly Updates:** Supporting data for each quarterly update will be filed with the Commission and served upon the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate at least ten (10) days prior to the effective date of the update.

### 3. Safeguards

**Cap:** The DSIC will be capped at 5% of the amount billed to customers under otherwise applicable rates and charges.

**Audit/Reconciliation:** The DSIC will be subject to audit at intervals determined by the Commission. It will also be subject to annual reconciliation based on a reconciliation period consisting of the twelve months ending December 31 of each year. The revenue received under the DSIC for the reconciliation period will be compared to the Company's eligible costs for that period. The difference between revenue and costs will be recouped or refunded, as appropriate, in accordance with Section 1307 (e), over a one year period commencing on April 1 of each year. If DSIC revenues exceed DSIC-eligible costs, such overcollections will be refunded with interest. Interest on the overcollections will be calculated at the residential mortgage lending specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law (41 P.S. sec. 101, et seq.) and will be refunded in the same manner as an overcollection.

**New Base Rates:** The charge will be reset at zero as of the effective date of new base rates that provide for prospective recovery of the annual costs that had theretofore been recovered under the DSIC. Thereafter, only the fixed costs of new eligible plant additions, that have not previously been reflected in the Company's rate base, would be reflected in the quarterly updates of the DSIC.

**Earning Reports:** The charge will also be reset at zero if, in any quarter, data filed with the Commission in the Company's then most recent Annual or Quarterly Earnings reports show that the Company will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC as described in the Pre-tax return section.

**Customer Notice:** Customers shall be notified of changes in the DSIC by including appropriate information on the first bill they receive following any change. An explanatory bill insert shall also be included with the first billing.

**DISTRIBUTION SYSTEM  
IMPROVEMENT CHARGE**

PENNSYLVANIA-AMERICAN WATER COMPANY  
DISTRIBUTION SYSTEM IMPROVEMENT CHARGE  
PAGE 1

DESCRIPTION		BURCHARGE EFFECTIVE 1/1/97
APPLICABLE NET ADDITIONS		\$4,473,385
LESS: ACCUMULATED DEPRECIATION		(18,693)
NET RATE BASE INCLUDED IN DISTRIBUTION SYSTEM IMPROVEMENT CALCULATIONS	(DSI)	4,454,692
ANNUAL REVENUE REQUIREMENT RATE		12.81%
QUARTERLY REVENUE REQUIREMENT RATE	(PTRR)	3.20%
QUARTERLY CAPITAL COST RECOVERY	(DSI X PTRR)	142,650
QUARTERLY DEPRECIATION EXPENSE	(DEP)	18,693
ANNUAL RECONCILIATION	(e)	0
TOTAL QUARTERLY DISTRIBUTION SYSTEM IMPROVEMENT CHARGE REVENUE REQUIREMENT		161,243
BASE RATE REVENUE TO BE COLLECTED DURING JANUARY THROUGH MARCH /1	(PQR)	43,049,430
DISTRIBUTION SYSTEM IMPROVEMENT CHARGE	(DSIC)	0.37%

TYPE	AMOUNT (\$000)	CAPITAL STRUCTURE	COST RATE	WEIGHTED AVERAGE COST RATE	REVENUE MULTIPLIER	REVENUE REQUIREMENT
DEBT	590,117	58.03%	7.98%	4.63%		4.63%
PREFERRED	18,061	1.78%	7.73%	0.14%	1.75476	0.25%
EQUITY	408,603	40.19%	11.26%	4.52%	1.75476	7.93%
TOTAL	\$1,016,781	100.00%		9.29%		12.81%

EQUITY COST RATE AND REVENUE MULTIPLIER BASED UPON PUC ORDER  
AT DOCKET NO. R-943231 ENTERED ON JULY 24, 1995  
DEBT AND PREFERRED COST RATES AND CAPITAL STRUCTURE BASED UPON  
INFORMATION AS OF SEPTEMBER 30, 1996

/1 ANTICIPATED REVENUES

JANUARY	\$14,802,603
FEBRUARY	14,236,163
MARCH	14,010,664
TOTAL	\$43,049,430

PENNSYLVANIA-AMERICAN WATER COMPANY  
DISTRIBUTION SYSTEM IMPROVEMENT CHARGE  
PAGE 2

BUDGET ITEM	STATE ACCOUNT	DESCRIPTION	ADDITION BREAKDOWN			TOTAL
			ACTUAL SEPTEMBER	PROJECTED OCTOBER	PROJECTED NOVEMBER	
1-A-5, BP 96-13	322	MAINS	\$582,817	1,329,284	2,044,561	\$3,956,662
1-B	323	SERVICES	\$284,652	90,250	341,100	\$716,002
1-C	324	METERS	\$38,011	45,925	74,051	\$157,987
1-A-5	325	HYDRANTS	\$78,530	15,061	5,300	\$98,891
		ADDITIONS	\$984,010	\$1,480,520	\$2,465,012	\$4,929,542
		RETIREMENTS	(\$61,602)	(148,052)	(246,501)	(\$456,155)
		NET ADDITIONS	\$922,408	1,332,468	2,218,511	\$4,473,387

PENNSYLVANIA-AMERICAN WATER COMPANY  
DISTRIBUTION SYSTEM IMPROVEMENT CHARGE  
PAGE 3

BUDGET ITEM	STATE ACCOUNT	DESCRIPTION	DEPRECIATION RATE	SEPTEMBER	OCTOBER	NOVEMBER	TOTAL
1-A-5, BP 96-13	322	MAINS	1.18%	\$1,719	3,921	6,031	\$11,671
1-B	323	SERVICES	1.89%	\$1,345	426	1,612	\$3,383
1-C	324	METERS	8.03%	\$763	922	1,487	\$3,172
1-A-5	325	HYDRANTS	1.89%	\$371	71	25	\$467
		APPLICABLE DEPRECIATION EXPENSE		4,198	5,340	9,155	\$18,693
		ACCUMULATED DEPRECIATION		4,198	9,538	18,693	

PENNSYLVANIA-AMERICAN WATER COMPANY

1-A-59 WORK ORDER	STATE ACCOUNT	WORK ORDER	SEPTEMBER
4" - VALVE	322	A-6536	\$1,361
18" - 12"	322	A-6541	208
4" - VALVE	322	A-6542	2,266
1,310' - 8"	322	A-6614.1	22,705
420' - 8"	322	A-6671	26,393
120' - 8"	322	A-6682	463
24' - 12"	322	A-6705.1	230
720' - 6"	322	A-6711	2,126
18' - 16"	322	A-6750	2,050
1,152' - 8"	322	A-6755.1	2,251
1,040' - 12"	322	A-6756.1	15,144
1,356' - 12"	322	A-6784.1	271
18' - 6"	322	A-6794	508
21' - 8"	322	A-6802	352
12" - GATE VALVE	322	A-6805	726
1,400' - 8"	322	A-6816.1	9,766
360' - 8"	322	A-6837	2,549
3 - 16" - GATE VALVE	322	A-6877	4,705
VARIOUS - 4"	322	B-504.22	1,371
VARIOUS - 4"	322	B-504.31	4,974
VARIOUS - 6"	322	B-506.22	714
VARIOUS - 8"	322	B-508.22	276
VARIOUS - 8"	322	B-508.31	5,029
VARIOUS - 8"	322	B-508.41	1,432
VARIOUS - 12"	322	B-512.22	915
6 - HYDRANT	325	A-6672	3,588
1 - HYDRANT	325	A-6689	513
1 - HYDRANT	325	A-6691	338
1 - HYDRANT	325	A-6697	513
1 - HYDRANT	325	A-6713	514
1 - HYDRANT	325	A-6748	637
1 - HYDRANT	325	A-6868	392
1 - HYDRANT	325	A-6869	392
1 - HYDRANT	325	A-6880	586
1 - HYDRANT	325	A-6884	2,096
INSTALL 4" GATE VALVE	322	A-4666	292
INSTALL 12" GATE VALVE	322	A-4729	5,283
INSTALL 4" GATE VALVE	322	A-4789	466
INSTALL 13' 8" DICL	322	A-4790	216
INSTALL 90' 12" DICL	322	A-4795	829
INSTALL 13' 6" DICL	322	A-4822	216
INSTALL 875' 8" DICL	322	A-4824	11,439
INSTALL 13' 6" DICL	322	A-4858	386
INSTALL TAPPING SLEEVE & VALVE	322	A-4909	2,233
INSTALL TAPPING SLEEVE & VALVE	322	A-4910	1,524
INSTALL TAPPING SLEEVE & VALVE	322	A-4911	1,104
1 - 6" VALVE	322	A-5509	11,129
18' - 10"	322	A-5592	7,414
920' - 8"	322	A-5643.1	13,025
650' - 8"	322	A-5666.1	31,764
640' - 8"	322	A-5667.1	18,341
625' - 8"	322	A-5692	6,096
720' - 8"	322	A-5693	8,378
18' - 6"	322	A-5711	6,870
1,350' - 8"	322	A-5730.1	874
1 - 6" VALVE	322	A-5741	597
345' - 8"	322	A-5790	21,632
275' - 8"	322	A-5802	15,526
595' - 8"	322	A-5814.1	20,228
650' - 8"	322	A-5823	23,739
1 - 8" BLOWOFF	322	A-5842	19,430
20' - 48"	322	A-5848	34,968
VARIOUS - 2"	322	B-602.11	19,281
VARIOUS - 2 1/2"	322	B-603.11	27,939
INSTALL 4" MAINS	322	B-504.61	921
INSTALL 4" MAINS	322	B-504.71	1,273
VARIOUS - 6"	322	B-506.11	34,671
INSTALL 6" MAINS	322	B-506.61	2,886
INSTALL 6" MAINS	322	B-506.71	698
VARIOUS - 8"	322	B-508.11	28,554
VARIOUS - 10"	322	B-510.11	764
INSTALL HYDRANT	325	A-4744	238
INSTALL HYDRANT	325	A-4906	1,453
INSTALL HYDRANT	325	A-4912	1,790
1 - HYDRANT	325	A-5643.2	468
2 - HYDRANTS	325	A-5814.2	4,169
1 - HYDRANT	325	A-5846	4,502
1 - HYDRANT	325	A-5850	1,777
TOTAL			613,713

PA-AMERICAN WATER COMPANY

BP 96-13			
WORK ORDER		SEPTEMBER	
DESCRIPTION	STATE ACCOUNT	WORK ORDER	
1,070' - 8"	322	A-6681	\$10,186
380' - 6"	322	A-6763	1,034
640' - 6"	322	A-6764	2,309
470' - 6"	322	A-6765	1,973
900' - 8"	322	A-6766	8,165
380' - 6"	322	A-6767	3,617
320' - 6"	322	A-6768.1	1,201
150' - 8"	322	A-6824	2,835
1,105' -	322	A-6846.1	913
1 - HYDRANT	325	A-6846.2	226
INSTALL 820' 8" DICL	322	A-3372P	13,286
INSTALL 200' 6" DICL	322	A-4904	3,068
INSTALL 230' 8" DICL	322	A-4908.1	11,602
1100' - 8"	322	A-5713	57,676
400' - 8"	322	A-5806	28,106
INSTALL HYDRANT	325	A-4908.2	1,435
<b>TOTAL</b>			<b>\$147,634</b>

**PENNSYLVANIA-AMERICAN WATER COMPANY**

**DOLLAR AMOUNTS FOR METERS AND SERVICES  
TRANSFERRED TO UTILITY PLANT DURING  
THE MONTH OF SEPTEMBER**

		<b>NUMBER</b>	<b>AMOUNT</b>
<b>SERVICES</b>			
<b>DOLLAR AMOUNT TRANSFERRED TO UTILITY PLANT</b>			<b>\$665,763</b>
<b>NUMBER OF SERVICES INSTALLED DURING MONTH</b>			
	<b>NEW</b>	<b>403</b>	
	<b>REPLACED</b>	<b>301</b>	
	<b>TOTAL</b>		<b>704</b>
	<b>AVERAGE COST</b>		<b>945.69</b>
	<b>NUMBER OF REPLACEMENTS</b>		<b>301</b>
<b>DISTRIBUTION SYSTEM IMPROVEMENT PORTION OF SERVICES</b>			<b>\$284,652</b>
<b>METERS</b>			
<b>DOLLAR AMOUNT TRANSFERRED TO UTILITY PLANT</b>			<b>\$49,297</b>
<b>NUMBER OF METERS INSTALLED DURING MONTH</b>			
	<b>NEW</b>	<b>403</b>	
	<b>REPLACED</b>	<b>1357</b>	
	<b>TOTAL</b>		<b>1760</b>
	<b>AVERAGE COST</b>		<b>28.01</b>
	<b>NUMBER OF REPLACEMENTS</b>		<b>1,357</b>
<b>DISTRIBUTION SYSTEM IMPROVEMENT PORTION OF SERVICES</b>			<b>\$38,011</b>

PENNSYLVANIA-AMERICAN WATER COMPANY

INFRASTRUCTURE IMPROVEMENTS PROJECTS TO BE CAPITALIZED  
 UTILITY PLANT ACCOUNTS IN OCTOBER AND NOVEMBER OF 1996

BP OR ITEM NO.	ACCT NO.	ADDITIONS DESCRIPTION	WORK ORDER	AMOUNT	COMPLETION DATE
1-A-5	322	Inst. 1-6" gate valve, 32nd Street	B050661	3,600	10/31/96
1-A-5	322	12" GATE VALVE RT 837 DRAVOSBURG	A-6805	2,000	10/31/96
1-A-5	322	4" GATE VALVE	A-4827	1,290	10/31/96
1-A-5	322	Inst. 21'-6" pipe Bachmanville Rd.	A4948	5,615	10/31/96
1-A-5	322	4-6" Valves	B050611	6,400	10/31/96
1-A-5	322	740'-8" Station St.	A-5815	47,411	10/31/96
1-A-5	322	TIE-IN 4" TO 12" S SPENCER & E OAK	A-4911	2,150	10/31/96
1-A-5	322	54'-2" Various	B0502.11	35,555	10/31/96
1-A-5	322	90'-6" DICL	B0506.11	45,716	10/31/96
1-A-5	322	54'-8" DICL	B0508.11	35,075	10/31/96
1-A-5	322	250'-8" DICL ROUTE 15, LSBG	A-4647	20,848	10/31/96
1-A-5	322	50' 8" MAIN	A-4784	3,422	10/31/96
1-A-5	322	875' 8' MAIN	A-4824	57,134	10/31/96
1-A-5	322	4" GATE VALVE	A-4862	2,300	10/31/96
1-A-5	322	MAINS	VARIOUS	5,000	10/31/96
BP96-13	322	1,105' 8" S WATSON E WASH BORO	A-6846	81,000	10/31/96
BP96-13	322	500'-8" DICL BUFFALO RD., LSBG	A-4646	40,130	10/31/96
BP96-13	322	640' 8" ST ANDREWS CL ELIZ TWSP	A-6769	28,000	10/31/96
BP96-13	322	825'-8" Elma Dr.	A-5868	44,265	10/31/96
BP96-13	322	380' 6" DIP CHARLES ST CLAIRTON	A-6763	8,700	10/31/96
RP96-13	322	INTERCONNECT PCP & PFE	A3139M	803,683	10/31/96
96-13	322	INSTALL 702' 8" DICL	A-3352	32,490	10/31/96
BP96-13	322	320' 6" DIP N 4TH ST CLAIRTON	A-6768	17,500	10/31/96
1B	323	SERVICES	B0405.11	90,250	10/31/96
1C	324	METERS	B0105.11	45,925	10/31/96
1-A-5	325	HYDRANT #25 RT 322 CLARION TWSP	A-6868	1,000	10/31/96
1-A-5	325	HYDRANT #99 ADDISON ST WASH	A-6884	3,700	10/31/96
1-A-5	325	HYDRANT #78 GRANT AVE CLARION BORO	A-6869	1,200	10/31/96
1-A-5	325	INSTALL HYDRANT	UNKNOWN	1,000	10/31/96
1-A-5	325	RELOCATE HYDRANT #1439 RT 19 S STRABANE	A-6889	1,700	10/31/96
1-A-5	325	INSTALL HYDRANT	A-3370	1,760	10/31/96
1-A-5	325	INSTALL HYDRANT	A-4228	1,260	10/31/96
1-A-5	325	INSTALL HYDRANT	A-4216	1,256	10/31/96
1-A-5	325	INSTALL HYDRANT	UNKNOWN	2,185	10/31/96
		SUB-TOTAL		1,480,520	
1-A-5	322	36'-8" Pipe	B0506.11	23,400	11/30/96
1-A-5	322	MAINS	VARIOUS	125,000	11/30/96
1-A-5	322	3 6" GATE VALVES	A-4730	3,000	11/30/96
1-A-5	322	3,200' 30" RT 136 SOUTH STRABANE	A-6601	1,140,000	11/30/96
1-A-5	322	936'6" DIP N BEAVER N CASTLE	A-6722	27,000	11/30/96
1-A-5	322	3,000' 12" DIP BEECH HOLLOW WASH	A-6823	88,000	11/30/96
1-A-5	322	3 2" GATE VALVES LEWIS ST BVILLE	A-6842	1,800	11/30/96
1-A-5	322	1,040' 12" DIP S MILL ST N CASTLE	A-6756	59,000	11/30/96
1-A-5	322	18' 16" DIP PARK RD MIDWAY	A-6750	9,000	11/30/96
1-A-5	322	2 12" VALVES RT 519 N STRABANE	A-6683	3,800	11/30/96
1-A-5	322	36'-2" Pipe	B0502.11	18,985	11/30/96
1-A-5	322	120'8" DIP CBG	A-6682	35,000	11/30/96
1-A-5	322	72'-6" Pipe	B0506.11	36,576	11/30/96
1-A-5	322	3-6" Valves	B0506.11	4,800	11/30/96
1-A-5	322	PRESSURE REDUCING VAULT	A-3165	36,000	11/30/96
1-A-5	322	6" valve	B050662	1,800	11/30/96
1-A-5	322	1,355' 12" DIP OLD OAK RD WASH	A-6784	54,000	11/30/96

PENNSYLVANIA-AMERICAN WATER COMPANY

INFRASTRUCTURE IMPROVEMENTS PROJECTS TO BE CAPITALIZED  
TO UTILITY PLANT ACCOUNTS IN OCTOBER AND NOVEMBER OF 1996

BP OR ITEM NO.	ACCT NO.	ADDITIONS DESCRIPTION	WORK ORDER	AMOUNT	COMPLETION DATE
1-A-5	322	1,100' 12" DIP ROW RT19 N STRAB	A-6626	30,000	11/30/96
1-A-5	322	360' 8"DIP WOODROW ST LIBERTY BORO	A-6837	15,000	11/30/96
BP96-13	322	1,070' 8" DIP ASH ST N STRABANE	A-6681	40,000	11/30/96
P96-13	322	325' 6" ROSLYN ST ELIZ TWSP	A-6762	8,400	11/30/96
P96-13	322	330' 6" DIP CATERBURY LANE ELIZ	A-6761	11,000	11/30/96
BP96-13	322	700' 8" DIP MONROE ST NEW CASTLE	A-6758	35,000	11/30/96
BP96-13	322	1,200' 8" DIP RAILROAD ST CECIL	A-6815	71,000	11/30/96
BP96-13	322	340' 8" DIP ALLEGHENY AVE ELIZ	A-6760	11,000	11/30/96
BP96-13	322	1,500' 8" DIP VALLEY ST SMITH TWSP	A-6780	60,000	11/30/96
BP96-13	322	690' 8" DIP PINE ALLEY HOUSTON	A-6782	44,000	11/30/96
BP96-13	322	1,425 8" DIP VOGLIANO ST CHARTIERS TWSP	A-6752	52,000	11/30/96
1B	323	SERVICES	B0405.11	341,100	11/30/96
1C	324	METERS	B0105.11	74,051	11/30/96
1-A-5	325	Inst. hyd. & valve, E. Choc. St.	UNKNOWN	3,500	11/30/96
1-A-5	325	Inst. 1-4 1/4" hyd., Railroad Ave	A-4906	1,800	11/30/96
		SUB-TOTAL		2,465,012	
		TOTAL		3,945,532	

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COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

MAR 08 1999

IN REPLY PLEASE  
REFER TO OUR FILE

March 5, 1999

MR ROBERT W FREESTON  
VP - COMPTROLLER  
PENNSYLVANIA AMERICAN WATER COMPANY  
800 WEST HERSHEY PARK DRIVE  
HERSHEY, PA 17033

RECEIVED

JUN 25 2012

DOCKET NO. D-97S023

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dear Mr. Freeston:

We have completed our examination of Pennsylvania American Water Company's Distribution System Improvement Charge (DSIC) activity for the year ended December 31, 1997. Our examination was conducted pursuant to Title 66 Pennsylvania Consolidated Statutes (66 Pa. C.S.) § 506 and the provisions of the Commission approved DSIC tariff.

It is the policy of the Public Utility Commission, Bureau of Audits, to conduct an audit review conference with appropriate personnel of entities which have been examined by our representatives prior to issuance of our report. The purpose of our conference is to review with you and appropriate members of your staff our findings and recommendations and also to eliminate any misunderstandings that may arise.

We are enclosing a copy of the draft report for your review prior to the exit conference. The draft report is to be returned to the PUC staff members at the conclusion of the exit conference. After you review the report, please contact John Crawford of this office at (717) 772-0302 within two weeks so that an exit conference can be arranged.

Very truly yours,

Dennis P. Dougherty  
Audit Supervisor

DPD/js

Enclosure

cc: J. T. Crawford  
J. G. Malloy  
C. Gilbert

PA-AMERICAN WATER COMPANY

A REPORT ON THE DISTRIBUTION SYSTEM  
IMPROVEMENT CHARGE

FOR THE YEAR ENDED DECEMBER 31, 1997

Prepared For The Public Utility Commission

By The Bureau of Audits

# PA-AMERICAN WATER COMPANY

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## FINANCIAL REVIEW



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

AUDITOR'S REPORT

To The Public Utility Commission

We have audited the Statement of Distribution System Improvement Charge (DSIC) Eligible Project Additions of the PA-American Water Company for the year ended December 31, 1997, and the Statement of Over/Under Collections (Section 1307(e)) for the year ended December 31, 1997. These statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. These standards require that we plan and perform the audit to obtain reasonable assurance about whether the specified statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statements referred to above. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying Statements were presented for the purpose of complying with the rules and regulations of the Pennsylvania Public Utility Commission and are not intended to be a complete presentation of the Company's revenues and expenses.

In our opinion, the accompanying statements of PA-American Water Company present fairly, in all material respects, the cost of DSIC-eligible property additions and the over/under collection resulting from its application of the DSIC in accordance with the provisions of its Schedule of Rates approved by the Pennsylvania Public Utility Commission.

Glenn W. Bartron, CPA  
Director of Audits

Harrisburg, Pennsylvania

PA-AMERICAN WATER COMPANY

Statement of Distribution System Improvement Charge (DSIC)  
Eligible Property and Related DSIC Billed (Note 1)  
For The Year Ended December 31, 1997

	<u>DSIC Eligible Property (Note 2)</u>	<u>DSIC Billed (Note 3)</u>
September 1996	\$ 984,010	0.00%
October	1,147,754	0.00%
November	664,971	0.00%
December	2,684,492	0.00%
January 1997	643,695	0.22%
February	493,923	0.22%
March	320,884	0.22%
April	794,983	0.55%
May	728,181	0.55%
June	740,819	0.55%
July	1,091,997	0.64%
August	629,387	0.64%
September	0	0.64%
October	0	0.85%
November	0	0.85%
December	<u>0</u>	0.85%
 Total	 <u>\$ 10,925,096</u>	

Components of DSIC Eligible Property

Mains	\$7,151,376
Services	2,142,966
Meters	1,109,580
Hydrants	<u>521,174</u>
 Total	 <u>\$10,925,096</u>

Notes to the Financial Statements are an integral part of this report.

PA-AMERICAN WATER COMPANY

Statement of Over/Under Collections (Section 1307(e))  
For The Year Ended December 31, 1997

<u>Month</u>	DSIC Revenue Collected <u>Note 4</u>	Capital Costs & Depreciation Expense Authorized <u>(Note 5)</u>	Over/ (Under) Collections <u>(Note 6)</u>
January 1997	\$ 31,825	\$ 31,542	\$ 283
February	31,803	31,542	261
March	30,532	31,543	(1,011)
April	78,130	82,182	(4,052)
May	78,996	82,182	(3,186)
June	84,734	82,183	2,551
July	104,103	105,505	(1,402)
August	107,189	105,505	1,684
September	98,512	105,505	(6,993)
October	14,733	12,751	1,982
November	0	0	0
December	0	0	0
	<u>\$ 660,557</u>	<u>\$670,440</u>	<u>\$ (9,883)</u>

Notes to the Financial Statements are an integral part of this report.

## PA-AMERICAN WATER COMPANY

### Notes To The Financial Statements

#### 1 - Distribution System Improvement Charge

On August 26, 1996, the Commission, at Docket No. P-00961036 approved PA-American Water Company's request for a Distribution System Improvement Charge Rate (DSIC). The purpose of the DSIC Surcharge is to recover the fixed costs (depreciation and pre-tax return) of certain non-revenue producing, non-expense reducing distribution system improvement projects completed and placed in service and to be recorded in individual accounts between base rate cases. The intent is to provide the Company with the resources to accelerate the replacement of aging water distribution infrastructure, to comply with evolving regulatory requirements imposed by the Safe Drinking Water Act, and to develop and implement solutions to regional water supply problems. Depreciation expense is calculated by applying to the original cost of DSIC-eligible property the annual accrual rates employed in the Company's last base rate case for the plant accounts in which each retirement unit of DSIC-eligible property is recorded. Pre-tax return is calculated using the state and federal income tax rates, the Company's actual capital structure, and actual cost rates for long-term debt and preferred stock as of the last day of the three month period ending one month prior to the effective date of the DSIC and updates. The cost of equity is the equity return rate approved in the Company's last fully litigated base rate case. The Quarterly DSIC rate became effective January 1, 1997 and applies to all service excluding public fire hydrants. During 1997, the DSIC was not applicable to the customers of the former Pennsylvania Gas and Water Company.

#### 2 - Distribution System Improvement Charge Eligible Property

The DSIC-eligible property consists of the following:

- a. Services (Account 323), meters (Account 324) and hydrants (Account 325) installed as in-kind replacements for customers;
- b. Mains and valves (Account 322) installed as replacements for existing facilities that have worn out, are in deteriorated condition, or upgraded to meet Chapter 65 regulations of Title 52;
- c. Main extensions (Account 322) installed to eliminate dead ends and to implement solutions to regional water supply problems that have been documented as presenting a significant health and safety concern for customers currently receiving service from the Company or the acquired company;
- d. Main cleaning and relining (Account 322) projects;

- e. Unreimbursed funds related to capital projects to relocate Company facilities due to highway relocations (Account 322).

Any Company projects receiving PENNVEST funding are not DSIC-eligible property.

The amounts shown on this statement are as reported by the Company in the DSIC filing.

### **3 - Distribution System Improvement Charge Billed**

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, excluding amounts billed for public fire protection service and the State Tax Adjustment Surcharge (STAS). To reflect subsequent capital expenditures, the Company is permitted to request approval from the Commission for quarterly DSIC rate adjustments. The DSIC is to be capped at 5% of the amount billed to customers under otherwise applicable rates and charges. To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC is divided by the Company's projected applicable revenue for sales of water for the quarterly period during which the charge is in effect. The DSIC is to be reset at zero as of the effective date of new base rates that provide for prospective recovery of the annual costs that theretofore had been recovered under the DSIC. Thereafter, only fixed costs of new eligible plant additions not previously reflected in the Company's rate base will be reflected in the quarterly DSIC updates.

A summary of the Company's Quarterly DSIC filings include the following:

DSIC Effective 1-1-97	.22%
DSIC Effective 4-1-97	.55%
DSIC Effective 7-1-97	.64%
DSIC Effective 10-1-97	.85%
DSIC Effective 10-3-97 (10-3-97 Rate Settlement)	0.00%

### **4 - Distribution System Improvement Charge Revenue Collected**

Distribution System Improvement Charge revenue is derived by multiplying the respective quarterly DSIC rate by the applicable portion of the total amount billed to each customer (excluding public fire protection service customers) exclusive of any STAS in effect.

### **5 - DSIC Eligible Project Capital Costs and Depreciation Expense Authorized**

DSIC Eligible Project Capital Costs and Depreciation Expense Authorized are the total recoverable capital costs and depreciation expenses (Note 2) in excess of the amounts recoverable by the company through base rates included in its approved tariff.

## 6 - Over/Under Collections

Over/Under Collections are the difference between the DSIC revenues and the DSIC eligible project capital costs and depreciation expenditures authorized. The resulting amount represents the portion of capital costs and depreciation expenditures that are either refundable, with interest, or recoverable by the Company. Over/(Under) collections for the twelve months ending December 31 of each year are reported to the Commission on Statement 1307(e) and are included in subsequent DSIC computations over a one year period commencing on April 1 of each year.

The statement included in this report is the 1307(e) statement filed by the Company and approved by the Commission, and does not include any audit adjustments.

**OPERATIONAL REVIEW**

## BACKGROUND

The background information was developed substantially from information and documentation made available by Pennsylvania American Water Company and is provided solely for informational purposes.

Pennsylvania-American Water Company (PAWC) is the largest regulated water utility in the state. It is a wholly-owned subsidiary of American Water Works Company, Inc., the largest investor owned water business in the United States. The name Pennsylvania-American Water Company was established in 1989 through the merger of the following former entities: Western Pennsylvania Water Company, Keystone Water Company and Riverton Consolidated Water Company. Previous to the name change, these predecessor companies were also owned by American Water Works Company, Inc. On February 17, 1996, PAWC purchased the regulated water operations of Pennsylvania Gas and Water Company (PGAW) which served an estimated population of about 400,000 people in the Scranton and Wilkes-Barre area.

The Company provides water service to more than 532,000 customers or a population of over 2 million people. Wastewater service is provided to over 4,500 customers or a population of approximately 12,000 people. These customers live in 290 municipalities encompassing 31 of the state's 67 counties.

Following are certain operating statistics of PA-American Water Company:

<u>Revenue From Water Sales Billed</u>	<u>As of December 31, 1997</u>	
	<u>(000,s)</u>	<u>% of Total</u>
Residential	\$ 162,332	64.1
Commercial	48,368	19.1
Industrial	19,460	7.7
Other	<u>22,935</u>	<u>9.1</u>
Total Revenue	<u>\$253,095</u>	<u>100.0</u>

<u>Water Customers Served:</u>	<u>Number</u>	<u>% of Total</u>
Residential	487,745	91.7
Commercial	38,564	7.2
Industrial	811	.2
Public and Other	<u>4,977</u>	<u>.9</u>
Total Customers	<u>532,097</u>	<u>100.0</u>

## 1997 AUDIT FINDINGS

### Finding No. 1 - PA-American Water Company's Distribution System Improvement Charge (DSIC) Tariff Requires A Revision.

The Company's DSIC Tariff provides a formula for the calculation of the DSIC Surcharge. Included in the formula are definitions identifying the components of the DSIC. The "DSI" component is defined as "the original cost of eligible distribution system improvement projects." The quarterly DSIC calculations state: Applicable Additions Less Accumulated Depreciation equals Net Rate Base Includable in the Respective quarterly DSIC calculation. When compared to the Company's DSIC Tariff, no mention of the accumulated depreciation exists. This was simply an oversight on the part of the Company when the DSIC tariff was formulated.

#### RECOMMENDATION:

We recommend that the Company add wording to the DSIC Tariff revising the "DSI" definition to read: "The original cost of eligible distribution system improvement projects net of accrued depreciation." (Auditor emphasis).

The Company agrees with this recommendation.

**Finding No. 2 - PA-American Water Company's Distribution System Improvement Charge (DSIC) Quarterly Filings Require Revisions Reflecting DSIC Application On A "Bills Rendered" Basis.**

The Company's quarterly filings had wording which had the DSIC charge to be applied on a "service rendered" basis. The Commission approved DSIC was on a "bills rendered" basis. Subsequent testing verified that the DSIC was in fact applied as properly approved and that the wording on all of the quarterly filings was incorrect.

**RECOMMENDATION:**

We recommend that the Company's future quarterly filings have the proper wording reflecting DSIC application on a bills rendered basis.

The Company agrees with this recommendation.

**Finding No. 3 - Additions Applicable to the Distribution System Improvement Charge (DSIC) Were Overstated for the 4 Quarters Ending With the DSIC Effective 10-1-97.**

Additions included in the DSIC filings for each of the first 4 quarters were overstated. The cumulative total of the overstatement included in the filing effective at 10/1/97 was \$129,795. The net effect of the error was a \$7,965 reduction to the current under collection of the DSIC.

When the accounting transfers of mains and hydrants were entered into a computer software format for analysis and inclusion to the DSIC filing by the rate department, certain formulas were erroneous. This resulted in several transfers being included twice, for a total of \$64,971. In addition, acquisition costs of Services and Meters totaling \$64,824 were posted in September of 1996. The rate department was not aware of this posting which was included with the total additions used for the DSIC filing.

Rate personnel determined that a comparison of total transfers included in the DSIC filing to total transfers per accounting will assure that possible formula errors will be detected in the future. Also, the rate department has determined that total capital work order transfers to plant in service must be verified to assure that non applicable journal entry postings are not included in the filing.

**RECOMMENDATION:**

We recommend that the Company implement the internal control checks noted above to assure the detection of formula errors and elimination of duplicate entries to the DSIC calculation.

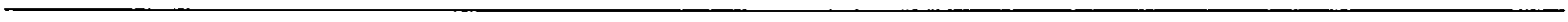
We also recommend that the Company refund \$7,965 plus appropriate interest of \$744 through the "E" factor in its DSIC calculation for the rate effective April 1, 1999.

The Company agrees with these recommendations.

### ACKNOWLEDGEMENTS

We wish to express our appreciation to the officers and staff of Pennsylvania American Water Company for the cooperation and assistance given us during the course of our examination. The audit was conducted by Daniel L. Hawkins assisted by William S. Pierce.

G





COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

DECEMBER 7, 2001

MR CHARLES GILBERT  
DIRECTOR OF ACCOUNTING  
PENNSYLVANIA-AMERICAN WATER COMPANY  
800 WEST HERSHEY PARK DRIVE  
HERSHEY PA 17033

RECEIVED

JUN 25 2012

DOCKET NO. D-99DSC029

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dear Mr. Gilbert:

Enclosed is a copy of the Bureau of Audits' report on the Distribution System Improvement Charge of Pennsylvania-American Water Company for the two years ended December 31, 1999. This report was considered by the Commission at its public meeting of November 30, 2001. No other formal action was taken.

The findings included in this report are as follows:

Finding No. 1 – Distribution System Improvement Charge (DSIC) Eligible Property Was Overstated By \$2,038,143 For The Twenty-Four Months Ended August 31, 1999.

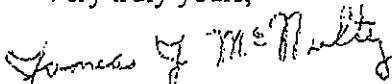
Finding No. 2 – Pennsylvania-American Is Including Rights-Of-Way Costs In Its DSIC Eligible Property.

Finding No. 3 – Pennsylvania-American Is Not Billing Its DSIC Surcharge In Accordance With Its Tariff.

Finding No. 4 – Pennsylvania-American Is Not In Full Compliance With Title 52, Chapter 56.15-Billing Information.

Since the Company agrees with the recommendations, the Commission will take no further action at this time. The Commission appreciates the cooperation of your officers and employees in conjunction with this audit.

Very truly yours,

  
James J. McNulty  
Secretary

IJM/bc  
Enclosure  
Contact Person: Wendy J. Nicholas  
(717) 772-0304

PENNSYLVANIA-AMERICAN WATER COMPANY

A REPORT ON THE DISTRIBUTION SYSTEM  
IMPROVEMENT CHARGE

FOR THE TWO YEARS ENDED DECEMBER 31, 1999

Prepared For The Public Utility Commission

By The Bureau Of Audits

PENNSYLVANIA-AMERICAN WATER COMPANY

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FINANCIAL REVIEW



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

AUDITORS REPORT

To The Public Utility Commission

We have audited the Statements of Distribution System Improvement Charge (DSIC) Eligible Property and Related DSIC Billed of the Pennsylvania-American Water Company for the twelve months ended August 31, 1999, and 1998, and the Statements of Over/Under Collections (Section 1307 (e)) for the years ended December 31, 1999, and 1998. These statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the specified statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statements referred to above. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying statements were presented for the purpose of complying with the rules and regulations of the Pennsylvania Public Utility Commission and are not intended to be a complete presentation of the Company's revenues and expenses.

In our opinion, the accompanying statements of Pennsylvania-American Water Company present fairly, in all material respects, the cost of DSIC-eligible property additions and the over/under collection resulting from its application of the DSIC in accordance with the provisions of its Schedule of Rates approved by the Pennsylvania Public Utility Commission.

Thomas E. Sheets, CPA  
Director  
Bureau of Audits

Harrisburg, Pennsylvania

PENNSYLVANIA-AMERICAN WATER COMPANY

Statement of Distribution System Improvement Charge (DSIC)  
Eligible Property and Related DSIC Billed (Note 1)  
For The Twelve Months Ended August 31, 1999

<u>Additions</u> <u>Month</u>	DSIC-Eligible Property <u>(Note 2)</u>	<u>Billing</u> <u>Month</u>	DSIC Billed <u>(Note 3)</u>
September 1998	\$2,802,529	January 1999	1.82%
October	3,632,968	February	1.82%
November	8,778,390	March	1.82%
December	3,871,744	April	2.14%
January 1999	482,340	May	2.14%
February	1,952,064	June	2.14%
March	2,637,013	July	2.40%
April	3,750,071	August	2.40%
May	3,685,758	September	2.40%
June	3,084,463	October	3.08%
July	2,671,021	November	3.08%
August	<u>2,737,261</u>	December	3.08%
Total	<u>\$40,085,622</u>		

Components of DSIC-eligible Property

Mains	\$22,887,101
Services	7,545,581
Meters	8,965,901
Hydrants	<u>687,039</u>
Total	<u>\$40,085,622</u>

Notes to the Financial Statements are an integral part of this report.

PENNSYLVANIA-AMERICAN WATER COMPANY

Statement of Distribution System Improvement Charge (DSIC)  
Eligible Property and Related DSIC Billed (Note 1)  
For The Twelve Months Ended August 31, 1998

<u>Additions</u> <u>Month</u>	<u>DSIC-Eligible</u> <u>Property</u> <u>(Note 2)</u>	<u>Billing</u> <u>Month</u>	<u>DSIC Billed</u> <u>(Note 3)</u>
September 1997	\$0	January 1998	0.00%
October	0	February	0.00%
November	0	March	0.00%
December	0	April	0.08%
January 1998	579,322	May	0.08%
February	627,132	June	0.08%
March	1,559,636	July	0.40%
April	2,273,484	August	0.40%
May	2,188,519	September	0.40%
June	2,586,686	October	0.95%
July	3,369,996	November	0.95%
August	<u>2,207,948</u>	December	0.95%
Total	<u>\$15,392,723</u>		

Components of DSIC-eligible Property

Mains	\$6,914,453
Services	3,375,074
Meters	4,741,878
Hydrants	<u>361,318</u>
Total	<u>\$15,392,723</u>

Notes to the Financial Statements are an integral part of this report.

PENNSYLVANIA-AMERICAN WATER COMPANY

Statement of Over/Under Collections (Section 1307(e))  
For The Year Ended December 31, 1999

<u>Month</u>	<u>DSIC Revenue Collected (Note 4)</u>	<u>Capital Costs &amp; Depreciation Expense Authorized (Note 5)</u>	<u>Over/ (Under) Collections (Note 6)</u>
January 1999	\$381,024	\$395,036	\$(14,012)
February	392,562	395,036	(2,474)
March	399,778	395,036	4,742
April	452,124	473,891	(21,767)
May	489,268	473,891	15,377
June	502,679	473,891	28,788
July	628,987	591,825	37,162
August	564,126	591,825	(27,699)
September	588,571	591,825	(3,254)
October	611,310	690,278	(78,968)
November	667,513	690,278	(22,765)
December	<u>486,010</u>	<u>460,185</u>	<u>25,825</u>
Total	<u>\$6,163,952</u>	<u>\$6,222,997</u>	<u>\$(59,045)</u>

Notes to the Financial Statements are an integral part of this report.

PENNSYLVANIA-AMERICAN WATER COMPANY

Statement of Over/Under Collections (Section 1307(e))  
For The Year Ended December 31, 1998

<u>Month</u>	<u>DSIC Revenue Collected (Note 4)</u>	<u>Capital Costs &amp; Depreciation Expense Authorized (Note 5)</u>	<u>Over/ (Under) Collections (Note 6)</u>
January 1998	\$0	\$0	\$0
February	0	0	0
March	0	0	0
April	15,557	16,290	(733)
May	16,804	16,290	514
June	17,091	16,290	801
July	95,123	99,688	(4,565)
August	96,522	99,688	(3,166)
September	100,558	99,689	869
October	200,049	207,096	(7,047)
November	216,473	207,096	9,377
December	<u>201,495</u>	<u>207,096</u>	<u>(5,601)</u>
	<u>\$959,672</u>	<u>\$969,223</u>	<u>\$(9,551)</u>

Notes to the Financial Statements are an integral part of this report.

# PENNSYLVANIA-AMERICAN WATER COMPANY

## Notes To The Financial Statements

### 1 – Distribution System Improvement Charge (DSIC)

On August 26, 1996, the Commission, at Docket No. P-00961036, approved Pennsylvania-American Water Company's (PAWC, PA-American or Company) request for a Distribution System Improvement Charge Rate (DSIC). The purpose of the DSIC Surcharge is to recover the fixed costs (depreciation and pre-tax return) of certain non-revenue producing, non-expense reducing distribution system improvement projects completed and placed in service and to be recorded in individual accounts between base rate cases. The intent is to provide the company with the resources to accelerate the replacement of aging water distribution infrastructure, to comply with evolving regulatory requirements imposed by the Safe Drinking Water Act, and to develop and implement solutions to regional water supply problems.

Depreciation expense is calculated by applying, to the original cost of DSIC eligible property, the annual accrual rates employed in the Company's last base rate case for the plant accounts in which each retirement unit of DSIC-eligible property is recorded. Pre-tax return is calculated using the state and federal income tax rates, the Company's actual capital structure, and actual cost rates for long-term debt and preferred stock as of the last day of the three-month period ending one month prior to the effective date of the DSIC, and updates. The cost of equity is the equity return rate approved in the Company's last fully litigated base rate case.

The Quarterly DSIC rate became effective January 1, 1997 and applies to all service excluding public fire hydrants. The DSIC was not applicable to the customers of the former Pennsylvania Gas and Water Company until April 1998.

### 2 – Distribution System Improvement Charge Eligible Property

The DSIC-eligible property, according to currently effective tariff wording, consists of the following:

- a. Services (Account 323), meters (Account 324), and hydrants (Account 325) installed as in-kind replacements for customers;
- b. Mains and valves (Account 322) installed as replacements for existing facilities that have worn out, are in deteriorated condition, or upgraded to meet Chapter 65 regulations of Title 52;
- c. Main extensions (Account 322) installed to eliminate dead ends and to implement solutions to regional water supply problems that have been documented as presenting a

significant health and safety concern for customers currently receiving service from the Company or the acquired company;

- d. Main cleaning and relining (Account 322) projects;
- e. Unreimbursed funds related to capital projects to relocate Company facilities due to highway relocations (Account 322).

Any Company projects receiving PENNVEST funding are not DSIC-eligible property.

The amounts shown on this statement are as reported by the Company in the DSIC filings. The company uses eligible plant additions placed into service during the three-month period ending one month prior to each DSIC effective date. For example, the filing effective January 1, 1999 includes DSIC-eligible plant additions placed in service through November 30, 1998.

### **3 – Distribution System Improvement Charge Billed**

The DSIC is 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, excluding amounts billed for public fire protection service and the State Tax Adjustment Surcharge (STAS). To reflect subsequent capital expenditures, the Company is permitted to request approval from the Commission for quarterly DSIC rate adjustments. The DSIC is to be capped at 5% of the amount billed to customers under otherwise applicable rates and charges. To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC is divided by the Company's projected applicable revenue for sales of water for the quarterly period during which the charge is in effect.

The DSIC is to be reset at zero as of the effective date of new base rates that provide for prospective recovery of the annual costs that theretofore had been recovered under the DSIC. Thereafter, only fixed costs of new eligible plant additions not previously reflected in the Company's rate base are to be reflected in the quarterly DSIC updates. The DSIC will also be reset at zero if, in any quarter, data filed with the Commission in the Company's then most recent annual or quarterly earnings reports shows that the Company will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC.

### **4 – Distribution System Improvement Charge Revenue Collected**

Distribution System Improvement Charge revenue is derived by multiplying the respective quarterly DSIC rate by the applicable portion of the total amount billed to each customer (excluding public fire protection service customers), exclusive of any STAS in effect.

## 5 – DSIC-Eligible Project Capital Costs and Depreciation Expense Authorized

DSIC-Eligible Project Capital Costs and Depreciation Expense Authorized are the total recoverable capital costs and depreciation expenses (Note 2) in excess of the amounts recoverable by the Company through base rates included in its approved tariff.

## 6 – Over/Under Collections

Over/Under Collections are the difference between the DSIC revenues and the DSIC-eligible project capital costs and depreciation expenditures that are either refundable, with interest, or recoverable by the Company. Over/Under collections for the twelve months ending December 31 of each year are reported to the Commission on Statement 1307(e) and are included in subsequent DSIC computations over a one-year period commencing on April 1 of each year.

The statements included in this report are the 1307(e) statements filed by the Company and approved by the Commission, and do not include any audit adjustments.

OPERATIONAL REVIEW

## BACKGROUND

The background information was developed substantially from information and documentation made available by Pennsylvania-American Water Company and is provided solely for informational purposes.

Pennsylvania-American Water Company (PAWC, PA-American, or Company) is the largest regulated water utility in the state. It is a wholly-owned subsidiary of American Water Works Company, Inc., the largest investor-owned water business in the United States. The name Pennsylvania-American Water Company was established in 1989 through the merger of the following former entities: Western Pennsylvania Water Company, Keystone Water Company, and Riverton Consolidated Water Company. Previous to the name change, these predecessor companies were also owned by American Water Works Company, Inc. On February 17, 1996, PAWC purchased the regulated water operations of Pennsylvania Gas and Water Company (PGAW) which served an estimated population of about 400,000 people in the Scranton and Wilkes-Barre area.

The Company provides water service to more than 543,300 customers or a population of over 2 million people. Wastewater service is provided to over 4,800 customers or a population of approximately 12,000 people. These customers live in 297 municipalities encompassing 31 of the state's 67 counties.

Following are certain operating statistics of PA-American Water Company:

	<u>As of December 31, 1999</u>		<u>As of December 31, 1998</u>	
<u>Revenue from Water Sales Billed</u>	<u>(000's)</u>	<u>% of Total</u>	<u>(000's)</u>	<u>% of Total</u>
Residential	\$183,706	64.2	\$175,535	63.6
Commercial	56,261	19.7	53,621	19.4
Industrial	20,696	7.2	21,749	7.9
Public and Other	<u>25,513</u>	<u>8.9</u>	<u>25,205</u>	<u>9.1</u>
Total Revenue	<u>\$286,176</u>	<u>100.0</u>	<u>\$276,110</u>	<u>100.0</u>
<u>Water Customers Served</u>	<u>Number</u>	<u>% Of Total</u>		
Residential	498,628	91.8		
Commercial	38,957	7.2		
Industrial	811	.1		
Public and Other	<u>4,992</u>	<u>.9</u>		
Total Customers	<u>543,388</u>	<u>100.0</u>		

PENNSYLVANIA AMERICAN WATER COMPANY

Disposition of Prior Year's Audit Findings

The prior audit for the year ended December 31, 1997 disclosed the following findings:

Finding No. 1 – PA-American Water Company's Distribution System Improvement Charge (DSIC) Tariff Defining the DSI Requires A Revision.

Recommendation:

We recommended that the Company add wording to the DSIC Tariff revising the "DSI" definition to read: "The original cost of eligible distribution system improvement projects net of accrued depreciation." (Auditor emphasis)

Disposition:

The Company agreed with this recommendation and added the appropriate wording to the definition of DSI in its tariff effective April 1, 2001.

Finding No. 2 - PA-American Water Company's DSIC Quarterly Filings Require Revisions Reflecting DSIC Application On A "Bills Rendered" Basis.

Recommendation:

We recommended that the Company's future quarterly filings have the proper wording reflecting the DSIC application on a bills rendered basis.

Disposition:

The Company agreed with this recommendation and changed the wording to reflect DSIC application on a bills rendered basis, starting with its quarterly filing effective July 1, 1999.

Finding No. 3 - Additions Applicable To The DSIC Were Overstated For The 4 Quarters Ending With The DSIC Effective 10-1-97.

Recommendation:

We recommended that the Company implement the internal control checks noted in the finding to assure the detection of formula errors and elimination of duplicate entries to the DSIC calculation.

We also recommended that the Company refund \$7,965 through the "E" factor in its DSIC calculation.

Disposition:

The Company agreed with this recommendation and included the \$7,965 adjustment in the "E" factor of the DSIC rate calculation in its quarterly filing effective January 1, 1999.

PENNSYLVANIA-AMERICAN WATER COMPANY

Current Findings

Finding No. 1 - Distribution System Improvement Charge (DSIC) Eligible Property Was Overstated By \$2,038,143 For The Twenty-Four Months Ended August 31, 1999.

The purpose of the DSIC is to allow the Company to recover the fixed costs (depreciation and pre-tax return) of DSIC-eligible property completed and placed in service between base rate cases. Various errors by the Company resulted in an overstatement of \$2,038,143 in DSIC-eligible property reported to the Commission for the two-year period ended August 31, 1999. This overstatement of DSIC-eligible property resulted from the following types of errors:

- (1) Excess AFUDC capitalized on DSIC-eligible work orders
- (2) Incorrect formulas used in computer files
- (3) Overstatement of the number of DSIC-eligible services replacements
- (4) Rights-Of-Way costs included with mains DSIC-eligible property  
(See Finding No. 2)
- (5) Acquisition costs included in DSIC-eligible property
- (6) PENNVEST funded project included in DSIC-eligible property
- (7) Costs of DSIC-eligible work orders included twice
- (8) Monthly net credit balances on DSIC-eligible work orders not included in DSIC filings amounts

The above types of errors were isolated incidents, except for numbers 4 and 8 which relate to Company policy (number 4 is discussed in Finding No. 2). The Company has a policy of not including monthly net credit balances on DSIC-eligible work orders in the costs of those work orders in the DSIC filings (number 8 above). When PA-American's DSIC started in 1997, the Company did not want to include in DSIC filing amounts the work order credits that related to prior period additions which were not applicable to DSIC. Also, the Company set a policy of not including work order monthly net balances less than \$200 due to immateriality. These policies did not appear to present a problem until the Company switched to a new work order system starting in 1999. Of the total \$2,038,143 overstatement in DSIC-eligible property, approximately \$1,250,000 is due to the credit balances not being included.

DSIC-eligible property totals are used in the calculation of the DSIC rate. The \$2,038,143 overstatement of DSIC-eligible property resulted in overstated DSIC rates which resulted in an overcollection of \$166,234 through the application of those rates for the two-year period ending December 31, 1999. The Company's DSIC tariff provides for calculation of interest on overcollections, to be refunded to customers, in accordance with Section 1307(e) of Title 66. Interest on the adjusted amounts, pro-rated to the mid-point of the April 2001 DSIC application period, totals \$15,751.

**Recommendations:**

We recommend that PA-American refund \$166,234 plus interest of \$15,751 to its customers through adjustment to the "E" factor in its next quarterly DSIC filing.

We also recommend that the Company adopt a procedure to begin including monthly net credit balances of DSIC-eligible work order additions in its quarterly DSIC filings.

The Company agrees with these recommendations.

**NOTE:** After being notified of the overstatement errors during the audit field work, and prior to issuance of this report, the Company included the \$166,234 adjustment in the "E" factor of the DSIC rate calculation for the quarter beginning April 1, 2001. However the related \$15,751 in interest had not been determined or included in that adjustment. It should be included as an "E" factor component in the next quarterly DSIC calculation.

With regard to the recommended procedure adoption, the Company intended to start including monthly net credit balances in the April 2001 filing, starting with December 2000 DSIC-eligible additions.

Finding No. 2 - Pennsylvania-American Is Including Rights-Of-Way Costs In Its DSIC-Eligible Property.

PA-American's Tariff states:

"Eligible Property: The DSIC-eligible property will consist of the following:

- services (account 323), meters (account 324), and hydrants (account 325) installed as in-kind replacements for customers;
- mains and valves (account 322) installed as replacements for existing facilities that have worn out, are in deteriorated condition, or upgraded to meet Chapter 65 regulations of Title 52;
- main extensions (account 322) installed to eliminate dead ends and to implement solutions to regional water supply problems that have been documented as presenting significant health and safety concern for customers currently receiving service from the Company or the acquired Company;
- main cleaning and relining (account 322) projects and;
- unreimbursed funds related to capital projects to relocate Company facilities due to highway relocations."

Although the tariff wording quoted refers to account numbers under the expired Pennsylvania Public Utility Commission "Uniform System of Accounts for Water Utilities" of January 1, 1948, the Company's accounting system has been converted to the National Association of Regulatory Utility Commissioners (NARUC) system prescribed by Section 65.16 of Title 52 "Public Utilities" of the Pennsylvania Code. Under that system, the relevant mains account under discussion is 331 "Transmission and Distribution Mains," and the relevant rights-of-way account is 303 "Land and Land Rights". To simplify discussion for this finding, the account number 322 for mains referred to in the tariff wording, and the corresponding rights-of-way account 311.4, will be used.

When the Company incurs expenses in the acquisition of a rights-of-way related to a DSIC-eligible main installation, it properly books those costs to A/C 311.4 "Transmission and Distribution Land and Rights-Of-Way." However, the Company includes these costs with the Mains (A/C 322) DSIC-eligible property costs in its DSIC quarterly filings. Technically, the Company is not in compliance with its tariff as it is recovering non-DSIC-eligible costs through its DSIC. The current audit disclosed \$71,862 of rights-of-way costs included in mains (A/C 322) DSIC-eligible property. Absent an approved tariff revision to include rights-of-way relevant to DSIC-qualified mains additions as eligible property, continuation of this practice will constitute an ongoing tariff violation.

Recommendations:

We recommend that PA-American discontinue the practice of including rights-of-way (A/C 311.4) costs in with mains (A/C 322) DSIC-eligible property costs so as to be in compliance with its tariff.

We further recommend a revision to the DSIC tariff wording to include the NARUC account numbers now being used.

Finally, we recommend that the Company include the above \$71,862 as a reduction to authorized capital costs in order to calculate an adjustment to the "E" factor in its next quarterly DSIC filing.

The Company agrees with these recommendations.

NOTE: The Company included \$71,862 as a reduction to authorized capital costs in determining the total adjustment amount calculated in Finding No. 1 of this report.

Finding No. 3 - Pennsylvania-American Is Not Billing Its DSIC Surcharge In Accordance With Its Tariff

PA-American's tariff states that its DSIC will become effective for bills rendered on and after a specific date. Our audit testing disclosed that the Company is not totally applying its DSIC on a "bills rendered" basis.

When the Company began its DSIC surcharge in 1997, it had a customer billing system which allowed it to begin or stop billing the DSIC based on the date of the bill. A new billing system, which was implemented in 1998, does not have that function or ability. The "current read date" determines when a new DSIC surcharge is put on the bill. For example, when a new surcharge went into effect on December 18, 1999, a bill rendered with a bill date of December 18, 1999 (but current read date prior to December 18<sup>th</sup>) did not include the new DSIC rate. Only when the current reading date was on or after December 18<sup>th</sup> was the new DSIC rate billed.

The Company, however, is not totally applying its DSIC on a "service rendered" basis either. Specifically, the Company does not prorate its bills when the DSIC rate changes.

Recommendations:

We recommend that PA-American revise its tariff to change the wording from "bills rendered" to wording which describes how the company is actually billing its DSIC surcharge.

The Company agrees with this recommendation.

Finding No. 4 - Pennsylvania-American Is Not In Full Compliance With Title 52,  
Chapter 56.15-Billing Information

Title 52, Chapter 56.15-"Billing Information", lists thirteen items which shall be stated clearly on a bill rendered by a utility for metered residential utility service. PA-American bills do not include item No. 4: "A Class A utility shall include a statement of the dollar amount of the total state taxes included in the current billing period charge." The Company was not aware of this billing requirement and is looking into feasible system revisions to provide for full compliance with Title 52, Chapter 56.15, item No. 4.

Recommendations:

We recommend that PA-American state the above tax item on its bill so as to be in full compliance with Title 52, Chapter 56.15-Billing Information.

The Company agrees with this recommendation.

## ACKNOWLEDGEMENTS

We wish to express our appreciation to the officers and staff of Pennsylvania-American Water Company for the cooperation and assistance given to us during the course of our examination. The audit was conducted by Wendy J. Nicholas, CPA.

H



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

MR PAUL DISKIN  
DIRECTOR OF RATES AND PLANNING  
PENNSYLVANIA-AMERICAN WATER COMPANY  
800 WEST HERSHEY PARK DRIVE  
HERSHEY PA 17033

September 18, 2003

DOCKET NO. D-01DSC009

Dear Mr. Diskin:

Enclosed is a copy of the Bureau of Audits' report on the Distribution System Improvement Charge of Pennsylvania-American Water Company for the two years ended December 31, 2001. This report was approved for release by the Commission at its Public Meeting of September 18, 2003. No other formal action was taken.

The findings included in this report are as follows:

Finding No. 1 – Distribution System Improvement Charge (DSIC) Eligible Property Was Overstated By \$954,305 For The Twenty-Four Months Ended August 31, 2001.

Finding No. 2 – Pennsylvania-American's DSIC Tariff Should Be Revised To Coordinate DSIC Application With Base Rate Changes.

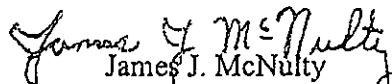
Finding No. 3 – The Cost Rates And Balances For Long-Term Debt And Preferred Stock, And The Balances For Common Equity Used In Calculating The Quarterly DSIC Rates Do Not Comply With The DSIC Tariff Criteria.

The report also includes the following area of concern:

Revenue Deferrals Relevant To New Competitive Rate Customers Include DSIC Revenues.

Since the Company agrees with the audit report, it is directed to implement the recommendations in the consensus findings. The Commission appreciates the cooperation of your officers and employees in conjunction with this audit.

Very truly yours,

  
James J. McNulty  
Secretary

JJM/bc  
Enclosure  
Contact Person: Wendy J. Nicholas  
(717) 772-0304  
cc: Office of Trial Staff

RECEIVED

JUN 25 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**PENNSYLVANIA-AMERICAN WATER COMPANY**

**A REPORT ON THE DISTRIBUTION**

**SYSTEM IMPROVEMENT CHARGE**

**FOR THE TWO YEARS ENDED DECEMBER 31, 2001**

**Prepared For The Public Utility Commission**

**By The Bureau Of Audits**

**September 9, 2003**

PENNSYLVANIA-AMERICAN WATER COMPANY

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PENNSYLVANIA-AMERICAN WATER COMPANY

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## FINANCIAL REVIEW



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

AUDITORS REPORT

To The Public Utility Commission

We have audited the Statements of Distribution System Improvement Charge (DSIC) Eligible Property and Related DSIC Billed of the Pennsylvania-American Water Company for the Twelve Months Ended August 31, 2001 and 2000, and the Statements of Over/Under Collections (Section 1307 (e)) for the Years Ended December 31, 2001, and 2000. These statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the specified statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statements referred to above. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying statements were presented for the purpose of complying with the rules and regulations of the Pennsylvania Public Utility Commission and are not intended to be a complete presentation of the Company's revenues and expenses.

In our opinion, the accompanying statements of Pennsylvania-American Water Company present fairly, in all material respects, the cost of DSIC-eligible property additions and the over/under collections resulting from the Company's application of the DSIC in accordance with the provisions of its Schedule of Rates approved by the Pennsylvania Public Utility Commission.

Thomas E. Sheets, CPA  
Director  
Bureau of Audits

Harrisburg, Pennsylvania

PENNSYLVANIA-AMERICAN WATER COMPANY

Statement Of Distribution System Improvement Charge (DSIC)  
Eligible Property And Related DSIC Billed (Note 1)  
For The Twelve Months Ended August 31, 2001

<u>Additions</u> <u>Month</u>	DSIC-Eligible Property <u>(Note 2)</u>	<u>Billing</u> <u>Month</u>	DSIC Billed <u>(Note 3)</u>
September 2000	\$ 2,536,409	January 2001	1.49%
October	2,047,118	February	1.49%
November	4,386,702	March	1.49%
December	2,996,107	April	1.44%
January 2001	943,512	May	1.44%
February	1,063,884	June	1.44%
March	515,572	July	1.76%
April	1,274,176	August	1.76%
May	3,655,851	September	1.76%
June	6,596,435	October	2.55%
July	3,355,828	November	2.55%
August	<u>3,670,293</u>	December	2.55%
Total	<u>\$ 33,041,887</u>		

Components Of DSIC-Eligible Property

Mains	\$ 22,218,615
Services	7,036,922
Meters	2,765,508
Hydrants	<u>1,020,842</u>
Total	<u>\$ 33,041,887</u>

Notes to the Financial Statements are an integral part of this report.

PENNSYLVANIA-AMERICAN WATER COMPANY

Statement Of Distribution System Improvement Charge (DSIC)  
Eligible Property And Related DSIC Billed (Note 1)  
For The Twelve Months Ended August 31, 2000

<u>Additions</u> <u>Month</u>	DSIC-Eligible Property <u>(Note 2)</u>	<u>Billing</u> <u>Month</u>	DSIC Billed <u>(Note 3)</u>
September 1999	\$ 0	January 2000	0.00%
October	0	February	0.00%
November	0	March	0.00%
December	0	April	0.12%
January 2000	716,127	May	0.12%
February	1,236,413	June	0.12%
March	1,358,292	July	0.39%
April	1,194,313	August	0.39%
May	3,935,588	September	0.39%
June	3,776,550	October	1.01%
July	2,138,982	November	1.01%
August	<u>6,150,416</u>	December	1.01%
Total	<u>\$ 20,506,681</u>		

Components Of DSIC-Eligible Property

Mains	\$ 12,489,430
Services	5,381,733
Meters	2,174,777
Hydrants	<u>460,741</u>
Total	<u>\$ 20,506,681</u>

Notes to the Financial Statements are an integral part of this report.

PENNSYLVANIA-AMERICAN WATER COMPANY

Statement Of Over/Under Collections (Section 1307(e))  
For The Year Ended December 31, 2001

<u>Month</u>	<u>DSIC</u> <u>Revenues</u> <u>(Note 4)</u>	<u>Capital Costs</u> <u>&amp; Depreciation</u> <u>Expense</u> <u>Authorized</u> <u>(Note 5)</u>	<u>Over/</u> <u>(Under)</u> <u>Collections</u> <u>(Note 6)</u>
January 2001	\$ 337,684	\$ 349,124	\$ (11,440)
February	340,977	349,124	(8,147)
March	333,669	349,124	(15,455)
April	383,792	407,091	(23,299)
May	397,984	407,091	(9,107)
June	413,828	407,091	6,737
July	433,921	462,139	(28,218)
August	463,687	462,139	1,548
September	<u>452,162</u>	462,139	(9,977)
October	622,332	614,589	7,743
November	584,859	614,589	(29,730)
December	<u>583,016</u>	<u>614,589</u>	<u>(31,573)</u>
Total	<u>\$ 5,347,911</u>	<u>\$ 5,498,829</u>	<u>\$ (150,918)</u>

Notes to the Financial Statements are an integral part of this report.

PENNSYLVANIA-AMERICAN WATER COMPANY

Statement Of Over/Under Collections (Section 1307(e))  
For The Year Ended December 31, 2000

<u>Month</u>	<u>DSIC Revenues (Note 4)</u>	<u>Capital Costs &amp; Depreciation Expense Authorized (Note 5)</u>	<u>Over/ (Under) Collections (Note 6)</u>
January 2000	\$ 0	\$ 0	\$ 0
February	0	0	0
March	0	0	0
April	16,258	23,425	(7,167)
May	24,505	23,425	1,080
June	26,323	23,425	2,898
July	86,080	99,380	(13,300)
August	89,533	99,380	(9,847)
September	97,153	99,380	(2,227)
October	217,912	240,046	(22,134)
November	229,879	240,046	(10,167)
December	<u>236,060</u>	<u>240,046</u>	<u>(3,986)</u>
	<u>\$ 1,023,703</u>	<u>\$ 1,088,553</u>	<u>\$ (64,850)</u>

Notes to the Financial Statements are an integral part of this report.

# PENNSYLVANIA-AMERICAN WATER COMPANY

## Notes To The Financial Statements

### 1 - Distribution System Improvement Charge (DSIC)

On August 26, 1996, the Commission, at Docket No. P-00961036, approved Pennsylvania-American Water Company's (PAWC, PA-American or Company) request for a Distribution System Improvement Charge (DSIC). The purpose of the DSIC is to recover the fixed costs (depreciation and pre-tax return) of certain non-revenue producing, non-expense reducing distribution system improvement projects completed and placed in service and recorded in individual accounts between base rate cases. The intent is to provide the Company with the resources to accelerate the replacement of aging water distribution infrastructure, to facilitate compliance with evolving regulatory requirements imposed by the Safe Drinking Water Act, and to develop and implement solutions to regional water supply problems. The rate applies to all services except public fire protection.

Depreciation expense is calculated by applying to the original cost of DSIC-eligible property the annual accrual rates employed in the Company's last base rate case for the plant accounts in which each retirement unit of DSIC-eligible property is recorded. Pre-tax return is calculated using the state and federal income tax rates, the Company's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day of the three-month period ending one month prior to the effective date of the DSIC and updates. The cost of equity is the equity return rate approved in the Company's last fully-litigated base rate case.

### 2 - DSIC-Eligible Property

The DSIC-eligible property, according to currently effective tariff wording, consists of the following:

- a. Services (Account 333000), meters (Account 334100), and hydrants (Account 335000) installed as in-kind replacements for customers;
- b. Mains and valves (Account 331800) installed as replacements for existing facilities that have worn out, are in deteriorated condition, or upgraded to meet Chapter 65 regulations of Title 52;

PENNSYLVANIA-AMERICAN WATER COMPANY

Notes To The Financial Statements (Continued)

- c. Main extensions (Account 331800) installed to eliminate dead ends and to implement solutions to regional water supply problems that have been documented as presenting a significant health and safety concern for customers currently receiving service from the Company or the acquired company;
- d. Main cleaning and relining (Account 331800) projects;
- e. Unreimbursed funds related to capital projects to relocate Company facilities due to highway relocations.

Any Company projects receiving PENNVEST funding are not DSIC-eligible property.

The amounts shown on this statement are as reported by the Company in the DSIC filings. The Company uses eligible plant additions placed into service during the three-month period ending one month prior to each DSIC effective date. For example, the filing effective January 1, 2001 includes DSIC-eligible plant additions placed in service through November 30, 2000.

3 - DSIC Billed

The DSIC is 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, excluding amounts billed for public fire protection service and the State Tax Adjustment Surcharge (STAS). To reflect subsequent capital expenditures, the Company is permitted to request approval from the Commission for quarterly DSIC rate adjustments. The DSIC is to be capped at 5% of the amount billed to customers under otherwise applicable rates and charges. To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC is divided by the Company's projected applicable revenue from sales of water for the quarterly period during which the charge is in effect. The rate is also adjusted to reflect prior period over or under collections.

The DSIC is to be reset at zero as of the effective date of new base rates that provide for prospective recovery of the annual costs that theretofore had been recovered under the DSIC. Thereafter, only fixed costs of new eligible plant additions not previously reflected in the Company's rate base will be included in the quarterly DSIC updates. The DSIC will also be reset at zero if, in any quarter, data filed with

PENNSYLVANIA-AMERICAN WATER COMPANY

Notes To The Financial Statements (Continued)

the Commission in the Company's then most recent Annual or Quarterly Earnings reports shows that the Company will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC.

4 - DSIC Revenues

DSIC Revenues are derived by multiplying the respective quarterly DSIC rate by the applicable portion of the total amount billed to each customer (excluding public fire protection service customers), exclusive of any STAS in effect.

5 - Capital Costs and Depreciation Expense Authorized

Capital Costs and Depreciation Expense Authorized are the total recoverable capital costs and depreciation expenses (Note 2) in excess of the amounts recoverable by the Company through base rates included in its approved tariffs.

6 - Over/Under Collections

Over/Under Collections are the differences between the DSIC revenues and the DSIC-eligible project capital costs and depreciation expenditures that are either refundable, with interest, or recoverable by the Company. Over/Under collections for the twelve months ending December 31 of each year are reported to the Commission on Statement 1307(e) and are included in subsequent DSIC computations over a one-year period commencing on April 1 of each year.

The 1307(e) Statements included in this report are filed by the Company and approved by the Commission, and do not include any audit adjustments.

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**OPERATIONAL REVIEW**

## BACKGROUND

This background was developed substantially from data and documentation made available by Pennsylvania-American Water Company and is provided solely for informational purposes.

Pennsylvania-American Water Company (PAWC, PA-American, or Company) is the largest regulated water utility in the state. It is a wholly-owned subsidiary of American Water Works Company, Inc. (American Water Works), which is the largest publicly-traded U.S. corporation devoted exclusively to the business of water. The name Pennsylvania-American Water Company was established in 1989 through the merger of the following former entities: Western Pennsylvania Water Company, Keystone Water Company, and Riverton Consolidated Water Company. These companies were also owned by American Water Works. In 2003, American Water Works became a wholly-owned subsidiary of Thames Water Aqua Holdings GmbH (Thames), the water division of RWE, the world's largest water company.

PAWC purchased the Strattanville Borough Water System, the water system of the Municipal Authority of Franklin Township, and the water system of Elk Forest Estates in 2000. In 2001, PAWC purchased the T.O.W. Associated Water System, the Fox Knoll Water Company, the Butler Township Authority, and the Coatsville Authority Water System. PAWC provided water service to 563,081 customers and wastewater service to 9,283 customers at December 31, 2001. These services were provided to an estimated population of 2 million people in communities located in 33 of the 67 counties in Pennsylvania.

Following are certain operating statistics of PA-American Water Company for the two years covered by this audit:

	<u>As of December 31, 2001</u>		<u>As of December 31, 2000</u>	
<u>Revenue From Water Sales Billed</u>	<u>(000's)</u>	<u>% of Total</u>	<u>(000's)</u>	<u>% of Total</u>
Residential	\$202,005	65.5	\$192,830	64.7
Commercial	61,845	20.0	60,045	20.1
Industrial	21,126	6.8	21,175	7.1
Public and Other	<u>23,641</u>	<u>7.7</u>	<u>24,277</u>	<u>8.1</u>
Total Revenue	<u>\$308,617</u>	<u>100.0</u>	<u>\$298,327</u>	<u>100.0</u>
<u>Water Customers Served</u>	<u>Number</u>	<u>% Of Total</u>		
Residential	516,558	91.7		
Commercial	40,590	7.2		
Industrial	852	.2		
Public and Other	<u>5,081</u>	<u>.9</u>		
Total Customers	<u>563,081</u>	<u>100.0</u>		

PENNSYLVANIA AMERICAN WATER COMPANY

Disposition Of Prior Years' Audit Findings

The prior audit for the two years ended December 31, 1999 disclosed the following findings:

Finding No. 1 - Distribution System Improvement Charge (DSIC) Eligible Property Was Overstated By \$2,038,143 For The Twenty-Four Months Ended August 31, 1999.

Recommendations:

We recommended that PA-American refund \$166,234 plus interest of \$15,751 to its customers through an adjustment to the "E" factor in its quarterly DSIC filing.

We also recommended that the Company adopt a procedure to begin including monthly net credit balances of DSIC-eligible work order additions in its quarterly DSIC filings.

---

Disposition:

The Company agreed with these recommendations and included the \$166,234 adjustment in the "E" factor of the DSIC rate effective April 1, 2001. However, the related \$15,751 in interest had not been refunded. After being notified of this during the current audit, the Company included the \$15,751 adjustment in the "E" factor of the DSIC rate effective April 1, 2003.

With regard to the recommended procedure adoption, the Company started including monthly net credit balances in the April 2001 filing, starting with December 2000 DSIC-eligible additions.

Finding No. 2 - PA-American Is Including Rights-Of-Way Costs In Its DSIC-Eligible Property.

Recommendations:

We recommended that PA-American discontinue the practice of including rights-of-way (A/C 311.4) costs in with the mains (A/C 331800) DSIC-eligible property costs so as to be in compliance with its tariff.

PENNSYLVANIA AMERICAN WATER COMPANY

Disposition Of Prior Years' Audit Findings (Continued)

We further recommended a revision to the DSIC tariff wording to include the NARUC account numbers now being used.

Finally, we recommended that the Company include \$71,862 as a reduction to authorized capital costs in order to calculate an adjustment to the "E" factor in its quarterly DSIC filing.

Disposition:

The Company agreed with these recommendations. The Company revised its DSIC tariff wording to include the NARUC account numbers now being used, effective April 1, 2003. Also, the Company included \$71,862 as a reduction to authorized capital costs in determining the total adjustment amount calculated in Finding No. 1, which was included in the "E" factor of the DSIC rate effective April 1, 2001.

---

Finding No. 3 - PA-American Is Not Billing Its DSIC Surcharge In Accordance With Its Tariff.

Recommendation:

We recommended that PA-American revise its tariff to change the wording from "bills rendered" to wording which describes how the company is actually billing its DSIC surcharge.

Disposition:

The Company agreed with this recommendation and revised its tariff to read "bills rendered with an ending read date equal to or greater than the effective date of the tariff supplement". This tariff revision was effective April 1, 2003.

PENNSYLVANIA AMERICAN WATER COMPANY

Disposition Of Prior Year's Audit Findings (Continued)

Finding No. 4 - PA-American Is Not In Full Compliance With Title 52, Chapter 56.15-  
Billing Information.

Recommendation:

We recommended that PA-American include on its bill a statement of the dollar amount of the total state taxes included in the current billing period charge, so as to be in full compliance with Title 52, Chapter 56.15-Billing Information.

Disposition:

The Company agreed with this recommendation; however, it still does not have the programming in place to achieve compliance. The Company has indicated that it is working with its software vendor in an attempt to comply, and is also considering a total revision of the billing form.

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PENNSYLVANIA-AMERICAN WATER COMPANY

Current Findings

Finding No. 1 - Distribution System Improvement Charge (DSIC) Eligible Property  
Was Overstated By \$954,305 For The Twenty-Four Months Ended  
August 31, 2001.

The purpose of the DSIC is to allow the Company to recover the fixed costs (depreciation and pre-tax return) of DSIC-eligible property completed and placed in service between base rate cases. Various errors by the Company resulted in a net overstatement of \$954,305 in DSIC-eligible property reported to the Commission for the twenty-four months ended August 31, 2001. This overstatement of DSIC-eligible property resulted from the following errors:

(1)	Monthly net credit balances on DSIC-eligible work orders not included in DSIC filings amounts (related to Finding No.1 in the prior audit report)	\$ 512,636
(2)	Costs of DSIC-eligible work orders included twice	1,864,454
(3)	Costs of projects not meeting the tariff definition of "DSIC-eligible property" included in DSIC	659,190
(4)	Costs of eligible plant additions that had previously been reflected in rate base	436,779
(5)	Costs from various errors (i.e. typographical, incorrect work order numbers, incorrect file formulas, missed adjustments, incorrect adjustments, etc.)	126,490
(6)	Costs for three DSIC-eligible Investment Projects not included in the DSIC effective July 1, 2001.	<u>(2,645,244)</u>
		<u>\$ 954,305</u>

In addition to the above errors, there were numerous account misclassifications (e.g. hydrants included in the mains account and mains included in the hydrants account). While these misclassifications do not affect the amount of total DSIC-eligible property,

they do have an impact on the calculation of the DSIC because of the different depreciation rates among the accounts involved.

The errors described above had a variety of causes. Company personnel received lists of "new" and "replaced" projects and had to manually read through these lists to pick up the DSIC-eligible costs based on project descriptions. Sometimes the incorrect project description of "replaced" was typed instead of "new"; thus the related project costs were improperly included in DSIC. In 2002, Company personnel started receiving lists of DSIC-eligible replacements only, which should reduce errors. Also, the procedure used to determine current monthly DSIC activity for a work order, using the cumulative total and then deducting amounts included in prior DSIC filings, led to numerous errors. During 2002, the procedure was changed to pick up the current month's activity only. In addition, many personnel changes contributed to the errors. Since 2001, the same personnel have been working on the DSIC filings and, as a result, the incidence of errors has decreased since then.

DSIC-eligible property totals are used in the calculation of the DSIC rate. The \$954,305 overstatement of DSIC-eligible property resulted in overstated DSIC rates which in turn resulted in an overcollection of \$83,663 through the application of those rates for the two-year period ending December 31, 2001. The Company's DSIC tariff provides for calculation of interest on overcollections, to be refunded to customers, in accordance with Section 1307(e) of Title 66.

**Recommendation:**

We recommend that PA-American refund \$83,663, plus applicable interest, to its customers through an adjustment to the "E" factor in its next quarterly DSIC filing.

The Company agrees with this recommendation.

Finding No. 3 - The Cost Rates And Balances For Long-Term Debt And Preferred Stock, And The Balances For Common Equity Used In Calculating The Quarterly DSIC Rates Do Not Comply With The DSIC Tariff Criteria.

The DSIC tariff describes the components for calculating the pre-tax return rate used to calculate the DSIC rate. The tariff states that "...the Company's actual capital structure and actual cost rates for long-term debt and preferred stock as of the 1<sup>st</sup> day for the three-month period ending one month prior to the effective date of the DSIC..." (auditor emphasis) will be used.

The audit staff reviewed details for the calculation of the DSIC rates effective October 1, 2000 and April 1, 2001. In both cases, the dates used for determining the amounts of long-term debt, preferred stock and common equity, and the rates for debt and preferred stock used in the calculation, deviated from tariff-prescribed time frames, as illustrated below:

	<u>Date of DSIC</u>	<u>Date of Plant Additions</u>	<u>Date of Equity \$</u>	<u>Date of Debt and Preferred \$</u>	<u>Date of Debt and Preferred Rates*</u>
DSIC Filing	10/1/00	8/31/00	8/31/00	8/31/00	7/1/00
Tariff	10/1/00	8/31/00	6/1/00	6/1/00	6/1/00
DSIC Filing	4/1/01	2/28/01	2/28/01	2/28/01	10/1/00
Tariff	4/1/01	2/28/01	12/1/00	12/1/00	12/1/00

\* Equity rate was 10.2% per approved tariff.

In calculating the DSIC rate, the Company has been using capital structure trial balance totals (long-term debt, preferred stock, common equity) at the end of the month which coincides with the most recent month's plant additions included in the filing. For debt and preferred rates, the Company uses the most recent quarterly financial report, which is filed with the Commission in compliance with the Pennsylvania Code Title 52, Chapter 71. Since the filing requirement for these reports is waived during the period of a general rate case proceeding, there is not always a consistent time differential between the date of DSIC application and the debt and preferred rates used. For example, the October 2000 DSIC used July 1, 2000 rates (3 month lag); while the April 2001 DSIC, in the midst of a rate case, used October 2000 rates (6 month lag).

These discrepancies were discussed with a representative of the Company who indicated that debt and preferred rates are not normally calculated for each month, but are available for calendar year quarters because of the requirement to file quarterly financial reports with the Commission. In addition, the Company believes that the trial balance capital structure which correlates to the most recent month's DSIC additions is more appropriate for calculating the DSIC. The Company agrees that its DSIC calculation does not comply with tariff provisions, and will request Commission approval of a tariff revision.

In further discussions regarding the draft audit report provided for the exit conference, Company representatives indicated that they intend to request use of debt and preferred rates which correlate with the corresponding dollars used in the calculation. In the example used in this Finding, debt and preferred rates for the October DSIC would be the rates at August 31.

### Recommendation

We recommend that the Company request Commission approval to revise its DSIC tariff to reflect the debt and preferred rates, and the debt, preferred and common equity dollars, actually used in the DSIC calculation. This request can be coordinated with the revision recommended in Finding No. 2.

The Company agrees with this recommendation.

rates for the same consumption over the same time period. DSIC revenue of approximately \$10,000 was imputed for that customer in the normal tariff revenue calculation and comprised a portion of the net deferred revenues.

The DSIC rates used in the calculation of deferred revenues are designed "to recover the fixed costs (depreciation and pre-tax return) of certain non-revenue producing, non-expense reducing distribution system improvement projects completed and placed in service...between base rate cases..." (DSIC-eligible costs). The DSIC tariff provides for yearly reconciliation of revenue received under the DSIC with the DSIC-eligible costs. The tariff requires that "the difference between revenue and costs will be recouped or refunded, as appropriate, in accordance with Section 1307(e), over a one-year period commencing on April 1, of each year." Our audit disclosed that no revenue was imputed for the new competitive rate customer on this reconciliation, although deferred revenue, including DSIC revenue, was included in the base rate request. Since DSIC-eligible costs will normally be fully recovered from system customers through the reconciliation process, any amount included in base rates is effectively duplicate recovery of the same costs.

When the competitive rate tariffs were approved in 1996, there was no DSIC rider in effect, and, therefore, its unique features, including reconciliation of all DSIC-eligible costs with revenues collected, were not addressed in the tariff terms and Commission Order approving them. The deferral of revenue to be addressed in subsequent base rate proceedings is a requirement of the Commission Order establishing the special rate tariffs. However, future base rate filings should clearly address the impact of the DSIC reconciliation process in deriving deferred revenues for consideration of recovery.

## ACKNOWLEDGEMENTS

We wish to express our appreciation to the officers and staff of Pennsylvania-American Water Company for the cooperation and assistance given to us during the course of our examination. The audit was conducted by Wendy J. Nicholas, CPA, assisted by William C. Sommer, Jr.



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of National Fuel :  
Gas Distribution Corporation :  
Requesting Permission to File :  
a Tariff Supplement to Become :  
Effective on One Day's Notice :  
Establishing a Recoupment :  
Surcharge :

P-850075

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OCT 2 1985

SECRETARY'S OFFICE  
Public Utility Commission

PETITION

National Fuel Gas Distribution Corporation ("National Fuel") files this petition requesting permission to file, on one day's notice, a tariff supplement establishing a recoupment surcharge. In support of such request, National Fuel represents as follows:

1. On November 29, 1979, National Fuel filed Supplement No. 19 to Tariff Gas - Pa. P.U.C. No. 4. Supplement No. 19 contained proposed increased rates designed to produce an increase of \$21,390,527 in National Fuel's annual operating revenues.

2. On January 28, 1980, the effective date of the proposed rates contained in Supplement No. 19 was suspended by operation of law for a seven-month period to August 28, 1980, pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S.A. §1308(d). An investigation of the proposed rates was instituted by the Commission by order entered January 4, 1980, at R-79090956.

DOCUMENT  
FOLDER

DOCKETED

OCT 3 1985

3. Following extensive hearings, briefs, a Recommended Decision and exceptions and reply exceptions, the Commission, by final order entered August 28, 1980, at R-79090956, permitted National Fuel to increase base rates by amounts required to permit recovery of an increase of \$8,549,761 in base-rate annual operating revenues. However, the Commission's order of August 28, 1980, provided that the increases in base rates permitted by the Commission's order of August 28, 1980, were to be filed to become effective on thirty-days' notice. The Commission's order provides as follows:

"3. That tariffs or tariff supplements may be filed upon less than statutory notice and that pursuant to the provisions of 52 Pa. Code §3.301(b) they may be filed to become effective upon thirty days notice." (Order of August 28, 1980, at R-79090956, page 56)

4. Although the maximum seven-month statutory suspension period with regard to the rates proposed by National Fuel's Supplement No. 19 expired as of the end of the day on August 27, 1980, the Commission did not permit National Fuel to charge before October 4, 1980, the increased rates designed to recover the increase in operating revenues permitted by the Commission's order of August 28, 1980. See the Commission's Secretarial letter dated September 4, 1980, and docketed at R-79090956, rejecting National Fuel's tariff supplements that proposed to increase rates for service rendered on, and after, August 28, 1980 (attached hereto as Appendix "A") and the Commission's Secretarial letter, dated October 27, 1980,

approving Distribution's charging increased rates for service rendered on, and after, October 4, 1980 (attached hereto as Appendix "B").

5. National Fuel believed that the Commission had no authority to extend the maximum seven-month statutory suspension period beyond August 27, 1980. National Fuel was deprived of operating revenues of \$872,928 because of the Commission's refusal to allow National Fuel to implement, effective for service rendered on, and after, August 28, 1980, increased rates to provide for the increase of \$8,549,761 in annual base-rate operating revenues. Therefore, National Fuel filed appeals with the Commonwealth Court of Pennsylvania ("Commonwealth Court").

6. In an opinion entered August 4, 1983, in National Fuel Gas Distribution Corporation v. Pa. P.U.C., 76 Pa. Commonwealth Ct. 102, 464 A.2d 546, 567 (1983), the Commonwealth Court stated as follows:

"(III) Effective Date of the Commission's Order Approving in Part NFG's November 29, 1979, Proposed Filing

"[14] As we have indicated, on November 29, 1980, NFG filed a revised tariff seeking a general rate increase proposing about \$21 million in additional annual revenues. The Commission suspended the proposed rates pursuant to Section 1308 of the Code, 66 Pa.C.S. §1308; conducted an investigation and, on August 28, 1980, disapproved the requested increase as proposed but permitted NFG to file new tariffs or tariff supplements designed to produce an increase in annual revenues of about \$8 million, the rates therein described to be effective on thirty days' notice of filing. August 28, 1980, was the last day of

the seven-month suspension period authorized by Code Section 1308(d) and NFG now argues that the effect of the Commission's action approving the increase in part but delaying the effective date of the approved rates, is to unlawfully extend the suspension period.

"The issues presented by this facet of NFG's appeal appear to be controlled by our recent opinion in the case of Bell Telephone Company v. Pennsylvania Public Utility Commission, 69 Pa. Commonwealth Ct. 554, 452 A.2d 86 (1982), allocatur granted, March 16, 1983, where we held that the effective date of compliance tariffs ordered to be filed on the last day of the suspension period must be the last day of the suspension if the Commission's order is to be, as it is required to be, final. None of the parties to these appeals have briefed the effect of our Bell Telephone opinion and, inasmuch as the Supreme Court has accepted allocatur in that case, we may not now reexamine the correctness of our resolution of the issues there presented. Therefore, we will remand this matter to the Commission for further proceedings, including a reexamination of the effective date of NFG's increased rates in the light of Bell Telephone Company v. Pennsylvania Public Utility Commission."

7. As indicated in the portion of the Commonwealth Court's opinion in National Fuel that is quoted in Paragraph No. 6 above, the Commonwealth Court previously had ruled, in Bell Telephone Company of Pennsylvania v. Pa. P.U.C., 69 Commonwealth Ct. 554, 452 A.2d 86 (1982), that any increase in base rates, which was permitted as the final result of a proposed general rate increase under Section 1308(d) of the Public Utility Code, 66 Pa. C.S.A. §1308(d), must become effective for service after the maximum seven-month suspension period. The Commonwealth Court also ruled, in Bell, that Bell was entitled to recover revenues that were lost as a result of the Commission's delaying

the effective date of Bell's increased rates beyond the end of the maximum seven-month suspension period.

However, as also noted by the Commonwealth Court in its opinion in National Fuel, the Commonwealth Court's order in Bell was the subject of a petition for allocatur to the Supreme Court of Pennsylvania ("Supreme Court"), and the Supreme Court, at the time that the Commonwealth Court decided National Fuel, had agreed to hear the appeal in Bell but had not decided the case. Because the final determination of whether National Fuel was entitled to charge increased rates immediately following the end of the suspension period depended upon the Supreme Court's decision, in the appeal of Bell, National Fuel and other parties to National Fuel's appeal agreed that any action on the Commonwealth Court's remand of the same issue in National Fuel should be postponed until the Supreme Court issued a decision in Bell. National Fuel informed the Commission of such agreement by letter dated December 5, 1983, a copy of which is attached hereto as Appendix "C".

8. By order September 24, 1984, reported at 482 A.2d 1272, the Supreme Court affirmed the Commonwealth Court's opinion and order in Bell, thereby affirming the Commonwealth Court's conclusion that the Commission was required to permit increased rates established in a 1308(d) proceeding, to become effective after the seven-month suspension period.

9. The Commission has taken no action with regard to the Commonwealth Court's remand in National Fuel with regard to the issue of National Fuel's right to recover revenues that were lost as a result of the Commission's delaying, from August 28, 1980, to October 4, 1980, the effective date of increased rates permitted by the Commission's order of August 28, 1980, at R-79090956. Therefore, National Fuel initiated discussions with the Commission's Prosecutory Staff in early 1985 in an attempt to resolve the matter and previously presented the calculations, attached as Appendix "D" to this petition, to the Commission's Prosecutory Staff.

10. Appendix "D" to this petition provides the detailed calculations, by customer class, of the difference between National Fuel's actual billings for service rendered during the period of August 28, 1980, through October 3, 1980, and the amounts that would have been charged during the same period if National Fuel had been permitted to charge, effective for service rendered on, and after, August 28, 1980, the increased rates permitted by the Commission's order of August 28, 1980. The additional amount that would have been charged if increased rates had been permitted to become effective for service rendered on, and after, August 28, 1980, is \$872,928. Such amount has been determined by class as shown on page 1 of Appendix "D".

National Fuel also proposes to recover interest at the legal rate of 6% percent per annum on the amount that should have been, but was not, charged with regard to billings for service

rendered during the period of August 28, 1980, through October 3, 1980.

The Commission has ordered the collection of interest from customers at the legal interest rate of 6% per annum where the additional principal amount to be charged to customers was the result of the Commonwealth Court's reversal and remand of portions of the Commission's final order in a base-rate proceeding. (See e.g., Pa. P.U.C. v. Blue Mountain Consolidated Water Company, order of January 14, 1982, at R-78100686, page 8, attached hereto as Appendix "F").

Interest has been calculated by customer class from the month of undercollection to the midpoint of the one-year period over which National Fuel proposes to recover such amounts. This is the same method used by the Commission when interest is paid to customers as a result of gas cost overcollections with the exception that, in such instance, customers receive the benefit of the higher mortgage interest rate.

11. National Fuel proposes to recover the amounts of principal and interest by a separate surcharge for each customer class. The amount of each such surcharge was calculated based upon estimated sales over a one-year period and, therefore is designed to provide for the recovery over a one-year period although the proposed tariff supplement, attached hereto as Appendix "E", specifically provides that the applicable surcharge will be applied to customers' bills, for each customer class,

only until the total amount listed for a customer class in Appendix "D" has been charged to such customer class.

The effects of the proposed surcharge on the average monthly bill of customers and on the average annual bill of customers, by customer class, are as follows:

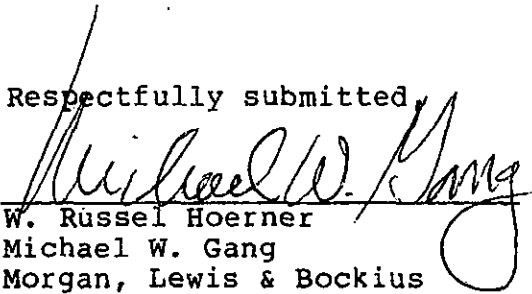
	<u>Average Normalized Consumption</u>	<u>Rate</u>	<u>Annual Recoupment Amount</u>	<u>Monthly Recoupment Amount</u>
Residential	142	.0247	3.51	.29
Commercial	581	.0209	12.14	1.01
Industrial	24,495	.0194	475.20	39.60
Public Authority	2,409	.0060	14.45	1.20
Sharon Steel	556,785	.0142	7,906.35	658.86

13. In order to avoid confusion for customers and expense for National Fuel, National Fuel requests that the Commission allow National Fuel to institute the proposed surcharges on a bills-rendered basis for bills mailed to customers on, and after, November 4, 1985. Application of the applicable surcharge on a bills-rendered basis does not place at a disadvantage any customer because each surcharge is designed to recover the recoupment amount over a one-year period.

WHEREFORE, National Fuel Gas Distribution Corporation requests that the Commission enter an order permitting the filing, on one day's notice, of the tariff supplement attached

hereto as Appendix "E" to become effective for bills rendered on,  
and after, November 4, 1985.

Respectfully submitted,

  
W. Russel Hoerner  
Michael W. Gang  
Morgan, Lewis & Bockius  
800 North Third Street  
Harrisburg, PA 17102

Of Counsel

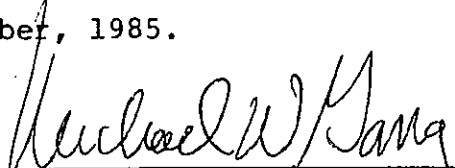
Morgan, Lewis & Bockius

October 2, 1985

Attorneys for NATIONAL FUEL GAS  
DISTRIBUTION CORPORATION

Kenneth C. Springirth  
4720 Cliff Drive  
Erie, PA 16511

Dated this 2nd day of October, 1985.

  
\_\_\_\_\_  
Michael W. Gang



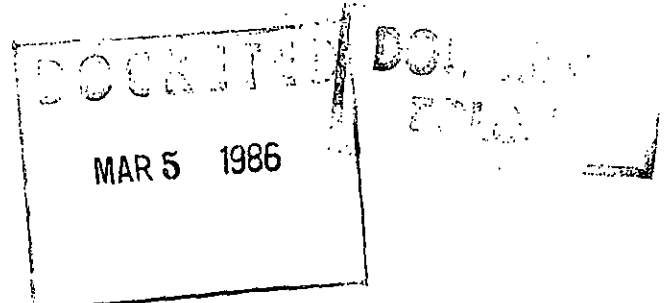
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P. O. BOX 3265, HARRISBURG, Pa. 17120

February 28, 1986

IN REPLY PLEASE  
REFER TO OUR FILE

P-850075

Michael W. Gang, Esquire  
Morgan, Lewis & Bockius  
800 North Third Street  
Harrisburg, Pennsylvania 17102



Petition of National Fuel Gas Distribution Corporation Requesting  
Permission to File a Tariff Supplement to Become Effective on One  
Day's Notice Establishing a Recoupment Surcharge

Dear Sir:

This is to advise you that the Commission at Public Meeting held February 20, 1986 adopted an Opinion and Order in connection with the above entitled proceeding.

A copy of the Opinion and Order is enclosed for your records.

Very truly yours,

Jerry Rich, Secretary

JZ  
Encls.  
Certified Mail  
Receipt Requested  
Office of Special Assistants  
Law Bureau  
Bureau of Rates  
Bureau of Rates, Mr. Patrick-Tariff Section

Copy of Opinion and Order picked up in this office by Mr. Hassel-NFG

4. The seven month statutory suspension period with regard to the rates proposed by NFGD's Supplement No. 19 expired as of midnight August 27, 1980. However, the increased rates did not go into effect until October 4, 1980.

5. NFGD thereupon filed an appeal with the Commonwealth Court of Pennsylvania ("Commonwealth Court") asserting that the Commission action requiring that rates be filed upon 30 days notice was erroneous. In an opinion entered August 4, 1983, in National Fuel Gas Distribution Corporation v. Pennsylvania Public Utility Commission, 76 Pa. Commonwealth Ct. 102, 464 A.2d 546, 567 (1983), the Commonwealth Court referred to its opinion in Bell Telephone Company v. Pennsylvania Public Utility Commission, 69 Pa. Commonwealth Ct. 554, 452 A.2d 86 (1982), allocatur granted, March 16, 1983. In the Bell case, it was held that the effective date of compliance tariffs must be the last day of the suspension. The Commonwealth Court thereupon remanded the matter to the Commission for further proceedings, including a reexamination of the effective date of NFGD's increased rates in light of the Bell case.

6. In the Bell case, the Commonwealth Court also ruled that Bell was entitled to recover revenues that were lost as a result of the Commission's delay of the effective date of Bell's increased rates beyond the end of the maximum seven-month suspension period. By Order of September 24, 1984, reported at 482 A.2d 1272, the Supreme Court affirmed the Commonwealth Court's opinion and order in Bell, thereby affirming the Commonwealth Court's conclusion that the Commission was required to permit increased rates established in a 1308(d) proceeding, to become effective at the end of the seven month suspension period.

7. NFGD submitted, as Appendix "D" to the Petition of October 2, 1985, the details regarding the lost revenues for which it seeks recoupment, summarized as follows:

11. NFGD requested that the Commission enter an Order permitting the filing, on one day's notice, of the tariff supplement attached to its Petition as "Appendix E", to become effective for bills rendered on, and after, November 4, 1985.

We approve NFGD's proposal, being of the opinion that NFGD's proposal is an appropriate method by which to achieve the recoupment to which it is entitled; THEREFORE,

IT IS ORDERED:

1. That NFGD be authorized to file a tariff or tariff supplement, effective for bills rendered on and after March 1, 1986, which would provide for a total recoupment of the amount of \$1,163,262, allocated to customer classes as set forth in the body of this Opinion and Order, via temporary surcharge rates per Mcf.

2. That NFGD is directed to render a final report to the Commission, when the recoupment has been completed, reflecting the actual revenue billed to each class and the date the surcharge for each class was terminated.

BY THE COMMISSION,



Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: February 20, 1986

ORDER ENTERED: February 28, 1986

J

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

-----  
No. 1061 C.D. 2011

C. LESLIE PETTKO, ON BEHALF OF HIMSELF AND  
ALL OTHERS SIMILARLY SITUATED,

Appellant,

v.

PENNSYLVANIA AMERICAN WATER COMPANY,

Appellee.

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APPLICATION FOR REARGUMENT

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On Appeal From the August 27, 2010 Order of the Court of Common Pleas of  
Washington County (O'Dell Seneca, P.J.), No: 2010-CV-2126

**RECEIVED**

JUN 25 2012

Roy W. Arnold  
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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Attorneys for Appellee Pennsylvania  
American Water Company

Appellee Pennsylvania American Water ("PAW") respectfully applies for reargument from one aspect of the decision the Court issued on January 13, 2012 (attached hereto).

### OVERVIEW

Under the well-established law of this Commonwealth, the Public Utility Commission ("PUC") has exclusive jurisdiction over challenges to a utility's rates and billing practices if the PUC has the power to make the consumer "whole" for the violation. Here, the Court concluded, correctly, that: (a) the PUC has broad statutory authority to regulate PAW's billing practices; and (b) the PUC has the power to order refunds of any charges improperly billed. Accordingly, the Court concluded, correctly, that the PUC thus has exclusive jurisdiction over the plaintiff's claims that PAW breached its contract with him and committed conversion by allegedly overcharging him.

The Court erred, however, when it then concluded that the PUC does *not* have exclusive jurisdiction over Pettko's claim that the identical conduct violates the Unfair Trade Practices and Consumer Protection Law ("UTCPL"), 73 P.S. § 201-2(4)(xxi).

The error resulted from the Court's conclusion that the PUC lacks the authority to make Pettko "whole" because it lacks the authority to award him the statutory damages available under the UTCPL. Although the PUC does lack the authority to award those damages, this *does not mean* that the PUC lacks the power to make Pettko "whole" for the alleged violation, and thus *does not mean* that the PUC lacks exclusive

jurisdiction over his UTPCPL claim, because those statutory remedies are not "make whole" remedies. To the contrary, they are remedies calculated to punish and deter the wrongdoer; they are *not* calculated to compensate the allegedly injured consumer.

The Court's conclusion - that a plaintiff who succeeds before the PUC in establishing that a public utility has engaged in billing practices not authorized by its tariff - may then bring a putative class action seeking, *inter alia*, punitive statutory damages and attorneys' fees - also improperly disregards the express provision in the Public Utility Code that governs when and under what circumstances an aggrieved consumer may seek exemplary damages in an overcharge situation. In doing so, the Court has subverted the entire regulatory scheme and deprived utilities of the Code's safe-harbor provision.

For all of these reasons, PAW respectfully asks the Court to reconsider its conclusion that the PUC has primary jurisdiction, but not exclusive jurisdiction, over Pettko's UTPCPL claim.

#### ARGUMENT

**A. The Trial Court Concluded, Correctly, that The PUC Has Exclusive Jurisdiction Over Pettko's Challenges To PAW's Billing Practices.**

Mr. Pettko contends, on behalf of a putative class of Pennsylvania consumers, that PAW improperly bills two charges, the Distribution System Improvement Charge

(the "DSIC") and the State Tax Adjustment Surcharge (the "STAS").<sup>1</sup> The calculation and application of the DSIC and the STAS are mandated by PAW's tariff. See 1/13/12 Op., p. 13.

Pettko challenges PAW's application of changes in the DSIC and the STAS on a "bills rendered" basis. Under a "bills rendered" scenario, a change (either an increase or decrease) in a rate is applied to the entire amount of any bill that a utility sends a consumer on or after the PUC-approved "effective" date of the rate change. In contrast, in a "service rendered" scenario, a rate change is "pro-rated," meaning that service rendered before the "effective" date is priced at the old rate and service rendered after the "effective" date is priced at the new (higher or lower) rate.<sup>2</sup> Pettko contends that PAW was not authorized to bill the DSIC and the STAS on a "bills rendered" basis. Pettko also challenges PAW's practice of allegedly "rounding" each of these charges up

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<sup>1</sup> The DSIC is a charge that adjusts PAW's rates to recover the fixed costs of certain non-revenue producing investments made to replace specified categories of aging distribution system infrastructure. The STAS is a surcharge that is applied to all services rendered and is designed to adjust customers' charges to reflect increases and decreases in the rates of various state taxes. It is computed using elements prescribed by the PUC whenever any of the tax rates used in calculation of the surcharge are changed.

<sup>2</sup> The PUC exercises its statutory authority to regulate rates to approve the application of rate changes on either a "bills rendered" or a "service rendered" basis. See *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 Surcharge*, Docket No. P-850075, 1986 Pa. PUC LEXIS 132 (February 28, 1986); see also J.H. Cawley and N.J. Kennard, *Rate Case Handbook: A Guide To Utility Ratemaking Before The Pennsylvania Public Utility Commission* p. 135 (1983) ("The new rates will apply either to service rendered on and after a certain date, or for bills rendered on and after a certain date.").

to the next penny, rather than (as Pettko deems appropriate) to the nearest penny.

Pettko alleged that these practices constitute: (a) breaches of PAW's "contracts" with consumers; (b) conversion; and (c) a violation of the UTPCPL, 73 P.S. § 201-2(4)(xxi).

The trial court concluded, correctly, that the PUC has exclusive jurisdiction over all of Pettko's claims. It dismissed Pettko's complaint and transferred the case to the PUC. As explained *infra*, this Court affirmed in part (agreeing that the PUC has exclusive jurisdiction over the breach of contract and conversion claims), but impliedly reversed in part (holding that the PUC does *not* have exclusive jurisdiction over the UTPCPL claim).

**B. Pettko's UTPCPL Claim.**

The UTPCPL prohibits, *inter alia*, "unfair methods of competition," including "[e]ngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding." 73 P.S. § 201-2(4)(xxi). Here, Pettko contends that the identical conduct that allegedly constitutes a breach of contract and conversion also constitutes "fraudulent or deceptive conduct" that "creates a likelihood of confusion or misunderstanding." In other words, he alleges that, by billing the DSIC and the STAS on a "bills rendered" basis, PAW has violated the UTPCPL.<sup>3</sup>

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<sup>3</sup> In its Opinion (p. 17), the Court stated: "Through the UTPCPL claim, Pettko seeks redress for PAW's alleged deceptive trade practices above and beyond overcharging." That statement is not accurate. Pettko's UTPCPL claim rests entirely on the very "failure to pro-rate" and "improper rounding" allegations that also underlie his breach of contract and conversion claims.

The alleged "overcharging" of which Pettko complains involves pennies or fractions of pennies. Under the UTPCPL, however, an aggrieved consumer may recover his "actual damages" (here, pennies per month) or \$100 per violation, whichever is greater. 73 P.S. § 201-9.2(a). The court also may award "such additional relief as it deems necessary or proper," including costs and attorneys' fees. *Id.* As explained *infra*, those additional statutory remedies are in sharp and distinct contrast to the plaintiff's "actual damages" - in other words, they simply are not "make whole" remedies.

**C. Because The PUC Can Make Pettko And All Similarly-Situated Consumers Whole By Ordering Refunds With Interest, It Has Exclusive Jurisdiction Over All Of Pettko's Challenges To PAW's Billing Practices.**

Under well-established Pennsylvania law, an agency has exclusive jurisdiction over a claim if the available administrative remedies are adequate to make the plaintiff "whole." *DiSanto v. Dauphin Consolidated Water Supply Co.*, 436 A.2d 197, 201 (Pa. Super. 1981); accord *Morrow v. The Bell Tele. Co. of Pa.*, 479 A.2d 548, 551 (Pa. Super. 1984) (holding, with respect to a challenge of a telephone company's toll charge practices, that the PUC had exclusive jurisdiction because the Public Utility Code granted it authority "to remedy any wrong which appellant may have sustained" through refunds of excessive charges). Here, the PUC has authority to make Pettko and all other consumers completely, one hundred percent whole in the event any overcharging occurred.

Specifically, under the Public Utility Code, if the PUC determines that “any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order, or was in excess of the applicable rate “ contained in a tariff, it has:

the power and authority to make an order *requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate . . . .*

66 Pa. C.S.A. § 1312(a) (emphasis added). The PUC also has the power to order the utility to refund the overcharges to “*all patrons subject to the same rate.*” *Id.* (emphasis added).

Furthermore, the DSIC is expressly subject to audit at intervals determined by the PUC, and also is subject to an annual reconciliation in front of the PUC. If the PUC’s audit determines that PAW has overbilled the DSIC (as Pettko claims), PAW’s tariff sets forth the pre-determined mechanism whereby PAW must refund that overage to consumers (with interest). *See* RR.126a (Tariff, 3rd Revised Page 12B3).

In either event – whether: (a) the consumer brings a refund action before the PUC; or (b) the PUC orders refunds pursuant to its regular audit and reconciliation process – the PUC undeniably has the power and the duty to make consumers “whole” for any amounts the PUC determines they have overpaid. Indeed, not only will the consumer receive the amount he overpaid, he also will receive interest on that amount. Thus, as the trial court properly recognized, because the PUC has the statutory authority to make consumers “whole” for the complained-of conduct, its jurisdiction

over all of Pettko's claims is exclusive. *DiSanto*, 436 A.2d at 201; see also *Elkin v. Bell Telephone Company*, 420 A.2d 371 (Pa. 1980).

This Court's contrary conclusion - that the PUC's jurisdiction over the UTPCPL claim is not exclusive because the PUC lacks the authority to award him the statutory windfall of \$100 per violation - cannot be reconciled with this well-established law. As the trial court correctly recognized (but this Court overlooked), those remedies are not "make whole" remedies. Trial Court Order p. 10 (statutory damages under the UTPCPL, "if awarded, would go beyond making Pettko whole and serve additional remedial purposes"). Indeed, even *this Court* acknowledged that the statutory penalties available under the UTPCL are *not* designed to make consumers "whole" for a defendant's wrongful conduct, but, rather, are devices calculated to "deter and punish" fraudulent and deceptive conduct. 1/13/12 Op., p. 17 ("[s]uch remedies serve both a deterrent and punitive function").<sup>4</sup>

The case on which this Court relied, *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1978), does not support the conclusion that the PUC lacks exclusive jurisdiction over Pettko's UTPCPL claim. In *Feingold*, a lawyer moved his office and was given a new telephone number. Because the telephone directories listed his old

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<sup>4</sup> Indeed, in this regard, the statutory penalties available under the UTPCPL are analogous to the punitive damages Pettko sought on his conversion claim - a claim that this Court concluded *is* within the PUC's exclusive jurisdiction to adjudicate. Cf. *Hoy v. Angelone*, 720 A.2d 745, 749 (Pa. 1998) ("Punitive damages . . . are not a make-whole remedy. Punitive damages are not awarded as an additional compensation but are purely penal in nature.") (citing *G.J.D. v. Johnson*, 713 A.2d 1127 (Pa. 1998)).

number, he provided a tape recorded referral that directed callers to the new number. He alleged that Bell improperly disconnected the old telephone number, causing his business to decline. 383 A.2d at 792. The Supreme Court concluded that it was proper for the trial court to hear the dispute because the PUC lacked authority to make the plaintiff whole, *e.g.*, it had no authority to award the plaintiff lost profits. Here, in stark contrast, the PUC *does* have authority to *fully compensate Pettko* for his claimed damages by ordering refunds of overcharges, with interest.

**D. The Court's Conclusion That A Consumer Aggrieved By A PUC-Regulated Billing Practice May Seek Exemplary Damages From The Courts Will Undermine The Regulatory Scheme Set Forth In The Public Utility Code.**

The Court held, in essence, that a consumer may obtain a ruling by the PUC that a utility engaged in billing practices that violate its tariff, then proceed directly to court to obtain exemplary damages for that conduct. That outcome ignores the specific provision in the Public Utility Code that expressly *limits* the circumstances under which a consumer may obtain exemplary damages. Specifically, the Code provides that a consumer may seek punitive remedies against a utility *only* if he establishes that: (1) the PUC ordered the utility to refund monies; and (2) *the utility failed to implement that order.* 66 Pa. C.S.A. § 1312(b) (if a utility ignores such an order, consumers may *at that point* file suit, and may seek a penalty (50% of the amount of the refund), court costs, and reasonable attorneys' fees).

Here, by concluding that a consumer has the right to proceed directly to court once the PUC determines that a utility's billing practices violate its tariff, this Court improperly has drained § 1312(b) of all meaning and improperly has deprived utilities

of their statutory safe harbor to issue refunds and thereby avoid exposure to exemplary damages.

This Court's reasoning that 66 Pa. C.S.A. § 103(b) compels the conclusion that the PUC lacks exclusive jurisdiction over Pettko's UTPCPL claim is flawed for similar reasons. Section 103(b) provides:

*Except as otherwise provided in this part, nothing in this part shall abridge or alter the existing rights of action or remedies in equity or under common or statutory law of this Commonwealth, and the provisions of this part shall be cumulative and in addition to such rights of action and remedies.*<sup>5</sup> (emphasis added)

As explained *supra*, however, "this part" - namely, § 1312(b) of the Public Utility Code - *does* "otherwise provide" for the award of exemplary damages. By holding that § 103(b) authorizes a putative class action seeking exemplary damages *without requiring the plaintiffs to first establish that the utility violated a PUC refund order* (as § 1312(b) expressly requires), this Court has profoundly altered the overall regulatory scheme.<sup>6</sup>

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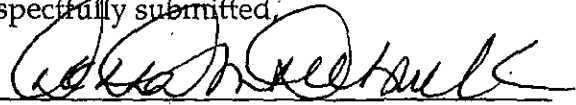
<sup>5</sup> "This part" is a reference to the entire Public Utility Code (Part I of Title 66 of the Pennsylvania Consolidated Statutes).

<sup>6</sup> The Supreme Court of Pennsylvania has held that the Public Utility Code, by authorizing the PUC to pervasively regulate utilities, displaces other statutory provisions that may impinge in any way on the PUC's authority to regulate a utility's rates and service. *Duquesne Light Co. v. Upper St. Clair Twp.*, 105 A.2d 287 (Pa. 1954) (the pervasive regulatory scheme enacted in the Public Utility Code entirely displaced land use and land regulation provisions of the First Class Township Code); *accord South Coventry Twp. v. Philadelphia Elec. Co.*, 504 A.2d 368 (Pa. Commw. 1986). By allowing § 103(b) of the Code to swallow and supplant §1312(b) of the Code, this Court has created a tension with those decisions as well.

E. Conclusion

For all of these reasons, Pennsylvania American Water respectfully asks the Court to reconsider its January 13, 2012, decision to the extent it concludes that the PUC lacks exclusive jurisdiction to resolve a dispute about a utility's billing practices.

Respectfully submitted,



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Dated: January 27, 2012

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. Leslie Pettko, on behalf of himself :  
and all others similarly situated, :  
Appellant :  
v. : No. 1061 C.D. 2011  
: Argued: November 15, 2011  
Pennsylvania American Water :  
Company :

**BEFORE: HONORABLE DAN PELLEGRINI, Judge<sup>1</sup>**  
**HONORABLE P. KEVIN BROBSON, Judge**  
**HONORABLE PATRICIA A. McCULLOUGH, Judge**

**OPINION BY JUDGE BROBSON**      **FILED: January 13, 2012**

Appellant C. Leslie Pettko (Pettko), on behalf of himself and others similarly situated, appeals from an order of the Court of Common Pleas of Washington County (trial court), which transferred the above-captioned action to the Pennsylvania Public Utility Commission (PUC). Pettko filed a class action against appellee Pennsylvania American Water Company (PAWC), seeking to challenge PAWC's billing practices, including practices relating to certain rate increases approved by the PUC, and PAWC's alleged practice of rounding up, rather than down, amounts for the various components of its bills. PAWC filed preliminary objections to Pettko's first amended complaint (complaint), which the trial court sustained, concluding that the PUC has jurisdiction over the matter. The trial court then transferred the action to the PUC. Pettko seeks review of that

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<sup>1</sup> The decision in this case was reached prior to January 7, 2012, when Judge Pellegrini became President Judge.

order.<sup>2</sup> We affirm the trial court's order to the extent that it transfers the matter to the PUC, but with the qualifications identified below regarding the trial court's legal conclusions.

The particular rate/billing issues that are involved in this case are: (1) a Distribution System Improvement Charge (DSIC);<sup>3</sup> (2) a State Tax Adjustment Charge (STAC); and (3) PAWC's alleged system of rounding individual charges in a bill up, rather than down, to the nearest cent. According to Pettko's complaint, PAWC's billing is based upon water consumption amounts, authorized taxes, fees, and surcharges. (Complaint ¶ 24.) PAWC bills customers based on a thirty-day cycle, but the cycle does not correspond to calendar months. (*Id.* ¶¶ 25-26.)

With regard to the DSIC component of PAWC's bills, Pettko alleged that although the PUC's authorizations of periodic increases in DSIC amounts are effective at the beginning of a particular calendar month, PAWC's practice is to implement the increase in that charge at the beginning of the billing cycle that

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<sup>2</sup> We note that Pettko initially appealed to the Superior Court, which transferred the matter to this Court by order dated April 25, 2011. Pursuant to Section 742 of the Judicial Code, 42 Pa. C.S. § 742, the Superior Court has jurisdiction over all appeals from orders of common pleas courts unless jurisdiction is vested in this Court under Section 762 of the Judicial Code, 42 Pa. C.S. § 762. We perceive no basis in Section 762 of the Judicial Code upon which we could conclude that this Court has jurisdiction over the trial court's order. The parties, however, did not raise the issue of this Court's lack of jurisdiction. Pennsylvania Rule of Appellate Procedure 741 provides that "[t]he failure of an appellee to file an objection to the jurisdiction of an appellate court on or prior to the last day under these rules for the filing of the record shall, unless the appellate court shall otherwise order, operate to perfect the appellate jurisdiction of such appellate court, notwithstanding any provision of law vesting jurisdiction of such appeal in another appellate court." *See* 42 Pa. C.S. § 704(a). Therefore, the parties have waived any objection to this Court's jurisdiction. In the interest of judicial economy, this Court will decide the merits of the appeal.

<sup>3</sup> DSIC "is used for infrastructure improvements to water and sewer delivery systems and to fund the replacement of water distribution facilities." (Complaint ¶ 27.)

predates the effective date of the increase, rather than to pro-rate the charge for the billing cycle during which the increase begins. (*Id.* ¶ 29, 31.)<sup>4</sup>

With regard to the STAC, Pettko alleged that the PUC authorized this charge effective January 1, 2010, but that, as with PAWC's method of implementing the increase with DSIC increases, PAWC similarly failed to pro-rate the charge such that customers would only be billed for the increase beginning with the effective date of the increase. (*Id.* ¶¶ 37-38.) With regard to both the DSIC and STAC increases, Pettko alleged that PAWC's billing practices improperly resulted in retroactive billing of customers for fee increases that did not become effective until some point after the billing cycle began. (*Id.* ¶ 40.)

Pettko also challenged PAWC's alleged practice of rounding up every individual charge encompassed on a customer's bill to the nearest cent, even though "accepted rules of arithmetic would dictate rounding down." (*Id.* ¶ 41.) Pettko averred that "[a]lthough individually small, the practice of rounding up to the next cent no matter whether it is the nearest cent, when aggregated among the components in each customer's bill and when all of the customers' bills are added together, represents a considerable amount of money." (*Id.* ¶ 43.) Pettko asserted that "absent individually calculating each element of their bills, the customers have no idea that the total is artificially inflated by [PAWC]'s rounding practices." (*Id.* ¶ 45.) Pettko claimed that PAWC's practices (1) violate Section 2(4)(xxi) of the Unfair Trade Practices and Consumer Protection Law (UTPCPL);<sup>5</sup> (2) constitute a conversion; and (3) constitute a breach of contract.

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<sup>4</sup> Pettko alleged that during the 2009 calendar year, the PUC approved two DSIC rate increases, in July and again in October.

<sup>5</sup> Act of December 16, 1968, P.L. 1224, as amended, 73 P.S. §§ 201-2(4)(xxi). This sub-section of the UTPCPL provides a catch-all definition of the terms "unfair methods of (Footnote continued on next page...)

PAWC filed preliminary objections to Pettko's complaint averring the following grounds: (1) the PUC, rather than the trial court, has primary and exclusive jurisdiction over Pettko's complaint, because Pettko's complaint essentially seeks to challenge PAWC's billing practices, and the PUC could provide complete relief to Pettko (and the putative class) if the PUC finds merit in Pettko's claims;<sup>6</sup> (2) Pettko failed to exhaust an available statutory remedy—an action before the PUC; and (3) the complaint fails to comply with Pennsylvania Rule of Civil Procedure No. 1028(a)(2), because Pettko did not include any written contract between him (and the putative class) and PAWC in relation to Pettko's breach of contract claim. Before the trial court, Pettko responded to PAWC's jurisdictional argument by asserting that his claims for relief are ones that the law recognizes in addition to whatever relief he may be entitled to receive from the PUC. The trial court concluded that the PUC has both primary and exclusive jurisdiction over Pettko's claims, dismissed Pettko's complaint, and transferred the matter to the PUC.

In this appeal,<sup>7</sup> Pettko raises the following issues for our review: (1) whether the trial court erred in concluding that the PUC has primary and/or

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**(Continued...)**

competition" and "unfair or deceptive acts or practices" by including the following conduct: "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding."

<sup>6</sup> PAWC alternatively requested the trial court to grant a stay of the proceedings "until such time as the [PUC] is asked to make, and does make, a final determination related to PAW[C]'s calculation of billing of the [DSIC] and [STAC]."

<sup>7</sup> This Court's standard of review of a trial court's order sustaining preliminary objections to a complaint is limited to considering whether the trial court erred as a matter of law or committed an abuse of discretion. *Muncy Creek Twp. Citizens Comm. v. Shipman*, 573 A.2d 662, 663 (Pa. Cmwlth. 1990). In considering whether a trial court properly sustained preliminary

exclusive jurisdiction over Pettko's claim where Section 103(c) of the Public Utility Code (Code)<sup>8</sup> provides that remedies available from the PUC are cumulative and in addition to common law and statutory remedies; and (2) whether the trial court erred in concluding that it lacks jurisdiction to render a determination on the merits of Pettko's claims.

We begin, as the trial court did, by considering whether the PUC has primary jurisdiction in this matter.<sup>9</sup> In *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977), our Supreme Court reviewed a trial court's conclusion that it lacked subject matter jurisdiction over the plaintiff's equity action against a telephone company.<sup>10</sup> The plaintiff sued the telephone company based upon the

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objections, this Court accepts as true all well-pled facts and all inferences reasonably deducible therefrom. *Cowell v. Com., Dep't of Transp.* 883 A.2d 705 (Pa. Cmwlth. 2005).

<sup>8</sup> 66 Pa. C.S. § 103(c).

<sup>9</sup> In contrast to the primary jurisdiction doctrine, we note that courts have defined subject matter jurisdiction generally as a court's or tribunal's power to hear cases of the class to which the case at issue belongs. *Verholek v. Verholek*, 741 A.2d 792, 798 (Pa. Super. 1999), *appeal denied*, 563 Pa. 665, 759 A.2d 388 (2000). This Court has observed also the distinction between subject matter jurisdiction and equity jurisdiction, "which describes the remedies available in equity" and which is a term "used to refer to invocation of the extraordinary remedies of equity." *Lashe v. N. York Cty. Sch. Dist.*, 417 A.2d 260, 262 (Pa. Cmwlth. 1980). Article V, Section 5 of the Pennsylvania Constitution is the ultimate source of jurisdiction for the courts of common pleas, and our General Assembly has provided further definition to the "manner in which the common pleas courts' jurisdiction is exercised." *Riedel v. Human Relations Comm'n of the City of Reading*, 559 Pa. 34, 42, 739 A.2d 121, 125 (1999) (Saylor, J., concurring). Similarly, the General Assembly creates and sets the limits of the competency of administrative agencies to adjudicate certain classes of cases. In this case, there can be no dispute that the courts of common pleas have subject matter jurisdiction over common law claims such as conversion and breach of contract involving private individuals and businesses and with regard to causes of action arising under the UTPCPL.

<sup>10</sup> At the time that the plaintiff in *Feingold* filed his appeal, the Supreme Court was vested with jurisdiction to hear such appeals directly from the trial court. *Feingold*, 477 Pa. at 4 n.1, 383 A.2d at 792 n.1 (noting that after appeal was filed Supreme Court adopted Pa. R.A.P. 702, "vesting appellate jurisdiction in cases such as this in the Superior Court.")

company's alleged failure to maintain a referral system after the plaintiff moved his business and obtained a new phone number. The plaintiff alleged that he lost clients as a consequence of the referral system failure and that the telephone company exacerbated the problem when it published its new phone book with the plaintiff's old telephone number. The plaintiff sought injunctive relief and compensatory and punitive damages.

The trial court in that case agreed with the telephone company's argument that the plaintiff had failed to exhaust a putative administrative remedy available in an action before the PUC. The Supreme Court phrased the issue before it as "whether [the plaintiff] had adequate administrative remedies available under the Public Utility Law." *Feingold*, 477 Pa. at 7, 383 A.2d at 794. Based upon its conclusion that the plaintiff sought damages as well as injunctive relief, the Supreme Court concluded that the available administrative remedy was not adequate to address the plaintiff's requested relief: "In the instant case, [the plaintiff] could not have been made whole by the PUC, thus the administrative remedy was not 'adequate and complete.'" *Id.* at 10-11, 383 A.2d at 796 (citations omitted). Thus, the Supreme Court remanded the matter to the trial court.

Following *Feingold*, our Supreme Court in *Elkin v. Bell Telephone Company*, 491 Pa. 123, 420 A.2d 371 (1980), addressed a similar question, but resolved the matter on a distinct jurisdictional basis. In *Elkin*, the plaintiff filed a four-count trespass action in the Court of Common Pleas of Montgomery County, asserting various negligence claims involving averments that the telephone company had failed to furnish reasonable telephone service, and requesting both compensatory and punitive damages. The telephone company filed preliminary objections, challenging the trial court's subject matter jurisdiction. The trial court

stayed the matter until the PUC could issue a determination regarding the appropriate standards for the service at issue.

The plaintiff filed a complaint with the PUC, raising the same claims as those he raised in his action before the trial court. The PUC, following hearing, issued an order in which it determined that the plaintiff had failed to substantiate his allegations of inadequate service. The plaintiff did not challenge the PUC's order, but filed a request with the trial court to proceed with his stayed civil action. The telephone company filed a motion for summary judgment based upon the collateral effect of the PUC's resolution of the issues it had addressed, which the trial court denied. The telephone company appealed that order to the Superior Court, which reversed the trial court's order and entered judgment in favor of the telephone company. The Supreme Court granted the plaintiff's petition for allowance of appeal for the purpose of evaluating the effect of the PUC's order on the plaintiff's civil action.

The plaintiff in *Elkin* relied upon the Supreme Court's analysis in *Feingold*, asserting that the Supreme Court intended for trial courts to have exclusive jurisdiction over actions relating to public utilities if the action involves a request for damages. The Supreme Court rejected this argument as sweeping too broadly. After observing that the focus of the Supreme Court's analysis in *Feingold* concerned whether an administrative remedy is adequate, the Supreme Court stated that the plaintiff's position "ignore[d] the reality that frequently *both* the courts and administrative agencies must each play roles in the adjudication of certain matters." *Id.* at 131, 420 A.2d at 375 (emphasis in original). To address such circumstances, our Supreme Court reasoned, the courts developed the doctrine of primary jurisdiction. *Id.*, 420 A.2d at 376. As described generally in

*Elkin*, the doctrine of primary jurisdiction permits the bifurcation of a plaintiff's claim, whereby a trial court, faced with a claim requiring the resolution of an issue that is within the expertise of an administrative agency, will first cede the analysis of the issue or issues to that agency. Once the agency resolves the particular issue or issues over which it has primary jurisdiction, the trial court may proceed, if necessary, to apply the agency's decision to the dispute remaining before the trial court. The doctrine "creates a workable relationship between the courts and administrative agencies wherein, in appropriate circumstances, the courts can have the benefit of the agency's views on issues within the agency's competence." *Id.* at 131-32, 420 A.2d at 376.

The Supreme Court explained:

The doctrine serves several purposes, chief of which are the benefits to be derived by making use of the agency's special expertise in complex areas with which judges and juries have little familiarity. Another important consideration is the statutory purpose in the creation of the agency—the powers granted by the legislature and the powers withheld. And, another fundamental concern is the need to promote consistency and uniformity in certain areas of administrative policy. It has been noted that these purposes are frequently served in, and the doctrine of primary jurisdiction principally applicable to, the controversies concerning the so-called "regulated industries."

*Id.* at 132-33, 420 A.2d at 376 (citations omitted). When a trial court calls upon an administrative agency to exercise its primary jurisdiction and evaluate a particular pertinent issue, and the agency renders a determination, that adjudicatory action has a binding, collateral effect upon the trial court's proceedings, unless a party successfully challenges the determination through the appeal process. *Id.* Such determinations by administrative agencies, therefore, serve more than a

merely advisory function. As we stated in *County of Erie v. Verizon North, Inc.*; 879 A.2d 357 (Pa. Cmwlth. 2005), under the doctrine of primary jurisdiction, a trial court may “refrain from hearing a case” over which it might otherwise have jurisdiction, “where protection of the integrity of [a] regulatory scheme dictates that the parties preliminarily resort to the agency that administers the scheme for the resolution of disputes.” *County of Erie*, 879 A.2d at 363. “Once the administrative tribunal has determined the issues within its jurisdiction, then the temporarily suspended civil litigation may continue, guided in scope and direction by the nature and outcome of the agency determination.” *Elkin*, 491 Pa. at 133-34, 420 A.2d at 377.

Our Supreme Court, however, admonished trial courts not to abdicate judicial responsibility, and summarized the circumstances in which the primary jurisdiction doctrine applies, as follows:

[W]here the subject matter is within an agency’s jurisdiction *and* where it is a complex matter requiring special competence, with which the judge or jury would not or could not be familiar, the proper procedure is for the court to refer the matter to the appropriate agency. Also weighing in the consideration should be the need for uniformity and consistency in agency policy and the legislative intent. Where, on the other hand, the matter is not one peculiarly within the agency’s area of expertise, but is one which the courts or jury are equally well-suited to determine, the court must not abdicate its responsibility. In such cases, it would be wasteful to employ the bifurcated procedure of referral, as no appreciable benefits would be forthcoming.

*Id.* at 134-35, 420 A.2d at 377 (footnote omitted).

Additionally, in *County of Erie* this Court confirmed the notion that the nature of the claims a plaintiff brings is not necessarily determinative of the question of whether the doctrine of primary jurisdiction applies. In *County of Erie*,

we quoted the Superior Court's decision in *Morrow v. Bell Telephone Company of Pennsylvania*, 479 A.2d 548 (Pa. Super. 1984), as follows: "[W]hen a utility's failure to maintain reasonable and adequate service is alleged, regardless of the form of the pleading in which the allegations are couched, it is for the PUC, initially, to determine whether the service provided by the utility has fallen short of the statutory standard required of it." *County of Erie*, 879 A.2d at 364 (quoting *Morrow*, 479 A.2d at 550-51).

In this case, Pettko argues that his claims under the UTPCPL and his common law claims do not implicate any regulatory matters within the PUC's subject matter competency. Pettko contends that the issues he raises are simple tort, contract, and statutory claims that do not require the expertise of the PUC. Pettko points out that he does not challenge the effective dates of the rate increases, the actual rates the PUC established, or that PAWC is authorized to bill its customers for DSIC and STAC charges. Rather, Pettko claims that the only issue before the trial court was PAWC's action of failing to pro-rate its charges. PAWC's conduct, Pettko alleges, was deceptive. Pettko contends that these discrete matters do not require the exercise of the PUC's expertise.

Pettko asserts that the Superior Court's decision in *Byer v. People's Natural Gas Company*, 380 A.2d 383 (Pa. Super. 1977), supports his position. In *Byer*, a gas utility entered a contract with natural gas consumers whereby the utility agreed to provide the consumers a special rate for gas (for the period from May 15 through October 15 of each year) in exchange for the consumers' purchase from the utility of gas air-conditioning systems. The special gas rate was to be effective for the life of the systems. In 1975, however, after the PUC approved the utility's tariff, the utility began to charge the rate established by the tariff instead of the

special rate. The consumers filed an action in assumpsit with the Court of Common Pleas of Allegheny County, and the utility filed preliminary objections claiming that the PUC had jurisdiction over the claim. The trial court dismissed the preliminary objections.

The Superior Court concluded that, based upon the record, it could not determine whether the consumers were challenging the rates established or were merely seeking damages based upon the alleged breach of the utility's promise in connection with the sale of the air-conditioning system. The Superior Court reasoned that, in the latter situation, the trial court, rather than the PUC, would have jurisdiction. Pettko asserts that, like the scenario in *Byer*, he is not seeking to challenge the established rates, but rather seeking to recover overcharges.

In response, PAWC argues that the PUC has primary jurisdiction over Pettko's claims because the essence of those claims relate to PAWC's billing practices. PAWC suggests that the PUC's broad regulatory powers, including the PUC's power to regulate the rates a utility charges to a customer and the power to prescribe regulations and practices with which utilities must comply, support PAWC's view that the PUC has primary jurisdiction in this case. In echoing the trial court's analysis, PAWC refers to Section 102 of the Code,<sup>11</sup> which defines the term "rate" to include "every . . . charge . . . or other compensation whatsoever of any public utility . . . made, demanded, or received for any service within this act, offered, rendered, or furnished by such public utility . . . and any rules, regulations, *practices*, classifications or contracts affecting any such compensation, *charge*, fare, toll, or rental." (Emphasis added.)

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<sup>11</sup> 66 Pa. C.S. § 102.

PAWC refers to our Supreme Court's decision in *Einhorn v. Philadelphia Electric Company*, 410 Pa. 630, 190 A.2d 569 (1963), in which the court considered a petition for depositions, discovery, and inspection filed by a party "escheater," seeking evidentiary support for a future claim he hoped to file in the Court of Common Pleas of Philadelphia County. The hopeful litigant sought to recover overcharges he believed an electric company had billed for the installation of underground electric service facilities. The litigant averred that the payments the electric company received exceeded certain costs that the electric company's filed tariff permitted. The Supreme Court agreed with the electric company's preliminary objections, which asserted that only the PUC could decide initially the issue of whether the charges exceeded the rates identified in the tariff. The Supreme Court considered the following statutory language, which provides that "[n]o action shall be brought in any court for a refund, unless and until the commission shall have determined that the rate in question was . . . in excess of the applicable rate contained in an existing and effective tariff, and then only to recover such refunds as may have been awarded and directed to be paid by the commission in such order."<sup>12</sup> *Einhorn*, 410 Pa. at 634, 190 A.2d at 571. The Supreme Court concluded that:

Both the Public Utility Law and the decisions of this Court, with unmistakable clarity, require that questions dealing with excessive charges be decided in the first instance exclusively by the Commission. In the absence of such determination, there is no escheatable property.

*Id.* at 634-35, 190 A.2d at 571.

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<sup>12</sup> As noted below, Section 1312(c) of the Code, 66 Pa. C.S. § 1312(c), retains this language.

In addition to this issue, we note that the Reproduced Record (R.R.) in this case includes the PAWC tariff at issue. The tariff includes details relating to PAWC's charges for the STAC and DSIC. For example, one page of the tariff referring to the DSIC includes the following notation:

In addition to the net charges provided for in this Tariff, a charge of 0.40% will apply to all bills rendered with an ending reading date equal to or greater than the effective date of the tariff supplement for all rate zones except Rate Zone 40. (I)

The above charges will be recomputed quarterly, using the elements prescribed by the Commission in its Order dated August 26, 1996 at Docket No. P-00961031.

(R.R. at 123a.) If this language is applicable to the DSIC at issue in this case, some of this language could be construed to mean that PAWC was not required to pro-rate the DSIC charge. Additionally, the tariff includes formulae PAWC is required to use, which direct that

[t]he charge will be expressed as a percentage carried to two decimal places and will be applied to the total amount billed to each customer under the Company's otherwise applicable rates and charges, excluding . . . the [STAC] . . . . To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC will be divided by the Company's projected revenue for sales of water for the quarterly period during which the charge will be collected . . . .

(R.R. at 125a.) These aspects of the tariff (and perhaps other more pertinent provisions of the tariff) appear to the Court to provide a PUC-approved method for determining charges pertaining to the DSIC and STAC which are the subject of Pettko's claims. These examples illustrate why the PUC is in the best position to evaluate in the first instance the claims Pettko initiated in the trial court. We

believe, therefore, that the trial court correctly deferred to the PUC's expertise on the question of whether the tariff supports Pettko's or PAWC's position.

Although none of the decisions upon which the parties rely specifically refer to billing practices as being a subject within the PUC's expertise, the above-noted aspects of the tariff suggest that the method of calculating the charges, including the place value for calculating fees, is a subject that the PUC oversees and interprets when it *approves* a tariff. Moreover, we conclude that the question of whether a utility's manner of billing is in compliance with a tariff is encompassed in the claims relating to billing practices that Pettko has raised in his complaint. ("It is well-settled that the PUC has particular expertise in interpreting its tariffs.") *County of Erie*, 879 A.2d at 364, citing *United States Steel Corp. v. Pennsylvania Pub. Util. Comm'n*, 581 Pa. 687, 863 A.2d 1151 (2004). If the PUC reviews the tariff and PAWC's billing methodology and concludes that the billing practices are compliant with the tariff, the civil matter will be concluded, subject of course to appellate review of the PUC's decision.

The trial court here also concluded that the PUC has not only primary jurisdiction, but also exclusive jurisdiction over Pettko's claims. The trial court relied upon the Superior Court's decision in *DiSanto v. Dauphin Consolidated Water Supply Company*, 436 A.2d 197 (Pa. Super. 1981) (*DiSanto*). In *DiSanto*, the court addressed a complaint filed by a real estate developer who entered into a contract with a water company to provide water services to a development. The water company rejected the developer's request to have an outside contractor install the water facilities and refused to provide service over the lines installed by the outside contractor. The developer then paid the water company for installation by the water company's preferred contractor, and the developer filed a complaint

against the water company seeking injunctive and monetary relief. The trial court overruled the water company's preliminary objections, which asserted that the PUC had "initial" (or primary) jurisdiction over the matters that the developer raised. The Superior Court then considered whether the PUC had exclusive jurisdiction over the claims in the complaint or whether the "bifurcated procedure adopted by *Elkin* should be followed." *DiSanto*, 436 A.2d at 202. The Superior Court opined:

Such a determination . . . is dependent upon the adequacy of the administrative remedies available to the appellee through the PUC. If the available administrative remedies are complete and adequate to make the complainant whole, then the PUC has exclusive jurisdiction over the controversy and there is no recourse to the courts outside of the normal channels of appeal to the Commonwealth Court. However, where the administrative remedies are not adequate and complete, the PUC's jurisdiction is not exclusive and an action for damages may be brought in a court of common pleas based upon the PUC's initial determination of the matters within its realm of expertise.

*Id.* at 202 (citation and footnote omitted). Ultimately, the Superior Court concluded that the PUC could make the developer whole, because the PUC had the power to issue an order addressing the reasonableness of the utility's actions by (1) reforming the contract for installation, (2) determining a reasonable rate, (3) allocating appropriate interest and refund on and of excessive rates paid, and (4) directing the utility to discontinue any improper practices. Thus, the matter was "exclusively within the PUC's jurisdiction and no recourse to the courts, outside of the normal appellate process," was warranted. *Id.* Thus, the Superior Court reversed the trial court's order and transferred the matter to the PUC.

In this case, the trial court noted Section 1312(a) of the Code, which provides for refunds as follows:

If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection . . . together with interest at the legal rate from the date of such excessive payment . . . .

66 Pa. C.S. § 1312(a). As stated above, the term “rates” is defined by Section 102 of the Code as “every . . . charge . . . or other compensation whatsoever of any public utility . . . made, demanded, or received for any service within this act, offered, rendered, or furnished by such public utility . . . and any rules, regulations, *practices*, classifications or contracts affecting any such compensation, *charge*, fare, toll, or rental.” (Emphasis added.) Under these provisions, Pettko and his fellow PAWC customers would be entitled to a refund for any payments they made above the charges the PUC may determine PAWC was entitled to bill under the tariff.

We observe, however, that, as the Supreme Court held in *Feingold*, under the doctrine of exhaustion of administrative remedies, an administrative agency does not have exclusive jurisdiction unless it has the power to award relief that will make a successful litigant whole. In *DiSanto*, the Superior Court concluded that the PUC had both primary and exclusive jurisdiction. The Superior Court reasoned that the PUC had exclusive jurisdiction because it could provide a remedy that would make *DiSanto* whole. In this case, however, Pettko has

included claims that, if he is successful, would provide him with relief that the PUC is not empowered to grant.

We believe that our inquiry must focus on the wrongs alleged to have been perpetrated by PAWC and consider whether the PUC has the ability to provide a statutory remedy for the alleged wrongful conduct, in order to determine if the PUC could make Pettko whole. Through his claims for breach of contract and conversion, Pettko essentially seeks redress for PAWC's alleged acts of overcharging its customers. Through the UTPCPL claim, Pettko seeks redress for PAWC's alleged deceptive trade practices above and beyond overcharging. The statutory refund remedy available through the PUC is sufficient to provide Pettko with relief for alleged overcharging; however, there is no remedy available through the PUC to provide relief for deceptive trade practices. Thus, while *DiSanto* supports the notion that, at least with regard to Pettko's breach of contract and conversion claims, the trial court correctly concluded that a statutory refund action before the PUC could provide Pettko with complete relief, we cannot similarly conclude that an action before the PUC would provide Pettko with complete relief with respect to his UTPCPL claim. Moreover, the relief potentially available to Pettko under the UTPCPL is substantially distinct from the relief available under the Public Utility Code. As Pettko contends, the General Assembly's objectives in enacting the UTPCPL are reflected in the remedies providing for potential exemplary and treble damages for successful plaintiffs. Such remedies serve both a deterrent and punitive function—goals not identical to those contained in the Public Utility Code.

amounts to which the PUC has determined a consumer is entitled. The last phrase appears to provide authority for trial courts to entertain only actions seeking to enforce a judgment entered by the PUC against a utility. This provision, however, pertains only to refund actions, and not to other statutory remedies that are *cumulative* to the refund remedy.

The UTPCPL provides a distinct remedy for particular deceptive and/or fraudulent conduct, including the actual amount of damages or \$100 for every violation of the Law, whichever is greater. Further, as Pettko notes, the UTPCPL provides for the possible award of exemplary or treble damages. Although the pecuniary beneficiaries of an award under the UTPCPL are generally individuals who have engaged in commerce with a person or business who acts deceptively, the purpose behind the award of damages (which may be greater than the financial loss to the consumers) is to punish and/or deter such fraudulent conduct. We do not agree with the trial court's "make-whole" reasoning, because that analysis ignores the fact that the General Assembly, through the statutory provisions of the UTPCPL, has provided potential remedies that are greater than the remedy provided through the Code's refund provision. We see no legislative intent to preclude parties from availing themselves of those additional remedies.

For the reasons identified above, including the fact that the Code does not authorize the PUC to remedy fraudulent conduct (unlike the UTPCPL), we do not view the language relating to *refunds* to limit the cumulative remedies to which Section 103(c) of the Code refers. Although the action Pettko has brought seeks damages for overpayments, if Pettko is successful before the PUC, he and others similarly situated will be able to recover those overpayments through the Code's refund provision. Thus, we conclude that the PUC has not only primary

jurisdiction, but also exclusive jurisdiction over claims based merely on overpayment under the tariff. On the other hand, while we agree that the PUC has primary jurisdiction over the general question of whether PAWC's billing practices comport with the tariff, the refund action does not eliminate Pettko's right to seek relief under the UTPCPL, because the PUC has no power to award relief, if it is appropriate, for that claim.

With the above conclusions in mind, the remaining question we must consider is whether the trial court correctly transferred the matter to the PUC. Unlike *Elkin*, where the trial court stayed the matter and the plaintiff filed an identical action with the PUC, in *County of Erie* the trial court dismissed the underlying civil action without prejudice, based upon its conclusion that the PUC had primary jurisdiction over the matter. Thereafter, the plaintiff, the County of Erie, filed complaints containing identical averments with the PUC and the Pennsylvania Emergency Management Agency. In reviewing the trial court's conclusion that the PUC had primary jurisdiction, this Court opined that the trial court should have ordered the matter transferred to the PUC rather than dismissing the matter without prejudice, based upon Section 5103(a) of the Judicial Code, 42 Pa. C.S. § 5103(a); *County of Erie*, 879 A.2d at 365. Thus, in accordance with our decision in *County of Erie*, the proper course, given our conclusion that the PUC has primary jurisdiction over the general question of the propriety of PAWC's

billing practices, is to affirm the trial court's order.<sup>14</sup>

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P. KEVIN BROBSON, Judge

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<sup>14</sup> We note that we do not believe that this process would result in a double recovery for Pettko and the members of the putative class. If the PUC agrees with Pettko, it will order a refund, and the UTPCPL aspect of the case can proceed with the understanding that the remedy that the trial court could provide must reflect the remedy the PUC awarded.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Application for Reargument was served upon the following counsel by U.S. mail, first-class, postage prepaid, on this 27<sup>th</sup> day of January, 2012:

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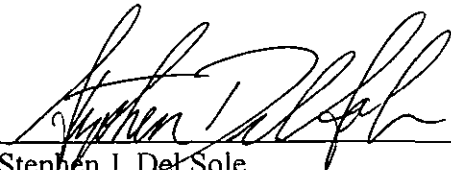
A handwritten signature in black ink, appearing to read "Matthew T. Logue", is written over a horizontal line. The signature is stylized and cursive.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 25<sup>th</sup> day of June, 2012, a true and correct copy of the foregoing *Appendix of Exhibits to Complainant's Opposition to Respondent's Motion for Summary Judgment* was served on the following by first class, U.S. mail:

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**RECEIVED**

JUN 25 2012

PA PUBLIC UTILITY COMMISSION  
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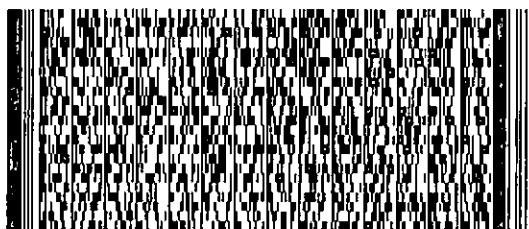
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