

DATE: March 1, 2001

SUBJECT: A-212285F0071; A-230073F0002; U-00004550; U-00004551;  
U-00004552; U-00004553; U-00004554; U-00004555;  
U-00004556; U-00004557; U-00004558; U-00004559;  
U-00004560; U-00004561; U-00004562

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary

LAF

**DOCKETED**  
MAR 02 2001

DOCUMENT  
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A-212285F0071 - Application of Pennsylvania-American Water Company for Approval of (1) the Transfer By Sale of Substantially All of the Water Works Property and Rights of the City of Coatesville Authority Water System to Pennsylvania-American Water Company; and (2) the Rights of Pennsylvania-American Water Company to Begin to Offer, or Furnish Water Service to the Public in all of the City of Coatesville, Parkersburg Borough, and South Coatesville Borough, Chester County, Pennsylvania, and Portions of Sadsbury, Caln, East Fallowfield, Valley, West Sadsbury and West Caln Townships and Atglen Borough, Chester County, Pennsylvania, and Quarryville Borough, Bart, Colerain, Eden and Sadsbury Townships, Lancaster County, Pennsylvania; and (3) Certain Additional Regulatory Approvals

A-230073F0002 - Application of Pennsylvania-American Water Company for Approval of (1) the Transfer By Sale of Substantially All of the the City of Coatesville Authority's Assets, Properties and Rights Related to its Wastewater System to Pennsylvania-American Water Company; and (2) the Right of Pennsylvania-American Water Company to Begin to Offer, or Furnish Wastewater Service to the Public in the City of Coatesville and Parkersburg Borough, Chester County, Pennsylvania, and Portions of Caln, Est Fallowfield, Valley, Sadsbury and

West Sadsbury Townships, Chester County, Pennsylvania;  
and (3) Certain Additional Regulatory Approvals

U-00004550 through U-00004562 - Assumption by  
Pennsylvania-American Water Company of Thirteen  
Agreements between the City of Coatesville Authority and  
Various Municipalities

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Attached is a copy of a Petition for  
Reconsideration and/or Clarification of Philadelphia  
Suburban Water Company, filed in connection with the  
above docketed proceeding.

This matter is assigned to your Office for  
appropriate action.

Attachment

cc: FUS  
OTS

laf

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February 28, 2001

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FEB 28 2001

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**VIA HAND DELIVERY**

James McNulty, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Building, 2nd Fl.  
400 North Street  
Harrisburg, PA 17120

RE: Applications of Pennsylvania-American Water Company,  
Docket Nos. A-212285F071 and A-230073F0002


Assumption of Pennsylvania Water Company of Thirteen  
Agreements between the City of Coatesville Authority and  
Various Municipalities, Docket Nos. U-00004550-4562

Dear Secretary McNulty:

Enclosed for filing please find the original and three (3) copies of Philadelphia Suburban Water Company's Petition for Reconsideration and/or Clarification in the above-referenced matters. We are also providing a diskette with the Petition saved in Word 97. As evidenced by the attached Certificate of Service, all parties of record have been served in the manner indicated.

If you have any questions, please contact me at your convenience.

Respectfully,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jlg  
Enclosures

cc: Certificate of Service (w/enc)  
Cheryl W. Davis, Esq., Director, OSA (w/enc)

69

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

  
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Kevin J. Moody, Esquire

Date: February 28, 2001

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

RE: Applications of Pennsylvania-American Water Company,  
Docket Nos. A-212285F071 and A-230073F0002

Assumption of Pennsylvania Water Company of Thirteen  
Agreements between the City of Coatesville Authority and  
Various Municipalities, Docket Nos. U-00004550-4562

Dear Secretary McNulty:

Enclosed for filing please find the original and three (3) copies of Philadelphia Suburban Water Company's Petition for Reconsideration and/or Clarification in the above-referenced matters. We are also providing a diskette with the Petition saved in Word 97. As evidenced by the attached Certificate of Service, all parties of record have been served in the manner indicated.

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Respectfully,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jlg  
Enclosures

cc: Certificate of Service (w/enc)  
Cheryl W. Davis, Esq., Director, OSA (w/enc)

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FEB 28 2001

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

  
Kevin J. Moody, Esquire

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania-American Water :  
Company for Approval of (1) The Transfer, By Sale, :  
of Substantially All of the Water Works Property :  
And Rights of the City of Coatesville Authority :  
Water System to Pennsylvania-American Water :  
Company, and (2) The Rights of Pennsylvania- :  
American Water Company to Begin to Offer or :  
Furnish Water Service to the Public in all of the City :  
of Coatesville, Parkersburg Borough, and South :  
Coatesville Borough, Chester County, Pennsylvania :  
And Portions of Sadsbury Township, Caln Township, :  
East Fallowfield Township, Valley Township, Atglen :  
Borough, West Sadsbury Township, and West Caln :  
Township, Chester County, Pennsylvania and :  
Quarryville Borough, Bart Township, Colerain :  
Township, Eden Township and Sadsbury Township, :  
Lancaster County, Pennsylvania; and (3) Certain :  
Additional Regulatory Approvals :

Docket No. A-212285F0071

Application of Pennsylvania-American Water :  
Company for Approval of (1) the Transfer, by :  
Sale, of Substantially All of the City of Coatesville :  
Authority's Assets, Properties and Rights Related :  
to its Wastewater System to :  
Pennsylvania-American Water Company; and (2) :  
The Right of Pennsylvania-American Water :  
Company to Begin to Offer or Furnish Wastewater :  
Service to the Public in the City of Coatesville and :  
Parkersburg Borough, Chester County, :  
Pennsylvania and Portions of Caln Township, East :  
Fallowfield Township, Valley Township, :  
Sadsbury Township, and West Sadsbury :  
Township, Chester County, Pennsylvania; and (3) :  
Certain Additional Regulatory Approvals :

Docket No. A-230073F0002

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FEB 28 2001

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Assumption of Pennsylvania Water Company  
of Thirteen Agreements between the City of  
Coatesville Authority and Various  
Municipalities

Docket Nos. U-00004550  
U-00004551  
U-00004552  
U-00004553  
U-00004554  
U-00004555  
U-00004556  
U-00004557  
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U-00004559  
U-00004560  
U-00004561  
U-00004562

**DOCKETED**  
MAR. 02 2001

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**PETITION FOR RECONSIDERATION AND/OR CLARIFICATION  
OF PHILADELPHIA SUBURBAN WATER COMPANY**

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Pursuant to 52 Pa. Code § 5.572, Philadelphia Suburban Water Company (“PSW”) hereby requests the Commission to reconsider and/or clarify its decision in this case that a utility is authorized to provide public service to similarly situated customers at different levels of compensation, depending upon the amount of the bill that the utility decides to return to each particular customer. While the Commission’s February 13, 2001 Order does not permit a utility to charge more than the tariff rate, the Commission appears to be willing to authorize utilities to *effectively charge and receive less than the tariff rate – including the right to effectively charge and receive nothing at all.* Before the Commission decides to delegate its rate setting authority to *utility management and non-jurisdictional municipalities to set perpetual rates below the tariff rate,* it should reconsider the public policy implications and reconcile its decision with well-settled case law holding that free public utility service is unreasonably discriminatory *per se* and

against public policy no matter what form the free service takes or how the free service is established – whether by deed, contract, ordinance or otherwise.

The public policy issues can be clarified with reference to some concepts embedded in our constitutional and statutory law:

- A transaction does not need to be analyzed in its fragmented structure, but can be analyzed by collapsing the individual steps into the final outcome. *See, e.g., 66 Pa. C.S. § 2102(d)*. In this particular matter, the PAWC/CCA agreement is a step transaction that seeks to elevate form over substance. The illusory nature of the transaction is proven (i) by the argument of the City and CCA cited at page 11 of the Commission’s Order that PAWC is providing the source of funds to be used by the ratepayer to pay utility bills,<sup>1</sup> and by the use of quotation marks around the word “pay” in the Brief of the City and CCA to highlight the unusual use of that word in connection with the underlying transaction,<sup>2</sup> since PAWC, the City and CCA repeatedly have rejected the idea that the City would actually pay for public fire hydrant service.<sup>3</sup>

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<sup>1</sup> PSW does not agree that PAWC’s pay back represents either “installment payments” of the purchase price or “deferred payments of the purchase price” (CCA/City Exceptions at 6-7), nor does PAWC. Transcript (“Tr.”) at 217.

<sup>2</sup> “[T]he City ‘pays’ for on-going fire hydrant service at a tariff rate.” (CCA/Coatesville Main Brief (“M.B.”) at 7); and “[T]he City ‘pays’ for on-going fire hydrant service at a tariff rate.” (CCA/Coatesville M.B. at 13).

<sup>3</sup> PAWC “stands ready to honor its commitment to the City of Coatesville regarding not charging it for public fire hydrant service.” PAWC St. No. 4.0 (Diskin) at 8. After PAWC determines the costs of operating the CCA system in order to set rates in PAWC’s next base rate case for customers served by CCA’s system, PAWC’s “position will continue to be that CCA pays zero for public fire  
(continued...)

- The fact that the free service to the City of Coatesville is being paid for by the shareholders of PAWC may resolve the issue of unfairness to ratepayers, as a group, who are not being asked to pay for this shortfall (although some additional costs may be incurred since the utility becomes more “risky” from an investment standpoint since the utility is not collecting all of its revenues). This resolution is further supported by the “annual tracker mechanism” imposed by the PUC on PAWC, and also explains the decisions in the cases dealing with gain on the sale of land.

- There is, however, a separate and important equal protection concern that arises from the Commission’s approval of the “restructured” arrangement for perpetual free service to only one customer – among a group of similarly situated customers – which has not been addressed in the Commission’s Order. There is no analysis of the impact on ratepayers, as individual customers vis-à-vis each other, or the impact on other utilities that may be reluctant to (or can’t afford to, or find it imprudent to) follow the business model being advanced by PAWC of giving back the compensation paid for service under a perpetual guaranty. As suggested by Commissioner Fitzpatrick in his dissent, the fact

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<sup>3</sup>(...continued)

service, and pays zero forever for public fire service.” Tr. at 206-07 (Diskin). Mr. Janssen testified that it would be a violation of the purchase agreement if PAWC initiated collection efforts on a bill to the City. Tr. at 380-81. When asked whether the City had discussions with PAWC on the issue of the invoicing for fire hydrant bill service, Mr. Janssen testified that “[w]e sought assurances from Pennsylvania-American that the city would not have to pay the fire hydrant fee in the future.” Tr. at 426-27. Finally, attorneys for both the City and CCA stated at the hearings that the City and CCA would sue PAWC for breach of contract if PAWC did not honor the APA provision relieving the City from the payment of public fire hydrant charges. Tr. at 436-37 (the City) and 440 (CCA).

that the City of Coatesville does not have to pay for public fire hydrant service while other municipalities will continue to pay for fire hydrant service under PAWC's tariff nonetheless violates the requirement of equal protection and non-preferential treatment set forth in Sections 1303 and 1304 of the Public Utility Code and PAWC's tariff.

PSW initially sought guidance from the Commission on this issue through the Declaratory Order proceeding, in which the Commission appeared to conclude that any utility acquisition agreement — no matter how structured — had to comply with the relevant provisions of the Public Utility Code and the utility's tariff.<sup>4</sup> However, the Commission's decision in this matter appears to authorize creation of a "VIP" list of customers deemed worthy of free service at the discretion of utility management. In view of well-settled case law holding that free public utility service is unreasonably discriminatory *per se* and against public policy no matter what form the free service takes or how the free service is established — whether by deed, contract, ordinance or otherwise — PSW respectfully requests the Commission to reconsider its decision or, at the very least, reconcile its decision with this judicial precedent.

In support of its request, PSW states as follows:

1. On February 29, 2000, Pennsylvania-American Water Company ("PAWC") filed two applications seeking approval from the Commission to acquire the assets of the water and wastewater systems of the City of Coatesville Authority ("CCA") in accordance with their Asset Purchase Agreement ("APA").

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<sup>4</sup> *Petition of Philadelphia Suburban Water Company for a Declaratory Order Clarifying a Potential Term in a Contract or Agreement between a Public Utility and a Municipal Corporation*, Docket No. P-00991732 (Order entered October 1, 1999) ("Declaratory Order").

2. The APA included the following “special covenant” by PAWC: “The City [of Coatesville] shall not, at any time, be required to pay charges for public fire hydrants.” APA, Section 3.4(b).

3. Pursuant to Sections 4.1(g) and 4.2(f) of the APA, PAWC’s obligation under this special covenant was not conditioned on Commission approval. As explained by PAWC, CCA and the City,<sup>5</sup> the APA required PAWC to close the deal even if the Commission disapproved the special covenant — but otherwise approved the applications.

4. PAWC’s tariff provides rates for public fire hydrant service. Supp. No. 86 to Tariff Water – PA PUC No. 4, Nineteenth Revised Page 11; Supp. No. 78 to Tariff Water – PA PUC No. 4, First Revised Page 11A. During the hearings, the City’s witness testified that the City will never pay for fire hydrants. Tr. at 426-27.

5. At the prehearing conference, PAWC, through its counsel, suggested that PAWC’s shareholders would be willing to absorb the cost of the free service guarantee to the City, but there was no testimony submitted on this concept or the consequences of such an arrangement. Tr. at 32-33.

6. PAWC’s tariff generally prohibits the creation of new free service arrangements. Section 20.1 of PAWC’s tariff provides for the termination of free service arrangements – whether “contained in any deed, grant, contract, franchise, permit, consent or other instrument” – and requires that “[e]very person who takes water shall pay for all water taken as provided in the applicable schedule of rates set forth herein.”

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<sup>5</sup> PAWC Exceptions at 6, 7-8; CCA/City Exceptions at 19-20.

7. On October 6, 2000, some of the parties to this case submitted a Stipulation of Settlement. Attached to the Stipulation was Exhibit 1, which was the First Amendment To The Asset Purchase Agreement For The Acquisition Of The Assets Of The Water System And Wastewater System Of The City Of Coatesville Authority By Pennsylvania-American Water Company, Dated February 15, 2000 ("First Amendment"). The First Amendment proposed to amend Section 3.4(b) of the APA to require PAWC to "issue bills to the City for public fire hydrant service and collect amounts owed in accordance with PAWC's effective tariff." The First Amendment also required the City to "pay" these charges<sup>6</sup> and required PAWC to "make a contribution equal in amount to the public fire service payments during that year, to the City's Economic Development Fund."

8. The ALJ concluded that the original Section 3.4(b) promise of free service was contrary to Section 508 of the Public Utility Code("Code"), the Declaratory Order and PAWC's tariff, violated Sections 1303 and 1304 of the Code, and was *per se* unreasonable. Initial Decision ("I.D.") at 140-41.

9. The ALJ also concluded that the First Amendment did not cure the infirmities of the original Section 3.4(b) promise of free service so as to render the First Amendment in compliance with the Code:

The next question is whether the language in the Amendment sufficiently revised the free hydrant concept to escape the violations. I find that the answer is "No." While the Amendment may now require PAWC to charge and the City to pay in accordance with the tariffed rate, it also requires PAWC to annually contribute an equal amount right back to the City's

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<sup>6</sup> CCA/City Brief at 6,7 and 13 (quotation marks in original).

control. The fact that the source of the money returned is from shareholder funds, and not from ratepayers, does not change the big picture. The result is still the same, *i.e.* the City is still receiving free hydrant service. And free hydrant service continues to contradict PAWC's tariff and the Declaratory Order. Any attempt by PAWC to characterize the changes set forth in the Amendment as a "charge and contribution" format is nothing more than an untenable form over substance argument.

I.D. at 53.

10. The Commission granted the exceptions of the City/CCA and PAWC concerning the First Amendment, concluding "that approval of the Amended Provision is in the public interest and is consistent with the applicable provisions of the Code" and distinguishing the case law cited by the ALJ "from the circumstances presented in the instant transaction" – simply because the First Amendment requires the City to pay PAWC's tariffed rate for fire hydrant service. Order at 13-14. The Commission rejected the ALJ's conclusion that "it simply does not matter how the contracting parties structure the transaction." Order at 14.<sup>7</sup>

11. The criteria applied to determine whether a petition for reconsideration should be granted is set forth in Duick v. Pennsylvania Gas & Water Co., 56 Pa. PUC 553, 588-59 (1982):

A petition for reconsideration, under the provision of 66 Pa.C.S. §703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . . What we expect to see raised in such petition are

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<sup>7</sup> The Commission misstated the "object" of the First Amendment as "to provide a contribution to the City's Economic Development Fund equal to that paid for fire hydrant service" and concluded that this is not "unlawful *per se*." Order at 15. The record makes clear that the object of the First Amendment is to preserve the essence of PAWC's original special covenant that "[t]he City shall not, at any time, be required to pay charges for public fire hydrants." PAWC Statement in Support of Stipulation of Settlement at 3-4; *see also* note 2 above.

new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. (Emphasis added).

12. PSW submits that the Commission's conclusion overlooks or misapprehends well-settled case law establishing that free public utility service is unreasonably discriminatory *per se* and against public policy no matter what the form the free service takes or how the free service is established – whether by deed, contract, ordinance or otherwise. As long ago as 1927, the Pennsylvania Supreme Court held that a city's agreement to provide free water service “is discrimination against other users and void against public policy.” American Aniline Products, Inc. v. City of Lock Haven, 288 Pa. 420, 429, 135 A. 726, 727 (1927). “The discriminatory engagements of both [a municipality and a public service company] are prohibited as matters of public policy for reasons so frequently stated we need not repeat them here.” Id. The fact that the city's free service agreement was an inducement to customer to purchase a bankrupt company did not justify the free service arrangement in American Aniline, nor does the Asset Purchase Agreement between PAWC, CCA and the City justify the free service to Coatesville in this case.

A few years earlier, the Superior Court had reached the same conclusion in Wayne Sewerage Co. v. Fronefield, 76 Pa.Super. 491, 1921 Pa.Super. LEXIS 174 (1921), in which landowners had claimed the right under easements to discharge their sewage into the utility's system, free of charge. The court recognized that free service was unfair to the remaining paying customers, and the unfairness was even further compounded if the paying customers had to make up the shares not being paid. The court required the landowners to pay the utility's tariff rates, holding that “[f]ree use of public service by certain favored persons cannot be permitted under

any form, whether in deed, contract, ordinance, agreement, or otherwise . . . for it imposes on the other users not only their own fair share of the cost and expense of operation but also the shares which such favored users ought to pay and is therefore preferential, unjust and unreasonable.”

Wayne Sewerage Co., 76 Pa.Super. at 499, 1921 Pa.Super. LEXIS 174, \*13-\*14.

The Commission, in its Order at pages 13-14 , distinguished a case relied upon by the ALJ, Scranton Electric Co. v. Sch. Dist. of Borough of Avoca, 37 A.2d 725 (Pa. Super. 1944), even though the first sentence of the court’s opinion states that “[t]his appeal involves the right to free electric current from a public utility.” Scranton Electric Co., 37 A.2d at 726. The school district had claimed an “indefeasible right to free electric service” as a donee beneficiary of a borough ordinance consenting to utility’s use of the borough’s streets in exchange for free service to the borough and the schools. The court held that the source of the alleged right to free service didn’t matter because granting free service was discriminatory *per se*. In this case, the fact that the source of PAWC’s promise to provide free hydrant service to the City is contained in an acquisition agreement should not matter, either. *See American Aniline.*<sup>8</sup>

Scranton Electric Co. relied upon Henshaw v. Fayette Gas Co., 161 A. 896 (Pa.Super. 1932), in which the utility agreed to provide free utility service in exchange for a right of way over the customers’ land. The court in Henshaw held that the free service agreement had to be revised to the utility’s tariffed rate, and the utility could not be compelled to continue providing

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<sup>8</sup> In the context of the service territory issues, the Commission states that it would be improper for CCA to act as if it still owned the means of rendering utility service after consummation of the transaction (Order at 21, n. 7). However, in the context of the free hydrant service issue, apparently the Commission believes that it is okay for the City to act as if the City/CCA still own the fire hydrants.

free service because the policy of the Public Service Law was to place everyone, in so far as feasible, on an equal basis. PAWC has included similar language in its tariff, but has not honored that language or concept in its dealing with the City and CCA.

Borough of White Haven v. P.S.C., 278 Pa. 420, 123 A. 772 (1924), involved a maximum rate prescribed by legislative charters that required the utility to take over the water works owned by the borough. The Pennsylvania Supreme Court rejected the borough's argument that this maximum rate – whether legislative or contractual – was “permanently fixed” and “inviolable and permanently binding” because it was no different from a rate fixed by the Public Service Commission (“PSC”) and subject to change by the PSC. Thus, the perpetual guaranty that the City will never have to pay compensation for public fire hydrant service falls within this same infirmity.

The Pennsylvania Supreme Court held that even rates prescribed by a contract between a utility and a municipality – entered into prior to enactment of Public Service Law – were subject to change by the Public Service Commission under the Public Service Law. Borough of Dormont v. South Pittsburgh Water Co., 322 Pa. 60, 185 A. 263 (1936).

In Leiper v. Baltimore & Philadelphia Railroad Co., 262 Pa. 328, 105 A. 55, the Pennsylvania Supreme Court focused on the substance of the transaction rather than its form, holding that to allow contract rates between a utility and a municipality to stand against the utility's tariffed rates “would be to nullify the purposes of the act” requiring equal and nondiscriminatory treatment of all customers.

As recently as 1967, the Commonwealth Court held that a utility cannot make a special contract with a customer for favored treatment by agreeing to charge or receive directly or

indirectly a greater or lesser rate than specified in its tariff, citing the predecessor to Section 1303 of the Public Utility Code. West Penn Power Company v. Nationwide Mutual Insurance Co., 228 A.2d 218, 220 (Pa.Super. 1967).

Finally, in Bell Telephone Co. v. Pa. P.U.C., 417 A.2d 827, 829 (Pa.Cmwlth. 1980), the Commonwealth Court reinforced West Penn Power, noting that “the nature or form of the contract could not affect the Commission’s power to change its terms by imposing new rates.”

13. The case cited by the PUC regarding the sale of land is not applicable because it involved only the allocation between the ratepayers and the shareholders. That case did not involve the equal protection arguments of unfair treatment among ratepayers inherent in the Coatesville case under Section 1303.

14. PAWC’s willingness to absorb the cost of free service to the City does not render this well established precedent inapplicable. As the ALJ found, the “contribution” does not *remove the discrimination against PAWC’s other customers, including PAWC’s other municipal customers, that are actually “out of pocket” for the tariffed rates with no return “contribution.”*

15. The Commission’s Order misapprehends the import of Sections 1303 and 1304 of the Code — if the prohibitions of these sections can be evaded so easily by a “device” such as the First Amendment, the purposes of Sections 1303 and 1304 are eviscerated and “nullified.” Leiper v. Baltimore & Philadelphia Railroad Co. As Commissioner Fitzpatrick stated in his dissent, he could not “in good conscience reach any conclusion other than that CCA [the City] is receiving free hydrant service . . . [and payment by PAWC’s shareholders] does not change the basic fact that this transaction contravenes PAWC’s tariff [because] [o]ther municipalities will continue to pay for fire hydrant service under this tariff.”

16. The Commission's approval of the "restructured" free service arrangement misapprehends or overlooks the contracting parties' admission that the pay back arrangement is just a ruse and the real goal is to preserve the original arrangement for free hydrant service. In its Statement in Support of the "restructured" arrangement, PAWC stated that "[t]his arrangement is nevertheless consistent with the bidding process, in which bidders were informed that the free public fire hydrant service requirement was non-negotiable, and . . . [i]t therefore preserves the essence of the agreement originally reached by the parties to the Asset Purchase Agreement." PAWC Statement in Support of Stipulation of Settlement at 3-4 (emphasis added).<sup>9</sup>

17. Furthermore, the "public interest" considerations referenced by the Commission in support of its conclusion that the First Amendment complies with the Code relate to approval of the overall transaction, not the free service arrangement. As the record clearly demonstrates, *there can be no serious dispute that approval of PAWC's "special covenant" to provide free service to the City is not required for the parties to consummate the transaction.*

18. Finally, the Commission's approval of the First Amendment creates bad public policy by exposing public utilities and their shareholders to demands for free service at shareholder's expense, at the risk of liability for impermissible discriminatory treatment if free service is given to some but denied to other customers and/or municipalities. The Commission's

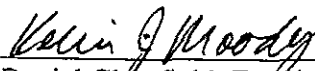
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<sup>9</sup> PAWC's admission contradicts its statement that "[t]he Stipulation eliminates the requirement that PAWC provide free public fire hydrant service to the City in perpetuity." PAWC Statement in Support of Stipulation of Settlement at 3. The settlement cannot both "preserve[ ] the essence of the agreement originally reached by the parties to the Asset Purchase Agreement" and "eliminate[ ] the requirement that PAWC provide free public fire hydrant service to the City in perpetuity."

approval poses a larger risk to smaller utilities that may not have the financial resources of PAWC to absorb these costs without adversely affecting service to paying customers. Even for larger utilities, at some point the expansion of the PAWC business model for providing free service will have an adverse affect on service to paying customers and the utility's return. PSW submits that the proper resolution of this issue should not turn on the amount of dollars available from shareholders, but on the correct application of the legal requirements and standards of the Public Utility Code.

WHEREFORE, the Philadelphia Suburban Water Company respectfully requests the Commission to grant this request for reconsideration and/or clarification .

Respectfully submitted,

  
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