

OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	C-00015377; C-20028177 ; C-20028361		YES	NO
Case Name:	Cindy Parks, Richard T. Minutello, Irwin A. Popowsky, Consumer Advocate v. Pennsylvania-American Water Company	Prehearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
Location:	Hickory, PA	Hearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Date:	September 9, 2002; 2:00 p.m.	Testimony Taken:	<input type="checkbox"/>	<input type="checkbox"/>
ALJ:	Larry Gesoff	Transcript Due:	<input type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Commonwealth Reporting	Hearing Concluded:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Further Hearing Needed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:	3	
		RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		DATE:		
		Briefs to be Filed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		DATE:	To be determined	
		Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		REMARKS:	30 testified between 2:00 and 5:00	

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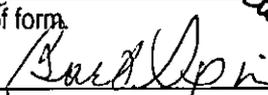
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PA PUC

PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
Dianne E. Dushman Joel H. Cheski's Telephone: 717-783-5048	555 Walnut St. 5 th Floor City: Harrisburg PA Zip: 17101-1923 E-mail Address: jcheski's@paoca.org	Office of Consumer Advocate Fax Number: 717-783-7152
SUSAN SIMMS MARSH Telephone: (717) 534-5000	800 Hershey Park Drive City: Hershey PA Zip: 17033 E-mail Address: SMARSH@PAWC.COM	PA - AMERICAN Fax Number: 717 531-3314
ANTHONY C. DeCusatis Telephone: 215-963-5034	Morgan, Lewis & Bockius LLP 1701 Market Street City: Phila. PA Zip: 19103 E-mail Address: adecusatis@morganlewis.com	Pennsylvania - American Water Co. Fax Number: 215-963-5001

Check this box if additional parties or attendees appear on back of form

2002 SEP 18 AM 10:29


 Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

Name and Telephone Number	Address			Who are you representing?
RICHARD MINUTELLO	110 PLEASANT RD			SELF
Telephone: 724-356-2789	City MCDONALD	State PA	Zip 15057	
E-mail Address:	RMINUTELLO@WPXI.COM			Fax Number:
Cindy Parks	447 FORECHERRY RD.			SELF
Telephone:	City McDonald	State PA	Zip 15057	
E-mail Address:	CINTRY58@LYALCO.COM			Fax Number:
Telephone:	City	State	Zip	
E-mail Address:				Fax Number:
Telephone:	City	State	Zip	
E-mail Address:				Fax Number:
Telephone:	City	State	Zip	
E-mail Address:				Fax Number:
Telephone:	City	State	Zip	
E-mail Address:				Fax Number:
Telephone:	City	State	Zip	
E-mail Address:				Fax Number:
Telephone:	City	State	Zip	
E-mail Address:				Fax Number:

OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.: <u>C-00015377, C-20028177, C-20028361</u>		YES	NO
Case Name: <u>Cindy Parks,</u>	Prehearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
<u>Richard T. Minutello,</u>	Hearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Irwin A. Popowsky, Consumer Advocate v.</u>	Testimony Taken:	<input type="checkbox"/>	<input type="checkbox"/>
<u>Pennsylvania-American Water Company</u>	Transcript Due:	<input type="checkbox"/>	<input type="checkbox"/>
Location: <u>Hickory, PA</u>	Hearing Concluded:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Date: <u>September 9, 2002; 7:00 PM</u>	Further Hearing Needed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ALJ: <u>Larry Gesoff</u>	Estimated Add'l Days:	<u>3</u>	
Reporting Firm: <u>Commonwealth Reporting</u>	RECORD CLOSED:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	DATE: <u>To be determined</u>		
	Briefs to be Filed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	DATE: <u>To be determined</u>		
	Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	REMARKS: <u>32 testified</u>		
	<u>between 7 and 9:45 pm</u>		

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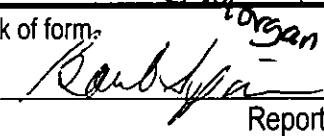
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Name and Telephone Number	Address	Who are you representing?
<u>Deanne Dusman</u> <u>Jud Cheski's</u>	<u>555 Walnut St Fifth</u> <u>FLOOR FORUM PLACE</u>	<u>Office of</u> <u>Consumer</u> <u>Advocate</u>
Telephone: <u>(717) 783 5048</u>	City: <u>Harrisburg</u> State: <u>PA</u> Zip: <u>17101-1928</u>	
	E-mail Address: <u>ddusman@pa.o.c.a.org</u> <u>cheski's@pa.o.c.a.org</u>	Fax Number: <u>(717) 783 7152</u>
<u>SUSAN SIMMS MARSH</u>	<u>300 West Hershey Park Drive</u>	<u>PA AMERICAN</u> <u>Water Co.</u>
Telephone: <u>(717) 531-3000</u>	City: <u>Hershey</u> State: <u>PA</u> Zip: <u>17033</u>	
	E-mail Address: <u>SMARSH@pawc.com</u>	Fax Number: <u>717 531-3314</u>
<u>ANTHONY C. DeCusatis</u>	<u>MORGAN, LEWIS & BOCKIUS LLP</u> <u>1701 Market Street</u>	<u>Pennsylvania</u> <u>American Water Co.</u>
Telephone: <u>215-963-5034</u>	City: <u>Phila.</u> State: <u>PA</u> Zip: <u>19103</u>	
	E-mail Address: <u>adecusatis@mlb.com</u>	Fax Number: <u>215-963-5001</u>

Check this box if additional parties or attendees appear on back of form.

2002 SEP 18 AM 10:30


 Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street 5th Floor, Forum Place
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(717) 783-5048

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FAX (717) 783-7152
E-Mail: paoca@ptd.net

IRWIN A. POPOWSKY
Consumer Advocate

October 4, 2002

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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02 OCT -4 PM 3:59
SECRETARY'S BUREAU

Re: Cindy Parks
v.
Pennsylvania-American Water Company
Docket No. C-00015377

Richard T. Minutello
v.
Pennsylvania-American Water Company
Docket No. C-20028177

Irwin A. Popowsky, Consumer Advocate
v.
Pennsylvania-American Water Company
Docket No. C-20028361

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of the Reply to New Matter of the Office of Consumer Advocate in the above-captioned proceeding. Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

Joel H. Cheskis
Assistant Consumer Advocate

Enclosures

cc: Hon. Larry Gesoff, ALJ
All parties of record

83

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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02 OCT -6 PM 3:53

IRWIN A. POPOWSKY, CONSUMER :
ADVOCATE, :
Complainant :

PA.P.U.C.
SECRETARY'S BUREAU

Docket No. C-20028361

v. :

DOCKETED

OCT 15 2002

PENNSYLVANIA-AMERICAN :
WATER COMPANY, :
Respondent. :

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REPLY TO NEW MATTER
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to 5.62(c), the Pennsylvania Office of Consumer Advocate ("OCA") hereby files this Reply to New Matter in response to the Answer and New Matter filed by the Pennsylvania-American Water Company ("PAWC" or "the Company") on September 12, 2002 in the above-captioned matter. In support of this Reply, the OCA submits as follows:

1-4. Paragraphs 1 thru 4 are responsive to the OCA original complaint. As such, no response herein is generally required. However, by way of response specifically to the Answer to Paragraph 3.C, to the extent such response is construed as New Matter, it is the intent of the OCA to represent potential customers of PAWC who reside in Mount Pleasant Township. The Consumer Advocate is authorized to represent potential customers pursuant to its enabling statute. Under the Consumer Advocate's enabling statute, the term "consumer" is defined, in pertinent part, as

any person (i) who makes a direct use or is the ultimate recipient of a product or a service supplied by any person or public utility subject to the authority of the Commission or (ii) *who may be a direct user*

or ultimate recipient of a product or service supplied by any person or public utility subject to the authority of the Commission and may be affected in any way by any action within the authority of the Commission.¹

As such, it is the Consumer Advocate's intent to represent homeowners in Mount Pleasant Township that need public utility service.

5. Admitted.

6. Denied. In several respects, PAWC's Rule 27 is not in compliance with the letter and spirit of 52 Pa.Code §65.21. First, Section 65.21 sets forth a formula to determine the minimum investment to be made by the utility where main extensions are sought, not a maximum, is PAWC's interpretation of its tariff. Second, nothing in the main extension rulemaking proceeding suggested that it would be appropriate to include large plant items in the "break-even analysis," as is PAWC's interpretation. Third, the regulation, in its definition of revenues, calls for consideration of comparable revenues for applicants using projected annual usage, which is absent from PAWC's application of its tariff to the Mount Pleasant Township residents' request for service in the Parks v. PAWC proceeding, of which this Complaint is consolidated.

7. Admitted in part and denied in part. It is admitted that under PAWC's interpretation of Section 65.21, the Company intends to invest approximately \$6,200 to extend its mains to serve a bona fide applicant for service. However, it is explicitly denied that the cost to extend the Company's mains to serve a bona fide applicant, in excess of the Company investment of \$6,200, *must* be paid by the applicant or by another government or private entity on the applicant's behalf. It is expressly stated in Section 65.21 that "a bona fide service applicant *may* be required to provide

¹ 71 P.S. §309-1 (emphasis added).

a customer advance to the utility's cost of construction for the line extension."² Furthermore, it was the original intention of the Commission in enacting Section 65.21 that the formula PAWC used to determine the \$6,200 is to represent the *minimum* Company investment for main extensions, as stated above.

A review of the Order approving the final main extension regulations in Docket No. L-930089³ indicates that this Section, used to determine the amount of company investment in cases where extensions of service are sought, does not *require* that the formula be as strictly applied as PAWC has in this case. Rather, the regulations include a formula intended to establish a *minimum* amount of investment that water utilities should make in the extension of service to new customers. The Commission Order adopting Section 65.21 specifically states:

However, it is not [the Commission's] intention to limit the utility's ability to fund more of the line extension costs if, for legitimate business reasons, the utility desires to do so.

Although we perceive a real need to protect bona fide service applicants from overly zealous utilities which would prefer to charge the entire cost of a main extension to the applicant in each instance, we have not perceived a need to protect utilities from themselves.⁴

In fact, Section 65.21 does not say that a customer *must* pay for any costs above the Company contribution. Nor does this Section say that PAWC is not required to extend the mains where such extension would exceed the formula. Section 65.21 only says that the Company will provide the line

² See, 52 Pa.Code §65.21(2).

³ See, Revise Order, Final Rulemaking Re: Line Extensions, 52 Pa.Code §§65.21, 65.22, Docket No. L-00930089 (entered October 7, 1996).

⁴ Id. at 13.

extension when the cost to do so does not exceed the per customer investment pursuant to the formula.

8. Admitted in part and denied in part. It is admitted that PAWC will extend its mains to serve bona fide applicants for service in Mount Pleasant Township in accordance with the terms of Rule 27 of its Tariff. It is denied that Rule 27, under all the circumstances presented in this case, would require a customer contribution.

Respectfully submitted,



Dianne E. Dusman
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate

For: Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048

Date: October 4, 2002

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P. J. O. C.
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

Re: Cindy Parks
v.
Pennsylvania-American Water Company
Docket No. C-00015377

Richard T. Minutello
v.
Pennsylvania-American Water Company
Docket No. C-20028177

Irwin A. Popowsky, Consumer Advocate
v.
Pennsylvania-American Water Company
Docket No. C-20028361

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F.A.F.J.C.
SECRETARY'S BUREAU

I hereby certify that I have this day served a true copy of the foregoing document, Reply to New Matter of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 4th day of October, 2002.

SERVICE BY ELECTRONIC MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

Robert M. Ross, President
Susan Simms Marsh, Esq.
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

Anthony Decusatis, Esq.
Morgan, Lewis & Bockius
1701 Market Street
Philadelphia, PA 19103-2921

Cindy Parks
447 Fort Cherry Road
McDonald, PA 15057

Richard T. Minutello
110 Pleasant Road
McDonald, PA 15057



Dianne E. Dugman
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate

Counsel for
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SECRETARY'S BUREAU

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1701 Market Street
Philadelphia, PA 19103-2921
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www.morganlewis.com

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Morgan Lewis
COUNSELORS AT LAW

Anthony C. DeCusatis
215.963.5034
adecusatis@morganlewis.com

PA. P.U.C.
SECRETARY'S BUREAU

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October 10 2002

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VIA FIRST CLASS MAIL

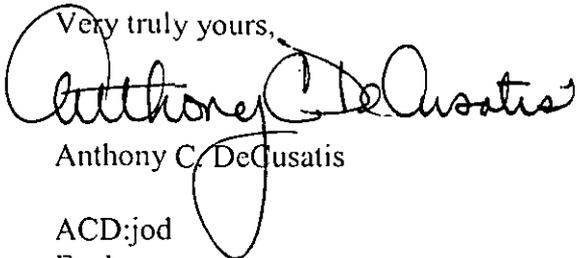
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: **Cindy Parks, Richard Minutello, and Office of Consumer Advocate v.
Pennsylvania-American Water Company
Docket Nos. C-00015377, C-20028177 and C-20028361**

Dear Secretary McNulty:

Enclosed for filing are an original and three copies of the Certificate of Service evidencing service upon the parties of record of Pennsylvania-American Water Company's Interrogatories and Requests for Production of Documents (Set II) to the Office of Consumer Advocate.

Very truly yours,



Anthony C. DeCusatis

ACD:jod
Enclosure

cc: Per Certificate of Service

BTL

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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CINDY PARKS,

PA. P.U.C.
SECRETARY DOCKET NO. C-00015337

RICHARD MINUTELLO, AND

: DOCKET NO. C-20028177

IRWIN A. POPOWSKY, CONSUMER
ADVOCATE

: DOCKET NO. C-20028361

v.

PENNSYLVANIA-AMERICAN WATER
COMPANY

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NOV 07 2002

CERTIFICATE OF SERVICE

DOCUMENT
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I hereby certify that I have this day served a true copy of the foregoing
Interrogatories and Requests for Production of Documents (Set II) to the Office of
Consumer Advocate upon the persons and in the manner set forth below, in accordance
with the requirements of 52 Pa. Code § 1.54:

VIA FIRST CLASS MAIL

Cindy Parks
447 Fort Cherry Road
McDonald, PA 15057

VIA FAX AND OVERNIGHT DELIVERY

Dianne E. Dusman, Esq.
Senior Assistant Consumer Advocate
Joel Cheskis, Esq.
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Fl., Forum Place
Harrisburg, PA 17101-1923

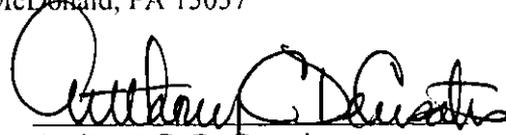
VIA OVERNIGHT DELIVERY

Terry L. Fought
780 Cardinal Drive
Harrisburg, PA 17111

VIA FIRST CLASS MAIL

Richard T. Minutello
110 Pleasant Road
McDonald, PA 15057

Dated: October 10, 2002


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



OFFICE OF CONSUMER ADVOCATE

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(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

ORIGINAL

October 21, 2002

SECRETARY'S BUREAU

02 OCT 21 PM 4:03

SRB

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

DOCUMENT
FOLDER

Re: Cindy Parks
v.
Pennsylvania-American Water Company
Docket No. C-00015377

Richard T. Minutello
v.
Pennsylvania-American Water Company
Docket No. C-20028177

Irwin A. Popowsky, Consumer Advocate
v.
Pennsylvania-American Water Company
Docket No. C-20028361

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of the Objections of the Office of Consumer Advocate to the Pennsylvania-American Water Company's Interrogatories and Requests for Production of Documents (Set II) in the above-captioned proceeding. Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

Dianne E. Dusman
Senior Assistant Consumer Advocate

Enclosures

cc: All parties of record
64253.wpd;1/DEED/smm

108

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CINDY PARKS	:	Docket No. C-00015337
	:	
RICHARD MINUTELLO	:	Docket No. C-20028177
	:	
IRWIN A. POPOWSKY,	:	Docket No. C-20028361
CONSUMER ADVOCATE	:	
	:	
v.	:	
	:	
PENNSYLVANIA AMERICAN WATER	:	
COMPANY	:	

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**OBJECTIONS OF THE OFFICE OF CONSUMER ADVOCATE
TO THE PENNSYLVANIA AMERICAN WATER COMPANY'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS (SET II)**

**DOCUMENT
FOLDER**

Pursuant to 52 Pa. Code §5.342, the Pennsylvania Office of Consumer Advocate ("OCA") hereby files these Objections to the Pennsylvania-American Water Company's ("PAWC") Interrogatories and Request for Production of Documents (Set II). In support of these Objections, the OCA submits as follows:

I. INTRODUCTION

On May 3, 2001, Cindy Parks filed a Complaint against PAWC with the Pennsylvania Public Utility Commission ("Commission"). In that Complaint, Ms. Parks states that her community of McDonald, in Washington County, is without a public water supply and has experienced well water contamination and other problems affecting the supply of potable water. The OCA intervened into the matter on June 14, 2001 seeking to assist the Complainant and the other residents of

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OCT 28 2002

McDonald in need of service in obtaining such service at the lowest reasonable cost to them. After a temporary suspension of the litigation schedule to attempt to reach a settlement of the issues, the OCA filed Supplemental Direct Testimony of Terry L. Fought and Marilyn J. Kraus on September 27, 2002. In response to that testimony, PAWC served the OCA with twenty-nine (29) interrogatories on October 10, 2002.

After reviewing the PAWC discovery, Set II, the OCA has determined to object to Interrogatories 6, 13 and 18.

II. OBJECTIONS

In proceedings before the Commission, a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant. 52 Pa. Code §5.321(c). However, Section 5.361 of the Pennsylvania Public Utility Code specifically limits the scope of discovery in proceedings before the Commission. In particular, section 5.361 provides that

(a) no discovery or deposition is permitted which:

- (1) is sought in bad faith;
- (2) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or participant;
- (3) relates to a matter which is privileged; or
- (4) would require the making of an unreasonable investigation by the deponent, a participant or witness.

52 Pa. Code §5.361. The OCA submits these objections because Interrogatories 6, 13 and 18 are outside the scope of permissible discovery or are otherwise limited by Section 5.361.

More specifically, the OCA submits as follows:

PAWC Interrogatory 6, Set II:

RE: OCA Statement No. 1A, pages 7-8. Does Mr. Fought believe that Chartiers Township should be compensated for the portion of the capacity of the booster pump station, for which it paid, that Mr. Fought proposes to appropriate for use by Mt. Pleasant Township? If not, please explain how future demand within Chartiers Township should be met, and how the associated capacity expansion should be paid for, if the capacity of the booster pump station funded by Chartiers Township is appropriated for use by Mt. Pleasant Township.

OCA Objection:

The OCA objects to this interrogatory because it is outside of the scope and expertise of the witness to which it is directed. The interrogatory is directed to OCA witness Fought. As indicated in his Direct Testimony, Mr. Fought is a consulting engineer with a Bachelor of Civil Engineering Degree. He has experience in the design of water supply, treatment, transmission, distribution and storage facilities. Interrogatory 6, Set II, asks for Mr. Fought's belief as to Chartiers Township should be compensated for the portion of the capacity of the booster pump statement, for which it paid, as Mr. Fought proposes to "appropriate" for use by Mt. Pleasant Township.¹ Mr. Fought's testimony discusses the design and scope of the water project being proposed by the OCA in this proceeding. In no manner does Mr. Fought testify as to the financial implications of the impact of his recommendation regarding the public water system in Chartiers Township. Rather, Mr. Fought's testimony concerns his determination as to the most appropriate, efficient and effective

¹ The OCA specifically objects to the use of the word "appropriate" in this interrogatory as it was not the terminology used in the testimony referenced and mischaracterizes Mr. Fought's testimony.

water system design possible so as to be able to extend the PAWC system into Mt. Pleasant Township. Furthermore, the answer to this interrogatory requires a legal interpretation of the existing laws, regulations and tariffs pertaining to main extensions, and other applicable areas. Mr. Fought is not an attorney and, therefore, this interrogatory is outside the scope of his testimony and expertise.

Therefore, the OCA objects to PAWC Interrogatory 6, Set II.

PAWC Interrogatory 13, Set II:

RE: OCA Statement No. 1A, pages 4-5. In addition to the copies of the documents requested in the preceding interrogatory, provide copies of all documents recording, describing, summarizing or otherwise relating to any contacts or communications between the OCA and residents of Mt. Pleasant Township pertaining to the facts or issues in this case.

OCA Objection:

The OCA objects to this interrogatory on the basis that it is outside of the scope of permissible discovery because it seeks contacts or communications that are protected under the attorney-client privilege and the work product privilege. As indicated above, the Commission's rules of discovery specifically exclude matters that are privileged from discovery. The OCA intervened and filed its complaint on behalf of all residents of Mt. Pleasant Township and, as such, any contacts or communications between the OCA and residents of Mt. Pleasant Township are privileged and non-discoverable. Additionally, this interrogatory seeks information which pertains specifically to the OCA's work product in this proceeding. As such, this interrogatory is also objectionable under the work product privilege.

Furthermore, the OCA objects to this interrogatory because providing an answer would cause an unreasonable burden, annoyance and expense upon the OCA. Therefore, this

interrogatory is objectionable under 52 Pa.Code §5.361. There are approximately 3,400 residents in Mt. Pleasant Township. The OCA, through its attorneys, experts and support persons, has had contacts or communications with a significant portion of those residents over the past year while investigating this case. As such, it would be an unreasonable burden, annoyance and expense upon the OCA to provide copies of any such contacts or communications.

Therefore, the OCA objects to PAWC Interrogatory 13, Set II.

PAWC Interrogatory 18, Set II:

RE: OCA Statement No. 2A, page 10, line 9. What amount would prospective customers in Mt. Pleasant Township be capable of paying "with personal funds" to obtain a public water supply? Identify all facts upon which Ms. Kraus relied or intends to rely to support her answer to this interrogatory and, if any of such facts are set forth in, or derived from, any document, identify and provide copies of all such documents.

OCA Objection:

The OCA objects to this interrogatory because it is irrelevant to the subject matter in the pending action and is therefore outside the scope of permissible discovery. The OCA submits that the specific amount that prospective customers in Mt. Pleasant Township would be capable of paying "with personal funds" to obtain a public water supply is irrelevant to any of the issues in this case, including any claim or defense that could be raised by a party. The issue involved in this proceeding is the extent to which public water service could be provided to Mt. Pleasant Township residents *without them having to pay with personal funds* under the Company's tariff and other applicable laws. The referenced portion of OCA testimony which this interrogatory pertains to discusses why, generally, Pennvest funding should be obtained in this case so as to *avoid* residents having to pay with personal funds to obtain public water service. No mention is made of the specific level of funding for each customer.

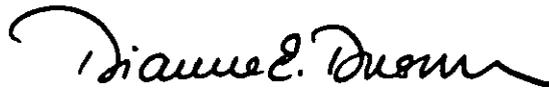
Furthermore, this interrogatory is objectionable because any answer would require the making of an unreasonable investigation by, and otherwise be burdensome to, the OCA. As stated above, there are approximately 3,400 residents in Mt. Pleasant Township. It is therefore unreasonable and burdensome to determine what amount would prospective customers in Mt. Pleasant Township be capable of paying "with personal funds" to obtain a public water supply.

Therefore, the OCA objects to PAWC Interrogatory 18, Set II.

III. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits the OCA's Objections to Interrogatories 6, 13 and 18 of the Pennsylvania-American Water Company's Interrogatories and Requests for Production of Documents (Set II).

Respectfully submitted,



Dianne E. Dusman
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate

For: Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-1923

Dated: October 21, 2002

00071263.WPD

RECEIVED
02 OCT 21 PM 4:03
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

Re: Cindy Parks
v.
Pennsylvania-American Water Company
Docket No. C-00015377

Richard T. Minutello
v.
Pennsylvania-American Water Company
Docket No. C-20028177

Irwin A. Popowsky, Consumer Advocate
v.
Pennsylvania-American Water Company
Docket No. C-20028361

RECEIVED
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SECRETARY'S BUREAU

I hereby certify that I have this day served a true copy of the foregoing document, Objections of the Office of Consumer Advocate to the Pennsylvania-American Water Company's Interrogatories and Requests For Production of Documents (Set II), upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 21st day of October, 2002.

SERVICE BY FACSIMILE & FIRST CLASS MAIL, POSTAGE PREPAID

Robert M. Ross, President
Susan Simms Marsh, Esq.
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

Anthony Decusatis, Esq.
Morgan, Lewis & Bockius
1701 Market Street
Philadelphia, PA 19103-2921

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Cindy Parks
447 Fort Cherry Road
McDonald, PA 15057

Richard T. Minutello
110 Pleasant Road
McDonald, PA 15057



Dianne E. Dusman
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
64254.wpd;1/DED/snm

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SECRETARY'S BUREAU

02 OCT 21 PM 4:03

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

Morgan Lewis
COUNSELORS AT LAW

DOCUMENT
FOLDER

Anthony C. DeCusatis
215.963.5034
adecusatis@morganlewis.com

October 25 2002

VIA FIRST CLASS MAIL

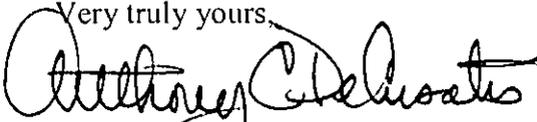
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: **Cindy Parks, Richard Minutello, and Office of Consumer Advocate v.
Pennsylvania-American Water Company
Docket Nos. C-00015377, C-20028177 and C-20028361**

Dear Secretary McNulty:

Enclosed for filing are an original and three copies of the Certificate of Service evidencing service upon the parties of record of Pennsylvania-American Water Company's Supplemental Testimony and accompanying Exhibits.

Very truly yours,



Anthony C. DeCusatis

ACD
Enclosure

cc: Per Certificate of Service

RECEIVED
2002 OCT 28 AM 9:19
PA PUC
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CINDY PARKS,

: DOCKET NO. C-00015337

RICHARD MINUTELLO, AND

: DOCKET NO. C-20028177

IRWIN A. POPOWSKY, CONSUMER
ADVOCATE

: DOCKET NO. C-20028361

v.

PENNSYLVANIA-AMERICAN WATER
COMPANY

DOCUMENT
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PA PUC
SECRETARY'S BUREAU

2002 OCT 28 AM 9:19

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served true copies of the Supplemental Testimony and accompanying Exhibits of Pennsylvania-American Water Company upon the persons and in the manner set forth below, in accordance with the requirements of 52 Pa. Code § 1.54:

VIA E-MAIL AND OVERNIGHT DELIVERY

Honorable Larry Gesoff
Administrative Law Judge
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

VIA E-MAIL AND OVERNIGHT DELIVERY

Dianne E. Dusman, Esq.
Senior Assistant Consumer Advocate
Joel Cheskis, Esq.
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Fl., Forum Place
Harrisburg, PA 17101-1923

VIA OVERNIGHT DELIVERY

Cindy Parks
447 Fort Cherry Road
McDonald, PA 15057

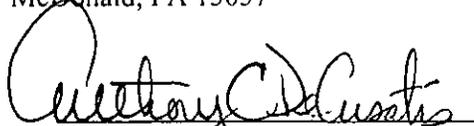
VIA OVERNIGHT DELIVERY

Terry L. Fought
780 Cardinal Drive
Harrisburg, PA 17111

VIA OVERNIGHT DELIVERY

Richard T. Minutello
110 Pleasant Road
McDonald, PA 15057

Dated: October 25, 2002



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

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DEC 02 2002

CERTIFICATE OF SERVICE

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02 OCT 30 PM 4:01

P.A.U.C.
SECRETARY'S BUREAU

Re: Cindy Parks
v.
Pennsylvania-American Water Company
Docket No. C-00015377

Richard T. Minutello
v.
Pennsylvania-American Water Company
Docket No. C-20028177

Irwin A. Popowsky, Consumer Advocate
v.
Pennsylvania-American Water Company
Docket No. C-20028361

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NOV 15 2002

DOCUMENT

I hereby certify that I have this day served a true copy of the foregoing document, the *Office of Consumer Advocate's Interrogatories, Set VI*, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 30th day of October, 2002.

SERVICE BY HAND DELIVERY

Anthony Decusatis, Esq.
Morgan, Lewis & Bockius
1701 Market Street
Philadelphia, PA 19103-2921

SRB

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Robert M. Ross, President
Susan Simms Marsh, Esq.
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

Cindy Parks
447 Fort Cherry Road
McDonald, PA 15057

Richard T. Minutello
110 Pleasant Road
McDonald, PA 15057

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Dianne E. Dusman
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
64254.wpd;1/DED/smn

CERTIFICATE OF SERVICE

Re: Cindy Parks
v.
Pennsylvania-American Water Company
Docket No. C-00015377

Richard T. Minutello
v.
Pennsylvania-American Water Company
Docket No. C-20028177

Irwin A. Popowsky, Consumer Advocate
v.
Pennsylvania-American Water Company
Docket No. C-20028361

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DEC 3 2002

DOCUMENT FOLDER

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I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Supplemental Discovery Response to PAWC Interrogatories, Set II, No. 13, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 21st day of November, 2002.

SERVICE BY FEDERAL EXPRESS

Anthony Decusatis, Esq.
Morgan, Lewis & Bockius
1701 Market Street
Philadelphia, PA 19103-2921

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Robert M. Ross, President
Susan Simms Marsh, Esq.
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

Cindy Parks
447 Fort Cherry Road
McDonald, PA 15057

Richard T. Minutello
110 Pleasant Road
McDonald, PA 15057



Dianne E. Dusman
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
64254.wpd;1/DED/smm

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SECRETARY'S BUREAU

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

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

Anthony C. DeCusatis
215.963.5034
adecusatis@morganlewis.com

November 21, 2002

DOCUMENT FOLDER

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SECRETARY'S BUREAU

VIA FIRST CLASS MAIL

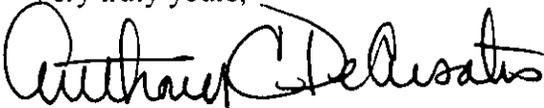
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Cindy Parks, Richard Minutello, and Office of Consumer Advocate v.
Pennsylvania-American Water Company
Docket Nos. C-00015377, C-20028177 and C-20028361**

Dear Secretary McNulty:

Enclosed for filing are an original and three copies of the Certificate of Service evidencing service upon the parties of record of Pennsylvania-American Water Company's Requests for Admissions (Set I) and Interrogatories and Requests for Production of Documents (Set III) to the Office of Consumer Advocate.

Very truly yours,


Anthony C. DeCusatis

ACD:
Enclosure

ORIGINAL

cc: Per Certificate of Service

123

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CINDY PARKS, : DOCKET NO. C-00015377
: :
RICHARD MINUTELLO, AND : DOCKET NO. C-20028177
: :
IRWIN A. POPOWSKY, CONSUMER : DOCKET NO. C-20028361
ADVOCATE : :

v.

PENNSYLVANIA-AMERICAN WATER :
COMPANY :

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DEC 2 2002

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SECRETARY'S BUREAU

2002 NOV 25 AM 9: 21

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Pennsylvania-American Water Company's REQUESTS FOR ADMISSIONS (SET I) and INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS (SET III) to the Office of Consumer Advocate upon the persons and in the manner set forth below, in accordance with the requirements of 52 Pa. Code § 1.54:

VIA FIRST CLASS MAIL

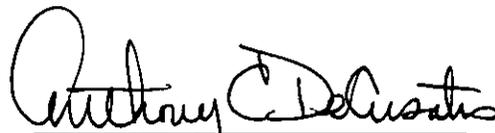
Cindy Parks
447 Fort Cherry Road
McDonald, PA 15057

VIA E-MAIL AND OVERNIGHT DELIVERY

Dianne E. Dusman, Esq.
Senior Assistant Consumer Advocate
Joel Cheskis, Esq.
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Fl., Forum Place
Harrisburg, PA 17101-1923

Richard T. Minutello
110 Pleasant Road
McDonald, PA 15057

Dated: November 21, 2002



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

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

Morgan Lewis
COUNSELORS AT LAW

Anthony C. DeCusatis
215.963.5034
adecusatis@morganlewis.com

DOCUMENT FOLDER

November 26, 2002

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2002 DEC 22 AM 9:54
SECRETARY'S BUREAU

VIA FIRST CLASS MAIL

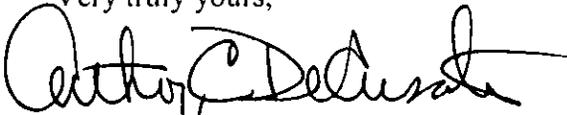
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: **Cindy Parks, Richard Minutello, and Office of Consumer Advocate v.
Pennsylvania-American Water Company
Docket Nos. C-00015377, C-20028177 and C-20028361**

Dear Secretary McNulty:

Enclosed for filing are an original and three copies of the Certificate of Service evidencing service upon the parties of record of Pennsylvania-American Water Company's Answers to the Interrogatories (Set VI) of the Office of Consumer Advocate.

Very truly yours,


Anthony C. DeCusatis

ACD:
Enclosure

cc: Per Certificate of Service

DOCUMENT FOLDE.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CINDY PARKS, : DOCKET NO. C-00015337
: :
RICHARD MINUTELLO, AND : DOCKET NO. C-20028177
: :
IRWIN A. POPOWSKY, CONSUMER : DOCKET NO. C-20028361
ADVOCATE : :
:

v.

PENNSYLVANIA-AMERICAN WATER
COMPANY

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DEC 3 2002

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SECRETARY'S BUREAU

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Pennsylvania-
American Water Company's Answers to the Office of Consumer Advocate's
Interrogatories (Set VI) upon the persons and in the manner set forth below, in
accordance with the requirements of 52 Pa. Code § 1.54:

VIA FIRST CLASS MAIL (Excluding Attachments)
Cindy Parks
447 Fort Cherry Road
McDonald, PA 15057

VIA FIRST CLASS MAIL (Excluding Attachments)
Richard T. Minutello
110 Pleasant Road
McDonald, PA 15057

VIA E-MAIL (Excluding Attachments) AND OVERNIGHT DELIVERY
Dianne E. Dusman, Esq.
Senior Assistant Consumer Advocate
Joel Cheskis, Esq.
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Fl., Forum Place
Harrisburg, PA 17101-1923

Dated: November 26, 2002



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

OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	C-00015377, et al	Prehearing Held:	<input type="checkbox"/>	<input type="checkbox"/>	
Case Name:	Cindy Parks, et a v. PA-American Water Co.I	Hearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
DOCUMENT FOLDER		Testimony Taken:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
		Transcript Due:	<input type="checkbox"/>	<input type="checkbox"/>	
Location:	HBG	Hearing Concluded:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Date:	December 3, 2002	Further Hearing Needed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
ALJ:	Larry Gesoff	Estimated Add'l Days:			
Reporting Firm:	Commonwealth Reporting	RECORD CLOSED:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
DOCKETED		DATE:	2/14/03		
		Briefs to be Filed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
DOCKETED		DATE:	Main 2/5 Reply 2/14		
		Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
DOCKETED		REMARKS:			
		JAN 06 2003			

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 2003 JAN 2 4 10:29
 PUBLIC RELATIONS BUREAU

PLEASE PRINT CLEARLY - Incomplete information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
Dianne E. Desman Joel H. Cheskis Telephone: 717-783-5048	555 Walnut St, 5th Fl. Forum Place City: Harrisburg State: PA Zip: 17101-1923	Office of Consumer Advocate Fax Number: 717-783- 5048 7152
ANTHONY C. Decusatis Telephone: 215-963-5034	MORGAN, LEWIS & BOCKIUS LLP 1701 Market Street City: Phila. State: PA Zip: 19103	Pennsylvania-American Water Company Fax Number: 215-963-5299
SUSAN SIMMS MARSH Telephone: 717-531-3208	800 Hershey Park Drive City: Hershey State: Pa Zip: 17033	PENNSYLVANIA-AMERICAN WATER COMPANY Fax Number: 717 531-3314

Check this box if additional parties or attendees appear on back of form.

SRB


 Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

CERTIFICATE OF SERVICE

RECEIVED

Re: Cindy Parks
v.
Pennsylvania-American Water Company
Docket No. C-00015377

02 DEC 18 PM 4:00

PA.P.U.C.
SECRETARY'S BUREAU

Richard T. Minutello
v.
Pennsylvania-American Water Company
Docket No. C-20028177

Irwin A. Popowsky, Consumer Advocate
v.
Pennsylvania-American Water Company
Docket No. C-20028361

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Responses to PAWC Interrogatories, Set III and also OCA Response to Request for Admission, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 17th day of December, 2002.

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID AND E-MAIL

Anthony Decusatis, Esq.
Morgan, Lewis & Bockius
1701 Market Street
Philadelphia, PA 19103-2921

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Robert M. Ross, President
Susan Simms Marsh, Esq.
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

DOCUMENT
FOLDER

DOCKETED
JAN 29 2003

Cindy Parks
447 Fort Cherry Road
McDonald, PA 15057.

Richard T. Minutello
110 Pleasant Road
McDonald, PA 15057



Dianne E. Dusman
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
64254.wpd;l/DED/smn

CERTIFICATE OF SERVICE

Re: Cindy Parks
v.
Pennsylvania-American Water Company
Docket No. C-00015377

Richard T. Minutello
v.
Pennsylvania-American Water Company
Docket No. C-20028177

Irwin A. Popowsky, Consumer Advocate
v.
Pennsylvania-American Water Company
Docket No. C-20028361

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Supplemental Response to PAWC Interrogatories, Set II, No. 12, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 17th day of December, 2002.

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Anthony Decusatis, Esq.
Morgan, Lewis & Bockius
1701 Market Street
Philadelphia, PA 19103-2921

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Robert M. Ross, President
Susan Simms Marsh, Esq.
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

DOCKETED
JAN 29 2003

DOCUMENT
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SECRETARY'S BUREAU

02 DEC 19 PM 4:01

SECRETARY

Cindy Parks
447 Fort Cherry Road
McDonald, PA 15057

Richard T. Minutello
110 Pleasant Road
McDonald, PA 15057



Dianne E. Dusman
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
64254.wpd;l/DED/smn



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265

January 6, 2003

DOCKETED
FEB 12 2003

TO ALL PARTIES OF RECORD:

In Re: Cindy Parks v. PA-American Water Company
Docket No. C-00015377

Richard Minutello v. PA-American Water Company
Docket No. C-20028177

Irwin A. Popowsky, Consumer Advocate v.
PA-American Water Company
Docket No. C-20028361

DOCUMENT

The transcript of testimony taken in the above-entitled proceeding indicates that the parties will file briefs.

In accordance with the Commission's Rules of Practice, main briefs shall be filed on or before February 5, 2003; reply briefs, if any, shall be filed on or before February 14, 2003. If briefs are not received within the allotted time, they shall not be accepted for filing, except by special permission of the presiding officer. Your main briefs should be concise and must comply with 52 Pa. Code §5.501. If you do not file a main brief, no reply brief will be accepted from you.

An original and nine (9) copies of each main and reply brief must be filed with the Commission in accordance with 52 Pa. Code §1.4 and in care of the New Filing Section, P.O. Box 3265, Harrisburg, PA 17105-3265. Also, two copies must be served on each party of record. Please provide me with a print copy of the brief and a copy on a 3.5" diskette compatible with Word 97.

Very truly yours,

Larry Gesoff
Administrative Law Judge

LG:aje

cc: File Room
Beth Plantz
Chief, Scheduling Unit



**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

**DOCUMENT
FOLDER**

January 14, 2003

In Re: **C-00015377, C-20028177, and C-20028361**

«FIRSTNAME» «MIDDLEINITIAL» «LASTNAME» «JOBTITLE»
«COMPANY»
«ADDRESS1»
«ADDRESS2»
«ADDRESS3»
«CITY» «STATE» «POSTALCODE»

DOCKETED
JAN 14 2003

**C-00015377 Cindy Parks; C-20028177 Richard T. Minutello and
C-20028361 Office of Consumer Advocate v. PA-American Water
Company**

Service dispute.

Hearing Correction Notice

This is to inform you that the Hearings on the above captioned cases scheduled to be held on Wednesday-Friday, December 4, 5 and 6, 2002 at 9:00 a.m. were change as follows:

Type: **Initial and Further Hearings**

Date: **Tuesday-Thursday, December 3, 4 and 5, 2002**

Time: **9:00 a.m.**

Location: **Hearing Room 2
Plaza Level
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania**

Presiding: **Administrative Law Judge Larry Gesoff
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-3550
Fax: (412) 565-5692**

SRB

Please change your records accordingly.



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

January 31, 2003

Administrative Law Judge Larry Gesoff
Pennsylvania Public Utility Commission
11th Floor State Office Building
300 Liberty Avenue
Pittsburgh PA 15222

Re: Parks, et al v. PAWC, Docket No. C-00015377

Dear ALJ Gesoff:

Pursuant to our telephone conversation today, this letter is to advise of the Presiding Officer's approval of a change in the briefing schedule for the above-referenced case. **Main briefs** are now due on **Monday, February 10, 2003** (instead of Wednesday, February 5, 2003) and **reply briefs** on **Wednesday, February 19, 2003** (instead of Friday, February 14, 2003). Both deadlines are in-hand electronically by 4:00 p.m. By copy of this letter, the Commission and all parties are so notified.

Please contact the undersigned if any questions arise related to this matter.

Sincerely,

Dianne E. Dusman
Senior Assistant Consumer Advocate

cc: Secretary James McNulty, PUC
Anthony DeCusatis, Esq.
Susan Simms, Esq.
Cindy Parks
Rick Minutello

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03 JAN 31 PM 4:00
PUC
SECRETARY'S BUREAU

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MAR 04 2003

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CINDY PARKS,	:	DOCKET NO. C-00015337
	:	
RICHARD MINUTELLO, AND	:	DOCKET NO. C-20028177
	:	
IRWIN A. POPOWSKY, CONSUMER ADVOCATE	:	DOCKET NO. C-20028361
	:	
	:	
v.	:	
	:	
PENNSYLVANIA-AMERICAN WATER COMPANY	:	
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UNREPORTED DECISIONS AND OTHER DOCUMENTS
CITED IN THE INITIAL BRIEF OF
PENNSYLVANIA-AMERICAN WATER COMPANY

ORIGINAL

SUBMITTED
FEBRUARY 10, 2003

RECEIVED

FEB 10 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Hershey Church of the Nazarene

C-844227

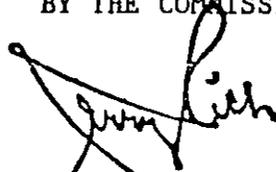
Keystone Water Company - Hershey
Division

O R D E R

In accordance with the provisions of Act 294 of 1978 (66 Pa. C.S. §332(h)), the decision of Administrative Law Judge George M. Kashi dated March 27, 1985 has become final without further Commission action; THEREFORE,

IT IS ORDERED: That the Complaint of Hershey Church of the Nazarene, docketed at C-844227 be and is hereby dismissed.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ENTERED: May 13, 1985

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Hershey Church of the Nazarene :
 :
 :
 v. : C-844227
 :
 Keystone Water Company - :
 Hershey Division :

INITIAL DECISION

Before

George M. Kashi
Administrative Law Judge

History of the Proceeding

By complaint filed July 18, 1984, and docketed to C-844227, Hershey Church of the Nazarene, 320 Townhouse, Hershey, Pennsylvania, 17033 (Complainant) alleged a dispute over the required size of a service line provided by Keystone Water Company - Hershey Division (Respondent/Keystone) and associated costs. Complainant requests a determination of cost liability.

In answer filed July 25, 1984, Respondent denied the existence of any dispute, relying on an Extension Deposit Agreement which Respondent claimed had been entered into by Complainant and itself and which was part of Respondent's approved tariff. Keystone requested the complaint be disallowed.

The matter was assigned to this Administrative Law Judge on September 10, 1984, and hearing was scheduled for and held before the undersigned on October 12, 1984, in

Harrisburg. A transcript of some 78 pages was produced through the direct testimony and cross-examination of three witnesses and the introduction of seven exhibits into the evidentiary record.

Complainant appeared at the hearing without counsel. Complainant had been represented by counsel during some of the events leading up to the hearing. We allowed the President/Pastor of the Complainant to present the case given that the events were well documented. At the conclusion of the hearing (N.T. 80) we advised Complainant to have counsel file a brief in the matter and provided a time frame for briefs. No brief was filed by Complainant; however, a brief was filed by Respondent. The record was closed December 15, 1984.

Summary of the Evidence

Due to the undisputed nature of the testimony and the documentation of the events by the exhibits, no summary is set forth. Relevant portions of the evidence are set forth in the following findings of fact and discussion.

Findings of Fact

1. Complainant is Hershey Church of the Nazarene, Inc., located at 320 Townhouse, Hershey, Pennsylvania, 17033.
2. Respondent is Keystone Water Company - Hershey Division, a regulated utility, with an office and principal place of business at 800 West Hershey Park Drive, Hershey, Pennsylvania, 17033.

3. Sometime in the early months of 1982, Complainant through its President/Pastor, Reverend Bud Reedy, inquired of Respondent about the possibility of obtaining water service to property that the church was buying, along U.S. Route 322 (N.T. 27).

4. At the initial contact Pastor Reedy was informed by Richard Neubauer, Respondent's Manager for the Hershey - Palmyra District, that mainline extension would be expensive and encouraged Complainant to pursue the possibility of sinking a well (N.T. 27).

5. Under Township regulations, Complainant could have provided its own water supply by digging a well. The quality of water and supply at the cite from a well is satisfactory (N.T. 22, 23).

6. By letter dated December 2, 1982, Complainant requested water service from Respondent (N.T. 28, Joint Exh. 2).

7. On December 6, 1982, Respondent notified Complainant that it could provide the requested service subject to a main extension deposit agreement (N.T. 28, Joint Exh. 3).

8. Respondent's tariff, Supplement No. 7 to Tariff Water - Pa. P.U.C. No. 23, at Sec. 23.2 effective December 27, 1983 sets forth terms offered to Complainant (Joint Exh. 1, N.T. 31).

9. Sometime in February 1984, representatives of Complainant visited Respondent's office to discuss implementation of the Extension Deposit Agreement (N.T. 9, 29).

10. At the February meeting, Complainant was advised that a 12-inch diameter iron water main was necessary to extend service to Complainant (N.T. 10, 30).

11. At the February meeting, Respondent again indicated that the proposed extension would be expensive and again suggested putting in a well (N.T. 30).

12. On or about March 1, 1984, Respondent forwarded to Complainant a proposed extension deposit agreement detailing the time and cost of installing:

650' of 12" D.I. water main in the south side of U.S. Route 322 east of "Arndt's Sub Base" Restaurant between Hershey and Campbelltown, Pennsylvania. All to be situated in the Township of Derry, Dauphin County, Pennsylvania (N.T. 30, Joint Exh. 1).

13. The aforesaid agreement called for a \$9,999.00 deposit (N.T. 30, Joint Exh. 1).

14. Sometime between the February meeting and March 7, certain church members contacted staff members of the Public Utility Commission and were given information which they believed contradicted the Respondent's position (N.T. 10, 11).

15. Based on its understanding of the matter after speaking with the Public Utility Commission Staff, Complainant through its counsel by letter dated March 7, 1985 informed Respondent:

"...you have indicated that a twelve inch (12") line will be warranted to effect the hook-up. It is our understanding that the current line is six (6") inches and that the P.U.C. requires that the pipeline diameter be "adequate" only; and that an eight (8") inch line would be more than

"adequate". It is our further understanding that the \$4.00 per foot differential between an eight (8) and twelve (12) inch line would result in additional expense to my client of some \$2400.

We trust that you will contact me directly in the near future to discuss this entire situation since time is of the essence." (N.T. 31, Joint Exh. 4).

16. On or about March 12, a date prior to receiving an answer to their March 7 letter to Respondent, Complainant executed the March 1 Extension Deposit Agreement and deposited with Respondent the sum of \$9,999. (N.T. 31, Joint Exh. 1).

17. Under cover dated March 16, in answer to the March 7, letter of Complainant's counsel and after the deposit had been received, Respondent advised Complainant:

".... The distribution system of KWC-Hershey/Palmyra District is dead-ended approximately 600 feet west of the proposed site for the new church. This is an area of our system which needs reinforcement.

.... In August of this year we have a planned project, budgeted at \$30,000, replacing a bottleneck consisting of 918' of 2" galvanized main with new 12" ductile iron main at this very location. The project also involves the abandonment of 170 feet of 6" main. This short section of main happens to be the same 6" main you mentioned in your letter of March 7, 1984. Long range plans call for further sizeable water company expenditures to provide additional reinforcement to this area of our distribution system for the benefit of existing customers.

.... We have the obligation or responsibility to plan ahead. We must have the ability to meet the peak demands of our customers and provide the required flows for fire protection. We cannot

allow the church to install main we know will instantly become another bottleneck." (Tr. 31, 32, Joint Exh. 5).

18. Respondent was willing to terminate the Agreement at any time prior to the commencement of construction (N.T. 31, 32).

19. The project was completed, and all costs finalized in May 1984 (N.T. 32).

20. Under cover letter dated May 31, 1984 Respondent sent a final memorandum (invoice), per the Extension Deposit Agreement, to the Complainant for execution (N.T. 32, Joint Exh. 6).

21. The final memorandum indicated that the estimated cost of the project, \$9,999.00, was reduced to \$8,047.00 (N.T. 35).

22. The Complainant has refused to execute the final memorandum contending that a six-inch diameter line would have been adequate to provide service to it (N.T. 14).

23. Harry W. Arndt; a plumber and superintendent for a local company which installs plumbing, heating and air conditioning for both commercial and industrial development, testified on behalf of Complainant and opined that a 6 inch diameter line was adequate to meet Complainant's needs. (N.T. 16, 17).

24. The 12-inch diameter mainline extension benefits the distribution system and was needed to reinforce the system (Joint Exh. 5).

25. As of the date of the hearing no 12-inch pipe exists in the area other than the 650' installed at the church (N.T. 27).

26. Service to Complainant is presently accomplished from a 2" pipe running into a 6" pipe which then flows into Complainant's 12" main (N.T. 25, Joint Exh. 7-B-9; C-9).

27. No present benefit beyond domestic service exists to Complainant from the 12 inch line (N.T. 69-71; Joint Exh. 7, B-4, B-8).

28. The Complainant is entitled to two refunds from the Respondent; i.e. the difference between the actual amount advanced to the Respondent and the actual completed cost of the project, and the average cost of installing 35 feet of mainline extension.

Discussion

The instant matter presents us with two questions as raised by the Complainant. The first is whether the Respondent's requirement for a 12-inch diameter mainline extension was reasonable to provide adequate service. The second is whether, under the terms of Respondent's tariff, Complainant is entitled to a refund for the first 35 feet of instant installation.

Turning to the first question, the Respondent, via an extension deposit agree (Joint Exh. 1) provided for the installation of a 12-inch diameter mainline extension to serve the Complainant. The Complainant contends that a 6-inch diameter extension would have been sufficient to provide adequate service to it and that the Respondent should be responsible for paying the difference in cost.

The Complainant has the burden of proof in this case, and it must produce the most persuasive evidence, or we are compelled to dismiss the complaint, Perr v. Bell Teleph. Co. of Pennsylvania, 52 Pa. PUC 261 (1977). The Complainant's evidence consists of the testimony of Mr. Harry W. Arndt, a member of the Complainant's congregation and a plumber and superintendant of a plumbing, heating and air conditioning concern, who testified that it is his opinion that the extension was overdesigned and may create the potential for a water quality problem (N.T. 14, 15). Further, he testified over hearsay objections of Respondent's counsel, that the Complainant had been advised by certain employees of the Public Utility Commission that a 6-inch diameter extension was the extent of the Complainant's financial responsibility (N.T. 10, 12).

The Public Utility Code requires every public utility to furnish and maintain adequate, efficient, safe and reasonable service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public (66 Pa. C.S.A. §1501).

As required by law the Company has implemented a tariff setting forth its rules and regulations governing the distribution and sale of water, Supplement No. 7 to Tariff Water - Pa. P.U.C. No. 23. Section 23 of the tariff relating to Main Extension providing in relevant part:

"...The Company shall have the exclusive right to determine the type and size of mains to be installed and other facilities required to render adequate service."

(Section 23.1(b)).

The principle as set forth in the tariff has been supported by the Commission in Radoff v. Langhorne Spring Water Company, 47 Pa. P.U.C. 67 (1933); where respondent refused to provide water service to complainant except under terms of an extension deposit agreement requiring an 8 inch distribution main although complainant offered to pay for the cost of a 2 inch water line, the Commission ruled:

"It is the prerogative of respondent's management to determine the character, size and location of all water main facilities necessary to provide adequate and reasonably continuous water service to customers throughout its authorized service area."

Here Respondent requires that extension be made with 12-inch diameter pipe in order to prevent a bottleneck in its distribution system (N.T. 40). Immediately preceding the extension made by the Complainant, the Respondent is installing a 12-inch diameter line during 1984 (N.T. 40), and the Respondent has designated funds for 1985 for installation of additional 12-inch diameter lines to replace an old 2-inch diameter galvanized water main and a section of 6-inch diameter cast iron main. Any further extension of the line extended by the Complainant would be with 12-inch diameter lines to be paid for by customers requesting the extensions (N.T. 39, 41). The record indicates that there is a possibility for development beyond the terminus of the main-line extension (N.T. 39).

Some of the problems associated with bottlenecks are reductions in flows and pressures to all customers served in the area, including the Complainant (N.T. 45). In addition,

bottlenecks are not consistent with sound engineering practices and do not provide for reasonably safe and adequate service (N.T. 45). A six-inch diameter line would not have been adequate to satisfy the fire flow needs of the Complainant (N.T. 45).

On the point regarding inadequate flows for fire-fighting purposes, the Respondent's Director of Engineering, Bruce Juergens, testified that based upon his engineering experience, he recommended a 12-inch diameter main. Further, he reviewed the Insurance Service Organization's standards for flows and pressures, which are approximately 1,100 gallons per minute for a structure the size and composition of the Complainant's building. He testified that a six-inch diameter extension would be incapable of delivering that volume (N.T. 71).

The Respondent's requirement that the Complainant pay for the installation of the 12-inch diameter extension is consistent with its reasonable policy which is uniformly applied to all customers. Other customers under similar circumstances have been required to bear the cost of such installations (N.T. 39).

The Complainant's contention regarding the degradation of water quality was unsubstantiated. Mr. Arndt, who made the allegation on behalf of the Complainant, acknowledged under cross-examination that he did not test the water (N.T. 19) and to his knowledge no one else has tested the water (N.T. 20).

However, on balance as we review the plans of the water company it would appear that the benefit inures to the company and not the Complainant (Joint Exh. 7). But

we know of no authority to make such a balancing act. Suffice it to say that Complainant has been unable to establish that Respondent's decision was unreasonable.

Turning to the second question relating to the proper operation of the tariff, the Complainant contends that the Respondent should pay for the first 35 feet of the mainline installation. The Complainant has relied upon Section 23.1(A) of the Respondent's tariff in support of its contention:

"The Company will extend existing distribution mains a distance of thirty-five feet (35') for each bona fide prospective Customer making application for water service therefrom for a period of one (1) year or more under these Rules and Regulations. Such extensions will be made without cost to such customer(s)."

It is the Respondent's position and we agree that the Complainant's reliance is misplaced. As explained by Mr. Neubauer, Section 23.1(A) is inapplicable to extensions in excess of 35 feet, as exists in the instant case (N.T. 64). For extensions of more than 35 feet, Section 23.1(B) is controlling:

"When an extension greater than thirty-five feet (35') in length for each bona fide prospective Customer is required or requested, such extension will be made under the terms of an 'Extension Deposit Agreement,' as hereinafter set forth. The Company shall have the exclusive right to determine the type and size of mains to be installed and the other facilities required to render adequate service. Should it be necessary in the Company's opinion, to extend beyond the last lot in a street to connect to an existing main thus to provide adequate and reliable service, this additional extension shall be part of the total

main extension whenever the last lot in the street does not exceed 150 feet to make such connection. All estimated or actual cost figures referred to in the 'Extension eposit Agreement' shall include a reasonable allowance for overhead costs."

The "Extension Deposit Agreement" referenced in Section 23.1(B) is contained in Section 23.2. This is the same agreement which was executed by the Complainant (Joint Exh. 1). Mr. Neubauer provided the following explanation:

"As I explained in my testimony, had your church been located within 35 feet of our distribution system we would have extended it at no cost to you. Since you are 650 feet away from our property, you go into paragraph (b) there, where it says, 'When an extension greater than 35 feet in length for each bona fide prospective customer is required or requested, such extension will be made under the terms of the Extension Deposit Agreement.'

Now, you are getting 35 foot back. Whether it is the first 35 feet or the last 35 feet or an average of any of the 35 feet, you are getting 35 foot of the actual installation cost back."
(N.T. 62, 63)

As soon as the installation is completed and the final memorandum is executed by the Complainant, a refund for the average cost of installing 35 feet will be refunded to the Complainant (N.T. 63). The Complainant is currently entitled to two refunds, i.e., the difference between the actual amount advanced to the Respondent and the actual completed cost of the project, and the average cost of installing 35 feet (N.T. 38). Furthermore, the extension deposit agreement provides that during the next ten years it is possible for the Complainant to recoup its entire expenditure through refunds from Respondent

for other bona fide prospective customers' connecting to that portion of the mainline extended by the Complainant (N.T. 37).

As in Miller v. Sinking Spring Water Company, 40 Pa. PUC 45 (1962), where the Commission dismissed a challenge to the terms of an executed extension deposit agreement, the following is applicable in this case:

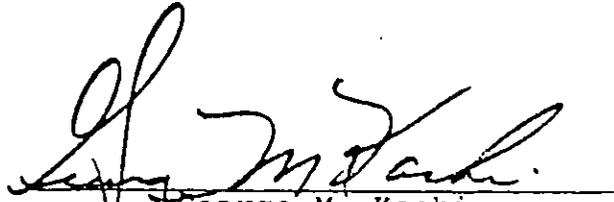
"From this record, it is clear that the water main installations by complainant in his development have been the subject of arm's-length negotiations between complainant and respondent which were subsequently formalized by agreements now in various stages of performance. It is clear that complainant entered into contractual arrangements with respondent with full understanding of the duties and obligations of both parties to such agreements, and further that complainant had ample opportunity to have his rights litigated and could have utilized the processes of law to protect himself, if he were seriously of the opinion that respondent's contract terms were unreasonable or unwarranted."

The record demonstrates that Complainant was keenly aware of the terms of the extension deposit agreement. Further, Complainant was represented by counsel. No evidence has been presented that Respondent in any way induced Complainant to execute the agreement. In fact, the record already demonstrates that Respondent discouraged the project based on the cost and encouraged Complainant to drill a well. Given that the agreement is in accord with the lawful tariff and we find no defects to its execution we conclude that what we have before us is something akin to buyer's remorse and nothing more. Consequently, we will dismiss the complaint.

Conclusion of Law

1. Complainant has failed to meet its burden of proof.
2. Respondent's regulations under its tariff are reasonable and apply to the instant matter.

THEREFORE, IT IS ORDERED: That the Complaint of Hershey Church of the Nazarene, docketed at C-844227 be and is hereby dismissed.


George M. Kashi
Administrative Law Judge

Date:

March 27, 1985

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

30124

Duane Flaherty
v.
Western Pennsylvania Water Company
Washington Division

C-850157

O R D E R

In accordance with the provisions of Act 294 of 1978 (66 Pa. C.S. §332(h)), the decision of Administrative Law Judge James D. Porterfield dated September 26, 1985 has become final without further Commission action; THEREFORE,

IT IS ORDERED:

1. That the Complaint of Duane Flaherty, docketed at C-850157, be and is hereby dismissed.

BY THE COMMISSION,

Jerry Rich
Secretary

(SEAL)

ORDER ENTERED: NOV 13 1985

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Duane Flaherty : C-850157
v. :
Western Pennsylvania Water Company :
Washington Division :

INITIAL DECISION

Before James D. Porterfield
Administrative Law Judge

History of the Proceedings

By complaint filed March 21, 1985, and docketed at C-850157, Duane Flaherty (hereafter sometimes "Flaherty" or "Complainant") alleges that he is constructing a new house on Glenn Avenue, Canonsburg, PA, and that Western Pennsylvania Water Company - Washington Division (hereafter sometimes "WPW" or "Respondent") is unreasonable by requiring that 250' of 8" distribution line be installed, at Flaherty's expense, in order for Flaherty to receive water service from WPW. Flaherty alleges that an 8" line is unreasonably large for the purpose of serving a single-family dwelling.

By letter answer filed April 15, 1985, WPW responds, in relevant part, to the complaint, as follows:

3. The Complainant has requested that Respondent permit him to install a meter pit at the corner of his property situate on Glenn Avenue in Canonsburg, Pennsylvania. Complainant then proposes to run a tap from the pit and install a 4-inch service line approximately 250 feet to his premises. Attached as Exhibit A is a map illustrating Complainant's proposal and Respondent's counter proposal. The Respondent has refused to install the meter pit or approve the installation of a 4-inch service line for the reasons which follow.

The Respondent is under the jurisdiction of the Public Utility Commission ("PUC"). At 52 Pa. Code §65.17, the PUC has promulgated regulations mandating that pipe of a diameter of not less than six inches be used for distribution mains. In addition, the Respondent's tariff (copy of relevant provisions attached as Exhibit B), which has been approved by the PUC, provides at Section 2.1 that an applicant for service must own property abutting a public highway in which a distribution main is located. In addition, Section 23.1(B) gives the Respondent the authority to determine the size of mains to be installed. Finally, Section 23.1 prohibits service lines from passing through or across any property other than the property to be serviced. It would be a violation of the PUC Code and the PUC-approved tariff to allow the installation of a meter pit and the 4-inch diameter service line.

4. The Respondent is not permitted by law to accede to the Complainant's request. However, the Respondent is willing to extend a water main 8 inches in diameter approximately 250 feet in order to serve the Complainant's residence. The 8-inch main will provide adequate fire protection to Respondent as well as foster a good waterworks distribution system design. Respondent operates on the basis that a system should be designed to provide safe and adequate service to all customers, not just one particular customer. The installation of an 8-inch main will achieve this goal.

A hearing was held on the complaint in Pittsburgh, PA, on June 12, 1985. Duane Flaherty appeared on his own behalf, testified, and

sponsored two exhibits: Complainant's Exhibit 1 -- a sketch of Flaherty's property and Complainant's Exhibit 2 -- a copy of Flaherty's formal complaint. Michael D. Klein, Esquire, appeared on behalf of Western Pennsylvania Water Company - Washington Division and offered the testimony of one witness who sponsored six exhibits (the identification and designation of Respondent's exhibits were established at page 33 of the transcript of hearing and thereafter).

The record in this proceeding consists of a sixty-one-page transcript of the hearing and the eight exhibits.

Summary of the Evidence*

Because the dispute is centered on the construction of certain tariff provisions and the documentation of the facts by a pictorial exhibit (Respondent's Exhibit 2) no summary of evidence is provided. Relevant portions of the evidence are reflected in the following findings of fact.

* For possible convenience and clarity, WPW's Exhibits Nos. 2 (a sketch depicting both WPW's and Flaherty's proposals), 3 (WPW's relevant rules tariff provisions), and 4 (a portion of WPW's distribution service map) are attached to this decision as Appendices A, B, and C, respectively.

Findings of Fact

1. Complainant, Duane Flaherty, is constructing a single-family dwelling located in the vicinity of Glenn Avenue, Canonsburg, PA. (Tr. 12; Complainant's Exhibit 2)

2: Western Pennsylvania Water Company - Washington Division, Respondent, is a regulated public utility with offices located at 800 West Hershey Park Drive, Hershey, Pennsylvania. (Tr. 51-52; Respondent's Exhibit 1)

3. Flaherty is the owner of an irregularly shaped (ten-sided) parcel of real property located in the Borough of Canonsburg and Chartiers Township. (Tr. 12; WPW Exhibit 2)

4. The two easterly sides of Flaherty's property face Glenn Avenue (Canonsburg) and Canyon Drive (Chartiers); the intersecting point of the two easterly sides of Flaherty's property is a point on the westerly side of Glenn Avenue/Canyon Drive. (WPW Exhibit 2)

5. All property between the westerly side of Glenn Avenue/Canyon Drive and the easterly sides of Flaherty's property is owned by the Borough of Canonsburg or the Township of Chartiers and this governmental owned property is part of the Glenn Avenue/Canyon Drive right-of-way. (Tr. 5, 31, & 46)

6. Glenn Avenue and Canyon Drive are a single street and there is no point reflected in the record where one street ends and the other street begins. (Tr. 29, 34; WPW's Exhibits 2 & 4)

7. At a point approximately on the border line between Canonsburg and Chartiers Township, Canyon Drive/Glenn Avenue contains a dog-leg that has an estimated angle of between 100 and 130 degrees of arc. (WPW's Exhibit 4)

8. Before Canyon Drive/Glenn Avenue dog-legs (at approximately the northern line of Flaherty's property) there is a 6" distribution water line parallel to Canyon Drive that terminates at approximately the point where Canyon Drive/Glenn Avenue dog-legs. (WPW's Exhibit 4)

9. If the 6" distribution line, parallel to Canyon Drive, were extended 180 degrees for a distance of approximately 53' across the Canyon Drive/Glenn Avenue right-of-way, the distribution line of WPW would intersect the northern most easterly side of Flaherty's property. (Tr. 33-34, 47; WPW's Exhibit 2)

10. Intersecting Canyon Drive/Glenn Avenue to the south of Flaherty's property is Violet Street parallel to which WPW has a 6" distribution line. (WPW's Exhibit 4)

11. Although possible, it appears to be unlikely that there will be future water customers other than possibly Flaherty on Canyon Drive/Glenn Street between the Chartiers Township border and Violet Street (and Spruce Street, which appears to be a continuation of Violet Street). (Tr. 16-17, 21, 32; Flaherty's Exhibit 1; WPW's Exhibit 4)

12. Flaherty's proposal for receiving water service from WPW would require WPW to extend its 6" Canyon Drive distribution line 180 degrees for a distance of approximately 53' to Flaherty's property line at which point WPW could install a water pit to house a water meter. (Tr. 25-26, 33-34, 47; WPW's Exhibit 2)

13. Respondent's proposal for providing water service to Complainant is to lay approximately 250' of 8" distribution line approximately parallel to that part of Canyon Drive/Glenn Avenue that lies to the south of WPW's existing 6" distribution line (which terminates in Canyon Drive) and Flaherty's north property line. (WPW's Exhibits 1 & 2)

14. WPW's proposal would result in its distribution line terminating at the point where the two eastern sides of Flaherty's property intersect with the westerly side of Canyon Drive/Glenn Avenue. (WPW's Exhibit 2)

15. With WPW's proposal, Flaherty could not install a straight service line from WPW's distribution line to his newly constructed dwelling and have the service line connect with the distribution line at a right angle. (WPW's Exhibit 2)

16. With Flaherty's service proposal, if WPW extended its Canyon Drive distribution line 53' to just reach Flaherty's property, Flaherty could not install a straight service line from WPW's distribution line to his newly constructed dwelling and have the service line connect with the distribution line at a right angle. (WPW's Exhibit 2)

17. The approximate cost to Flaherty to implement WPW's proposal for providing him with water service would be \$4,500. (Tr. 45)

18. Flaherty is not prohibited by the Borough of Canonsburg from constructing a water well on his property; and the cost constructing a private water well on Flaherty's property is approximately \$1,800. (Tr. 18, 59-60)

19. There is a WPW system advantage to WPW's proposal for providing Flaherty with water service and there is no similar potential advantage with Flaherty's proposal. (Tr. 33-35)

20. WPW has a policy of installing main distribution lines with a diameter of no less than 8". (Tr. 35-36)

21. WPW's proposal is justified by various provisions of its rules tariff, Supplement No. 29 to Water-Pa. P.U.C. No. 20 (2.1 at Second Revised Page No. 8; and 23.1 (B), (C), and (E) at Second Revised Page No. 30 and Second Revised Page No. 30A. (WPW's Exhibit 3)

22. Flaherty's property abuts a public highway right-of-way (Canyon Drive/Glenn Avenue) in which a main pipe of WPW's distribution system is located. (WPW's Exhibits 2 & 3; Tr. 27)

Discussion*

Subsection 332(a), 66 Pa. C.S. §332, provides that except in circumstances covered by Section 315, the proponent of a rule or order shall have the burden of proof in proceedings such as the present one. Complainant in this proceeding is the proponent of rules contained in Sections 1501, 1502, and 1505, 66 Pa. C.S. §§1501, 1502, and 1505, that every public utility shall furnish and maintain adequate, efficient,

*

As previously indicated, WPW's Exhibits Nos. 2 (a sketch depicting both WPW's and Flaherty's proposals, 3 (WPW's relevant rules tariff provisions), and 4 (a portion of WPW's distribution service map) are attached to this decision as Appendices A, B, and C, respectively.

safe, and reasonable service and facilities in a non-discriminatory manner. Accordingly, the substantive issues in this proceeding are not whether Flaherty's proposal for receiving water service is reasonable or even whether Flaherty's proposal is more reasonable than WPW's proposal. The substantive issues are whether WPW's proposal complies with the law, the Commission's regulations, WPW's tariff provisions, and WPW's internal policies. Specifically, the fulcrum issue in this proceeding is whether Flaherty has demonstrated by a preponderance of the evidence that WPW has, by its proposal for providing him with water service, failed to comply with the law, the Commission's regulations, with the provisions of WPW's rules tariff, or with the internal policies of WPW. Complainant's burden of proof is qualified by the Commission's statement in Marvin L. Radoff v. Langhorne Spring Water Company, 47 Pa. P.U.C. 64, 67 (1973), as follows:

It is the prerogative of respondent's management to determine the character, size and location of all water main facilities necessary to provide adequate and reasonably continuous water service to customers throughout its authorized service area.

WPW's proposal for providing water service to Complainant is to lay approximately 250' of 8" distribution line approximately parallel to that part of Canyon Drive/Glenn Avenue that lies to the south of WPW's existing 6" distribution line which terminates in Canyon Drive in proximity with Flaherty's north property line. (Refer to the attached appendices A and C) WPW justifies its requirement for an 8" line by the application of its system-wide policy of installing main distribution lines with a

diameter of no less than 8". The reason for this requirement, states WPW's witness, is that the increased diameter pipe enhances fire protection for WPW's customers. This statement is unrebutted and appears to be reasonable.

WPW's proposal, furthermore, is advanced as the most reasonable proposal consistent with its rules tariff. (Refer to Appendix B for the relevant portions of WPW's rules tariff.) WPW submits that in order for a customer to receive a service connection the proposed customer's property must abut a public highway in which a main pipe of the company is located. By one possible construction of the facts in this case, Flaherty's property abuts a public highway, at only one point and that is the point to which WPW proposes to extend its distribution line. However, a strict reading of WPW's tariff provision (2.1, First Revised Page No. 8) raises at least two questions, the answers to which may support Flaherty's proposal but do not necessarily defeat WPW's proposal. First, WPW's tariff provision does not expressly require that the requested service connection be at a point of abutment. Second, the term "public highway" certainly includes, by any reasonable construction, the right-of-way of the public highway. Both of these answers tend to support Flaherty's proposal, for both easterly sides of Flaherty's property abut the Glenn Avenue/Canyon Drive right-of-way, by the admission of WPW's counsel (Tr. 5), and WPW has a main pipe located in Canyon Drive in proximity (53' away) with Flaherty's property.

WPW finds support for its proposal in its tariff provision that reserves an exclusive right to the company to determine the type

and size of mains to be installed and the other facilities required to render adequate service, when, as here, an extension greater than 35' is required. (23.1(B) at First Revised Page No. 30) Of course, in applying this provision, WPW remains subject to a standard of reasonableness.

WPW relies heavily on the following provision of its tariff for rejecting Flaherty's proposal and for supporting its proposal:

In determining the length of and necessity for any extension required pursuant hereto, the terminal point of such extension shall, in all cases, be at the point in the curb line which is equidistant from the side property lines of the last lot for which water service is requested, A street service connection will be provided only for Customer service lines from the curb to the premises to be served which are laid in a straight line at right angles to the curb line. [23.1(c) at First Revised Page No. 30]

Aside from the problem of construing the term "curb line," this provision would appear to make Flaherty's proposal violative of WPW's tariff. However, it is not at all apparent, using WPW's assumptions and its sketch (see Appendix A, hereof), that WPW's proposal can comply with its tariff provision. WPW's position is that Flaherty's property only abuts a public highway at one point. It is not apparent that this one point is, first, equidistant between Flaherty's property lines or, second, if the point is equidistant, that Flaherty's dwelling can be served by a service line at right angles to WPW's extension. WPW's counsel is invited to note that contrary to the representation, (Tr. 49) there is no requirement at rule or paragraph 23.1(C) that a main must be located in "front" of a prospective customer's property.

Finally in an effort to show that Flaherty's proposal is violative of its rules tariff, WPW cites the following language:

Street service supplying a premises shall not pass through or across any premises or property other than that to be supplied, and no water pipes or plumbing in any premises shall be extended therefrom to adjacent or other premises. [23.1(E) at First Revised Page No. 30A]

Flaherty proposes to have WPW's extension pass through or across what is, admitted to be by WPW's counsel, public highway or street right-of-way property. It is specious to argue that the tariff provision prohibits a line extension from passing through right-of-way property.

Although WPW's rules may not be stated with exquisite precision, they are not facially unreasonable. In an instance where it is impossible, strictly, to comply with the rules tariff and at the same time offer water service to a prospective customer, liberties must be taken with the rules.

Flaherty's evidentiary efforts in this proceeding have been directed toward showing a less costly alternative to WPW's proposal. As praiseworthy as that effort might be, it does not satisfy his burden of showing by a preponderance of the evidence that WPW's proposal is unreasonable or unfairly discriminatory. This record contains no basis for faulting WPW's proposal by these standards. Complainant may take some consolation in having available to him the far less costly alternative of drilling a private water well on his property.

Where a complainant fails to satisfy his burden of proof by a preponderance of the evidence, or by the most persuasive evidence,

the, complaint shall be dismissed. Perr v. Bell Teleph. Co. of Pennsylvania, 51 Pa. P.U.C. 261, 262 (1977). Mr. Flaherty has not carried his requisite burden of proof, and, therefore, his complaint is dismissed.

Conclusions of law

1. Complainant, Flaherty, failed to show by a preponderance of the evidence that Respondent, Western Pennsylvania Water Company, by its proposal for extending its distribution line for the purpose of providing Complainant with water service, has failed to comply with the law, with any regulation or order of the Commission, with any tariff provision, or with any internal policy of Western Pennsylvania Water Company.

2. Complainant failed to show by a preponderance of the evidence that Respondent's proposal, if implemented, would be unfairly discriminatory.

3. The provisions of Respondent's rules tariff, cited by the Respondent in support of its proposal, are not facially unreasonable and are reflected in Respondent's proposal for extending its distribution line for the purpose of providing Complainant with water service.

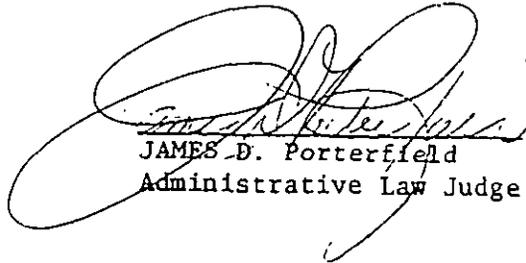
4. Respondent has broad management discretion to determine the character, size, and location of all water distribution facilities necessary to provide adequate and reasonable service to its customers.

ORDER

THEREFORE, IT IS ORDERED:

1. That the Complaint of Duane Flaherty, docketed at C-850157, be and is hereby dismissed.

September 26, 1985



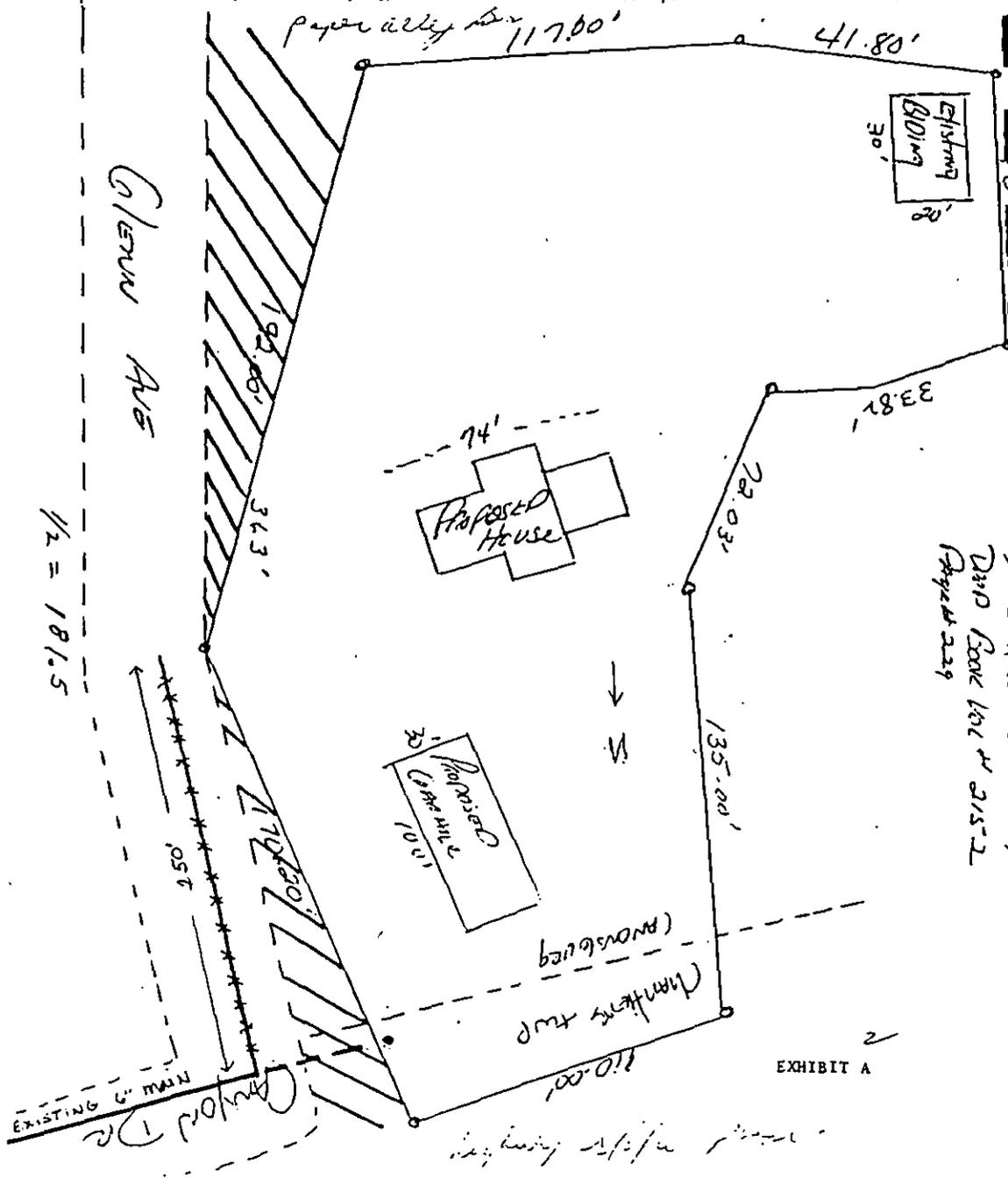
JAMES D. Porterfield
Administrative Law Judge

LEGEND

Respondent's proposed extension -x-x-x-x-x-

Property other than Complainant's _____

Complainant's proposed extension with meter pit - - - - -



DND Book 1512 p 215-2
Page 229

EXHIBIT A

Western Pennsylvania Water Company
Western Region

Supplement No. 29 to
Water-Pa. P.U.C. No. 20
Second Revised Page No. 8
Cancelling
First Revised Page No. 8

RULES AND REGULATIONS GOVERNING THE
DISTRIBUTION AND SALE OF WATER
(Continued)

1. The Water Tariff

1.1 Filing and Posting

A copy of this Tariff, which is the rates, rules and regulations under which water service will be supplied by Western Pennsylvania Water Company, to its Customers in Pennsylvania, is on file with the Pennsylvania Public Utility Commission, and is posted and open for inspection at the offices of the Company.

1.2 Revisions

This Tariff may be revised, amended, supplemented and otherwise changed from time to time in accordance with the Pennsylvania "Public Utility Law," and such changes, when effective, shall have the same force and effect as the present Tariff.

1.3 Applications of Tariff

The Tariff provisions apply to any party or parties lawfully receiving water service from the Company under the rates set forth therein, and the receipt of water shall constitute the receiver a Customer of the Company as the term is used herein.

1.4 Rules and Regulations

The Rules and Regulations, filed as a part of this Tariff, are a part of every contract or agreement for service, whether written, oral or implied, made by the Company, and govern all classes of service where applicable.

1.5 Statement of Agents

No agent or employee of the Company has authority to make any promise, agreement or representation inconsistent with the provisions of this Tariff.

2. Application for Service

2.1 Application

Upon receipt of the proper application, the Company will install a street service connection and will maintain the same at its expense, provided that the property abuts a public highway in which a main pipe of the distribution system of the Water Company is located. Application for street service connection shall be made in writing at the office of the Company and change in the identity of the contracting Customer at a property can be made either in writing or by telephone.

Issued: ~~April 20, 1984~~
JAN 28 1985

Effective: ~~April 20, 1984~~
JAN 28 1985

EXHIBIT B

Western Pennsylvania Water Company
Western Region

Supplement No. 29 to
Water-P? P.U.C. No. 20
Second Issued Page No. 30
Cancelling
First Revised Page No. 30

RULES AND REGULATIONS GOVERNING THE
DISTRIBUTION AND SALE OF WATER
(Continued)

23. MAIN EXTENSIONS

23.1 General Provisions

- (A) The Company will extend existing distribution mains a distance of thirty-five feet (35') for each bona fide prospective Customer making application for water service therefrom for a period of one (1) year or more under these Rules and Regulations. Such extensions will be made without cost to such customer(s).
- (B) When an extension greater than thirty-five feet (35') in length for each bona fide prospective Customer is required or requested, such extension will be made under the terms of an "Extension Deposit Agreement," as hereinafter set forth. The Company shall have the exclusive right to determine the type and size of mains to be installed and the other facilities required to render adequate service. Should it be necessary in the Company's opinion, to extend beyond the last lot in a street to connect to an existing main thus to provide adequate and reliable service, this additional extension shall be part of the total main extension whenever the last lot in the street does not exceed 150 feet to make such connection. All estimated or actual cost figures referred to in the "Extension Deposit Agreement" shall include a reasonable allowance for overhead costs.
- (C) In determining the length of and necessity for any extension required pursuant hereto, the terminal point of such extension shall, in all cases, be at the point in the curb line which is equidistant from the side property lines of the last lot for which water service is requested, except as provided in Paragraph B above wherein it may be necessary to extend beyond the last lot and connect to an existing main to provide for more adequate and reliable water service. A street service connection will be provided only for Customer service lines from the curb to the premises to be served which are laid in a straight line at right angles to the curb line.
- (D) For the purpose of this rule:
- "Bona fide prospective customer" shall mean any owner or lessee who is or will be the occupant of an existing developed premise having a curb line abutting on that part of a street or public highway in which there is, or is to be, located a distribution main of the Company, who shall file a signed application for a new street service connection to such premises and for water service to begin immediately following installation for the street service connection.

"Street service connection" shall mean a pipe with appurtenances used to conduct water from a distribution main of the Company to the curb line of the premises.

Issued: ~~April 20, 1925~~
JAN 20, 1925

Effective: ~~April 20, 1925~~
JAN 28 1925

Western Pennsylvania Water Company
Western Region

Supplement No. 29 to
Water-Pa. P.U.C. No. 20
Second Revised Page No. 30A
Cancelling
First Revised Page No. 30A

RULES AND REGULATIONS GOVERNING THE
DISTRIBUTION AND SALE OF WATER
(Continued)

23. MAIN EXTENSIONS

23.1 General Provisions (Continued)

- (E) Street service supplying a premises shall not pass through or across any premises or property other than that to be supplied, and no water pipes or plumbing in any premises shall be extended therefrom to adjacent or other premises. Street service connections shall not be connected to hydrant branch lines and they will not be permitted to cross intervening properties even with the protection of easements. Only Customers owning property in fee which directly abuts a street wherein there is an existing main of the Company will be permitted to attach a street-service connection to the Company's main for the purpose of receiving water service therefrom. It is understood that such property owned in fee by the said prospective Customer shall be a complete standard building lot which complies with the existing zoning laws and regulations of the municipality in which such property is located. It is further understood that if such property owned in fee by a Customer is subsequently sold, the purchaser of such property will be entitled to receive water service upon compliance with all of the provisions of this tariff, but that the seller of such property shall only be entitled to continue to receive service if such seller complies with all of the provisions of this tariff.

Issued: ~~April 30, 1984~~

JAN 28 1984

Effective: ~~June 27, 1984~~

JAN 28 1984

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held January 8, 1987

Commissioners Present:

Linda C. Taliaferro, Chairman
Frank Fischl
Bill Shane

Petition of John M. and
Paula D. Blair

Docket No.
P-860184

O R D E R

BY THE COMMISSION:

Before us for consideration is the Petition of John M. and Paula D. Blair (hereinafter Blairs) for our permission to allow construction and operation of a water utility service line connecting the Blairs' residence in Warren, Pennsylvania, with a distribution main owned and operated by the Western Pennsylvania Water Company (hereinafter Western Penn or Company). Although the document filed by the Blairs is denominated a "Petition", only, we shall consider it a Petition for Declaratory Order under 52 Pa. Code §5.42, as it clearly seeks to terminate a controversy or remove uncertainty over the issue of installation of a proposed water utility service line. We shall deny the Petition.

The uncontested facts are as follows: The Blairs built their house on Mohawk Avenue in Warren in 1978. As they had been told at the time of construction that water utility service from Western Penn was doubtful because of the elevation of the home, the Blairs drilled and maintained their own water well. The well provided an adequate water supply until March, 1985, when pollution from nearby oil drilling operations began seeping into the well, rendering the Blairs' well water useless by June, 1986. The Blairs temporarily restored water service by running a 400 foot garden hose from their home to that of a neighbor who received service from Western Penn.

When the Blairs inquired as to the feasibility of becoming Western Penn customers, they were informed by the Company that, under the Company's tariff, initiation of new service would require construction of a 400 foot distribution main extension from an existing company main, down Mohawk street to the centerpoint of the property. As the Blairs determined that the cost of the main extension as proposed would be prohibitive, they declined to apply for new service under these terms. Instead, the Blairs,

by their Petition, propose construction of a presumably less costly 1-inch private service line to run from a point at or near a company main connection with a neighbor's service line, across properties of two neighbors, to the Blairs' property. The Blairs' Petition promises to make construction and operation of the proposed line contingent upon the following conditions: (1) that the neighbors, across whose property the proposed line is to run, grant and record rights-of-way for the Blairs' line, (2) that the Blairs assume the total cost of construction and maintenance of the proposed line and all liability connected thereto, (3) that the Blairs hold the Company harmless for any loss of service, presumably resulting from malfunction of the proposed line, and (4) that in the event Western Penn should, in the future, ever extend the current distribution main up Mohawk street past the Blairs' property, the Blairs, or their successor property owners, would agree to abide by Company tariff provisions pertaining to main extensions.

Appended to the Petition is a clipping from a local newspaper, dated November 12, 1986, discussing, inter alia, the cost of extending Western Penn's distribution main up Mohawk Avenue to serve 45 homes. The main extension, if built, would presumably also be able to provide service to the Blairs' property. The article is appended to the Petition to support the Blairs contention that extension of the Company's main to and beyond the Blairs' property is not likely in the foreseeable future.

In its response to the Blairs' Petition, the Company does not deny the facts alleged but opposes the Petition on various legal grounds. Western Penn asserts that the Blairs' proposal is in violation of several provisions of Commission regulations and the Company's tariff, is antithetical to good waterworks practice, would result in discrimination against other Company service applicants and is contrary to longstanding Commission policy as articulated by prior Commission orders resolving similar matters. We agree.

DISCUSSION:

Western Penn's tariff, on file with the Commission, provides, at Section 2.1 of the rules and regulations governing the distribution and sale of water, in relevant part:

Upon receipt of the proper application, the Company will install a street service connection and will maintain the same at its expense, provided that the property abuts a public highway in which a main pipe of the distribution system of the Water Company is located.

The Company's tariff further provides, at Section 23.1(E), in relevant part:

Street service supplying a premises shall not pass through or across any premises or property other than that to be supplied, and no water pipes or plumbing in any premises shall be extended therefrom to adjacent or other premises. Street service connections shall not be connected to hydrant branch lines and they will not be permitted to cross intervening properties even with the protection of easements.

We have repeatedly articulated our support for the public policy and legal justifications for our strict enforcement of water utility tariff provisions essentially identical to those at issue here. These provisions must be strictly enforced both to promote sound waterworks practice and to avoid unfair and unlawful discrimination among the utility's customers.

In Casciano v. Keystone Water Company, C-844200 (1985), we were confronted with a situation in which a utility customer whose service line across a neighbor's property suffered an irreparable break. As no company distribution main was located on the street abutting his property, the customer sought to avoid the cost of construction of a new 6-inch main under provisions of the utility's tariff by proposing that his service be restored through construction of a 1-inch private service line to run several hundred feet from his property, down two public roads, to the nearest main. In refusing to permit construction of the 1-inch line in derogation of the utility's tariff, we held:

In resolving situations such as this one, it is important to think in terms of overall system planning and to approach the problems in the context of an orderly development of the distribution system. We must fashion a solution which not only addresses the present crisis, but also takes the future into account.

We hold that the best and most appropriate course of action here is to order that a 6-inch diameter distribution main be installed. Service should be provided to complainants by running a 6-inch diameter main line along the proposed route. Advantages of the 6-inch pipeline are better water quality, less likelihood of pipe breakage, and orderly main line extension and system development.

Our holding in Casciano is consistent with that of Radoff v. Langhorne Spring Water Company, 49 Pa. PUC 690 (1976), the facts of which are on point with the instant matter. In refusing to permit construction of a 2-inch service line to provide water to a residential

applicant for utility service, we ruled that service could only be provided through extension of a company main constructed pursuant to applicable tariff provisions.

It is the prerogative of respondent's management to determine the character, size, and location of all water main facilities necessary to provide adequate and reasonable continuous water service to customers throughout its authorized service area. Orderly extension of adequate public water service facilities by respondent into an area under development is a reasonable and necessary exercise of this prerogative clearly in the public interest. Respondent is under no obligation to permit or to construct a private water line as a monetary expedient for an applicant-customer.

In Barna v. Western Pennsylvania Water Company, 53 Pa. PUC 500 (1979), we reiterated our concern in encouraging good waterworks practice by disallowing construction of private residential service lines which would be in derogation of utility tariff provisions. We further held that allowing the proposed service line would very likely result in discrimination in the providing of utility service. While one applicant may have no difficulty securing the rights of way necessary to construct and maintain a relatively low-cost private line, another similarly situated applicant may, for whatever reason, not have similar luck, thereby forcing the second applicant to pay for a full main extension under the tariff for the same service. Also See; Flaherty v. Western Pennsylvania Water Company, C-850157 (1985), Hershey Church of the Nazarene v. Keystone Water Company, C-844227 (1985), Dilucia v. Western Pennsylvania Water Company, C-844247 (1985).

We accept the Blairs' contention that their cost of construction of the proposed 1-inch private service line may be significantly less than the cost of a Company main extension down Mohawk Street under Western Penn's tariff. We also accept the Blairs' contention that extension of Western Penn service to the 45 homes located beyond the Blairs' Mohawk Avenue property is not likely in the foreseeable future. However, as we stated in Radoff, supra., and implied in West v. Citizen's Water Company, 40 Pa. PUC 502 (1963), we will not consider the financial convenience of an applicant-customer when it conflicts with the orderly extension of public water service facilities into an area which may be subject to development. Furthermore, we find that permitting installation of the proposed service line would place the Blairs at an unreasonable advantage as to other applicants unable to secure line rights-of-way under similar circumstances, thus presenting an inherent risk of unlawful discrimination in derogation of Section 1502 of the Public Utility Code, 66 Pa. C.S. §1502.

Section 1501 of the Public Utility Code, 66 Pa. C.S. §1501 authorizes public utilities to establish reasonable rules and regulations governing the conditions under which service shall be rendered. In

consideration of the foregoing, we find the Company's tariff rules pertaining to application for service and main extensions to be reasonable and applicable in the instant matter; THEREFORE,

IT IS ORDERED: That the Petition of Mr. and Mrs. John M. Blair is hereby dismissed.

BY THE COMMISSION,

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: January 8, 1987

ORDER ENTERED:

JAN 14 1987

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Collier Township :
 :
 v. : Docket No.
 : C-00934978
 :
 Pennsylvania-American Water Company :

INITIAL DECISION

Before
Robert P. Meehan
Administrative Law Judge

History Of The Proceeding

On April 23, 1993, Collier Township (Township or Complainant) filed a formal complaint against Pennsylvania-American Water Company (Respondent) alleging an inadequate water supply in parts of the Township, and seeking an order directing the Respondent to construct the necessary water lines to serve all properties in the Township not currently provided with public water service. The Respondent's answer was filed on June 16, 1993.

Hearings were held in this complaint proceeding on August 11, 1993, October 26, 1993, and November 9, 1993. The record was then closed, and main and reply briefs were filed by the parties. However, upon consideration of the Respondent's petition, at Docket No: P-00930717, and my Initial Decision approving the settlement in a main extension complaint proceeding, Kaufman v. Pennsylvania-American Water Company, Docket No. C-00935279, dated April 5,

1994,¹ I issued an Order on April 8, 1994, reopening the record in this proceeding.

A series of conferences were then held to explore the possibility of achieving a settlement in this proceeding, along the lines outlined in the Respondent's petition and/or the Initial Decision in Kaufman. Although a settlement was not achieved, those discussions did result in the identification of the number of the residents of the Complainant, who applied for service from the Respondent, and the distance of each property from the nearest facilities of the Respondent. A final hearing was held on February 1, 1995.

During the hearings in this proceeding, the Complainant presented a total of 14 witnesses, and submitted the following exhibits: 1; 1-A; 1-B; 2; 3; 3-A; 4; 5; 8; 9; 10; 10-A; 11-19; 21; 24; and 27-34, of which all, but Exs. 11, 14, and 30, were admitted. The Respondent presented three (3) witnesses and submitted 13 exhibits, all of which were admitted. In addition to the main and reply briefs previously filed, the parties filed supplemental main briefs following the February 1, 1995 hearing. The Respondent also filed a supplemental reply brief. The record

¹The Commission's Order approving the settlement in this proceeding was entered on July 1, 1994.

consists of 377 total pages of transcript² and the above-referenced admitted exhibits.

Findings of Fact

1. The Complainant is Collier Township, a first-class township under the laws of the Commonwealth, and within Allegheny County. The Complainant's mailing address is 1500 Hilltop Road, Presto, PA 15142 (Complaint, ¶1).

2. The Respondent is Pennsylvania-American Water Company, a public utility subject to regulation by the Commission.

3. The Respondent is the successor to the former Western Pennsylvania Water Company (WPW), and the South Pittsburgh Water Company (Tr-1, 83-84).

4. By letter, dated November 28, 1972, WPW informed the Complainant that it would install water mains and fire hydrants in the Township, at WPW's expense (Tr-1, 139-140; Comp. Ex. 17).

5. It was the understanding that the construction and installation of the mains and hydrants would proceed in four phases (Tr-1, 142-143, 149-153; Comp. Exs. 18-19).

6. The mains and hydrants were installed in Phases I-III. Phase IV has never been completed (Tr-1, 152-155).

²During the course of the hearings, two different reporting services were used to produce the transcript. This resulted in the duplication of some of the transcript page numbers. To avoid confusion, references to the transcript shall be by hearing day number and page number, i.e., the hearing of August 11, 1993, shall be (Tr-1), the hearing of October 26, 1993, shall be (Tr-2), the hearing of November 9, 1993, shall be (Tr-3), and the hearing of February 1, 1995, shall be (Tr-4).

7. By letter, dated September 17, 1977, WPW informed the Complainant that it had no definite plans to install pipes in the remainder of the Township. That letter also informed the Complainant that WPW stood ready to install pipelines in the Township in accordance with its then applicable Main Extension Refundable Deposit Agreement (Tr-1, 159-160; Comp. Ex. 24).

8. The parts of the Township in which the water mains were installed are densely populated. In addition, the Nevillewood Planned Residential Development paid to have the necessary water mains extended to the development (Tr-1, 13-15; Comp. Exs. 1-2).

9. Residents in those parts of the Township in which water mains have not been installed receive water from wells or holding tanks, cisterns, etc. In addition, the Complainant also delivers water to these residents, using a 1,500 gallon tank truck (Tr-1, 17-18, 32-33).

10. The Complainant has been ordered to cease delivering water by the Department of Environmental Resources for violation of that Department's bulk water hauling regulations (Tr-1, 18-19).

11. The lack of fire hydrants in those parts of the Township without water mains presents a public safety concern. Additionally, the wells in those areas are contaminated with bacteria (Tr-1, 19).

12. The lack of a public water system throughout the Township has hindered development in the Township (Tr-1, 19-20).

13. Peter Becarri, Jr., a truck farmer on Steen Hollow Road in the Township, has had difficulty in drilling wells and

maintaining ponds on the farm because the farm has been undermined (Tr-1, 31-33).

14. In 1988 Mr. Becarri received an estimate of \$75,000 as the cost of extending the main approximately one-quarter mile to his residence (Tr-1, 35-36).

15. A public water supply system would provide Mr. Becarri with a reliable source of water for irrigation (Tr-1, 38).

16. Theresa Dunn, and her family, purchased a home on Steen Hollow Road in the Township in approximately 1988. They have been unable to re-finance their home because no financial institution will re-finance a home with a cistern (Tr-1, 45-46).

17. The Dunns have a 5,000 gallon concrete tank that collects the rain water. They have also had the Township deliver water to them (Tr-1, 46).

18. Although the Dunns have a filtration system, the water in the cistern is not used for drinking because it has an odor and they are not sure it is safe for drinking. They have bottled water delivered to their home once a month for drinking water (Tr-1, 46-47).

19. They are concerned about fire protection for their home, because there are no fire hydrants near their house (Tr-1, 47).

20. Although the Dunns had been told that there would be a public water supply system for their house when the Phase IV

construction was completed, they had been told by the Respondent that they would have to pay for the main extension (Tr-1, 48-50).

21. Paula Addlespurger lives on Noblestown Road in the Township (Tr-1, 50-51).

22. In 1973, the Addlespurgers' 150 year-old house was destroyed by a fire, because of an inadequate supply of water, and the need for the firemen to obtain water from a nearby creek (Tr-1, 53; Comp. Ex. 3-A).

23. The Addlespurgers did not intend to reside again in an area without a public water supply. They learned about the Phase IV construction of the water system in the Township and saw pipes stacked along Noblestown Road. Believing that there would be a public water system in their area, they began to build a new home on their property (Tr-1, 54; Comp. Ex. 3-A).

24. After they began the construction of their new home, the pipes, which had been stacked along Noblestown Road, were removed (Tr-1, 54-55; Comp. Ex. 3-A).

25. The Addlespurgers have a well, but it is contaminated. They use the water from the well only for washing. They bring in their own bottled water (Tr-1, 58; Comp. Ex. 3-A).

26. Theresa McGuire resides on Baldwin Road in the Township. The McGuires have resided on Baldwin Road for approximately seven years (Tr-1, 58-59).

27. When the McGuires purchased their home, they had difficulty in obtaining homeowners' insurance, because there was no fire hydrant within 500 feet of their property (Tr-1, 59-60).

28. They were finally able to obtain homeowners' insurance, but have to pay a higher premium, because they are considered a high risk (Tr-1, 60).

29. Ms. McGuire has no idea of the distance from their property to the nearest main of the Respondent (Tr-1, 60).

30. Edward Smith has resided on Gregg Station Road in the Township for about 12 years. There is no public water system at his property, but there is public sewage (Tr-1, 63-65).

31. Mr. Smith uses rain water and water delivered by the Township for showering, etc., and obtains bottled water for drinking (Tr-1, 64).

32. Mr. Smith believes the nearest main of the Respondent would be one-quarter of a mile from his property. There are about 10-15 other homes in his area of the Township (Tr-1, 68-69).

33. Mrs. Donald Peduto resides on Scotts Run Road in the Township. Mrs. Peduto stated that their home is approximately 200-300 feet from Noblestown Road, which is the approximate distance to the nearest water main of the Respondent (Tr-1, 70-71).

34. In 1972, Mrs. Peduto saw the water pipes laid past her house to the next house on Scotts Run Road. Later, the pipes were removed (Tr-1, 72).

35. The Pedutos do not have a public water supply. They obtain water from a hand-dug well, but it is contaminated. They also obtain bottled water (Tr-1, 73).

36. In 1972, the Pedutos were informed by the water company that, because they did not reside in either the Rennerdale or Walkers Mill areas of the Township, it would cost them approximately \$4,000 to have the main extended to their property (Tr-1, 73).

37. Gertrude Keifner resides alone on Bliss Road in the Township. She has lived in the Township for 73 years. Her water system consists of a cistern that gathers rain water from the roof of her house. This does not supply sufficient water for her needs. She has been drinking the water from the cistern (Tr-1, 75-76).

38. Mrs. Keifner's 81-year old sister resides next door, in a house owned by Mrs. Keifner's son. Her sister has lost two houses to fires in the Township (Tr-1, 77-79).

39. Jane Mitchell resides on Noblestown Road in the Township. The Mitchells do not have a public water supply to their house (Tr-1, 79-80).

40. In August of 1992, Ms. Mitchell and her 21-month old daughter were diagnosed with giardiasis, caused by the contaminated water from their well. They have since hooked up the well to the showers, bathroom and toilet. They also obtain water from a water buffalo provided by the Township, and have been boiling water (Tr-1, 80).

41. In December of 1992, Ms. Mitchell's two children became ill with giardiasis. They disconnected the well, dumped chlorine into it and flushed their house piping. The Township also supplied them with a larger water buffalo (Tr-1, 81).

42. Ms. Mitchell estimates that it is approximately one mile from their house to the nearest main of the Respondent (Tr-1, 82).

43. Mary Jane Tidball resides on Tomey Drive, off of Noblestown Road, in the Township. There are five homes on Tomey Road, with room for further development. The nearest main of the Respondent is approximately 650 feet from her home (Tr-1, 84-85, 86).

44. The Tidballs purchased their home in 1955, at which time there was no public water system in their area. They used a well, which was fine until the Rennerdale Highlands area of the Township was developed. The well is now bad, and the Tidballs purchase bottled water (Tr-1, 86-87).

45. The Township is seeking to have the Respondent extend its service to those areas that were to have been included under Phase IV of the 1972 agreement, as well as to additional areas of the Township that do not have a public water supply system (Tr-1, 89-92).

46. A 1992 Allegheny County Health Department (ACHD) survey of private water systems along Noblestown Road in the Township determined that 77% of all water utilized in that area is contaminated to some degree and does not meet the standards for an approved drinking water source. According to the ACHD, this is a major public health problem that can only be remedied through the installation of a safe public water supply system throughout the area as quickly as possible (Comp. Ex. 29).

47. A facility, such as a restaurant, that serves more than 25 people (customers) a day from a private water system operates what is known as a noncommunity water system. The Roadway Tavern on Noblestown Road in the Township operates such a system (Tr-1, 95).

48. As the operator of a noncommunity water system, the Roadway Tavern is subject to the same obligations as a public water supplier, such as monitoring, testing, reporting and the development of an emergency response plan. The Roadway Tavern obtains its water through a well and chlorinator (Tr-1, 95-97).

49. Any business that would locate in the Township that would cater to the public in supplying food and water to more than 25 people a day, and would not have a public water supply, would have to meet the same requirements as the Roadway Tavern, in addition to initial source testing (Tr-1, 97-98).

50. It is the position of the ACHD, as well as the Pennsylvania Department of Environmental Resources (DER), that cisterns or springs used as a source of water be classified as contaminated (non-potable) water (Tr-1, 98-99; Comp. Ex. 29).

51. In June of 1993, the ACHD informed the Township that its water hauling operations required a bulk water hauling permit from the DER. The fact that various Township residents have agreed that the water being supplied to them by the Township would not be used for human consumption, does not exempt the Township from the permit requirements (Tr-1, 100-101; Comp. Ex. 31).

52. The Respondent has received applications for water service from 70 residents or property owners in the Township. The applications were sent to the Respondent from the Township (Tr-4, 287-288; Resp. Ex. 12).

53. Of the 70 applications received by the Respondent, 10 are for vacant land. Three (3) of the applications involving vacant land will be included in the main extensions to be constructed in accordance with the Respondent's current tariff provisions pertaining to main extensions, at no cost to the property owners (Tr-4, 287-288; Resp. Ex. 12).

54. Two (2) of the 70 applications were from existing customers of the Respondent (Tr-4, 288; Resp. Ex. 12).

55. Subtracting the applications pertaining to vacant land and from existing customers, the Respondent received 58 bona fide applications for water service (Tr-4, 288; Resp. Ex. 12).

56. Two (2) of these 58 bona fide applicants for water service can already connect to an existing facility of the Respondent by installing a service line from their houses to the main in the road (Tr-4, 288-289).

57. Eight (8) of the 58 bona fide applicants for water service, including three (3) of the vacant properties, can be served under the Respondent's current tariff provisions pertaining to main extensions, at no cost to these applicants (Tr-4, 289-290; Resp. Ex. 12).

58. To extend water service to the remaining 48 bona fide applicants will require the installation of a total of 33,310

feet of 8-inch and 12-inch mains. The total estimated cost of construction is \$1,385,090. Under its current tariff provisions pertaining to main extensions, the Respondent would bear \$545,760 of the total construction costs, and would require the applicants to bear the remaining \$839,330, plus the applicable taxes (Tr-4, 293-298; Resp. Exs. 12-13).

59. The estimated costs per individual applicant or customer, exclusive of any amount for taxes, range from a low of \$4,590, for 15 applicants on Dorrington, Cluxton, Spring/Hilltop to contribute \$68,850 for the cost of 6,300 feet of 8-inch main, to a high of \$133,830 for one customer to contribute for the cost of 3,300 feet of 12-inch main on Fort Pitt Road (Resp. Ex. 12).

60. In addition to the 70 applications discussed above, and through the combined efforts of the Township and the Respondent, 7,728 feet of 12-inch main was installed along Noblestown Road to its intersection with Pinkerton Road, and was placed in service in June of 1994 (Tr-4, 296-297).

61. The Respondent had received 31 applications for service from that area, of which 26 customers eventually connected to the main (Tr-4, 297).

62. Fire hydrants have been installed along this 7,728-foot segment of 12-inch main along Noblestown Road (Tr-4, 306).

Discussion

Section 332(a) of the Public Utility Code ("Code"), 66 Pa. C.S. §332(a), provides that the party seeking affirmative

relief from the Commission has the burden of proof. In this proceeding, the Complainant has requested that the Commission direct the Respondent to install water lines throughout those parts of the Township in which there is not a public water supply system. Thus, it is clear that the Complainant is the party seeking affirmative relief from the Commission, and, thus, is the party with the burden of proof.

In Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950), the Pennsylvania Supreme Court held that the term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest degree, than the evidence presented by the other party. The Commission has held that a complainant, to establish a sufficient case against a utility and satisfy the burden of proof, must show that the utility is responsible or accountable for the problem described in the complaint. Feinstein v. Philadelphia Suburban Water Company, 50 Pa. PUC 300 (1976).

Upon a complainant's submission of evidence sufficient to establish a prima facie case, the burden of going forward with the evidence, sometimes called the burden of persuasion, shifts to the utility. If a utility fails to rebut such evidence, then a complainant would prevail. However, if the utility has placed into the record evidence to rebut that of a complainant, the burden of going forward with the evidence has shifted back to a complainant.

In order to now satisfy the burden of proof, a complainant must now rebut the utility's evidence by a preponderance of the evidence. Although the burden of going forward with the evidence may shift from one party to another during a proceeding, the "burden of proof" never shifts. It always remains on a complainant. Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980), and Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980).

As required by these decisions, the record in this proceeding must be reviewed to determine whether the Complainant has satisfied the burden of proof. If the review indicates that this burden has been satisfied, it must then be determined whether the Respondent has submitted evidence of "co-equal" value or weight to refute the Complainant's evidence. If this has occurred, the burden of proof cannot be deemed to have been satisfied, unless additional evidence has been presented by the Complainant in opposition to Respondent's evidence. Morrissey v. PA Dept. of Highways, 424 Pa. 87, 225 A.2d 895 (1967), and Burleson v. Pa. P.U.C. 66 Pa. Commonwealth Ct. 282, 443 A.2d 1373 (1982), aff'd. 501 Pa. 433, 461 A.2d 1234.

In addition to determining whether the Complainant has satisfied the burden of proof, care must be exercised to insure that the decision of the Commission is supported by substantial evidence in the record. See, e.g., Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704. The term "substantial evidence" has been defined by the Pennsylvania Supreme, Superior and Commonwealth Courts as such relevant evidence that a reasonable

mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984).

In addition to the preceding, consideration must also be given to the provisions of: (a) Section 1303 of the Code, 66 Pa. C.S. §1303, which generally requires a public utility to adhere to its tariff; (b) Section 1501 of the Code, 66 Pa. C.S. §1501, which generally requires a public utility to make such extensions to its service and facilities as shall be reasonably necessary for the accommodation, convenience and safety of its patrons, employees, and the public; (c) the Commission's policy statement on fixed utility line extensions, 52 Pa. Code §69.171, adopted September 18, 1992, effective September 19, 1992; (d) the Commission's July 1, 1994 notice of proposed rulemaking pertaining to line extensions, at Docket No. L-00930089, 24 Pa. B. 5103, et seq., October 8, 1994; (e) the Commission's Order, at Docket Nos. R-00943155 & R-00943155C0001, entered September 2, 1994, approving proposed changes to the Respondent's tariff provisions pertaining to main extensions; and (f) Rule 27 of the Respondent's tariff pertaining to main extensions for bona fide service applicants, effective September 4, 1994.

It is the Township's position that the Respondent has the legal obligation under Section 1501 of the Code, 66 Pa. C.S. §1501, to install the necessary water mains in those parts of the Township which do not have a public water supply system. The Township also argues that, in installing the water mains in Phases I-III at its cost, but in requiring contributions for the cost of further extensions, the Respondent is in violation of Section 1502 of the Code, 66 Pa. C.S. §1502. Additionally, the Township argues that, since it abandoned its efforts to establish a municipal water authority and the construction of a public water supply system within the Township upon reliance of WPW's 1972 notice that it would construct the water system in the Township, at no cost to the Township, the Respondent should now be required to comply with that notice. See, Main Brief of the Township.

Additionally, it is the position of the Township that the Respondent's current tariff provisions pertaining to main extensions can not be applicable to this proceeding because: (a) it was not in effect when this case was commenced; and (b) the Township was not a party to the proceeding which resulted in the Commission's approval of those provisions. The Township further argues that application of the tariff provision in this proceeding would amount to an improper and unconstitutional taking of the property of the residents of the Township because the costs of the main extensions include system improvements to benefit existing customers, as well as all the public, and provide for future growth and expansion of the Respondent's system. Lastly the Township

argues that the estimated costs are excessive and not justified on this record. See, Supplemental Main Brief of the Township.

The Respondent's position is that any present attempt by the Township to enforce the 1972 letter of WPW and now require the Respondent to complete what is known as Phase IV of the water main construction is barred by the statute of limitations in Section 3314 of the Code, 66 Pa. C.S. §3314. It is also the Respondent's position that, assuming the applicability of the Commission's policy statement (52 Pa. Code §69.171), the Township failed to meet its burden of proof so as to invoke that policy statement. However, the Respondent takes the position that the policy statement is not binding because it is neither a rule, regulation or order of the Commission. Further, the Respondent argues that the policy statement, itself, is not in accordance with the common law, in that, under the common law, the Respondent is entitled to request a contribution with respect to the requested main extensions. Lastly, the Respondent argues that, again assuming the applicability of the policy statement, that the requested main extensions, if installed at its cost, would materially handicap it in obtaining a fair return on the investment required to be made for the requested extensions. See, Main Brief of the Respondent.

The Respondent further argues that its current tariff requires bona fide service applicants to enter into a main extension deposit agreement under which such applicants are required to pay the difference between the amount of the Respondent's contribution and the cost of the main extension, plus

applicable interest charges and income taxes. Additionally, the Respondent relies on the Commission's decisions in Aronson v. North Penn Gas Company, Docket No. C-00913749, entered March 22, 1994; McLaine v. Pennsylvania-American Water Company, Docket No. C-00935050, entered December 5, 1994; and Crums Mill Associates, et al. v. Dauphin Consolidated Water Supply Company, Docket No. C-00934810, entered April 4, 1995. See, Supplemental Brief of the Respondent.

In response to the Township's Supplemental Brief, the Respondent argues that it is the tariff in effect at the time applications for service are received, not the one in effect at the time this case was commenced, that is applicable. Further, the Township submitted no evidence that it did not participate in the rate proceeding which resulted in the Commission's approval of the Respondent's current tariff provisions pertaining to main extensions. In any event, the Township was served with a copy of the proposed main extension tariff revisions. Thus, there would be no violation of due process through the application of the Respondent's current tariff provisions on main extensions in this case. As to the Township's argument that the application of the tariff provision would constitute an improper taking of the property of the residents, the Respondent contends that this should have been raised in the Township's Main Brief. Nonetheless, the Respondent argues that the Township's position overlooks Commission precedent on the customer contributions for main extensions. Concerning the Township's argument that the costs of the main

extensions are excessive, the Respondent discounts the evidence presented by the Township on this issue. See, Supplemental Reply Brief of the Respondent.

It is my opinion that the Respondent's Tariff Rule 27, pertaining to main extensions for bona fide service applicants (Resp. Ex. 9), is applicable to this proceeding. The Township's non-participation in PA PUC & Office of Consumer Advocate v. Pennsylvania-American Water Company, Docket Nos. R-00943155 & R-00943155C0001, the proceeding where the Commission, by Order entered September 2, 1994, permitted Rule 27 to become effective on September 4, 1995, cannot prevent the application of the provisions of this Tariff Rule to this proceeding, for, at least, two reasons.

First, the records of the Commission, at Docket No. R-00943155, clearly indicate that a copy of the proposed tariff changes, which are now Tariff Rule 27, was served on counsel for the Township in this proceeding. The threshold inquiry concerning a claim of lack of due process is whether the party making such a claim had knowledge of the pending action and an opportunity to be heard therein. By being served with a copy of the proposed changes, counsel for the Township, and, thus, the Township, had actual knowledge of the Respondent's tariff filing seeking to change its main extension provisions. The Township's counsel in this proceeding is an experienced practitioner before the Commission, having represented parties in both rate and non-rate proceedings. Having received actual knowledge of the tariff filing, the Township had the opportunity to participate in that

proceeding. Due process is satisfied when the opportunity to be heard is provided. It is then the responsibility of the party, to whom that opportunity has been provided, to avail itself of that opportunity. No one can be forced to participate in a proceeding before the Commission. At the same time, no one having an interest in the subject matter of a proceeding can be denied the opportunity to participate. Thus, there can be no violation of any due process of the Township through the application of Tariff Rule 27 to this proceeding.

Second, no party can defeat the application of any tariff change to it by not participating in the rate proceeding, where the tariff change is being considered. If this were true, any person could absolve themselves from having to pay the new tariff rates for the utility services used by simply not participating in the rate case of that utility. Participation or non-participation in a rate proceeding has never been the criterion for determining the effectiveness of a tariff change to any person or entity.

The Commission's Order permitting, what is now, Tariff Rule 27 to become effective, notes that the proposed main extension provisions are but an interim solution to requests for line extensions and that the changes were intended to be in compliance with its Order of July 1, 1994, instituting the proposed rulemaking, at Docket No. L-00930089. In permitting Tariff Rule 27 to become effective on September 4, 1994, the Commission must have determined that the proposed changes were lawful, just and reasonable, if even on an interim basis. However, the Commission

has held that tariff provisions, reasonable on their face, may be applied in an unreasonable manner, considering the facts and circumstances of each case. Joseph Erdos v. Western Pennsylvania Water Company, Docket No. C-00861021, entered March 17, 1987.

In Erdos, the Complainant was constructing a house on the last available lot in a neighborhood, and had been a customer of the Respondent in a home across the street from where the new house was being constructed. There were no water mains in front of the lot on which the new house was being built. The Respondent was requiring a contribution for the extension of an 88-inch main. A property to the east of that lot was served from a 1-1/2-inch main, which branched off of a 6-inch main. Properties to the west of that lot were served from an 8-inch main. The Respondent's future plans called for the installation of an 8-inch main, from the existing 8-inch main west of the Complainant's lot, to the 6-inch main, east of the Complainant's lot, and the elimination of the 1-1/2-inch main.

Noting that: (a) the regulations of both DER and the Commission generally prohibit the installation of water mains of less than six (6) inches in diameter; (b) the only basis for seeking a customer contribution for an 8-inch main was the Respondent's policy to install 8-inch mains, when extensions were requested; (c) the Respondent's future plans to install an 8-inch main past the Complainant's lot to connect two other mains, which would benefit the Respondent and existing customers; and (d) the absence of any evidence that an 8-inch main was necessary to serve

the Complainant, the ALJ determined that the Respondent should install the 8-inch main consistent with its policy, but that the amount of the customer contribution should be calculated as if a 6-inch main had been installed. See, e.g., Keystone Water Company, v. PA PUC, 100 Pa. Commonwealth Ct. 644, 515 A.2d 367 (1986).

In its Opinion and Order Denying the Exception of the Respondent in Erdos, the Commission stated (Slip Opinion, at 12-13):

The thrust of the Respondent's contention is that a policy which is applied system-wide without exception and applies to all customers, cannot be discriminatory. We disagree. A policy which is uniformly applied, ignoring the facts and circumstances of a particular instance, may be unreasonably discriminatory by ignoring the peculiar facts and circumstances of a particular case. We agree with the ALJ that the blind application of the Company's policy without consideration of the facts and circumstances of this case, and without it being established that those considerations which gave rise to the adoption of the 8" main policy are present here, would result in an unreasonable prejudice or disadvantage.

See also, Duane Flaherty v. Western Pennsylvania Water Company--Washington Division, Docket No. C-00850157, Initial Decision dated September 26, 1995, Order entered November 13, 1995, wherein the ALJ, at page 10 of the Initial Decision, noted that a utility's application of its tariff and internal policies remain subject to a standard of reasonableness.

The Respondent estimates that, to provide service to 48 "bona fide applicants" from the Township, it will be required to install approximately 33,310' of water mains, of which 13,425'

would be 8-inch mains and 19,885' would be 12-inch mains (Resp. Ex. 12, p. 2). The locations of the requested main extensions are described in Resp. Ex. 12, p. 2, and correspond to the map (Resp. Ex. 13), where: (a) the solid black lines represent existing mains of the Respondent; (b) the red lines represent the mains that were to have been installed under Phase IV of WPW's 1972 letter; and (c) the green lines represent the additional mains requested in this proceeding. However, there are two (2) exceptions to the "Phase IV" red color code and five (5) exceptions to the "additional mains" green color code on Resp. Ex. 13.

First, the "Phase IV" main proceeding westerly on Noblestown Road, from a point west of Stonegate Drive, to the intersection with Pinkerton Road and then continuing southerly along Noblestown Road, for a distance of 7,728 feet, has been installed and placed in service in June of 1994 (Tr-4, 296-297; Resp. Ex. 13). Second, Old Noblestown Road, proceeding westerly from the intersection with Noblestown Road, dead-ends just past house number 1032, and does not extend further west to Franklin, as indicated on Comp. Ex. 2 and Resp. Ex. 13. Under "Phase IV, Old Noblestown Road was to have been extended to the west and mains installed along it, but, as there is an alternate means of installing mains to serve Franklin and Gregg Station, the Township is not proposing Old Noblestown Road be extended. See, Transcript of September 26, 1994 Conference, at 71-73.

Further, the requested additional main extensions to provide service to: (a) #3 Scott Way; (b) #11 Miller Drive and lot

#13 Miller Drive; (c) #801 Scotts Run Road; and (d) #s 19, 25, 27, and 28 Tomey Road, and lot #s 2 & 3 Tomey Road, have been installed by the Respondent, pursuant to its Tariff Rule 27, without contribution from any of those applicants or property owners. The Respondent will be installing a main, pursuant to its Tariff Rule 27, at no cost to the applicant or property owner, for 195 Baldwin Road, which will also include the Skvarca property, upon receipt of the State Highway Occupancy Permit (Tr-4, 288-291).

The size of the 8-inch and 12-inch mains to install the extensions to provide service to the remaining 48 "bona fide applicants" is based on "sound engineering practices" by the Respondent, which includes provisions for: (a) adequate fire protection; (b) future growth and expansion; (c) the size of existing mains; and (d) service to existing structures (Tr-4, 293, 312, 320; Resp. Ex. 12). In this proceeding, the Township noted that extensive development has occurred in those parts of the Township in which the mains were installed under Phases I-III, but that the lack of a public water system throughout the Township has hindered development in those parts lacking a public water supply system (Tr-1, 13-15, 19-20; Comp. Exs. 1-2). Clearly, the Township expects that the installation of the water mains under "Phase IV", as well as the additional mains requested in this proceeding, will be an incentive to further development in the Township.

Although it is possible that the main sizes proposed by the Respondent, in this proceeding, may be larger than what would be necessary to serve specific applicant(s) today, it would be

unreasonable to direct the present installation of lesser-sized mains to serve these applicants, and then put the Respondent in the position of having to replace the lesser-sized mains with larger mains to serve future applicants. Further, while lesser-sized mains may be less expensive than the main sizes proposed, and might reduce the amount of the estimated "per customer contribution" (Resp. Ex. 12), that does not make the Respondent's proposed main installations unreasonable. Flaherty, supra., where the ALJ, in his Initial Decision, observed that the issue is not whether a customer's alternative main extension proposal is more reasonable than that proposed by the utility, but whether the utility's proposal complies with the law, the Commission's regulations and its tariff.

The record in this proceeding supports the main sizes proposed by the Respondent to provide service to the 48 "bona fide applicants within the Township. Further, the Respondent's proposed main extensions in this case is in conformity with the Code, the Commission's Order at Docket No. R-00943155, and its Tariff Rule 27. Lastly, the Township presented no evidence that the application of Tariff Rule 27 would subject any of the 48 "bona fide applicants" to an unreasonable prejudice or disadvantage.³

³Given this disposition of the proceeding, discussion of the other issues raised by the Complainant is unnecessary. However, had those issues been discussed, they would have been resolved in favor of the Respondent and adverse to the Complainant.

Conclusions Of Law

1. The parties to, and subject matter of, this main extension complaint proceeding are properly before the Commission.

2. The Complainant, as the party seeking affirmative relief from the Commission is the party with the burden of proof.

3. The provisions of the Respondent's Tariff Rule 27, pertaining to main extensions for bona fide service applicants (effective September 4, 1994), are lawful, just and reasonable, and are applicable to this proceeding.

4. The Township has failed to prove that the application of Tariff Rule 27, under the facts presented in this case, would subject any of its residents or citizens to an unreasonable prejudice or disadvantage.

5. The complaint should be dismissed.

ORDER

In consideration of the foregoing, IT IS ORDERED THAT: The complaint of Collier Township against Pennsylvania-American Water Company, at Docket No. C-00934978, is dismissed for the failure of the Complainant to satisfy the burden of proof.

Date: August 18, 1995


ROBERT P. MEEHAN
Administrative Law Judge

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held March 14, 1996

Commissioners Present:

John Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger
David W. Rolka
Robert K. Bloom

Collier Township

v.

C-00934978

Pennsylvania-American Water Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration are the Exceptions of Collier Township ("Complainant" or "Township") taken to the Initial Decision of Administrative Law Judge ("ALJ") Robert Meehan issued on August 28, 1995, relative to the above-captioned proceeding.

History of the Proceeding

On April 23, 1993, the Township filed a Formal Complaint against Pennsylvania-American Water Company ("Respondent" or "PAWC") alleging an inadequate water supply in parts of the Township. The Township sought, in its Complaint, an Order directing PAWC to construct the necessary water lines to serve all properties

in the Township not currently provided with public water. The Respondent filed its Answer on June 16, 1993.

Hearings were held on August 11, 1993, October 26, 1993, and November 9, 1993. The record was closed on November 9, 1993. Main and Reply Briefs were filed by the Parties.

By Order issued on April 8, 1994, the ALJ reopened the record to allow the Parties an opportunity to explore possible settlement in light of PAWC's petition filed at Docket No. P-00930717¹ and the ALJ's Initial Decision issued on April 5, 1994, approving a settlement in a main extension complaint proceeding, Kaufman v. Pennsylvania-American Water Company, Docket No. C-00935279². A series of conferences were held, however, a settlement was not reached by the Parties. A final hearing was held on February 1, 1995.

On August 28, 1995, the Initial Decision of ALJ Meehan was issued, dismissing the Complaint for failure to sustain the burden of proof. On September 17, 1995, the Complainant filed the instant Exceptions. PAWC filed Reply Exceptions on October 2, 1995.

Discussion

In his Initial Decision, the ALJ made 62 Findings of Fact which we shall incorporate herein by reference unless expressly or by necessary implication, the ALJ's Findings are modified or reversed by this Opinion and Order. (I.D., pp. 3-12).

¹ On September 2, 1993, PAWC filed a Petition for Declaratory Order requesting that the Commission declare inter alia that PAWC's proposed tariff supplement was in compliance with the Commission's Policy Statement at 52 Pa. Code §69.171.

² The Commission's Order adopting the ALJ's Initial Decision was entered on July 1, 1994.

Based on his evaluation and analysis of the record, ALJ Corbett reached the following Conclusions of Law:

1. The parties to, and subject matter of, this main extension complaint proceeding are properly before the Commission.
2. The Complainant, as the party seeking affirmative relief from the Commission is the party with the burden of proof.
3. The provisions of the Respondent's Tariff Rule 27, pertaining to main extensions for bona fide service applicants (effective September 4, 1994), are lawful, just and reasonable, and are applicable to this proceeding.
4. The Township has failed to prove that the application of Tariff Rule 27, under the facts presented in this case, would subject any of its residents or citizens to an unreasonable prejudice or disadvantage.
5. The complaint should be dismissed.

(I.D., p. 26).

The ALJ recommended that the Complaint be dismissed for the failure of the Township to satisfy the burden of proof.

The Township filed the following Exceptions to the Initial Decision:

1. Exceptions are taken to the failure to make the following additional Findings of Fact that were part of the uncontroverted evidence introduced at the hearings.

2. Exceptions are taken to the Administrative Law Judge's Findings that are not based upon the record or the law.
3. Exceptions are taken to the failure to give any weight to any of the testimony of the residents of Collier Township when that testimony contradicted anything the PAWC witnesses claimed.
4. Exceptions are taken to material errors by the Administrative Law Judge during the course of the hearing.

Before addressing the foregoing Exceptions, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceeding. University of Pennsylvania v. Pennsylvania Public Utility Commission, 86 Pa. 410, 485 A.2d 1217 (1984). Any Exception or argument not directly addressed by this Commission shall be deemed to have been duly considered and denied.

In its first Exception, the Complainant lists forty-four (44) additional "Findings of Fact" which it proffers should have been stated in the Initial Decision. The Complainant contends that these additional findings of fact were part of the uncontroverted evidence introduced during the hearings.

Our review of the record as developed leads us to conclude that the inclusion of the proposed Findings would not materially affect the outcome of this proceeding. Further, we conclude that the "Findings of Fact" proposed by the Complainant reflect, in some instances, the same facts or information, albeit worded differently, already stated in the ALJ's Findings. (See Complainant's proposed Finding of Fact, Exc., p. 5 and Finding of Fact Nos. 22 & 23, I.D., p. 6). The Complainant has not offered any convincing reasons why its proposed Findings should be added or

replace the ALJ's Findings. Accordingly, we will deny the Complainant's Exception No. 1.

In Exception No. 2, the Complainant argues that the ALJ's Findings are unsupported in the record. The Complainant contends, inter alia, as follows:

1. The ALJ improperly shifted the burden of proof to the Township to show why PAWC should meet its statutory duty to provide service rather than requiring PAWC to show why it should not meet its statutory duty.
2. The ALJ failed to follow Pennsylvania law in determining who should bear the cost of providing water main extensions to the Township.
3. The ALJ failed to follow the ruling in Ridley Township v. Pennsylvania Public Utility Commission, 172 Pa. Super. 472, 94 A.2d 168 (1953).
4. The ALJ's decision to require new customers in Collier Township to contribute capital to enable Respondent to provide its facilities to them, as provided for in PAWC's approved tariff, constitutes an unconstitutional taking of the new customer's property.
5. The ALJ improperly determined that the Respondent's proposed use of 8" and 12" main pipes is reasonable and that Department of Environmental Protection³ regulations generally prohibit the installation of water mains of less than 6" in diameter.

³ This department was formerly known as the Department of Environmental Resources.

In its Reply Exceptions, the Respondent disputes the Complainant's contentions, arguing that the Township, as the party seeking affirmative relief, has the burden of proving by a preponderance of evidence that the Respondent should be required to extend its facilities at its own costs to all Township properties. The Respondent further points out that the Complainant failed to present any evidence that the Respondent's tariff provisions governing main extensions are illegal and unreasonable. The Respondent rejoins that tariff provisions previously approved by the Commission are presumed reasonable and in accord with Section 1501 of the Public Utility Code, 66 Pa. C.S. §1501.

It is well settled that the party seeking affirmative relief from the Commission has the burden of proof. 66 Pa. C.S. §332(a). In this proceeding, the Complainant, as the party requesting that we direct PAWC to install water lines in those parts of Collier Township in which there is no public water supply system, has the burden of proof. To satisfy its burden of proof in the instant proceeding, the Complainant was required to show that PAWC was obligated to extend its facilities to the Township without customer contribution and that the Respondent's refusal to bear the entire cost of the main extensions constituted unreasonable service in violation of Section 1501 of the Public Utility Code, 66 Pa. C.S. §1501. See e.g., Feinstein v. Philadelphia Suburban Water Company, 50 Pa. P.U.C. 300 (1976).

Our review of the record leads us to conclude that the Complainant failed to meet its burden of proof. The Complainant failed to establish by a preponderance of the evidence that the Respondent had a legal obligation to pay more than the utility's contribution as provided for in its tariff. We note the Respondent's Tariff Rule 27 was previously determined by us to be lawful, just and reasonable in Pennsylvania Public Utility Commission & Office of Consumer Advocate v. Pennsylvania-American

Water Company, Docket Nos. R-00943155 & R-00943155C0001 (September 2, 1994).

As a result, it was incumbent upon the Complainant to show that the Respondent's request for customer contribution was inconsistent with Tariff Rule 27. The evidence in the proceeding evinces that the Respondent followed the guidelines of its tariff. Accordingly, we do not find that the application of PAWC's Tariff Rule 27 to Collier Township resulted in violation of the Applicants' constitutional rights. Moreover, it appears that the Township, via service of the proposed tariff on its counsel, had actual notice of its PAWC's tariff filing regarding its main extensions provisions.

Further we disagree with the Complainant's contention that a 3/4" water line would be sufficient and that the ALJ erred in finding that the use of 8" and 12" main pipe was reasonable. The record reveals that both 8" and 12" water mains would provide adequate fire protection and promote the orderly development of the distribution system in the Township. We further find that PAWC's determination of the main size as provided for in its tariff is reasonable, appropriate and in the public interest.

Contrary to the Complainant's contention that the ALJ failed to consider the Ridley decision, our review of the record leads us to conclude that the ALJ's findings are consistent with Pennsylvania case law. It would appear that the Complainant is attempting to use the Ridley decision isolation, without considering the combined precedent value of Sherman v. Public Service Commission, 90 Pa. Superior Ct. 523 (1927) and Colonial Products Co. Pennsylvania Public Utility Commission, 188 Pa. Superior Ct. 163, 94 A.2d 816 (1958). In Pennsylvania, a public utility's duty to provide line extensions is not unlimited and it is not obligated to make line extensions which are uneconomical or

unreasonable. See: Sherman, cited supra; Ridley, cited supra; and Colonial Products, cited supra.

The ALJ's decision is consistent with Pennsylvania case law and supported by substantial evidence in the record.

We hasten to point out that we are the final arbiter of fact in proceedings before this Commission. 66 Pa. C.S. §703. Our review of the record as developed in this proceeding, leads us to conclude the ALJ's Findings of Fact are amply supported by substantial evidence in the record. It is well settled that the proponent of a rule or order has the burden of proof. 66 Pa. C.S. §332(a). We do not find that the ALJ abused his discretion or committed reversible error in the conduct of the evidentiary hearings in this proceeding.

We disagree with the Complainant's contention that a utility has a boundless obligation to provide line extensions without customer contribution. In our Final Order, Final Rulemaking Re Line Extensions, ("Order") Docket No. L-930089 (December 28, 1995), we defined the guidelines regarding utility service extension service. Specifically, we stated that:

The overall concept behind this regulation, however, remains the same: a public utility's obligation to make a line extensions is not unlimited and, accordingly, it will not be obligated to make line extension that is uneconomic or unreasonable absent an appropriate customer contribution. Pursuant to this regulation, if the economic analysis indicates that annual revenue will equal or exceed the company's operating and maintenance expenses, depreciation and debt costs for the new line, no customer contribution will be

required.⁴ Alternatively, if the annual revenue will cover only a portion of the line's annual costs, a contribution may be required in proportion to the annual costs of the line not covered by the annual revenue.

The basis of this customer contribution is that, absent a reasonable contribution to the line extension's construction costs, the utility would experience a negative (less than zero), equity return on the line extension. Indeed, it appears to us that a line extension that yields a negative equity return, representing an economic loss on the transaction, is one that begins to "materially handicap the utility in securing a fair return on all of its operations," Ridley, 172 Pa. Superior Ct. at 497, 94 A. 2d at 171, as well as one that unfairly asks existing customers to subsidize the costs of serving a new customer. Accordingly, the application of this regulation should ensure, . . . that utilities will "fund all line extensions that are appropriate for the level of service to be purchased by the new customer without requiring the utilities and their existing customers to incur the costs of unreasonable line extensions.

(Order, pp. 6-8)

As result of our rulemaking investigation, cited supra, a utility's duty to make line extensions is promulgated at Section 65.21 of our regulations, which states, in pertinent part, that:

A utility is required to include in its tariff a rule spelling out the conditions under which the utility will extend its facilities to an applicant. The remainder of the regulation sets out the circumstances under which

⁴ Implementation of this economic test may require the use of reasonably-developed company averages and/or expense allocations; in other words, we will not require companies to determine customer-specific operating and maintenance expenses.

extensions to bona fide service applicants shall be constructed.

Section (a). Where the projected annual revenue from the line extension will equal or exceed the utility's annual line extension costs, as defined above, the extension shall be made without requiring contributions from the applicant.

Section (b). This section sets forth the circumstances under which a utility may require (a utility is not obligated to require) a customer in order to extend a main for service. The utility may require a contribution where the annual revenue from the line extension will not equal or exceed the utility's annual line extension costs. The amount of the pre-tax customer contribution will be determined by multiplying the utility's cost of construction by the percent of annual line extension costs not covered by annual revenue. We believe that this formula will result in the applicant bearing only those costs of his or her line extension which will not pay for itself through annual revenue.

In keeping with our provisions order at Docket No. I-88083⁵, we are also providing that the total customer contribution amount may include a gross-up factor to account for applicable income taxes but a utility is not required to do so, unless otherwise directed by the Commission.

In the instant proceeding, the record indicates that it would require the installation of 33,310 feet of 8-inch and 12-inch mains to provide water service to the 48 bona fide applicants, for an estimated cost of \$1,385,090. (See Finding of Fact No. 58). Under the terms of the Respondent's tariff provisions, at the time

⁵ Re Contributions in Aid of Construction and Customer Advances, Docket No. I-880083 (Order entered June 14, 1989) (adopting uniform rate making and accounting methods for contributions in aid of construction and customer advances, specific to each utility type.)

of the applications for service, the Respondent would assume the responsibility for \$545,760 of the costs of the installation. The terms of the tariff would also require the applicants to contribute, in determined individual amounts depending on the size of the main and length of the extension, the remaining \$839,330 plus applicable taxes. (Tr. 4, 293-298⁶; Respondent's Exhibit 12-13). The evidence also reveals that the average annual gross income from a PAWC customer is \$312. (Tr. 3; 222). It would appear that the cost of construction of the requested main extensions far exceed the revenues generated from customers bills.

Our review of the record as developed leads us to conclude the Respondent complied with its Commission approved tariff provisions when it requested a customer contribution from the applicants. Further, the law is clear that a public utility is not obligated nor will we compel a public utility to make line extensions which are uneconomic or unreasonable absent customer contributions. Sherman v. Public Service Commission, 90 Pa. Superior Ct. 523 (1927); Ridley Township v. Pennsylvania Public Utility Commission, 172 Pa. Superior Ct. 472, 92 A. 2d 168 (1953); Colonial Products Co. v. Pennsylvania Public Utility Commission, 188 Pa. Superior Ct. 163, 94 A. 2d 816 (1958).

Accordingly, we will deny the Complainant's Exception No. 2.

In Exception No. 3, the Complainant argues that the ALJ erred in failing to consider the testimony of the Township's

⁶ The record of the four hearings in this proceeding was transcribed by two different reporting services resulting in the duplication of some transcript numbers. To avoid confusion, the ALJ assigned the following system to reference the various transcripts: hearing of August 11, 1993 (Tr. 1); the hearing of October 26, 1993 (Tr. 2); the hearing of November 9, 1993 (Tr. 3); and the hearing of February 1, 1995 (Tr. 4). We shall follow the same system in this Opinion and Order as that used by the ALJ.

witnesses which contradicted the Respondent's contentions. The Complainant contends that PAWC's claim, that the cost difference of extending service would be minimally altered by the size of the pipe line installed was refuted in the record. The Complainant further objects to the ALJ's decision to treat the testimony of at least one of its witnesses as irrelevant.

We are reminded that the question of credibility of witnesses falls clearly within the purview of the ALJ. It is well settled, in this jurisdiction, that in considering the credibility of witnesses, their manner of testifying, their apparent candor, intelligence, personal intent and bias or lack of it, are to be considered in determining what weight shall be given to their testimony. Danovitz v. Portnov, 399 Pa. 599, 161 A. 2d 146 (1960). In the instant proceeding, it would appear that the ALJ, after evaluating the evidence as presented by the Parties, determined that the Complainant failed to sustain its burden of proof by a preponderance of the evidence. We see no reason to disturb the ALJ's findings. Accordingly, the Complainant's Exception No. 3 is denied.

Finally, in its Fourth Exception, the Complainant objects to the ALJ's finding to exclude certain evidence from the record. The ALJ, in the Complainant's opinion, erred in sustaining the relevancy objection made by the Respondent with respect to evidence offered by the Complainant concerning other suits filed pending the Township. The Complainant further challenges the ALJ's decision to exclude evidence concerning its attempt to build a municipally owned water system.

We note that our Regulations confer upon the ALJ the authority to make rulings regarding evidence offered by the Parties during a proceeding. Specifically, Section 5.403 of our Regulations, 52 Pa. Code §5.403, states, in pertinent part, that:

(a) The presiding officer shall have all necessary authority to control the receipt of evidence, including the following:

(1) Ruling on the admissibility of evidence.

(2) Confining the evidence to the issues in the proceeding and impose, where appropriate:

(i) Limitations on the number of witnesses to be heard.

(ii) Limitations of time and scope for direct and cross-examinations.

(iii) Limitations on the production of further evidence.

(iv) Other necessary limitations.

In our view, the ALJ made evidentiary rulings which were clearly within the purview of his authority as established by our regulation at 52 Pa. Code §5.403, supra. Moreover, the Complainant has failed to convince us that the ALJ's evidentiary rulings were outside the scope of his authority, that he acted arbitrarily or capriciously or that the inclusion of the evidence would have served to support a different resolution of the instant dispute. Accordingly, we will deny Exception No. 4; **THEREFORE,**

IT IS ORDERED:

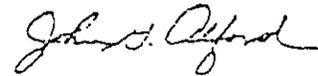
1. That the Exceptions of Collier Township filed on September 17, 1995, be, and hereby are, denied.

2. That the Initial Decision of Administrative Law Judge Robert Meehan which was issued on August 28, 1995, be, and hereby is, adopted to the extent that it is consistent with this Opinion and Order.

3. That the Complaint of Collier Township filed on April 23, 1993, at Docket No. C-00934978, be, and hereby is, dismissed.

4. That the record at Docket No. C-00934978, be marked closed.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: March 14, 1996

ORDER ENTERED: MAR 18 1996

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CHESTER CHRZANOWSKI,
Petitioner

v.

No. 1685 C.D. 1987

PENNSYLVANIA PUBLIC UTILITY
COMMISSION,
Respondent

BEFORE: HONORABLE JOSEPH T. DOYLE, Judge
HONORABLE FRANCIS A. BARRY, Judge
HONORABLE EMIL E. NARICK, Senior Judge

ARGUED: February 23, 1988

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BARRY

FILED: August 19, 1988

Chester Chrzanowski (appellant) appeals an order of the Pennsylvania Public Utility Commission (Commission) which dismissed his complaint against Philadelphia Suburban Water Company (Company). We affirm.

The appellant owns property on Narsissa Road in Plymouth Township, Montgomery County. Narsissa Road intersects with Anthony Drive one property south of the appellant's. Narsissa Road does not have an existing public water service. Anthony Drive does.

The appellant testified as follows. He attempted to bring water service to his property. Initially he contacted the Company by phone hoping to secure permission to tap the existing water line on Anthony Drive. He stated that he informed an unknown employee of the Company of his plans to construct a connecting water line through his neighbor's yard. This employee gave his approval of the plan with the proviso that the appellant secure a easement over his neighbor's property. However, the appellant was subsequently officially informed that he would not be permitted to tap into the water line on Anthony Drive. He was instructed that in order to secure water to his home, he would have to finance the installation of a main water line to Narsissa Drive.

Intimidated by the estimated cost in excess of 10,000 dollars for this project, the appellant purchased an easement over his neighbor's property and proceeded to install a copper pipe water line from his property to Anthony Drive. When the line was installed, he called the Company to provide connecting service. The Company refused to provide this service and to allow the appellant to tap into the Anthony Drive water line.

The appellant filed a complaint with the Pennsylvania Public Utility Commission (Commission) which requested that the Company be ordered to provide tap in service at Anthony Street. The appellant alleged that the Company violated Sections 1501 and 1502 of the Public Utility Code by not allowing him to connect to the main water line on Anthony Drive.

An Administrative Law Judge, Sheldon W. Farber, (ALJ) recommended that the Company allow the appellant to connect to the water service on Anthony Drive. The Commission refused to accept the recommendation of the ALJ and dismissed the appellant's complaint. This appeal follows.

The appellant argues that the Commission erred by determining that the Company's main extension policy was reasonable and that the Company was applying its policy in a uniform fashion. We disagree. ¹

Section 1501 of the Public Utility Code states:

Every public utility shall furnish and maintain adequate, efficient, safe, and

¹We note that our standard of review when reviewing a Commission order is whether the findings, order, or determination are supported by substantial evidence, an error of law was committed, or constitutional rights were violated. Public Utility Commission v. Blanchette, 21 Pa. Commonwealth Ct. 329, 345 A.2d 787 (1975).

reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service....

66 Pa. C.S. §1501.

The appellant argues that Section 1501 of the Code mandates that the utility has a duty and obligation to make reasonable extensions of its facilities and services. He alleges the most reasonable method for the utility to provide service is to allow the tap-in at Anthony Drive. He argues that the most reasonable method of providing service is the legal standard that a utility must follow.

We believe that the appellant is interpreting the word "reasonable" to mean the most financially viable method to the consumer. Financial considerations are always pertinent to the question whether a procedure is reasonable. Water systems however, if not properly regulated, would create a maze of underground obstacles. To promote this orderly establishment of water service, the general legislature granted the Commission the authority to promulgate regulations to establish a uniform system of water service. Section 65.18 (d)(2) of the Pa. Code provides:

(d) Company service lines.

Company service lines shall include the following

(2) Service connections should not be constructed to hydrant branch lines, and they should not cross intervening properties unless there is no other way in which services can be provided and appropriate easements are obtained.

52 Pa. Code §65.18(d)(2).

This regulation requires service connections across another landowner's property only when two conditions are established. First, an easement is secured. In this case there is an easement over the intervening property. Second, there must be no other method of providing the service. There exists another method of providing water service to the appellant's property, installing a main line on Narcissa Road. Although this cost is initially expensive to the appellant, much of his costs may be refunded if surrounding properties are developed.²

Section 1501 of the Code grants the Commission exclusive original jurisdiction to determine the reasonableness, adequacy and sufficiency of public utility's service. Behrend v. Bell Telephone Co. of Pennsylvania, 431 Pa. 63, 243 A.2d 346 (1968). The party alleging the unreasonableness of the utility's rule or regulation has the burden of establishing unreasonableness. DiSanto v. Dauphin County Water Supply Co., 291 Pa. Superior Ct. 440, 436 A.2d 197 (1981). In the current matter, the Commission specifically found that the appellant has not met this burden. We agree.

²Tap in charges charged to future property owners who seek water service on Narcissa Road will be charged a pro rata share of the Appellant's construction costs.

The appellant argues that the Company's refusal to allow him to tap into the water main on Anthony Drive is a violation of Section 1502 of the Code. He argues that other property owners in the area were allowed to tap into an existing water line, rather than advance the costs of constructing a new water line. Again we disagree with this contention.

Section 1502 of the Code states:

No public utility shall, as to service, 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. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classification of service.

66 Pa.C.S. § 1502.

The appellant presented evidence that the Company allowed a neighbor to establish water service by installing a line through an intervening property. However, the evidence also established that this particular land was land locked and that the company could not provide an alternative water system. We do not believe that this constitutes discrimination. In this matter, the claimant was notified of the Company policy that would prevent him from tapping the existing water service on Anthony Drive. His subsequent act of installing a water line prevents him from challenging the company's refusal as discriminatory. Therefore,

we affirm the decision of the Commission.

Francis A. Barry
FRANCIS A. BARRY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CHESTER CHRZANOWSKI,
Petitioner

v.

No. 1685 C.D. 1987

PENNSYLVANIA PUBLIC UTILITY
COMMISSION,
Respondent

Order

Now August 19, 1988, it is ordered that the order of the Commission, entered at C-860816 on June 25, 1987 is affirmed.


FRANCIS A. BARRY, Judge

CERTIFIED FROM THE RECORD
AND ORDER ENT

AUG 19 1988


Deputy Prothonotary - Chief Clerk



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
ISSUED: MARCH 25, 2002

MAR 26 2002

Ex. 1-E

IN REPLY PLEASE
REFER TO OUR FILE

C-20016173

SUSAN SIMMS MARSH ESQUIRE
PENNSYLVANIA AMERICAN WATER
800 HERSHEY PARK DRIVE
PO BOX 888
HERSHEY PA 17033-0888

Douglas Noll
V.
Pennsylvania-American Water Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Michael A. Nemeo. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265**, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
FG

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Douglas Noll

v.

Pennsylvania-American Water Company

:
:
: Docket No.
: C-20016173
:
:

INITIAL DECISION

Before
Michael A. Nemec
Administrative Law Judge

History of the Proceeding

The complaint of Douglas Noll ("Complainant"), filed September 27, 2001, stated simply that he had no water service. He asked why he was left out of an unspecified project. Respondent Pennsylvania-American Water Company ("PAWC") filed a timely answer to the complaint. The answer stated in part that Mr. Noll was not a customer of PAWC, but that PAWC was willing to provide him with water service in accordance with its filed and approved tariff.

The initial hearing was held by telephone from Pittsburgh on January 23, 2002. Complainant Noll represented himself and counsel appeared for and represented PAWC.

The record here consists of a 52-page transcript and four PAWC exhibits. The record is summarized in the findings of fact that follow and is reviewed along with the applicable law in the discussion section. The complaint is dismissed for failure to carry the burden of proof in the order at the end. No briefs were filed.

Findings of Fact

1. Complainant Douglas Noll resides at 125 Sumney Road, Bentleyville, Somerset Township, Washington County, PA 15314, where he would like to become a water utility customer of PAWC. Tr. 5-7, 27.

2. Complainant moved into his home on Sumney Road in May 2001. The two water wells on his property are dry, apparently due to deep mine coal mining that occurred in 1989-1990. His major source of water currently is from a cistern. Tr. 6-7.

3. Prior to purchasing his home, Complainant attended a public meeting held at a local school where a water main extension project was discussed. He learned at that meeting that the property he was considering buying was not included in the project. Tr. 9.

4. The water main extension project mentioned in the complaint was a joint project put together by the elected municipal and state representatives for portions of Nottingham and Somerset Townships in Washington County. The municipalities specified the areas to be served and PAWC planned and constructed the water facilities to serve the specified area. As constructed the project brought water service to 186 residential customers. Tr. 20-27; PAWC Exhibit 1.

5. Complainant's home is 2,850 feet from the nearest PAWC main. In addition to his home, three other potential customers for PAWC are located between Mr. Noll's home and the nearest PAWC main. Tr. 27.

6. Based on the costs of the recently completed project, and in accordance with its filed and approved tariff, PAWC calculated the cost of a main extension to serve Mr. Noll and his neighbors. The total estimated cost was \$73,976.00. Assuming four bona fide service applicants, PAWC would contribute \$22,620.00. The final cost to be recovered would be \$51,356.00. The numbers here are estimates. PAWC's contribution would be different because new rates went into effect at the end of January 2002. Tr. 27-34, 42; PAWC Exhibits 2, 3 and 4.

Discussion

Complainant bears the burden of proof under Section 332(a) of the Public Utility Code, 66 Pa. C.S.A. §332(a), of showing that PAWC has in some fashion violated provisions of the Public Utility Code or the regulations of this Commission. His argument is that, in some fashion, the project recently completed in Somerset Township was accomplished in a manner unfair to him. However, he had not even purchased his home at the time he attended that public meeting that presented the scope of the project. It was clear then that the property that he was at least contemplating buying was not included in the project. I conclude that he has not carried his burden of proof.

Complainant desires water service and PAWC stands ready to provide it. The obstacle, of course, is the cost of the extension. In the recently completed project the affected municipalities contributed or arranged funding. Also, a coal company provided funding for homes that its mining operations had adversely affected. I urged Mr. Noll to

contact his Township's planning commission. A PAWC witness provided Mr. Noll with the name and telephone number for a contact person at the coal mining company. Tr. 46-50.

Conclusions of Law

1. The parties to and the subject matter of this case are within the jurisdiction of this Commission.

2. Complainant has failed to carry his burden of proof under Section 332(a) of the Public Utility Code, 66 Pa. C.S.A. §332(a), to show that any action by PAWC has been improper, or that he is entitled to the relief he requested.

ORDER

In consideration of the foregoing IT IS ORDERED THAT the complaint of Douglas Noll against the Pennsylvania-American Water Company, docketed at C-20016173, is dismissed for failure to carry the burden of proof.

Dated: March 12, 2002



MICHAEL A. NEMEC
Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ADVANCE NOTICE OF PROPOSED :
RULEMAKING : Docket No. L-00930089
RE: LINE EXTENSIONS :

456

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

The Office of Consumer Advocate (OCA) offers the following Comments in response to the Public Utility Commission's (PUC) Advance Notice of Proposed Rulemaking, which was published for comment in the Pennsylvania Bulletin of December 18, 1993. The OCA reserves the right to modify the positions set forth herein following review of information or data provided by the other participants through the course of this proceeding.¹

In general, in cases where a "public need" for extension of utility service is present, the OCA supports the general prohibition on requests for "contributions in aid of construction" (CIAC), as stated within the Commission's Order of August 20, 1992

¹ The OCA has sought the opinions of its Senior Regulatory Analyst, Marilyn J. Kraus, on the subject of main extension policy, which are set forth in the Affidavit attached hereto as Appendix A. Ms. Kraus' educational background and qualifications in the utility regulatory field are set forth in Appendix I.

in Docket Nos. L-900053 and L-920067. App. A, at 1-2. The OCA notes that this general prohibition is based upon the holding in Ridley Township v. Pennsylvania Public Utility Commission, 172 Pa. Super. 472, 94 A.2d 168 (1953) ("Ridley"). The Ridley court held that CIAC may not be required, unless a project would "materially handicap the utility in securing a fair return on its investment or would place an undue burden on other customers of the utility." This holding is based upon Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, which requires extensions to be made "as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public." A threshold finding by the Court was that there was "a need for the extension facilities and service." Ridley, 172 Pa. Super. 472, 475, 94 A.2d 169-170.

The OCA submits that, under this standard, the great majority of requests by bona fide residential customers for water, electric, telephone and sewer service should be granted without CIAC, as Section 1501 of the Public Utility Code requires, unless a company can show that to do so would "materially handicap the utility" or would "place an undue burden on other customers of the utility." 52 Pa. Code § 69.171; App. A at 7. In such cases, the "public need" for the services is clear, as there is generally no readily available alternative to the service. App. A, at 2-4. Moreover, the Commission has recognized for large utilities that it is unlikely that any single line extension expenditure would materially affect the utility's rate of return or justify a rate increase to other customers. Commission Order of August 20, 1990,

at 10; see also App. A at 4-5. In the event that a company believes that a project will meet the test, it should have the burden of proof as to that issue. App. A at 8.

In other cases, such as most requests for natural gas service where alternative fuel sources are readily available, a "public need" may not be as readily demonstrable. App. A at 5. In such cases, the Commission may wish to adopt a costs to revenues comparison to determine whether a utility should request CIAC, as described by OCA witness Kraus. App. A, at 7-10. The OCA would note that the test as expressed therein, if adopted, should be considered a maximum standard, or ceiling, rather than a regulatory requirement. Id., at 11-13. In other words, if a utility were to be able to make extensions without CIAC in more circumstances, or with smaller contributions from the applicants, a tariff leading to such a result should be permitted.

The OCA also supports an exception to the general prohibition against contributions in cases of requests for special utility service. App. A at 16; see Colonial Products Co. v. Pennsylvania Public Utility Service, 188 Pa. Super. 163, 146 A.2d 657 (1958). The Commission, in its Policy Statement, also recognized that such exceptions should be made. 52 Pa. Code § 69.171(b). In such cases, which would include requests made by developers for proposed new residential or commercial developments, the full amounts required to build the mains or other plant should be provided by the applicant for service. App. A at 16.

The OCA also supports the implementation of a refund requirement wherever CIAC is permitted or required. See Appendix A at 15.

Before addressing the specific questions posed by the Commission, the OCA would note that numerous complaint proceedings concerning requests for contributions toward line extensions to serve residential and other customers are pending, as are other types of proceedings, e.g. petitions for declaratory order for special ratemaking treatment of costs associated with construction of main extensions and approval of new tariffs. See, e.g. Brown v. Pennsylvania-American Water Company, Docket No. C-934816 (pending challenge by a group of prospective customers to a request for advance contribution to costs of construction of water main); Aronson v. North Penn Gas, Docket No. C-913749 (pending challenge to a request for contribution and company's refund policy); Petition of Pennsylvania-American Water Company for Declaratory Order: (1) Finding Its Proposed Tariff Supplement In Compliance With the Commission's Policy Statement at 52 Pa. Code § 69.171..., Docket No. P-00930717 ("PAWC Petition For Declaratory Order").² The OCA submits that these and the other pending proceedings should not be delayed pending a conclusion of this rulemaking.

Through commencement of this rulemaking, the Commission has appropriately recognized that while the Commission's prior Policy Statement expresses the state of the law on main extensions,

² Although the Commission voted to deny this Petition at a December, 1993, Public Meeting, to date no order has been issued in the proceeding.

it gives little guidance on whether or in what manner tariffs should be modified in order to bring a utility into compliance with the law as stated. Comments from the various industry groups and governmental advocates on these issues should enable the Commission to give more specific guidance on the principles for appropriate tariff language and the manner in which the resulting tariffs should be applied.

II. LEGAL BACKGROUND

The law concerning main extensions and "contributions in aid of construction" (CIAC) was set forth by the Commission in its Order requiring publication of the Policy Statement. 22 Pa.B. No. 38, Sept. 19, 1992, at 4701-4702. As stated above, the OCA generally concurs with that discussion and believes that it represents a reasonable interpretation of the pertinent case law. Thus, the law will not be extensively discussed herein.

The OCA would note initially, however, that even the United States Supreme Court has recognized that a franchised monopoly may not avoid its statutory obligation to serve the public simply because a particular project appears not to be profitable. See Milwaukee Elec. Ry. Co. v. Milwaukee, 252 U.S. 100, 106 (1920). The appellate precedents in our jurisdiction are consistent with that holding, and emphasize that these issues should turn on the primary objective of the public service laws, which is serving the interests of the public, rather than upon concern for the security of investments in the corporation. Ridley, supra, at 475, 94 A.2d 168, 171 (1953), citing Hoffman v. Public Service Comm., 99 Pa. Super. 417, 429 (1929).

The OCA would note, however, that in nearly every case in which a court has had to decide whether a contribution is warranted, the extent of the revenues which are to be generated through use of the plant to be constructed are part of the factual background considered. See, e.g. Ridley, supra (Court noted costs of \$6,950 - \$7,600, less expenses, depreciation and tax charges

would generate net income of \$65.71 to \$182, depending upon number of customers served); Sherman v. P.S.C., 90 Pa. Super. 523 (1927) (Court compared revenues to be generated in the amount of \$100 per year with costs of construction of \$14,564); Fayette County Gas Co. v. Pa. P.U.C., 153 Pa. Super. 271, 33 A.2d 761 (1943) (Revenues of \$3.20 per month to be generated by single customer who would benefit by the line part of rationale for finding that total CIAC of \$97.43 was reasonable); Fairview Water Company v. Pa. P.U.C., 55 Pa. Commw. 96, 97-98; 422 A.2d 1209, 1211 (1980) (anticipated net revenues considered in decision to direct extension without contribution); Lynch v. Pa. P.U.C., 140 Pa. Commw. 599, 603-604, 594 A.2d 816, 818 (1991) (Contribution from single customer reasonably expected where revenues expected less than cost of construction and motivation for applying for service was to improve resale value of unimproved lot).

Thus, the courts have either reversed or affirmed orders requiring a contribution, in part based upon the extent of the revenues to be generated by the customers to be served by the project. The OCA submits that in general, decisions whether to make an extension to provide service should not turn on the estimated revenues to be generated thereby. The OCA would emphasize that proving that the estimated revenues are exceeded by the costs of the project to the utility is not tantamount to proof of "material hardship" or "undue burden." In cases where a public need is present, the latter test should require the utility to show that an immediate and substantial rate effect will result from the

project, or that its ability to earn a return is materially impaired. In situations where a public need is not present or for other than bona fide applicants for residential service, however, estimation of the revenues to be generated, as compared with the costs of the plant, may be useful in deciding whether CIAC should be requested and in what amount.

The OCA would again emphasize that in the majority of cases where a public need for the service exists, no CIAC should be required pursuant to the Public Utility Code, as interpreted in Ridley. Only where a utility can demonstrate a "material hardship" or an "undue burden", however, should the Commission grant an exception to the general prohibition - and this determination should be made on a case-by-case basis.

Drawing upon OCA witness Kraus' analysis, the OCA will respond to the questions the Commission posed in the Appendix A attached to the Order commencing this rulemaking.

III. OCA RESPONSE TO QUESTIONS IN APPENDIX A TO COMMISSION ORDER OF DECEMBER 8, 1993.

Question No. 1: Should our new regulations be generic in nature or industry specific?

At this point, the OCA believes that the Commission regulations should be generic in nature and should establish principles to be followed by each of the specific industries. Nevertheless, the OCA recognizes that these principles, once established, may produce different results for each industry. The Commission itself, in the course of its prior orders, has recognized that the different industry groups, although governed by the same appellate law, present sufficiently different contexts to warrant different specific regulatory considerations. See, e.g. Re: Contributions in Aid of Construction and Customer Advances, Docket No. I-880083, Order of June 14, 1989. The costs of installing a telephone line, water, electric and gas line extension vary. Revenues per customer also vary significantly. In addition, competitive forces are at work in varying degrees.

Therefore, although the general prohibition for residential applicants in cases of public need should apply across the board to all of the industry groups, the degree to which public need will be demonstrable will vary.

As OCA witness Kraus states, the public need for electric, telephone and water service is obvious. App. A at 3. In cases of requests for gas service, however, the public need may not be as readily apparent, although environmental concerns or demand side management may be material considerations. Id. at 5. The OCA

would also note that small utilities may, in a greater number of situations, be able to show that a particular project will cause material financial hardship or impose an undue burden upon existing ratepayers. See App. A, at 6-7.

The OCA submits that the Commission should not attempt to implement complex formulae tailor-made to each utility area or company in a single set of regulations at this time. The Commission should develop a set of principles to guide this determination, but recognize that these principles might produce different results, depending upon the type or size of the utility.

Question No. 2.a. Do we need a complete revamping of the current tariff provisions?

a. A complete revamping of current tariff provisions may be unnecessary. It appears to the OCA that some companies' present tariffs are within the scope of the Commission's Policy Statement and the applicable law. It is difficult, however, to know without more hard data than we currently have available to what extent any utility's tariff is being applied unfairly, inconsistently, or contrary to law. Without knowing how many customers are effectively denied service due to a contribution request being made where no material hardship will result, it is impossible to determine in what proportion of the cases unreasonable contributions are being requested, pursuant to the tariff provisions currently in place. Evaluation of interim data, as set forth in the OCA's Response to Question No. 12, will enable

the participants to answer this question in a more meaningful manner.

Question No. 2.b. Should these tariff provisions be industry specific?

As to whether the tariff provisions should be industry specific, please refer to the OCA Response to Question No. 1 above.

Question No. 2.c. Should there be a tariff distinction between large and small companies? If so, how should we define small and large companies?

The regulatory principles should apply to large and small utilities alike. The OCA would emphasize again, however, that the application of those principles may indeed produce different results. The Commission has already recognized that large utility companies are unlikely to be materially handicapped by a single main extension -- and would be unlikely to show that a single line extension project would lead to a rate increase to other customers. Commission Opinion and Order of Aug. 20, 1992, Docket No. L-900053, at 10; see also App. A at 4. In fact, in the PAWC Declaratory Order Proceeding, the utility has conceded that neither the material handicap, nor the undue burden test would be met by consideration of each individual application for service. The opposite result might prevail where a very small utility is requested to make a costly line extension.

Thus, any regulation should require large utilities to extend service within their franchised service territory to bona fide residential service applicants without contributions, when

there is a public need for such service. It should be noted that, in general, such a public need may not be as easily demonstrable for gas service, as there is generally an energy alternative available. App. A at 3-5. On the other hand, changing environmental and conservation considerations may enter into a "public need" determination.

As stated above, the OCA supports the application of the Ridley standard to both large and small utilities in cases of public need for the service. In the event, however, that the Commission should deem it necessary to delineate between large and small utilities, current regulatory standards already setting forth such delineations should be incorporated. For example, for rate filing purposes, utilities with over \$100,000 in gross revenues have different filing requirements. See 52 Pa. Code § 53.51(b). The Uniform System of Accounts also distinguishes between utilities with over and under \$100,000 per year in gross revenues. In addition, water, gas and electric utilities are grouped into classes by bracketing annual revenue levels. Unless the industry commentators provide some substantive basis for varying from these present categories, they should not be changed.

Question No. 3.a. At what point does a line extension to a residential customer become uneconomic?

3.a. In general, a public utility should not be permitted to consider the profitability of individual residential extension projects to be determinative in deciding whether to ask for a contribution from the prospective customers, where the request is

prompted by a public need. As stated above, public utilities have a statutory obligation to serve the public and may not "skim the cream" within the franchised service territory. Thus, it is no more useful to assess the economic or uneconomic nature of plant required to service a new customer than it is to do so for main replacements to existing customers, also required to fulfill the statutory obligation to provide service, pursuant to Section 1501.

In the case of gas service, however, where a public need may not be as demonstrable as in cases of requests for water service due to the fact that energy alternatives are usually available, the utility should be permitted to compare the costs of the project with the revenues to be generated by the customers to be served by the project in the immediate and near future. As described by OCA witness Kraus, the utility should take into account no less than five years of revenues, as compared to the ratemaking costs which would arise from the particular project, to determine whether a customer contribution is needed. App. A at 7-8. Depending upon the particular company's financial circumstances and potential for growth in the service territory, a longer period of time may be considered appropriate.

Question No. 3.b. Should the tariff provisions be based on some detailed cost analysis? Please provide details and methodology for calculation.

Where a cost/revenue balance may be considered, as in the case of a request for non-residential service where no public need can be shown, the Commission may consider requiring the economic

analysis applied by Ms. Kraus as described in her affidavit in support of these comments. App. A at 7-8.

Question No. 3.c. In regards to possible cross-subsidization, when is the plant investment in a line extension considered to be unreasonable, leading to the potential for discrimination and or cross-subsidization by all company ratepayers. Provide details.

The OCA submits that all members of the public should be served without regard to potential cross-subsidization of individual customers or groups of new customers, in cases where the request for service reflects a public need. It is inevitable that the costs to serve individual customers will vary for any number of reasons, and this is true for existing as well as new customers. Cross-subsidization among customer classes due to investment in main extensions occurs only on a temporary basis, if at all.

With the adoption of single tariff pricing for large utility companies, the Commission accepted the principle of cost averaging among nonintegrated districts. See Pa. PUC v. Western Pennsylvania Water, 72 PUR4th 103 (1986) at 149-155. While cost of service studies revealed substantial variations in serving customers in different districts, the cumulative benefits and economies resulting from single tariff pricing overrode considerations of such interdistrict subsidies. Id. In like manner, any purported subsidy by existing ratepayers of new customers should be deemed to be superseded by the need for the utility to fulfill its statutory obligation to serve.

Question No. 4. (a) Do we need a provision in the regulations or tariffs to provide for a contribution-in-aid-of-construction for extensions beyond the minimum extension tariff standard? (b) If so, what is the appropriate standard? Should the standard be 35 ft, 75 ft or other? Please explain your choice. Such as, is the use of a 35 ft rule a break-even point for earnings?

(a)-(b). As described above, the OCA supports the general prohibition on contributions in aid of construction where a public need exists for the service. In instances where advances may be requested, no minimum extension tariff standard should be applied. The revenues-to-costs comparison, as discussed by OCA witness Kraus, would serve as a preferable substitute for such a standard. App. A at 8-9. The OCA would oppose the adoption of a length-of-main standard, due to the variability in the costs of constructing mains over various terrains and in service territories, which differ economically and geographically. Id. Consideration of the potential revenues as compared to the estimated costs to the utility of construction and inclusion of the plant in rate base over a period of years will result in more consistent treatment of potential ratepayers, both among companies and between service territories. See id.

Question No. 4(c) Should we consider deferral accounting procedure for investment in line extension? If so, provide details for the methodology and calculation.

The OCA opposes deferral accounting procedures for investment in line extensions. See Answer of the Office of Consumer Advocate, PAWC Petition for Declaratory Order Proceeding, Docket No. P-930717. In essence, the OCA opposed such treatment

because most service requests would require projects which would be constructed over a period of three to six months and require expenditure of only several thousand dollars each. Such projects are not usually subject to AFUDC treatment. In addition, such treatment should only be entertained if both sides of the coin are taken into account. In other words, if a utility were to be able to defer accounting of AFUDC on the costs of the customer requested main extension projects, it should also be required to account for the additional revenues generated through the placement of such mains in service. In the PAWC Declaratory Order proceeding, the OCA contended that the Company sought special accounting treatment only for the negative occurrences between rate cases, without considering the possibly beneficial offsetting events of the making of extensions pursuant to the company's current rule.

Question No. 5. In reference to the policy statement which is supported by common law and our statute at § 1501. What indicators should exist to determine whether there is an ability or opportunity to receive a rate of return for a line extension? How should the new regulations incorporate a determination of rate of return on line extension?

As discussed above, the most appropriate standard to apply where requests for contributions are permitted is one which compares the anticipated revenues to the costs of the depreciation and return related to the project over a period of years. This test will indicate whether the company will have a reasonable opportunity to earn a return on its investment in the required plant. See App. A, at 8-12.

Question No. 6. Each specific industry is directed to provide draft regulations concerning the uniqueness of their industry. Also, they should provide industry specific tariff provisions which distinguish between large and small companies.

The OCA is not responding to this question as it is directed toward the members of the industry and associations who will be commenting. The OCA reserves the right, however, to address the industries' proposals in Reply Comments.

Question No. 7. Provide an explanation of your main extension practices within the requirements of Ridley and other court decisions.

The OCA is not responding to this question as it is directed toward the members of the industry and trade associations who will be commenting. The OCA reserves the right, however, to address the industries' responses in Reply Comments.

Question No. 8. In order to provide more guidance in implementing the broad legal test set forth in the policy statement, would it be appropriate for the Commission to adopt a specific practical standard such as:

- (a) total revenues for ten years from the customer must equal or exceed the cost of constructing the line extension;
- (b) annual revenues from the customer must equal or exceed the annual operation and maintenance expenses and depreciation charges associated with the line extension, or;
- (c) some other revenue or cost based standard.

In circumstances where the request for service is not prompted by a public need for service to residential customers, the OCA supports the adoption of the revenues to costs comparison test described by OCA witness Kraus. See App. A, at 7-10. Consistent application of such a test would result in fair and equitable

treatment of all prospective customers, without imposing an undue burden on the existing customer base.

The OCA would emphasize, however, that the analysis described by Ms. Kraus should set a ceiling upon CIAC, not a floor. In other words, a utility should be permitted to adopt a test which considered ten or fifteen years' worth of revenues, rather than five, which would result in fewer requests for CIAC, to apply only to those circumstances in which service is sought by non-residential customers in situations not prompted by a public need. App. A at 14-15.

Question No. 9. In all questions and or comments, specifically address economic and policy considerations and how they can be accommodated under existing binding legal precedent or what regulatory or statutory changes would be needed to accommodate recommendations.

The OCA submits that although the "material hardship" and "undue burden" tests are stated fairly consistently in the appellate case law, the costs of a project and the revenues to be generated are also consistently part of the factual background and record evidence which are considered in arriving at the court's conclusion. In addition, a threshold consideration by the Ridley court was whether the record reflected a public need. As the Court stated:

The appellants sought an extension of the Company's facilities in a residential section of the Township known as Faraday Park, a part of which is already served by the Company. The Township requested the installation of a fire hydrant and the property owners desired water for their homes. It is not necessary to describe further the conditions prevailing in

the area, for the Commission found 'that there is need for the extension facilities and service.' Unless other substantial and competent evidence negated that finding the Commission should have sustained the complaint, since the Public Utility Code of May 28, 1937, P.L. 1053, § 401, 66 P.S. § 1171, clearly commands that "Every public utility * * * shall make all such * * extensions * * * as shall be necessary or proper for the accommodation convenience and safety of its patrons and the public."

(Emphasis added by the Superior Court). 94 A.2d 169-170. Thus, the Court based its holding in part upon the finding of the public need for the service.

In the course of arriving at its conclusion that the company had not demonstrated material hardship and thus did not justify the CIAC request, the Court went on to consider, among numerous other factors, the cost of the extension (\$6,950) versus the annual net income after considering the operating, maintenance, depreciation and income tax charges of \$65.71 (fire hydrant and eight residential) or \$182.93 (fire hydrant and 20 residential). Id. In light of these express considerations, the OCA submits that no statutory or regulatory changes are required to adopt regulatory standards which turn on the presence of a "public need" for residential service or which may require a net annual revenues test in other situations. Such regulatory standards are clearly within the bounds of the Commission discretion and legal precedent.

Question No. 10. Specifically respond to how the regulations should consider the reasonableness of the extension investment based upon anticipated or documented future growth which may be serviced by the extension.

As stated above, the Court considered the revenues to be generated not only by the applicants for service themselves, but also the additional prospective applicants in a fast-growing area. Ridley, at 169-170. In instances in which a utility investigates the potential for future growth in the main extension area and determines that the potential for additional revenues are there, the company may choose to waive a contribution request which would ordinarily be made. The potential for additional growth should also be considered relevant to whether a "material hardship" standard is met.

Question No. 11. Specifically indicate how or whether distinction should be made for primary or secondary homes, commercial or industrial uses, or other user distinctions.

The OCA does not oppose requests for contributions for all non bona fide residential applicants for service, if the application of the revenues to costs test indicates that such a contribution should be made. In addition, where contributions are requested, refunds should be required where additional customers are served via the plant supported by the funds obtained from the initial applicant or group of applicants. App. A at 15.

The OCA also supports mandatory requests for full contributions in cases of requests for special service and in cases where developers request extensions. App. A. at 16.

Question No. 12. Indicate proposed filing requirements for data, assumptions, economic or policy and legal support.

The OCA proposes that annual reporting requirements be instituted for all large utility companies during the pendency of this rulemaking proceeding. The following items should be required to be included in the annual line extension report for all such utilities:

1. The total number of requests for service received in each calendar month, the number of new customers which would be added if the application were granted, and how many of those applicants for service would fall within each customer class.

2. Whether each application for service would be categorized as involving a "bona fide applicant for residential service," or some other type of application for service, e.g. commercial, industrial or municipal, including whether the service would be considered "special service."

3. The cost of any construction required to provide service for the applicant or group of applicants, including a break-out of the portion of the costs related to bona fide applicants for service and applicants for special service.

4. The estimated revenues to be generated by the applicants for service.

5. The estimated revenues from additional customers who may potentially served, in addition to the applicants themselves, and the number of new potential customers by customer class.

6. Any additional costs projected to be incurred to serve the potential customers in addition to the applicants.

7. Whether the application of the company's current tariff resulted in a request for contribution from each applicant or not, and if so, how much.

8. Whether the applicant agreed to pay the requested contribution.

9. The number of challenges to contribution requests per month, and a list of pending proceedings, specifying docket numbers, if any.

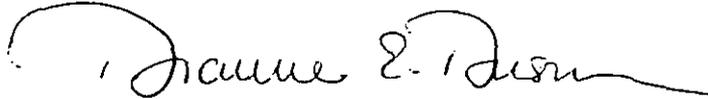
10. The number of feet of main extensions, replacements, service lines and other plant placed into service per each calendar month, specifying which items were constructed in response to an application for service and the total cost of such construction, specifying the amounts related to all applications for service.

11. The total amount of customer advances/contributions, specifying the refundable and nonrefundable portions.

V. CONCLUSION.

The OCA submits that the Commission should adopt regulatory standards regarding main extension tariffs consistent with the above Comments, as supported by the opinions and analyses expressed by OCA witness Kraus in Appendix A.

Respectfully submitted,



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Dated: February 1, 1994
12393

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ADVANCE NOTICE OF PROPOSED :
RULEMAKING : Docket No. L-00930089
RE: LINE EXTENSIONS :

AFFIDAVIT OF MARILYN J. KRAUS

APPENDIX A

1 Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND OCCUPATION.

2 A. Marilyn J. Kraus, 1425 Strawberry Square, Harrisburg,
3 Pennsylvania 17120. I am a certified public accountant
4 currently employed as a Senior Regulatory Analyst by the
5 Pennsylvania Office of Consumer Advocate ("OCA").

6 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND QUALIFICATIONS
7 IN THE UTILITY REGULATORY FIELD.

8 A. Appendix I, which is attached to this affidavit, describes my
9 educational background and includes a list of the various rate
10 cases and regulatory matters in which I have participated.

11 Q. WHAT IS THE PURPOSE OF THIS AFFIDAVIT?

12 A. The purpose of this affidavit is to provide the results of my
13 initial review of the financial impacts on utilities related
14 to the recommendations of the OCA with regard to main
15 extension policies, as set forth in its Comments in response
16 to the Public Utility Commission's ("PUC") Advance Notice of
17 Proposed Rulemaking on this issue. I will also provide some
18 further explanation of the OCA's recommendations. In this
19 affidavit, I will address, specifically:

- 1 (1) The different situations with regard to the extension of
2 facilities by the different types of utilities, i. e.,
3 electric, telephone, sewer, water and gas.
- 4 (2) A suggested economic test to be used in determining
5 whether to require a contribution if there is no public
6 need for a line extension.
- 7 (3) The different situations with regard to the extension of
8 facilities by large versus small utilities.

9 The general recommendations, as outlined in this affidavit,
10 refer specifically to "bona fide residential applicants".
11 That is, the general prohibition against utilities requesting
12 contributions in aid of construction ("CIAC") for main
13 extensions, which the OCA supports, relates to individuals or
14 groups of individuals requesting utility service to their
15 residences, existing or under construction, within the
16 boundaries of the franchised service territory of the utility
17 from which service is requested.

18 Q. PLEASE EXPLAIN THE GENERAL PROHIBITION AGAINST CIAC FOR MAIN
19 EXTENSIONS, AS SUPPORTED BY THE OCA, IN TERMS OF THE DIFFERENT
20 TYPES OF UTILITIES.

21 A. As stated in its Comments, the OCA supports the general
22 prohibition on requests for CIAC where the request for service
23 is prompted by a public need for the service. In such cases,

1 customer CIAC should only be considered where full investment
2 in a main extension project by the utility would result in a
3 material financial hardship or an undue burden on the
4 utility's present customers. Public need for a utility
5 service can be demonstrated by the different types of
6 utilities in different manners, as follows.

7 **Electric/Telephone**

8 With regard to electric and telephone utilities, the public
9 need is obvious. There are presently no reasonable
10 alternatives to the services which these utilities provide,
11 e.g., lighting, refrigeration, outside land line
12 communications. Thus, line extensions by electric and
13 telephone utilities are among those for which CIAC generally
14 should be prohibited. The virtual nonexistence of electric or
15 telephone cases where CIAC for line extensions was at issue
16 indicates that the implementation of such a policy does not
17 create a situation that is different from the current practice
18 within these two industries.

19 **Water**

20 It is the OCA's position that public need is also present in
21 the cases of water line extensions. It is undeniable that a
22 public need exists where an individual's private source
23 becomes inadequate or contaminated. For example, in a case
24 where a prospective customer had been using spring water from

1 a cistern as a water source and that source dries, there is no
2 question that a public need exists.

3 The concept of public need should extend to all requests by
4 bona fide residential customers for water main extensions. A
5 prospective customer, who is situated within the boundaries of
6 a water utility's service territory, should be provided a safe
7 and adequate water supply from that utility. A private
8 source, even if permitted, is not governed by the requirements
9 of the Safe Drinking Water Act, which established strict rules
10 for public water supplies. As such, private wells generally
11 should not be considered adequate alternatives for the
12 provision of water by a public supplier. In these cases no
13 CIAC should be required unless the investment in a main
14 extension by the utility results in material financial
15 hardship or undue burden.

16 I believe it would be impossible for a large utility to show
17 material financial hardship where, for example, it finances a
18 \$10,000 main extension and its current rate base and annual
19 revenues are \$500 million and \$180 million, respectively.
20 Even in the aggregate, I do not believe that an undue burden
21 can be shown by a large utility financing the costs of main
22 extensions. Using the example above, and assuming that the
23 cost of all potential main extensions in a year's time, if
24 constructed at the utility's expense would be \$12 million,

1 resulting in the need for an additional revenue requirement of
2 \$1.2 million, the revenue increase due to the investment in
3 main extensions would be only 0.67%, even assuming no
4 additional revenues resulted from the main extensions.

5 I do not believe that this presents material financial
6 hardship or an undue burden to present customers. This
7 situation would be no different than the varying levels of
8 contributions to a utility's costs being borne by customers in
9 different areas of a utility's service territory which occurs
10 during rate levelization. Thus, with very little exception,
11 the costs of water main extensions should be initially borne
12 by the utilities.

13 Gas

14 Public need in the case of gas main extensions may be more
15 difficult to demonstrate. In many cases, there is an
16 acceptable alternative to the service provided by a gas
17 utility, such as electricity, oil, etc. In these cases, it
18 may be appropriate to use a revenue test to determine whether
19 a contribution may be justified. Public need for a gas main
20 extension might be shown, however, where there are
21 environmental concerns or benefits of increases in the use of
22 gas as a fuel source as part of Demand Side Management
23 programs.

24 Sewer

1 In the case of sewer line extensions, a unique situation is
2 present. While public need for sewage treatment services can
3 certainly be shown, e. g. a prohibition against or inability
4 to install on-lot sewage, the occurrences of requests for line
5 extensions to sewer utilities under the jurisdiction of the
6 PUC is rare. To my knowledge, there are few large investor or
7 privately-owned sewer utilities in Pennsylvania. In general,
8 the sewer utilities under the jurisdiction of the PUC are
9 small companies with constraints such as small or fully
10 developed service territories and/or limited treatment
11 capacity. Thus, while the general prohibition against CIAC
12 for line extensions would likely apply to most requests for
13 sewer line extensions on the basis of public need, there are
14 probably few, if any, such requests with respect to the
15 utilities subject to the PUC's jurisdiction. In the event
16 there would be such a request, it would likely involve a small
17 company and be treated as such.

18 Q. PLEASE EXPLAIN WHY DIFFERENT RESULTS MAY OCCUR FOR SMALL
19 UTILITIES.

20 A. Even where there is a public need, constraints such as a small
21 customer base, lack of financing vehicles, etc. may prevent a
22 small utility from making an investment in a main extension at
23 the request of an individual or group of residential
24 customers. For example, assume a small utility with a current

1 rate base of \$150,000, present total revenues of \$50,000 and
2 impending capital investment requirements under the Safe
3 Drinking Water Act. In this situation, it would be unlikely
4 that this company would be able to finance even one main
5 extension in addition to its other financing needs, without
6 experiencing a financial hardship.

7 I should note that the occurrences of main extension requests
8 relative to such small companies may be rare due to the
9 limited service territories of the small companies. Thus, the
10 determination of whether a utility-financed main extension
11 would materially handicap a small utility or result in undue
12 burden to its present customers should be evaluated on a case
13 by case basis.

14 Q. PLEASE SUMMARIZE YOUR POSITION REGARDING CONTRIBUTIONS IN
15 CASES WHERE PUBLIC NEED FOR A SERVICE IS SHOWN.

16 A. In cases where public need for a service is shown, the
17 Commission should only allow requests for contributions where
18 the extension would cause a material financial hardship or an
19 undue burden on existing customers. While I have not
20 developed a specific test to identify when this standard is
21 met, I submit that it must consider both the net cost of the
22 extension and the size of the utility. That is, even a costly
23 extension project might not impose an undue burden on a large

1 company, but it might do so for a small company. At this
2 point I would recommend that this issue be addressed on a
3 case-by-case basis, with the utility bearing the burden of
4 showing that the lack of a contribution would create material
5 financial harm or undue burden to other customers.

6 Q. IN CASES WHERE EXTENSIONS ARE SOUGHT, BUT NO PUBLIC NEED FOR
7 THE SERVICE IS PRESENT, OR IN CASES INVOLVING NON-RESIDENTIAL
8 APPLICANTS, HOW DO YOU RECOMMEND PROSPECTIVE REVENUES CAN BE
9 CONSIDERED IN DETERMINING THE NECESSITY OF CIAC TOWARD MAIN
10 EXTENSIONS?

11 A. I recently conducted an analysis as to how prospective
12 revenues from new customers could be used in determining
13 utility investment and customer contributions toward main
14 extensions in conjunction with the OCA's intervention in
15 Aronson v. North Penn Gas Company at Docket No. C-913749. I
16 will present the results of that analysis as a possible
17 uniform method in making this determination in cases where a
18 public need is not shown.

19 I should first note that I believe a revenue-based method is
20 preferable to a method which uses, for example, a "number of
21 feet" allowance. The same number of feet of an extension can
22 vary in cost from one project to another during the same time
23 frame due to the location of the prospective customer. Thus,

1 the utility investment/allowance could vary between two
2 prospective customers whose expected revenues may be the same.
3 Therefore in order to treat all prospective customers
4 consistently, with respect to the financial impact on the
5 utility and its present customers, the new customers'
6 contributions to revenues should be considered.

7 Q. PLEASE OUTLINE YOUR RECOMMENDATIONS WITH RESPECT TO THE METHOD
8 OF CALCULATING UTILITY INVESTMENT AND CUSTOMER CIAC WHICH
9 CONSIDER EXPECTED BASE REVENUES.

10 A. During my analysis in Docket No. C-913749, I found that
11 several Pennsylvania gas utilities were using various numbers
12 of years' net base revenues expected from the prospective
13 customer in determining the amount which the utility would
14 invest in a main extension project. My recommendation in that
15 case was based upon the use of five times net annual base
16 revenues in determining the amount of utility investment.
17 This was the maximum number of years of expected base revenues
18 that was being considered by a Pennsylvania utility at the
19 time. Five years' revenues, I believe, represents a
20 conservative amount to use with respect to any type of
21 potential customer, since those who seek service generally
22 remain on the system for an indefinite period of time. To
23 demonstrate how this method would work, I have presented the
24 calculations which were included for illustrative purposes in

1 my testimony in Docket No. C-913749 on Schedule 1, which is
2 attached to this Affidavit.

3 As shown on Page 1 of Schedule 1, using the utility's (North
4 Penn Gas Company) estimates of the annual Mcf consumption of
5 eight applicants for service and the residential tariff rates
6 at the time, I calculated the expected annual net base
7 revenues (i.e., base revenue less cost of gas included in base
8 rates) to be \$3,683. Five years of these revenues, or
9 \$18,415, would be the maximum amount to be invested by the
10 utility in the main extension.

11 The next step was to ascertain whether five times the expected
12 net annual base revenues would provide the utility an
13 opportunity to earn a return on its investment. As shown on
14 Page 2 of Schedule 1, I compared the annual revenue
15 requirement associated with an \$18,415 investment in a main
16 extension, using the pre-tax rate of return (assuming the
17 current income tax rates) pursuant to the most recent
18 Commission Order at the time, and a 55-year life for the main,
19 assuming that revenues would be constant during the life of
20 the main extension. This Schedule shows that the expected
21 base revenues at then present rates exceeded the revenue
22 requirement associated with the main in each year. In year 1,
23 when the revenue requirement is at its highest level, the
24 excess of net base revenues over the revenue requirement

1 associated with the investment of five times net base revenues
2 was \$332. This margin increases in each year thereafter,
3 assuming constant base rates. These margins, which represent
4 the contribution toward customer and other operation and
5 maintenance costs, would grow even more with the
6 implementation of base rate increases, which, of course, these
7 customers would be required to pay. As indicated previously,
8 a new applicant for service, once connected, tends to remain
9 a customer for an indefinite period of time. Therefore, this
10 method, using five years' net base revenues, offers the
11 utility a reasonable opportunity to earn a return on its
12 investment.

13 On Schedule 2, Pages 1 and 2 I have presented another example
14 of this method, using a hypothetical main extension request by
15 a single residential customer, and the current tariff rates
16 and average residential consumption of The Peoples Natural Gas
17 Company.¹ This example shows that currently, five times
18 annual net base revenues relative to an average residential
19 customer of Peoples would be \$1,965. This would be the
20 maximum investment to be made by Peoples to extend a main to
21 a residential customer with average expected consumption under

22 ¹ Peoples Natural Gas Company data was used for
23 illustrative purposes only, due to the availability of such data.
24 The example presented here does not represent a particular case
25 involving a main extension request by a prospective Peoples
26 customer, nor the OCA's recommendations in a particular current
27 case.

1 this method. As shown on Schedule 2, the excess of net base
2 revenue over the revenue requirement associated with the
3 investment of five times annual net base revenue is \$58 in
4 year 1, increasing each year thereafter, representing the new
5 customer's contribution to other expenses.

6 As both of these examples indicate, a method using five years
7 of expected annual net base revenues to determine a utility's
8 investment in a "non-public need" main extension results in an
9 excess of revenues over revenue requirement directly
10 associated with the main extension, even in the first year.
11 This is a reasonable result, particularly considering the fact
12 that rates are calculated on a per class rather than a per
13 customer basis. For example, a special rate increase is not
14 implemented to a particular group of customers who benefit
15 directly from a major main improvement or repair project.
16 Rather, the costs of such projects form the basis for rate
17 increases to the entire customer base of the utility. This
18 means that different customers or groups of customers in the
19 same class are contributing to the various costs to different
20 degrees. The customers who are added by main extensions,
21 using the method whereby the utility invests five years'
22 annual net base revenues in the extension, are immediately
23 contributing revenues over the revenue requirement of the
24 extension, and will be available to share in the costs which
25 prompt future rate increases.

1 Q. WHAT OTHER POINTS SHOULD BE CONSIDERED IN ESTABLISHING A
2 STANDARD POLICY FOR REQUESTING CIAC FROM A PROSPECTIVE
3 CUSTOMER IN NON-PUBLIC NEED CASES INVOLVING APPLICANTS OF ANY
4 RATE CLASS?

5 A. Some other points which should be considered in establishing
6 a standard policy for utilities requesting CIAC from
7 prospective customers are as follows.

8 First, the cost of the individual service line and meter
9 should not be considered in making a determination of whether
10 CIAC is warranted. The costs of these service and meter
11 additions are generally small and the associated revenue
12 requirement would be minuscule relative to the total revenue
13 requirement of a large utility. This policy should extend to
14 prospective customers for whom it would be necessary to extend
15 a main. That is, where a contribution by the customer would
16 not even be considered by the utility to provide the service
17 connection and meter to a new customer who did not require a
18 main extension, these costs should not be considered in
19 determining the possible contribution of a new customer for
20 whom a main extension is required.

21 Second, the revenue test outlined above is presented as a
22 maximum CIAC calculation which I would recommend in cases
23 where a public need is not present. This is because the costs

1 of a main extension as borne by a large utility are not likely
2 to have a substantial negative impact on such a utility. This
3 has been found to be true by ALJ's in several recent cases
4 involving gas main extensions, where alternatives to gas
5 service would have been available (see, e.g., Docket No.
6 C-913749, Initial Decision, p. 13 and Docket No. F-00164008,
7 Initial Decision, p. 7). It is possible that even in the
8 aggregate, as in the example described earlier with respect to
9 water utilities, the full investment by any large utility in
10 all main extensions requested would not have a substantial
11 financial impact on the utility. Additional information from
12 the Pennsylvania utilities would be necessary in order to make
13 this determination. (I should note that the Commission has
14 generally considered possible financial handicap on a case by
15 case basis rather than in the aggregate. I have presented
16 aggregate data only to emphasize the point that investment in
17 main extensions by large utilities would not pose a material
18 handicap on the utility or its customers.) Thus, considering
19 the expansion of the customer base that would result from main
20 extensions and the availability of these additional customers
21 to share in the utilities' fixed costs and future improvement
22 projects, along with the lack of showing of harm in covering
23 the costs of adding these customers, I would not oppose a
24 standard that would allow for a lesser contribution on the
25 part of prospective customers. This could be in the form of
26 a greater number of years' revenues considered in determining

1 utility investment in a main extension project, up to no
2 customer CIAC required at all.

3 Third, a period during which a customer who made a
4 contribution toward a main extension would be eligible to
5 receive a proportional refund for additional hook-ups to the
6 line should be established to correspond to the number of
7 years' revenues used to determine the amount of the utility
8 investment and resulting CIAC amount. That is, if the main
9 extension policy is such that the amount in excess of five
10 years of a prospective customer's net base revenue is
11 contributed by that customer, refunds should be given for any
12 additional revenues received by the utility from other new
13 customers relative to the same extension that materialize
14 within the same five year period of time. Furthermore, where
15 there is documented evidence or even a likelihood that a main
16 extension requested by one customer will result in other
17 additional customers within that period of time, a credit,
18 calculated in the same manner as the utility investment in the
19 main extension relative to the requesting customer, should be
20 given against the calculated CIAC.

21 Q. IS THERE A THIRD CATEGORY OF CASES FOR WHICH YOU BELIEVE CIAC
22 SHOULD BE REQUIRED?

1 Yes, a third category of cases consists of applications for
2 service for which full contribution should be required. Thus,
3 the revenue test described above should not be applicable to
4 residential or other developers, in which cases utilities
5 should require CIAC. This is because in situations involving
6 new developments, there is no guarantee that a certain number
7 of customers or amount of revenues will materialize within a
8 reasonably short time frame, as is the case with an individual
9 customer who specifically requests service. In addition, OCA
10 agrees that utilities should continue to require a full
11 contribution in cases of requests for special service.

Q. DOES THIS CONCLUDE YOUR STATEMENT AT THIS TIME?

A. Yes. However, this statement represents my initial views which may change if and when additional information relative to this issue, as noted above, is presented by the utilities.


Marilyn J. Kraus

Sworn and subscribed before me
this 1ST day of February, 1994.

NOTARIAL SEAL
Susan J. Henry, Notary Public
Harrisburg, Dauphin County
Commission Expires Oct. 8, 1994

Annual Base Revenue

For 8 Applicants:		For 7 Applicants:	
8 x \$5.25 x 12 =	\$504	7 x \$5.25 x 12 =	\$441
8 x 5 x 12 x \$5.4695 =	2,625	7 x 5 x 12 x \$5.4695 =	2,297
(1,515-480) x \$3.9888 =	4,128	(1,342-420) x \$3.9888 =	3,678
	7,257		6,416
Less: Cost of Gas		Less: Cost of Gas	
1,515 x \$2.3589 =	(3,574)	1,342 x \$2.3589 =	(3,166)
Net Base Revenue	\$3,683	Net Base Revenue	\$3,250
NBR including		NBR including	
STAS @ 2.74%	\$3,784	STAS @ 2.74%	\$3,339

Source: Residential base rates and gas cost portion per tariff, pp. 39th Revised 11 and 19th Revised 11 C(1), and Company response to deposition requests.

Assumptions:

Net Base Annual Revenues (Schedule 1, Page 1)	\$3,683
Company Investment at 5 X Net Base Annual Revenues	\$18,415
Service Life of Main Extension (years)	55
Pre-tax Rate of Return (Commission Order, Docket No. R-860535)	16.38%

Year	Rate Base	Depreciation	Return	Revenue Requirement	Annual Net Base Revenue	Difference
1	\$18,415	\$335	\$3,016	\$3,351	\$3,683	\$332
2	18,080	335	2,962	3,297	3,683	386
3	17,745	335	2,907	3,242	3,683	441
4	17,410	335	2,852	3,187	3,683	496
5	17,075	335	2,797	3,132	3,683	551
6	16,740	335	2,742	3,077	3,683	606
7	16,405	335	2,687	3,022	3,683	661
8	16,070	335	2,632	2,967	3,683	716
9	15,735	335	2,577	2,912	3,683	771
10	15,400	335	2,523	2,858	3,683	825
11	15,065	335	2,468	2,803	3,683	880
12	14,730	335	2,413	2,748	3,683	935
13	14,395	335	2,358	2,693	3,683	990
14	14,060	335	2,303	2,638	3,683	1,045
15	13,725	335	2,248	2,583	3,683	1,100
16	13,390	335	2,193	2,528	3,683	1,155
17	13,055	335	2,138	2,473	3,683	1,210
18	12,720	335	2,084	2,419	3,683	1,264
19	12,385	335	2,029	2,364	3,683	1,319
20	12,050	335	1,974	2,309	3,683	1,374
21	11,715	335	1,919	2,254	3,683	1,429
22	11,380	335	1,864	2,199	3,683	1,484
23	11,045	335	1,809	2,144	3,683	1,539
24	10,710	335	1,754	2,089	3,683	1,594
25	10,375	335	1,699	2,034	3,683	1,649
26	10,040	335	1,645	1,980	3,683	1,703
27	9,705	335	1,590	1,925	3,683	1,758
28	9,370	335	1,535	1,870	3,683	1,813
29	9,035	335	1,480	1,815	3,683	1,868
30	8,700	335	1,425	1,760	3,683	1,923
31	8,365	335	1,370	1,705	3,683	1,978
32	8,030	335	1,315	1,650	3,683	2,033
33	7,695	335	1,260	1,595	3,683	2,088
34	7,360	335	1,206	1,541	3,683	2,142
35	7,025	335	1,151	1,486	3,683	2,197
36	6,690	335	1,096	1,431	3,683	2,252
37	6,355	335	1,041	1,376	3,683	2,307
38	6,020	335	986	1,321	3,683	2,362
39	5,685	335	931	1,266	3,683	2,417
40	5,350	335	876	1,211	3,683	2,472
41	5,015	335	821	1,156	3,683	2,527
42	4,680	335	767	1,102	3,683	2,581
43	4,345	335	712	1,047	3,683	2,636
44	4,010	335	657	992	3,683	2,691
45	3,675	335	602	937	3,683	2,746
46	3,340	335	547	882	3,683	2,801
47	3,005	335	492	827	3,683	2,856
48	2,670	335	437	772	3,683	2,911
49	2,335	335	383	718	3,683	2,965
50	2,000	335	328	663	3,683	3,020
51	1,665	335	273	608	3,683	3,075
52	1,330	335	218	553	3,683	3,130
53	995	335	163	498	3,683	3,185
54	660	335	108	443	3,683	3,240
55	325	258	53	311	3,683	3,372

Base Revenue Calculation
Hypothetical, Using the Rates and
Average Residential Consumption
of The Peoples Natural Gas Company

Customer Charge @ \$9.16/month	\$110
Total Commodity Charge (see below)	670
Total Base Revenue	780
Less: Cost of Gas @ \$3.5185/Mcf	(387)
Net Base Annual Revenue	\$393

	Consumption				Revenue			
	Total	First 5 Mcf	Next 5 Mcf	Over 10 Mcf	Total	First 5 Mcf 6.5124	Next 5 Mcf 5.9011	Over 10 Mcf 5.2899
Ja	18.3	5.0	5.0	8.3	\$107	\$33	\$30	\$44
Fe	17.5	5.0	5.0	7.5	103	33	30	40
M	14.1	5.0	5.0	4.1	85	33	30	22
Ap	9.5	5.0	4.5		60	33	27	0
M	4.8	4.8			31	31	0	0
Ju	3.0	3.0			20	20	0	0
Jul	2.6	2.6			17	17	0	0
Au	2.6	2.6			17	17	0	0
Se	3.3	3.3			21	21	0	0
Oc	6.8	5.0	1.8		44	33	11	0
No	11.4	5.0	5.0	1.4	70	33	30	7
De	16.1	5.0	5.0	6.1	95	33	30	32
	110.0				\$670			

Source: Residential base rates and gas cost and take or pay portions per Peoples' tariff, pp. 16th Revised 28, 9th Revised 52, and 5th Revised 57, and consumption per Company response to OCA informal request in Docket No. F-218963.

Assumptions:

Not Base Annual Revenue (Schedule 1, Page 1)	\$393
Company Investment at 5 X Net Base Annual Revenues	\$1,965
Serv. Life of Main Ext. (yrs., per current depr study)	57
Pre-tax Rate of Return (estimated, using curr. stat. tax rates, incl. GRT)	15.32%

Year	Rate Base	Depreciation	Return	Revenue Requirement	Annual Net Base Revenue	Difference
1	\$1,965	\$34	\$301	\$335	\$393	\$58
2	1,931	34	296	330	393	63
3	1,897	34	291	325	393	68
4	1,863	34	285	319	393	74
5	1,829	34	280	314	393	79
6	1,795	34	275	309	393	84
7	1,761	34	270	304	393	89
8	1,727	34	265	299	393	94
9	1,693	34	259	293	393	100
10	1,659	34	254	288	393	105
11	1,625	34	248	283	393	110
12	1,591	34	244	278	393	115
13	1,557	34	238	272	393	121
14	1,523	34	233	267	393	126
15	1,489	34	228	262	393	131
16	1,455	34	223	257	393	136
17	1,421	34	218	252	393	141
18	1,387	34	212	246	393	147
19	1,353	34	207	241	393	152
20	1,319	34	202	236	393	157
21	1,285	34	197	231	393	162
22	1,251	34	192	226	393	167
23	1,217	34	186	220	393	173
24	1,183	34	181	215	393	178
25	1,149	34	176	210	393	183
26	1,115	34	171	205	393	188
27	1,081	34	166	200	393	193
28	1,047	34	160	194	393	199
29	1,013	34	155	189	393	204
30	979	34	150	184	393	209
31	945	34	145	179	393	214
32	911	34	139	173	393	220
33	877	34	134	168	393	225
34	843	34	129	163	393	230
35	809	34	124	158	393	235
36	775	34	119	153	393	240
37	741	34	113	147	393	246
38	707	34	108	142	393	251
39	673	34	103	137	393	256
40	639	34	98	132	393	261
41	605	34	93	127	393	266
42	571	34	87	121	393	272
43	537	34	82	116	393	277
44	503	34	77	111	393	282
45	469	34	72	106	393	287
46	435	34	67	101	393	292
47	401	34	61	95	393	298
48	367	34	56	90	393	303
49	333	34	51	85	393	308
50	299	34	46	80	393	313
51	265	34	41	75	393	318
52	231	34	35	69	393	324
53	197	34	30	64	393	329
54	163	34	25	59	393	334
55	129	34	20	54	393	339
56	95	34	14	48	393	345
57	61	34	9	43	393	350

BACKGROUND AND QUALIFICATIONS

MARILYN J. KRAUS, C.P.A.

Education

Madonna College, Livonia, Michigan, Bachelor of Accountancy Degree, 1984.

Passed C.P.A. examination in 1986 and certified in 1987.

Larkin & Associates Staff Training Seminar in the application of Lotus 1-2-3 software package to financial analysis of utilities and to tax and financial planning and projections.

Experience

I am currently employed by the Pennsylvania Office of Attorney General, Office of Consumer Advocate in the capacity of Senior Regulatory Analyst. My responsibilities include the review of utility filings related to base rate requests, fuel adjustment clauses and other petitions and applications, as well as the analysis of other regulatory matters handled by the Office of Consumer Advocate. My duties also include appearing as a witness on behalf of the OCA at hearings related to regulatory matters to present the results of my analyses and recommendations for the disposition of such matters with regard to generally accepted accounting and ratemaking principles.

From April 1985 to October 1989, I was employed by Larkin & Associates, a firm of certified public accountants and utility regulatory consultants.

At Larkin & Associates, my assignments included: analysis of expense and balance sheet accounts; testing of accounting systems for compliance with management policies and standards; the evaluation of accounting systems for their effectiveness; the preparation and review of financial statements and tax returns; preaudit interviews with management including submitting bids for engagements; preparation of management letters and the advice and training of client personnel in the maintenance of proper accounting records.

In the utility regulatory area, I was involved in the review of rate case testimonies, exhibits, responses to discovery requests and commission orders and in the analysis of financial data for various rate cases. I was responsible for the preparation of rate case testimony, exhibits and briefs, and evaluations of commission orders.

During my employment with this firm, I worked on the analysis of the New England Power Company's request for a change in the

treatment of abandoned plant losses before the Federal Energy Regulatory Commission. I also performed analyses, interviewed Company employees, attended various hearings and assisted in cross examination of utility witnesses, prepared workpapers, exhibits and testimony concerning the rate increase requests of United Telephone Company of Missouri, El Paso Electric Company, Central Maine Power Company, Pennsylvania Power Company, Southern California Edison Company, Carolina Power & Light Company, St. Augustine Shores Utilities, Pennsylvania Gas and Water Company and Orange Osceola Utilities.

I was involved in the analyses of the effects of the provisions of the Tax Reform Act of 1986 on regulated utilities which were performed generically for the California Public Utilities Commission and for the Hawaiian Electric Company before the Hawaii Public Utilities Commission on behalf of the Department of the Navy. I also actively participated in the budget audit of the Georgia Power Company on behalf of the Staff of the Georgia Public Service Commission, and the management audit of the Anchorage Water and Wastewater Utility on behalf of the Staff of the Alaska Public Utilities Commission.

Prior to my employment with Larkin & Associates, I worked for Michigan Consolidated Gas Company, a major utility in Detroit, Michigan, as an accounting clerk. My duties included: preparation of financial statements and supporting statements; preparing journal vouchers for monthly entries, including support data; handling accounts receivable billings and cost allocations; assisting in preparation of entries for year-end closing; and special assignments in other departments, including payroll and bank reconciliations. I was also assigned to a special project group initiated to implement a new general ledger computer system.

Previously, I had worked at Northland Underwriters, Inc. as a full-charge bookkeeper. There, I was responsible for an entire accounting system through trial balance, including accounts receivable and payable, payroll and income taxes.

List of cases in which I have testified or provided substantial assistance:

<u>Docket Number</u>	<u>Company Name and Jurisdiction</u>
9283	Kentucky American Water (Kentucky Public Service Commission)
Tr-85-179	United Telephone Company of Missouri (Missouri Public Service Commission)
6350	El Paso Electric Company (Public Utility Commission of Texas)

U-8091/U-8239 Consumers Power Company-Gas-Refunds
(Michigan Public Service Commission)

85-212 Central Maine Power Company
(Maine Public Service Commission)

ER-85646001 & New England Power Company
ER-85647001 (Federal Energy Regulatory Commission)

R-850267 Pennsylvania Power Company
(Pennsylvania Public Utility Commission)

Docket No.
R-850267 Pennsylvania Power Company
(Rebuttal) (Pennsylvania Public Utility Commission)

Docket No.
R-860378 Duquesne Light Company - OCA
(Surrebuttal) Statement No. 2D
(Pennsylvania Public Utility Commission)

87-01-03 Connecticut Natural Gas
(Department of Public Utility Control)

86-12-047 Southern California Edison Company
(California Public Utilities Commission)

86-11-019 Tax Reform Act of 1986 Commission Investigation
(California Public Utilities Commission)

5740 Hawaiian Electric Company Tax Reform Act of 1986
(Hawaii Public Utilities Commission)

3673-U Georgia Power Company - Budget Audit
(Georgia Public Service Commission)

7460 El Paso Electric Company
(Public Utility Commission of Texas)

Docket No.
8747 Anchorage Water and Wastewater
Utility - Management Audit
(Alaska Public Utilities Commission)

U-8924 Consumers Power Company - Gas
(Michigan Public Service Commission)

Docket No.
E-2, Sub 537 Carolina Power & Light Company
(North Carolina Utilities Commission)

Docket No.
870980-WS St. Augustine Shores Utilities, Inc.
(Florida Public Service Commission)

Docket No. 870853	Pennsylvania Gas and Water Company (Pennsylvania Public Utility Commission)
Docket No. 871134-WS	Orange Osceola Utilities, Inc. (Florida Public Service Commission)
Docket No. R-881084 et al.	Pocono Water Company, et al. (National Utilities, Inc.) (Pennsylvania Public Utility Commission)
Docket No. 881503-WS	Poinciana Utilities, Inc. (Florida Public Service Commission)
Docket No. R-891364	Philadelphia Electric Company (Pennsylvania Public Utility Commission)
Docket No. R-891473	Pennsylvania Water Co.-Sayre Division (Pennsylvania Public Utility Commission)
Docket No. R-891557	Arrowhead Public Service Corporation (Pennsylvania Public Utility Commission)
Docket No. R-901625	Roaring Creek Water Company (Pennsylvania Public Utility Commission)
Docket No. R-901663	Citizens Utilities Water Company of Pennsylvania (Pennsylvania Public Utility Commission)
Docket No. R-901664	Citizens Utilities Home Water Company (Pennsylvania Public Utility Commission)
Docket No. C-903013	Waymart Water Company (Pennsylvania Public Utility Commission)
Docket No. C-902815	GTE North, Inc. (Pennsylvania Public Utility Commission)
Docket No. R-911918 C-892706 C-892531	Clean Treatment Sewage Co. (Pennsylvania Public Utility Commission)
Docket No. A-211770 et.al	L.P. Water and Sewer Co. (Pennsylvania Public Utility Commission)
Docket No. R-911963	Roaring Creek Water Company (Pennsylvania Public Utility Commission)

Docket No. R-912000	Dauphin Consolidated Water Co. (Pennsylvania Public Utility Commission)
Docket No. R-912064	Bloomsburg Water Company (Pennsylvania Public Utility Commission)
Docket No. R-912114	Lemont Water Company (Pennsylvania Public Utility Commission)
Docket No. R-912117	Fawn Lake Forest Water Company (Pennsylvania Public Utility Commission)
Docket No. A-230013	Broad Run Sewer Co. (Pennsylvania Public Utility Commission)
Docket No. C-913749	North Penn Gas Company (Pennsylvania Public Utility Commission)
Docket No. R-922209	Citizens Utilities Home Water Co. (Pennsylvania Public Utility Commission)
Docket No. R-922319	Glen Alsace Water Company (Pennsylvania Public Utility Commission)
Docket No. R-922326 et al	Dallas Water Company, et al (Pennsylvania Public Utility Commission)
Docket No. R-00922372	Lake Heritage Utilities, Inc. (Pennsylvania Public Utility Commission)
Docket No. R-00922502	Mechanicsburg Water Company (Pennsylvania Public Utility Commission)
Docket No. R-00922493	L.P. Water and Sewer Company - Sewer Division (Pennsylvania Public Utility Commission)
Docket No. A-210025F002	Public Service Water Company (Pennsylvania Public Utility Commission)
Docket No. A-230026	MPW Utilities, Inc. (Pennsylvania Public Utility Commission)
Docket No. R-00932604	Dauphin Consolidated Water Supply Company (Pennsylvania Public Utility Commission)
Docket No. R-00932795	General Waterworks of Pennsylvania, Inc. (Pennsylvania Public Utility Commission)
Docket No. R-00932673	Lemont Water Company (Pennsylvania Public Utility Commission)

Affiliations

I am a certified public accountant licensed in the state of Pennsylvania and registered in the state of Michigan. I am a member of the Michigan Association of Certified Public Accountants and the Pennsylvania Institute of CPA'S.

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February 10, 2003

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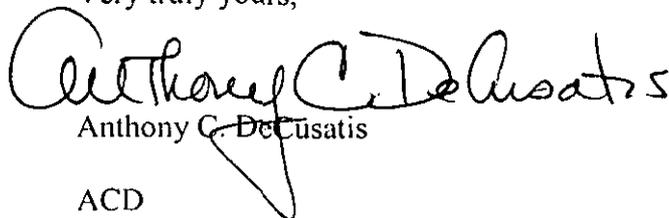
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: **Cindy Parks, Richard Minutello, and Office of Consumer Advocate v.
Pennsylvania-American Water Company
Docket Nos. C-00015377, C-20028177 and C-20028361**

Dear Secretary McNulty:

Enclosed for filing are an original and nine copies of the Initial Brief of Pennsylvania-American Water Company, which are accompanied by a bound volume containing the unreported authorities cited in the Company's Brief. Pursuant to 52 Pa. Code §1.11(a)(2), the enclosed Brief shall be deemed filed on February 10, 2003, which is the date shown on the express delivery receipt attached to the delivery envelope. As evidenced by the enclosed Certificate of Service, copies of the Company's Brief have been served upon the presiding Administrative Law Judge and upon the parties to this case. An additional copy of this letter is enclosed, which we ask be date stamped and returned to us in the stamped, self-addressed envelope provided.

Very truly yours,


Anthony C. DeCusatis

ACD
Enclosure

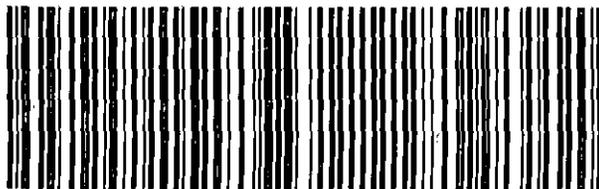
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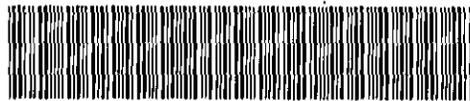
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CINDY PARKS,

RICHARD MINUTELLO, AND

IRWIN A. POPOWSKY, CONSUMER
ADVOCATE

v.

PENNSYLVANIA-AMERICAN WATER
COMPANY

: DOCKET NO. C-00015337

: DOCKET NO. C-20028177

: DOCKET NO. C-20028361

: ORIGINAL

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BRIEF OF RESPONDENT

PENNSYLVANIA-AMERICAN WATER COMPANY

Before Administrative Law Judge
Larry Gesoff

DOCUMENT

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DATE: February 10, 2003

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I. INTRODUCTION AND OVERVIEW

A. The Complaints And The Relief Requested

This proceeding was initiated by a Complaint filed by Cindy Parks asking the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) to order Pennsylvania-American Water Company (“PAWC” or the “Company”) to extend its mains, solely at the Company’s cost, to provide water service to her and other residents of Mount Pleasant Township. The Office of Consumer Advocate (“OCA”) intervened on behalf of Ms. Parks and filed a Complaint in its own right. Subsequently, an individual Complaint was also filed by Richard T. Minutello, another resident of Mount Pleasant Township, and all three Complaints were consolidated for hearing and decision.

The OCA proposed a project scope that its witnesses estimate would require PAWC to invest \$5,303,352 to serve up to 568 locations. Because the OCA’s projection of potential customers is based upon an extrapolation from responses to a non-binding “survey” (OCA St. 2A, pp. 4-5), it is not known whether all of the estimated 568 locations represent Bona Fide Service Applicants or whether all those locations would actually take water service if the facilities proposed by the OCA were installed (Tr. 393-94).

Even if the OCA’s figures are used, the investment per potential customer of \$9,336 is well above the Company-required investment of \$6,200 determined in accordance with the Commission-approved Rule 27 of PAWC’s Tariff Water-PA P.U.C. No. 4, which was filed in compliance with the Commission’s line extension regulations (PAWC St. 3.1, p. 5). Moreover, as explained in greater detail hereafter, the OCA’s estimate understates by nearly \$1 million the cost of the facilities that PAWC would have

to install to furnish the service the OCA proposes and the other Complainants desire (PAWC St. 1.1, pp. 3-4; PAWC St. 2.1). Using a more realistic cost estimate, the Company investment would exceed \$11,200 per customer even assuming all 568 potential applicants extrapolated by the OCA were to materialize.¹

The OCA's fundamental position in this case is that the Commission should depart from the terms of PAWC's Commission-approved tariff and its own line extension regulations and order PAWC, initially, and PAWC's existing customers, ultimately, to bear the entire cost of the main extensions and other facilities the Company would have to install to provide the general and fire protection service the OCA and Complainants propose. In so doing, the OCA seeks to collaterally attack a Commission decision, embodied in the PUC's line extension regulations, that carefully balanced all of the interests affected by line extension requests. After a lengthy and rigorous deliberative process, the Commission, by regulation, established clear and precise economic standards for evaluating such requests and determining the utility-required investment. Nonetheless, the OCA is attempting, through burdensome case-by-case litigation,² to reopen a matter that the Commission put to rest in 1996 when it adopted a regulation on the very issue the OCA is now trying to resurrect.

¹ Mr. Lucas determined that the cost of a project of the scope the OCA proposed would be \$6,290,499 (PAWC St. 1.1, p. 4). Hence, the per customer investment of \$11,216 ($\$6,290,499 / 568$).

² The OCA has intervened in five pending main extension complaint cases involving PAWC where PAWC is proposing to follow its tariff and the PUC's regulation (Tr. 419-21).

B. The Commission's Regulation

This case is governed by the Commission's regulation on line extensions at 52 Pa. Code §§ 65.1 and 65.21-65.23, which was approved by the Commission's Order entered October 7, 1996 at Docket No. L-00930089 and published at 27 *Pennsylvania Bulletin* 799 *et seq.* (February 15, 1997). The final line extension regulation was three years in the making¹ and reflects the Commission's definitive statement on how requests for main extensions by "Bona Fide Service Applicants" are to be resolved. The Commission determined that a just and lawful resolution of this issue required it to balance the interests of all the stakeholders whose interests would be affected – the applicant for service, the utility and the utility's existing customers (27 *Pa. Bull.* at 800):

In other words, the claim of an individual seeking the line extension must be balanced against the right of the public utility to remain financially viable and the right of existing customers to avoid subsidizing uneconomic line extensions for new customers.

Determining exactly how this balance should be struck has been the subject of considerable uncertainty and litigation over the years before the Commission. *Thus, the purpose of this rulemaking is to create a fair, reasonable and predictable economic standard to address this regulatory problem that will eliminate uncertainty and greatly reduce the litigation in this area.* (Emphasis added; footnotes omitted)

¹ See *Advance Notice of Proposed Rulemaking Re Line Extensions*, Docket No. L-00930089 (December 8, 1993); *Proposed Rulemaking Re Line Extensions – 52 Pa. Code Chapter 66*, Docket No. L-00930089 (July 1, 1994); *Final Rulemaking Re: Line Extensions – 52 Pa. Code §§ 65.21, 65.22*, Docket No. L-00930089 (December 28, 1995); *Revised Final Order --Final Rulemaking Re: Line Extensions – 52 Pa. Code §§ 65.21, 65.22*, Docket No. L-00930089 (October 7, 1996). (Copies of the foregoing Orders are attached hereto as Appendices A through D).

The Commission also determined that the “overall concept behind its regulation” had to conform to longstanding appellate court precedent, which holds that “a public utility’s obligation to make line extensions is not unlimited and, accordingly, it will not be obligated to make a line extension that is uneconomic or unreasonable absent an appropriate customer contribution.” *27 Pa. Bull.* at 801.

To implement that “overall concept” and to achieve its stated goals of predictability, certainty and the avoidance of needless litigation engendered by “case-by-case” decision-making, the Commission adopted a revenue-justified investment formula to ascertain the amount a utility should be required to expend to install a main extension for a Bona Fide Service Applicant. *27 Pa. Bull.* at 802 (“Thus, to avoid the subsidization of uneconomic line extensions, the regulation will permit utilities to require a contribution where the annual revenue from the line extension will not equal or exceed the utility’s annual line extension costs.”)

The Commission also concluded that its approved formula complied with the principle laid down by the Independent Regulatory Review Commission (“IRRC”) that “utilities will ‘fund all line extensions that are appropriate for the level of service to be purchased by the new customer without requiring the utilities and their existing customers to incur the costs of unreasonable line extensions’” (*27 Pa. Bull.* at 801). Accordingly, the Commission’s regulation was approved by the IRRC and by the Senate Committee on Consumer Protection and Professional Licensure and became final upon its publication in the *Pennsylvania Bulletin*. See *27 Pa. Bull.* at 799 and 804. The Company filed a compliance tariff as required by the Commission’s Order, which was approved by the Commission. Since the filing of that tariff, the Company has been

through several base rate cases in which the Commission initiated investigations of the Company's then-existing and proposed rates, rules and regulations. In none of these cases has the Commission or any party found fault with Rule 27.

C. The OCA's Refusal To Accept The Validity of The Commission's Regulation

During the multi-year period when the Commission was developing its regulation on line extensions, the OCA twice filed comments (including affidavits by its witness in this case, Ms. Kraus) urging that the Commission not adopt a specific economic standard for ascertaining when customer contributions may be required (Tr. 416-17). Instead, the OCA recommended that the Commission articulate a few general principles to be applied on a case-by-case basis (Tr. 417). However, the overarching principle advanced by the OCA was that: "In general, in cases where a 'public need' for extension of utility service is present, the OCA supports the general prohibition on requests for 'contributions in aid of construction' (CIAC), as stated within the Commission's Order of August 20, 1992 in Docket Nos. L-900053 and L-920067."⁴ *Comments of the Office of Consumer Advocate* submitted February 1, 1994 at Docket No. L-00930089 (p. 1).

The OCA fleshed out its proposal by noting that "under this standard, the great majority of requests by bona fide residential customers for water, electric, telephone and

⁴ In its Orders adopting both the proposed and final line extension regulations, the Commission disabused the OCA of the notion that the PUC had ever endorsed a "general prohibition" on customer contributions. The Commission also rejected the OCA's position in a PAWC-specific adjudication wherein the OCA challenged the Company's adoption of a tariff rule based upon what, at the time, was the Commission's proposed regulation on line extensions. *Popowsky v. Pennsylvania-American Water Company*, Docket No. R-00943155C001 (June 9, 1997), 1997 Pa. PUC LEXIS 143. This case is discussed further above.

sewer service should be granted without CIAC” unless the utility can show that it would suffer a “material handicap” or that other customers would bear an “undue burden.” *Comments of the Office of Consumer Advocate, supra* (p. 2). And, the OCA further proposed that the “material handicap” and “undue burden” tests be applied on a total-company basis. That is, the revenue requirement associated with a specific main extension would have to be assessed based upon the utility’s total return and overall rate structure. *See Comments of the Office of Consumer Advocate, supra* (pp. 7-8).

Thus, under the OCA’s proposed approach, each “case-by-case” determination would require a mini-rate case to determine if a customer contribution would be permitted. In her affidavit that accompanied the OCA’s *Comments*, Ms. Kraus candidly opined that, under this test: “Even in the aggregate, I do not believe that an undue burden can be shown by a large utility financing the cost of a main extension.” In short, the OCA’s argument ended where it began, with a practical, if not legal, prohibition against any major utility requesting a customer contribution for a line extension. As evidenced by the Commission’s October 7, 1996 Order adopting the final regulations on line extensions, the PUC rejected the OCA’s position. *See 27 Pa. Bull.* at p. 801.

While the Commission’s rulemaking was pending, it also decided the OCA’s specific challenge to a Company tariff rule that was the precursor of its current Rule 27. Ironically, that case arose because PAWC was the first water utility to abandon the “35-foot rule” in favor of a much more generous allowance for main extensions. On July 6, 1994 – only a few days after the Commission issued for comment its proposed regulations on line extensions - - PAWC filed a tariff supplement incorporating that liberalized utility-investment standard. The immediate effect of the filing was to increase

the Company investment per applicant by several times over the “35-foot” allowance. The OCA filed a complaint against this tariff change alleging that it was not generous enough and contending that, based on its interpretation of the “material hardship” and “undue burden” tests, PAWC should not be permitted to request a customer contribution if the applicant for a main extension is a residential customer who needs water service. After full litigation, the Commission entered an Opinion and Order dismissing the OCA’s Complaint. *Popowsky v. Pennsylvania-American Water Company*, Docket No. R-00943155C001 (June 9, 1997), 1997 Pa. PUC LEXIS 143. The Commission’s holding and rationale were the same as those in its October 7, 1996 Order approving the final regulations.⁵

The foregoing history is important because it highlights the fact – clearly evident from the OCA’s position in this case – that the OCA still refuses to accept the Commission’s resolution of line extension and customer contribution issues embodied in its regulations. Indeed, Ms. Kraus admitted as much when cross-examined on this issue (Tr. 417):

⁵ The Company’s adoption of the Commission’s proposed regulations was also fully litigated in *Collier Township v. Pennsylvania-American Water Company*, Docket No. C-00934978 (March 18, 1996), where the Commission affirmed the Initial Decision of Administrative Law Judge Robert P. Meehan and dismissed a complaint alleging that the economic standard underlying the Commission’s proposed regulation and the Company’s tariff rule were contrary to law. Although the OCA did not participate in that case, it is well aware of Judge Meehan’s Initial Decision and the Commission’s final Order, since the OCA has intervened in a pending complaint proceeding brought by Collier Township attempting to raise the same issues yet again. *See Township of Collier v. Pennsylvania-American Water Company*, Docket No. C-20016207.

Q. Would you agree that to the extent the Commission established a formula for determining company investment, that it did not accept the fundamental position you've offered [in the rulemaking affidavit], which was a case-by-case determination?

A. *Not necessarily.* As I understand it, the formula was set by the Commission as a minimum amount of company investment, and I don't believe that would preclude the company from investing more in a particular situation. (Emphasis added.)

While characterizing its position as an "interpretation" of the Commission's regulation – albeit one that is at odds with the plain language thereof and the Commission's October 7, 1996 Order – the OCA continues to press its view that, when faced with a "public need," a water utility should bear the full cost of main extensions unless it can satisfy the OCA's version of the "material financial harm" test (Tr. 422). Thus, the premise underlying the OCA argument in this case is the same as the position it advocated in the Commission's rulemaking proceeding and in *Popowsky v. Pennsylvania-American Water Company, supra*, where it was soundly rebuffed. Now, however, the OCA acknowledges the existence of the Commission regulation and the Company's tariff rule based thereon, but contends that a demonstration of "public need" justifies creating an exception to both (Tr. 421-22):

Q. [Y]ou indicate that the company has proposed to construct this project only under the strictest possible application of its main extension tariff rule. Would it be fair to characterize your testimony as calling for some departure from the terms of the company's tariff in this case?

A. Certainly my recommendation does represent a departure from the company's application of its tariff.

Q. What is it, in your view, that would justify that departure?

A. I believe the bases I have set forth in my testimony is that the public need in this case certainly does exist, and if the company does depart from the strict application of its tariff and fund this project, there would be no financial harm.

The exception the OCA hopes to carve out would consume the rule. If departures from the Commission's regulation and utility tariffs were to be recognized under the circumstances articulated by Ms. Kraus, the OCA will have succeeded in undermining the Commission's entire rulemaking effort and, thereby, "interpreting" the line extension regulation out of existence. The OCA's efforts should be seen for what they are – a collateral attack on the Commission's regulation that underscores the OCA's continuing refusal to recognize the validity and legitimacy of that regulation. Notwithstanding the Commission's rejection of "case-by-case" decision-making as the appropriate means to solve line extension disputes, the OCA has made its position clear – it will continue to litigate virtually every main extension request requiring a customer contribution that a Bona Fide Service Applicant does not want to pay (Tr. 423):

Q. So we would really be back in a situation of doing a case-by-case determination?

A. [by Ms. Kraus] I don't believe it's ever been any different.

D. PennVest Financing

The OCA also contends that a customer contribution should not be required in this case if: (1) PAWC were to apply for, and receive, a low-interest-rate loan from the Pennsylvania Infrastructure Investment Authority ("PennVest"); and (2) all of the potential customers the OCA projects were to actually take service (Tr. 393-94). Underlying this argument is Ms. Kraus' proposal to modify the revenue-justified

investment formula in the Commission's regulation by substituting an assumed PennVest loan rate for the Company's weighted average cost of debt, which the formula actually requires (OCA St. 2A, p. 8).

As Mr. Diskin explained, there are a number of fatal flaws in the OCA-proposed approach in addition to the obvious one – it is clearly contrary to the terms of the Commission's regulation (PAWC St. 3.1, pp. 10-13; PAWC Exhibit Nos. 3.3 - 3.6). On an even more fundamental level, the OCA's proposed departure from the Commission-approved formula leaves the Company-required investment well shy of the costs to provide the service the Complainants request.

Using, in the Commission's formula, the weighted average interest rate for a twenty-year PennVest loan in Washington County (2.427%) (PAWC St. 3.0, p. 5),⁶ the Company investment thereby derived would be \$9,125 [$\$320 / (1.08\% + 2.427\%)$]. Even if one were to accept the OCA's generous projected customer count of 568, the resulting investment (\$5,183,000) falls well short of the project cost (\$6,290,499). Consequently, the OCA's proposition that PennVest financing eliminates the need for customer contributions in this case is not borne out by the facts. And, to the extent the actual customer count is less than the OCA assumes (a virtual certainty), the shortfall is even

⁶ Ms. Kraus considered only the introductory interest rate, applicable in the first five years of a PennVest loan (1.387%) and expects PAWC and the Commission to ignore the fact that the rate jumps to 2.774% for years 6 through 20 (PAWC St. 3.0, p. 5).

bigger.⁷

In short, despite all the noise about PennVest financing, the OCA is left with nothing more than its original proposition that the Commission should impose a “general prohibition” on customer contributions from Bona Fide Service Applicants. As previously explained, the Commission has already rejected this argument several times.

⁷ By asking PAWC and the Commission to rely on the OCA’s estimate of possible applicants, the OCA expects PAWC to bear the entire risk that the estimate is overstated. This asymmetrical distribution of risk is inequitable and is yet another aspect of the OCA’s proposal that is contrary to the Commission’s regulation and the Company’s tariff.

II. PROCEDURAL HISTORY

A. The Pleadings

This case was initiated on May 3, 2001, by a Complaint filed by Cindy Parks asking the PUC to direct PAWC to extend its facilities into portions of Mount Pleasant Township, Washington County. On May 24, 2001, the Company filed an Answer to Ms. Parks' Complaint stating, *inter alia*, that it will extend its mains to Bona Fide Service Applicants in accordance with the terms of its Commission-approved tariff, which provides that such applicants must pay the cost of such main extensions that exceeds the Company-required investment therein.

On June 14, 2001, the OCA intervened on behalf of Ms. Parks and moved to consolidate her Complaint with the Company's then-pending base rate proceeding at Docket No. R-00016339. Administrative Law Judge Nemeck, the presiding officer in that case, denied the OCA's Motion.

On July 18, 2002, Richard T. Minutello, a homeowner who built a new house in Mount Pleasant Township approximately five years ago (Tr. 69-70), filed a Complaint in which he also asked that PAWC extend its mains to provide water service to him. On August 12, 2002, the Company filed an Answer to Mr. Minutello's Complaint stating, *inter alia*, that it will extend its mains to Bona Fide Service Applicants in accordance with the terms of its Commission-approved tariff.

Finally, on August 21, 2002, the OCA filed a Complaint alleging that PAWC should extend its mains to serve the residents of Mount Pleasant Township at the Company's sole cost. On September 12, 2002, the Company filed an Answer and New

Matter to the OCA's Complaint. On October 4, 2002, the OCA filed an Answer to the Company's New Matter.

On August 23, 2002, the OCA filed a Motion to Consolidate its and Mr. Minutello's Complaints with that of Ms. Parks. The Motion was not opposed by PAWC, and, by Order issued September 5, 2002, the Administrative Law Judge granted that Motion.

B. Schedule, Testimony And Hearings

Ms. Parks' Complaint and the OCA's Intervention were assigned to Administrative Law Judge Larry Gesoff (the "ALJ") for hearing and decision. The first Prehearing Conference in this case was held telephonically on October 22, 2001. At that time, a schedule for litigation was established, which was subsequently embodied in the Second Interim Order issued on November 14, 2001. That schedule provided that the OCA's and PAWC's written direct testimony were to be filed on November 30 and December 21, 2001, respectively; the OCA's written responsive testimony was to be filed on January 17, 2002; and evidentiary hearings were to be held on February 26 and 27, 2002. That schedule was amended, by the parties' agreement, pursuant to the ALJ's Third Interim Order issued on November 28, 2001, which made the OCA and PAWC direct testimony due December 7, 2001 and January 4, 2002, respectively; the OCA responsive testimony due January 25, 2002; and held the hearing dates the same.

Pursuant to the Third Interim Order, the OCA distributed the written direct testimony of its witnesses, Terry L. Fought (OCA St. 1) and Marilyn J. Kraus (OCA St. 2) along with their accompanying exhibits. As scheduled, PAWC distributed direct

testimony by Jay R. Lucas (Operations Manager) (PAWC St. 1.0), Jerry E. Hankey (Engineering Manager) (PAWC St. 2.0) and Paul T. Diskin (Director of Rates and Planning) (PAWC St. 3.0) along with their accompanying exhibits.

On January 28, 2002, at the parties' request, the ALJ issued a Fourth Interim Order suspending the schedule and canceling the hearing in order to allow the parties to explore the possibility of settlement. The Order called for a status report in May 2002. On May 15, 2002, following the required status report, a Fifth Interim Order was issued continuing the schedule suspension and calling for another status report in July 2002. Thereafter, the parties notified the ALJ that a settlement could not be achieved and litigation would resume. Accordingly, a second Prehearing Conference was held telephonically on July 30, 2002 at which a revised schedule was established for the remainder of the case.

Under the revised schedule, public hearings were held in Mount Pleasant Township commencing at 2:00 p.m. and 7:00 p.m. on September 9, 2002. In addition, both the OCA and PAWC were permitted to submit supplemental direct testimony on September 27 and October 25, 2002, respectively. The OCA's written rebuttal was made due on November 15, 2002. Hearings were scheduled for December 4-6, 2002, but were subsequently moved to December 3-5, 2002.

As scheduled, the OCA submitted the Supplemental Direct Testimony of its witnesses Fought (OCA St. 1A) and Kraus (OCA St. 2A). PAWC submitted Supplemental Direct Testimony by Messrs. Lucas (PAWC St. 1.1), Hankey (PAWC St. 2.1) and Diskin (PAWC St. 3.1) with their accompanying exhibits. Finally, the OCA

filed Rebuttal Testimony (which it styled as "Surrebuttal") by Mr. Fought (OCA St. 1S) and Ms. Kraus (OCA St. 2S). In addition, Patrick Gallagher, Chairman of the Mount Pleasant Township Authority, submitted late-filed testimony (Gallagher St. 1-S) concerning the status of the Township's efforts to comply with the Pennsylvania Sewage Facilities Act.

A one-day evidentiary hearing was held in Harrisburg on December 3, 2002, at which testimony and other evidence was introduced and the respective witnesses were cross-examined. That hearing produced a transcript of 160 pages (Tr. 275-435). (Transcript pages are numbered consecutively and include the transcription of the public hearing in Mount Pleasant Township.)

III. STATEMENT OF THE CASE

A. Scope, Facilities And Cost

The scope, or “footprint,” of the project at issue in this case (i.e., the streets where mains are proposed to be installed) was determined by the OCA based upon input from citizens in Mount Pleasant Township (*See* OCA Exhibit TLF-1A). The OCA asked the Company to conduct the engineering studies necessary to determine the facilities that would have to be installed to serve potential customers within that “footprint.” The Company complied, and provided the results of its study, and the associated costs, to the OCA and its witness, Mr. Fought.

The Company determined that the most feasible, and economical, means of providing the requested service was to install a transmission main from the Gretna Booster, located in Chartiers Township, to a site at a relatively high elevation near the center of the Township, where a water storage tank would be constructed. Additional mains would run from the tank to points of service in the Township. The tank would maintain adequate, stable operating pressures throughout the system and provide the storage capacity needed to assure reliable service to the 500 to approximately 700 customers the OCA asked the Company to accommodate in its design criteria (PAWC St. 2.1, pp. 2-3).⁸ As PAWC’s Engineering Supervisor, Mr. Hankey, explained, without the tank in the location identified by the Company, reliability for both general and public fire protection service would be compromised and well-accepted design criteria could not be

⁸ Putting storage capacity near that point of service assures that general and fire protection service can be maintained by gravity flow from the tank if upstream supply or pumping capacity were lost for any reason. OCA witness Fought conceded that the proposed tank would serve this important function (Tr. 399).

met (PAWC St. 2.1, p. 2).

PAWC also laid out a system of mains in the locations the OCA identified. For the most part, these were sized at 8 inches in diameter. However, in certain critical locations, mains were sized at 12 inches in diameter because the Company's hydraulic analyses indicated that at least that much capacity was needed, at those points in the system, to provide adequate flows for general and/or fire protection service (PAWC St. 2.1, pp. 3-4). In making these assessments, the Company used the well-accepted fire flow standard of 750 gallons per minute (gpm) at pressure not less than 20 pounds per square inch (psi) (PAWC St. 2.1, p. 4). PAWC uses this standard for new installations throughout its system and, to its knowledge, this is the lowest generally-accepted fire flow standard for new main construction.

The Company conservatively estimated the cost of the facilities described above to be \$6,290,499 (PAWC St. 1.1, p. 4). However, under the terms of the Company's tariff, at the conclusion of a project, the actual completed cost would be used to determine whether customer contributions are required and, if so, the amount. A refund to, or additional payment by, the applicants would be required to reconcile the final outcome to the customer contribution initially deposited by the applicants based on the pre-construction estimate (PAWC St. 3.1, p. 3).

There is no dispute in this case about the unit costs of the facilities PAWC determined necessary to provide the requested service. All such construction is done by independent, third-party contractors selected through a competitive bidding process, and only PAWC's out of pocket costs are used in the estimating process (Tr. 347). Rather,

Mr. Fought proposes that the Company: (1) eliminate the storage tank altogether; and (2) substitute 8 inch mains in some (but not all) of the locations where the Company's analyses show that 12-inch mains are needed (OCA St. 1A).² Mr. Fought claims that these shortcuts would reduce the project cost by \$1,067,350 (\$850,000 for the tank and \$217,350 for the incremental cost of 12 inch diameter pipe) (OCA Exhibit No. TLF-2A). As explained hereafter, Mr. Fought's proposed modifications are designed simply to suppress the cost without regard for reasonable, well-accepted engineering and operational standards. Mr. Fought's proposal is not supported by the evidence, is contrary to long-standing Commission precedent and should be rejected.

B. Number Of Customers

The number of customers who will actually take service from the project is not known. The OCA distributed a Questionnaire to residents of the Township to determine the level of interest in obtaining a public water supply. Within the "footprint" of the OCA project, the OCA alleges there are 701 "total potential customers" and, of these, responses were received from only 530. Of that number 430 indicated a desire to become a customer of PAWC if they could do so without paying any customer contribution (OCA St. 2A, p. 4). Ms. Kraus used these data to try to divine the desires of the non-responding parties by extrapolating the percentage of positive responses (i.e., because 81% of the responders said they were interested in water service, Ms. Kraus assumed that 81% of the non-responders were as well). On this basis, she hypothesized that there are 568 "total

² There are locations within the "footprint" where the capacity of 12-inch diameter mains is essential, which even Mr. Fought does not dispute. In view of that concession, Mr. Fought's decision to challenge the installation of 12-inch mains in other, similar locations is puzzling and unsupportable.

potential customers within the project footprint” (OCA St. 2A, p. 4). No statistical basis, nor any empirical evidence, was adduced to justify such an extrapolation. Indeed, it would appear that a party’s failure to respond to the OCA’s Questionnaire is more likely evidence of his or her lack of interest in obtaining a public water supply. Furthermore, since names and locations cannot be attached to each of the proposed 568 “potential customers,” it is not known whether all of them are even Bona Fide Service Applicants. (A Bona Fide Service Applicant is defined in 52 Pa. Code §65.1, which specifically excludes: (i) “an applicant requesting water service to a building lot, subdivision or a secondary residence” and (ii) a “request for service [that] is part of a plan for the development of a residential dwelling or subdivision.”)

In summary, the number of customers is an important variable in the application of the Commission’s regulation and Rule 27 of the Company’s tariff because it determines the level of the Company-required investment. Moreover, under the Commission’s regulation a “customer” is “a party contracting with a public utility for service.” 52 Pa. Code §65.1. Nothing in the Company’s tariff or the Commission’s regulations permits the Company investment to be calculated on the basis of estimates or extrapolations, which would have the added defect of placing upon the Company (and its existing customers) the entire risk that the “estimate” will not materialize.

C. The Commission-Approved Formula For Calculating Utility-Required Investment

The Commission’s regulations contain a formula for calculating the amount a utility may be required to invest in main extensions requested by Bona Fide Service Applicants. Under that formula, an investment is required if the annual revenue will

equal or exceed the utility's operating and maintenance expenses, depreciation and debt costs. If the annual revenue is not sufficient to cover those costs, the Company is permitted to request, as a condition for extending its mains, a contribution for the cost of the installation not covered by annual revenue. The formula set forth in the regulations is:

X = [AR – OM] divided by [I + D]; and,
 AR = the utility's annual revenue
 OM = the utility's operating and maintenance costs
 I = the utility's current debt ratio multiplied by the utility's weighted long-term debt cost rate
 D = the utility's current depreciation accrual rate

Using PAWC data, the application of the foregoing formula results in a *Company-required investment for each residential Bona Fide Applicant of \$6,200*, calculated as follows:

Average Annual Revenue		\$ 424
Less: Operating and Maintenance Expense		<u>104</u>
Subtotal		\$ 320
Divided by:		
Depreciation Rate for 8" Mains	1.08%	
Plus: Weighted Cost of Debt	4.08%	
Composite Rate:		0.0516
Company Investment		\$6,200

The total investment PAWC may be required to invest in the Mount Pleasant project is a function of the \$6,200 per customer investment figure¹⁰ and the number of

¹⁰ The investment of \$6,200 per customer is substantially greater (2.7x) than PAWC's investment in existing facilities serving its existing customers, which is \$2309, as reflected in the final Order in the Company's most recent base rate case. (continued).

residential-equivalent customers that actually take service from the Company upon completion of the project. As noted before, the Company is not required to use estimates or projections of “potential customers” to calculate its investment. By the same token, if additional customers decide to attach directly to the mains installed with customer contributions after the project is completed, a true-up mechanism assures that the original Bona Fide Service Applicants – not the Company – get the benefit of that growth (PAWC St. 3.1, p. 2). In that event, customers added at any time up to 10 years after the contributions are paid will trigger refunds to the original contributors equal to their per-customer contributions (PAWC St. 3.1, pp. 2-3; Tr. 348).

D. Public-Private Partnerships

PAWC has been successful in addressing regional water supply issues, like those in Mount Pleasant Township, through effective use of public-private partnerships. As Mr. Lucas explained, there are three recent examples in Washington County alone where PAWC was able to introduce a public water supply with the cooperation of the affected Townships, which paid the customer contribution on behalf of their residents (PAWC St. 1.1, pp. 8-9). In fact, Chartiers Township, located immediately to the south of Mount Pleasant, agreed to bear customer contributions totaling \$880,000 to make a public water supply available to residents in one part of that Township (PAWC St. 1.1, p. 8).

In addition to paying the customer contribution, municipalities can help facilitate

Pa. P.U.C. v. Pennsylvania-American Water Company, Docket No. R-00016339 (January 25, 2002), 2002 Pa. PUC LEXIS 1 (p. 2 and Table 1) (Total rate base divided by 562,000 customers.) This comparison is even more telling when it is considered that PAWC’s existing rate base includes far more than just the cost of mains.

the completion of a water supply project by enacting a mandatory connection ordinance, thereby assuring that a specified, minimum number of actual customers is known in advance. Or, either in lieu of, or in addition to, such an ordinance, the municipality could “underwrite” a specific, minimum number of connections. Then, if any of the property-owners on whose behalf the municipality paid the contribution were to later take water service, the municipality could be reimbursed from the property-owner for that earlier payment (PAWC St. 1.1, p. 8).

If Mount Pleasant Township were to either adopt a mandatory connection ordinance or underwrite the number of customers such an ordinance might produce (i.e., approximately 744 residential equivalent accounts, according to the OCA), the contribution could be reduced to \$2,255 per residential customer (PAWC St. 1.1, pp. 6, 8 and 10; PAWC St. 3.1, pp. 5-6). In that case, the customer contributions could be financed at no net increase above the level of expenses most Township residents already incur to obtain water, which expenses would cease when a public water supply is available (PAWC St. 3.1, pp. 6-10).

As this Commission is well aware, given the size and scope of projects designed to bring a public water supply to an entire township, effective partnering between the utility and the municipality is essential to getting the job done in an efficient, cost-effective manner. Unfortunately, Mount Pleasant Township has not expressed any willingness to enter into such a partnership in this instance.

E. Causes Of The Degradation Of Groundwater Supplies In Mount Pleasant Township

The evidence adduced at the September 9, 2002 public hearing points to three

major causes for the degradation of groundwater supplies in Mount Pleasant Township: (1) malfunctioning or improperly installed septic systems; (2) the character of the Township – a rural area with substantial land devoted to livestock pasture; and (3) the history of underground mining in the area. Malfunctioning septic systems and livestock are the source of *e coli* and fecal coliform contamination. Coal mining has degraded both the quality and quantity of the groundwater (PAWC St. 1.1, pp. 10-11).

There are no public sewers in most of Mount Pleasant Township and, in the past, the Township did not require permits before homeowners could build individual on-lot septic systems (Tr. 100; PAWC St. 1.1, p. 11). As a result, some – perhaps most – of those systems were built in areas that do not “percolate” or were built too close to water wells. Even after permitting was required, septic systems were improperly installed and maintained (Tr. 198-202). The Township does not currently have any form of on-going health inspection program to identify such problems and mandate that homeowners fix them in order to prevent public health problems. In fact, the Township is only now looking into such a monitoring program to try to comply with the Sewage Facilities Act (Tr. 203; PAWC St. 1.1, p. 11)

Because Mount Pleasant Township is a predominantly rural area, keeping livestock is consistent with local zoning and land use regulations. Based upon the testimony from the September 9 hearing, it is apparent that many – if not most – current residents moved to the Township, or remain there, because of its rural nature (Tr. 131) and their desire to keep livestock on their property (Tr. 97-98; PAWC St. 1.1, p. 11).

F. The Township Will Realize Substantial Benefits From The Introduction Of A Public Water Supply

Testimony at the September 9 hearing established that all property-owners in Mount Pleasant Township would experience monetary benefits from the introduction of a public water supply. Fire insurance premiums will decrease (Tr. 118, 189), and the value of existing homes and businesses will increase (Tr. 67, 152, 224 and 256). In addition, local government officials testified that installation of a public water system would unleash “growth” within the Township, including commercial and business development that would lead directly to increases in the tax base (Tr. 159). The Township would also get more business tax revenue if commercial and business development materializes, as a number of government official believe will be the case (Tr. 99, 159-61). A growing tax base, as those witnesses project, could more than offset the Township’s expenditures to fund a portion of the customer contribution for the project the OCA proposes (PAWC St. 1.1, p. 9). Where, as here, the Township’s actions and omissions have directly contributed to the degradation of groundwater supplies about which its residents complain, and the Township also stands to realize substantial benefits from the installation of a public water supply, it is not unreasonable for this Commission to expect the Township to share some of the burdens associated with bringing that water supply to itself and its citizens.

G. Customer Financing Of Contributions

Section 65.22(a) (1) of the Commission’s line extension regulation requires a water utility to “allow the applicant to pay the advance over a period of not less than 3 years, with the utility recovering financing costs equal to the utility’s weighted cost of long term debt” and further provides that the utility “may require the applicant to deposit

up to one-third of the total customer advance prior to extending service.” PAWC’s Rule 27 allows applicants to finance their customer contributions on these terms (1/3rd down and the balance over three years with interest at its weighted long-term debt cost rate). In addition, the Company has expressed its willingness to liberalize these financing terms if that would resolve the current controversy (Tr. 350).

In addition, Section 65.22(a) (2) requires water utilities to “provide information to the customer on financial institutions that may offer financing to the customer for the line extension.” Mr. Diskin provided this information on the record in this case. Specifically, he identified three banks in Washington County that, in October 2002, were offering home equity loans at 4.75% (PAWC St. 3.1, p. 7)¹¹. Mr. Diskin also explained that such a loan could be used to finance a customer contribution of \$2,255 at a monthly pre-tax cost of \$24.51. And, because some portion thereof would be tax-deductible, the after-tax cost would be even less (PAWC St. 3.1, pp. 7-8). That amount, plus PAWC’s average residential water bill, would be the same or less than the expenses most Township residents would cease to incur if a public water supply were to become available (PAWC St. 3.1, pp. 7-10).

H. Reasonable Burden-Sharing Should Occur When Main Extensions Are Requested

As the Commission made abundantly clear in its regulations and its final Order adopting them, it does not believe that public water utilities (and their existing customers)

¹¹ After Mr. Diskin submitted his testimony, the Federal Reserve reduced the discount rate by another 50 basis points, which is likely to drop the indices used for many home equity credit facilities.

should bear a disproportionate cost burden when facilities are installed to serve Bona Fide Service Applicants. Some degree of burden-sharing is appropriate and necessary.¹² The evidence in this case demonstrates that, by investing \$6,200 per customer, PAWC is making a substantial and appropriate contribution to addressing regional water supply problems in the Mount Pleasant area of Washington County. It is reasonable to expect the Township and its residents, who will realize substantial monetary and non-monetary benefits from the introduction of a public water supply, to share some portion of that burden as well. Indeed, the substantial and un rebutted evidence in this case shows that the Township and its residents can help defray the cost of the facilities they desire at minimal – or no – incremental expense to either.

¹² As the Commission is well-aware, the legacy of coal-mining in Pennsylvania assures that the kinds of groundwater problems that surfaced in this case are pervasive throughout Washington County and, indeed, Western Pennsylvania. Problems of this magnitude should not be laid at the doorstep of water utilities alone. Certainly, PAWC is willing to do its share. However, even its resources will be stretched or exhausted if the OCA's conception of how to solve such problems were applied throughout PAWC's service territory.

IV. ARGUMENT

A. The Complainants' Legal And Evidentiary Burdens

Paragraph 6 of the Prehearing Order in this case states as follows:

The Complainant bears the burden of proof in this proceeding and must show by a preponderance of the evidence that the Respondent has violated the Public Utility Code or a regulation or an Order of this Commission so that the Complainant is entitled to the relief requested in the complaint. (Emphasis in the original.)¹³

No party in this case disputes the allocation of the burden of proof set forth in the Prehearing Order. More importantly, the pleadings and evidence in this case show that none of the Complainants even allege that PAWC “has violated the Public Utility Code or a regulation or an Order of this Commission.” To the contrary, the gist of the OCA’s argument on behalf of all the Complainants is that PAWC is adhering too closely to the Commission’s line extension regulations and its own tariff (OCA St. 1A, p. 6, lines 12-13), and the Complainants should be granted a waiver from the application of both (Tr. 421). Under these circumstances, the Complainants bear a very heavy and – given the facts in this case – insurmountable burden.

The allocation of the burden of proof in the Prehearing Order is fully supported by

¹³ The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even a small amount, than the evidence presented by the other side. If the evidence is co-equal, the party with the burden of proof loses. *Morrissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1987); *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 134 Pa. Cmwlth. 218, 221-22, 578 A.2d 600, 602 (1990). In addition, the Commission’s findings of fact must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. More than a “trace of (continued).

Section 332(a) of Public Utility Code (66 Pa. C.S. §332(a)) (“[T]he proponent of a rule or order has the burden of proof.”) That burden is magnified because, as noted above, the Complainants are asking the Commission to set aside both a duly-approved tariff rule and the Commission regulation on which it is based.

1. Commission-Approved Tariff Provisions Are Prima Facie Reasonable

Tariff provisions, like PAWC’s Rule 27 in this case, once approved by the Commission, are legally binding on the utility and its customers. *Brockway Glass Co. v. Pa. P.U.C.*, 63 Pa. Cmwlth. 238, 437 A.2d 1067, 1070 (1981). Tariff provisions previously approved by the Commission are deemed *prima facie* reasonable as a matter of law. *Zucker v. Pa. P.U.C.*, 43 Pa. Cmwlth. 207, 401 A.2d 1377 (1979). Consequently, a party challenging a duly adopted tariff rule “carries a very heavy burden,” as the Commonwealth Court held in *Shenango Township v. Pa. P.U.C.*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996):

Because Pennsylvania courts have repeatedly held that tariff provisions previously approved by the PUC are *prima facie* reasonable, *Zucker v. Pennsylvania Public Utility Commission*, 43 Pa. Cmwlth. 207, 401 A.2d 1377 (Pa. Cmwlth. 1979), a complainant seeking to evade the effect of an existing tariff provision, such as Shenango, carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. *Id.*; *see also Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 63 Pa. Commw. 238, 437 A.2d 1067 (Pa. Cmwlth. 1981). The PUC held Shenango did not meet this burden, and

evidence or a suspicion of the existence of a fact” is required to establish a fact. *Norfolk and Western Railway v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980).

following our review of the record, we must agree.¹⁴

Accord Paul Kossman t/a Kossman Development Company v. Pa. P.U.C., 694 A.2d 1147, 1154 (Pa. Cmwlt. 1997) (Upholding an electric utility's line extension tariff that conformed to the Commission's directive in a generic order on utility line extension policies.); *Lynch v. Pa. P.U.C.*, 140 Pa. Cmwlt. 599, 594 A.2d 816 (1991), *appeal denied* 529 Pa. 670, 605 A.2d 335 (1992) (Upholding a water utility's tariff rule requiring a residential customer to advance the cost of a requested main extension.)

The primacy and binding effect of a utility's tariff is also incorporated in Section 1303 of the Public Utility Code (66 Pa. C.S. §1303), which mandates a utility's adherence to its tariff. *See Pennsylvania Electric Co. v. Pa. P.U.C.*, 663 A.2d 281, 284 (Pa. Cmwlt. 1995) ("Tariffs have the force and effect of law and are binding on both the utility and the customer. *Brockway*. The Code contains no specific authority for a tariff waiver granted by the Commission.")

2. A Regulation Has The Force And Effect Of Law; Binds The Regulator As Well As the Regulated; And Is "Finally Determinative" Of The Issues It Addresses

The Commission has the authority to make regulations, not inconsistent with the Public Utility Code, as may be necessary or proper in the exercise of its powers or for the performance of its duties. 66 Pa. C.S. §501(b). Pursuant to this specific grant of authority, the Commission adopted its line extension regulation. *See 27 Pa. Bull.* at 804 (Stating that the regulation was adopted pursuant to, *inter alia*, Sections 501, 504, 505,

¹⁴ In *Shenango, supra*, the Commonwealth Court upheld a Commission decision finding that PAWC's requirement that Shenango Township advance the cost of constructing main extensions to serve its residents was lawful and appropriate.

506, 1301 and 1501 of the Public Utility Code.) The Commission's regulation was adopted in a manner that comported fully with the technical and formal requirements of the Commonwealth Documents Law (45 P.S. §1201 *et seq.*), and no one has challenged it on that basis. Finally, in accordance with the requirements of the Regulatory Review Act (71 P.S. §745.5(a)), the Commission submitted the regulations and all of the comments thereon to the IRRC and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. The Committee on Consumer Affairs did not oppose the adoption of the regulations. The Senate Committee and the IRRC affirmatively approved them. *27 Pa. Bull.* at 799.

It is well established that a duly enacted regulation of an administrative agency has the "force of law." *Pennsylvania Human Relations Commission v. Norristown Area School District*, 473 Pa. 334, 350, 374 A.2d 671 (1977) ("A properly adopted substantive rule establishes a standard of conduct which has the force of law.") As such, regulations bind the agency that adopted them as well as the entities over which the agency has jurisdiction. *Good v. Wohlgemuth, Secretary of Welfare*, 15 Pa. Cmwlt. 524, 327 A.2d 397 (1974) ("Authorized regulations of an administrative agency have the force and effect of law and bind the agency equally with others.") As a consequence, an agency cannot "ignore or fail to apply its own regulations." *Teledyne Columbia-Summerhill Carnegie v. Unemployment Compensation Board of Review*, 160 Pa. Cmwlt. 17, 23, 634 A.2d 665 (1993).

The substantial body of administrative law determining the binding effect of regulations is directly applicable to the PUC, as the Commission itself has held:

The most frequently noted distinction between a regulation and statement of policy is that *a regulation has the force and effect of law and is finally determinative of the issue*, whereas a statement of policy is merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications. This distinction has developed based on Federal and State court decisions.

* * *

A regulation has the force and effect of law *and is unequivocally determinative of the issue*. *Pennsylvania Human Relations Commission v. Norristown Area School District, Baker v. Department of Public Welfare*, 93 Commw. Ct. 632, 502 A.2d 318 (1985) and *Lopata v. Pa. Unemployment Compensation Board of Review*, 507 Pa. 570, 493 A.2d 657 (1985). (Emphasis added.)

Statement Of Policy On Expanded Interconnection For Intrastate Special Access, Docket No. M-00920376 (February 11, 1993), 1993 Pa. PUC LEXIS 5 (pp. 56-57).

As the foregoing authorities establish, a regulatory agency is not free to apply or depart from its substantive regulations on a case-by-case basis. Indeed, even if those strictures imposed by appellate court precedent did not exist, the Commission made it clear in its final Order that the line extension regulations were adopted for the express purpose of supplanting case-by-case adjudication, which experience had shown to be unacceptable. *See 27 Pa. Bull.* 800 (One major purpose of the regulation is to “eliminate uncertainty and greatly reduce the litigation in this area.”)

B. The OCA’s Position Presumes Numerous Departures From The Most Fundamental Elements Of The Commission’s Regulation And The Company’s Tariff

The OCA believes that the Company is at fault for expecting “strict” adherence to the terms of its tariff (OCA St. 1A, p. 6; Tr. 421-22). However, the Company believes that the application of its tariff is appropriate because it is applying the plain language

thereof in accordance with its well-accepted meaning and Commission regulations and orders. However, as the testimony of the OCA's witnesses in this cases shows, the OCA is not seeking merely a less "strict" application of the Company's tariff and the Commission's line extension regulation, but a drastic departure from several of the most fundamental aspects of both. In fact, the OCA's position is built upon an entire matrix of proposed modifications that run counter to the letter and spirit of the Commission's line extension regulation. Not only is the OCA's proposal contrary to the law, it would unravel the well-considered "balance" of stakeholder interests that the Commission worked hard to achieve during the three-year rulemaking that culminated in its line extension regulation. *See 27 Pa Bull at 800.*

1. The Number Of "Bona Fide Service Applicants" Is Not Known

The number of Bona Fide Service Applicants is not known. The OCA expects PAWC and the Commission to rely upon its estimate of the number of "potential customers" within its project footprint to determine the Company-required investment in this case. This proposition is wrong for several reasons.

First and most importantly, the concept of a Bona Fide Service Applicant is that each actual applicant for service represents a dwelling or business that will become a customer and also meets all of the other elements of the Commission's definition (52 Pa. Code §65.1). For this reason, the Commission has set out a formula that uses a specified revenue stream to determine the level of utility-required investment. In short, the existence of a Bona Fide Service Applicant and the certainty of the applicant becoming a customer are the essential pre-conditions to the utility's investment.

If, as the OCA assumes, the number of Bona Fide Service Applicants is a matter of speculation and “estimates,” the concept of the Bona Fide Service Applicant, as it has developed under Commission and appellate court precedent, simply does not exist. No legal principle in this area is more deeply engrained than the proposition that a utility should not be required to invest its own funds to extend facilities into areas where the number of actual customers and the extent of the use of its facilities is “speculative.” *George Hyam Associates, Inc. v. Pennsburg Water Company*, 39 Pa. P.U.C. 622 (1962), appeal dismissed 184 A.2d 414 (1962); *Southboro Homes, Inc. v. South Pittsburgh Water Company*, 35 Pa. P.U.C. 685 (1958). See also *Lynch v. Pa. P.U.C.*, *supra*. For this reason, the Commission has consistently approved tariff rules requiring applicants for main extensions to new developments to advance the cost thereof subject to credits or refunds, based on the “35 foot” rule, for customers actually taking service. Indeed, this provision is also embodied in PAWC’s tariff (Rules 23 and 23.3) and the tariffs of all major water utilities in the Commonwealth.

Second, because the OCA’s “estimate” is based upon a non-binding Questionnaire from which the OCA made a further extrapolation, names and locations cannot be matched for some 138 of the 568 “potential customers” included in the OCA’s estimate (OCA St. 2A, p. 4; Tr. 394). Therefore, no basis exists to determine whether the extrapolated portion of the estimate represents Bona Fide Service Applicants as defined by the Commission. Rather, this is just more speculation by the OCA.

Third, the use of an “estimate” places upon the utility the entire financial risk that the “potential customers” assumed in calculating the Company’s investment will actually materialize (Tr. 392-94; PAWC St. 1.1, p. 5). That risk allocation is wrong and is totally

contrary to the “balance” of risks and rewards embodied in the Commission’s regulation. The generous investment allowance of \$6,200 per residential customer derived from the PUC line extension regulation is premised upon the concept that Bona Fide Service Applicants are named individuals, at known locations, and it is certain that they will take service when the facility extensions are completed. If that were not the case, there would be no justification for including their “revenue” in the calculation of the Company-required investment in the first place.

Finally, the OCA’s “estimate” is unsupported, theoretically wrong and vastly overstated. The stating point was a non-binding Questionnaire that asked whether the recipients would be interested in taking water service if they could do by paying only a nominal application fee and the Company’s tariff rates for water use. Consequently, even the 430 positive responses tell us nothing about those responders’ interest in water service if any other costs were to be imposed. Simply stated, the OCA assumed its desired result by crafting a Questionnaire that presupposed no customer contributions would be necessary.

Additionally, and as previously explained in Section III.B., *supra*, the OCA extrapolated from 430 positive responses based on the assumption that those who did not respond to the Questionnaire would answer the same way as those that did. No principle of statistical analysis supports that kind of extrapolation. More importantly, it is contrary to commonsense. If a party had so little interest in obtaining water service as not to respond to the Questionnaire at all, it should not be assumed that fully 81% thereof would affirmatively seek a public water system and become a customer thereof if one were

built.¹⁵

Thus, it is incontrovertible, on this record, that the number of Bona Fide Service Applicants is not known and, under any set of circumstances, would be far less than the “estimate” of 568 advanced by the OCA. That variable is an essential input for applying the Company’s Rule 27, and the line extension regulation on which it is based, in order to determine the level of Company-required investment and the customer contribution. As things now stand, neither is possible. However, as explained in Section III.H., *supra*, and Section IV.C., *infra*, there are things that Mount Pleasant Township could do, at little or no burden to itself, to help nail down – and maximize -- the number of Bona Fide Service Applicants. However, even that minimal level of cooperation – which has been provided by other municipalities in similar circumstances -- has not been forthcoming.

2. The Possibility Of “Growth” Cannot Make Up For Other Deficiencies In The Complainants’ Case

The possibility that new customers might be added after the OCA-proposed project is completed cannot make up for the fundamental deficiencies in its case. Trying to justify a utility’s investment today based on the possibility additional customers might appear in the future is precisely the kind of “speculative” investment the Commission and the courts have held should not be made with the utility’s funds. *See George Hyam*

¹⁵ The OCA’s Questionnaire also asked (Question 2): “Do you have enough good quality water.” As evidenced by the completed Questionnaire examined at the hearing (Tr. 427), some respondents answered that they do have “enough good quality water” but nonetheless desired a public water supply. In those instances, the respondent would not satisfy even Ms. Kraus’ relaxed definition of a Bona Fide Service Applicant evincing a “public need” for water service (Tr. 422). Perhaps, for this reason, the OCA did not review or tabulate the responses to Question 2 of its survey before submitting its testimony (Tr. 427).

Associates, Inc. v. Pennsburg Water Company, supra. Consequently, the “growth” argument is contrary to the policy underlying the Commission’s regulation and its express terms.

Furthermore, such argument overlooks the fact that the regulation and the Company’s tariff have a built-in mechanism to address the possibility of “growth” in a manner that is fair and equitable to the initial contributors. As previously explained (*see* Section III.C., *supra*), the initial contributors get refunds for each addition customer that attaches directly to the customer-funded main extensions. Thus, while the Company does not bear the risks associated with speculative “estimates” of “potential customers,” its tariff assures that the original contributors get the benefit of future customer growth not factored into the calculation of Company-required investment (PAWC St. 1.1, pp. 2-3; Tr. 348).

The OCA’s witnesses gloss over the refund provisions in the Company’s tariff. Presumably, they would expect refunds to be paid despite the fact that, under their proposal, the Company would bear the risks inherent in using estimates of “potential customers” to calculate its investment responsibility. Obviously, that proposition is fundamentally unfair, since risks and rewards would be completely out of line. This internal inconsistency in the OCA’s proposal underscores yet again the “balance” of stakeholder interests struck by the Commission’s regulation. And, it shows why the various departures from the regulation advocated by the OCA upset that balance in ways the OCA has not even envisioned.

3. The Commission's Regulation Specifies The Interest Rate To Be Used In The Revenue-Justified Investment Formula

As previously explained (Section I.D., *supra*), the OCA also proposed to depart from the Commission's regulation and the Company's tariff by substituting, in the required investment formula, a "PennVest" loan interest rate. To do so is wrong for a variety of legal, conceptual and factual reasons, as explained below. However, the OCA's basic assumption -- that using the "PennVest" loan rate in the formula would increase the Company-required investment enough to eliminate the need for customer contributions -- is itself based on a number of subsidiary assumptions, all of which are unproven and plainly wrong.

First, the "PennVest" loan rate assumed by OCA witness Kraus is simply the introductory or "tickler" rate applicable for the first five years (1.387%). The rate jumps to 2.774% for years 6 through 20, i.e., 75% of the loan term (PAWC St. 3.0, p. 5). Thus, the actual "PennVest loan rate" is not less than 2.427%, which is the weighted average interest rate over the entire term of such a loan (PAWC St. 3.0, p. 5).

Second, and as previously explained, the OCA assumes that an "estimate" of Bona Fide Service Applicants could be used to calculate the Company-required investment, and the estimate should be as much as 568. It is wrong on both counts.

Third, the OCA assumes that Mr. Fought's assessment of the facilities to be installed and his unreasonably low estimate of the associated cost of the project (\$5,303,352) can and should be used. This is also wrong for reasons set forth in greater detail in Section IV.D., *infra*.

As can be seen, even if one were to accept the notion of using a “PennVest” loan rate as a surrogate for the utility’s weighted average cost of long term debt, other defects in the OCA’s position make its conclusion – that no contribution should be required – unsustainable. Using the correct PennVest loan rate and the OCA’s projection of Bona Fide Service Applicants, the Company investment is still below even Mr. Fought’s low-ball estimate (\$5,183,000 versus \$5,303,352).¹⁶ Even a modest reduction in the customer count makes the problem far worse¹⁷, as shown in the table below, where total utility investment is calculated based on a per-customer amount of \$9,125 at various customer levels:

Bona Fide Applicants	Total Utility Investment
550	\$5,018,750
525	\$4,790,625
500	\$4,568,500
475	\$4,334,375
450	\$4,106,250
430	\$3,923,750

Using the Company’s more realistic estimate of the cost of the project

¹⁶ The investment figure of \$5,183,000 is derived in the manner shown in Section I.D., *supra*.

¹⁷ Since the project cannot be done without some level of customer contribution, the OCA’s “estimate” of “potential customers” is invalid. As previously explained, that estimate was based upon answers to a survey eliciting recipients’ interest in becoming customers only if they could do so without paying any customer contribution.

(\$6,290,499) (PAWC St. 1.1, p. 4), the assumed Company investment based on an estimated 568 Bona Fide Service Applicants (\$5,183,000) is far short of what is needed to complete the project without customer contributions.

Of course, all of the foregoing assumes that it would be lawful and permissible to modify the utility-required investment formula in the manner the OCA advocates. For a variety of reasons, the OCA's position is not correct, as explained below. However, at the outset, it must be emphasized that the Company does not oppose the OCA's proposed amendments to the formula simply because it wants to adhere to a technical reading of the regulation and its own tariff. The OCA's proposed changes have consequences; they would have a real and substantial effect on the Company's return and revenue requirement currently and in future rate proceedings.

In addition, the OCA is clearly proposing a paradigm that, if accepted in this case, the Commission could not avoid following in the future. In that event, the adverse financial consequences identified by the Company would grow geometrically. And, along the way, the OCA's assumption that PennVest funding is unlimited and will always be available will undoubtedly be proven wrong. As the Commission is well aware, the bulk of PennVest funding is reserved for municipal systems, and the ability of investor-owned utilities to tap into it at all is a new development.

As Mr. Diskin explained, there are three major problems with the OCA's proposal to use a PennVest loan rate in the Commission's investment formula. First, it is contrary to the line extension regulation itself, which specifies the interest rate to be used in the formula as follows: "I = the utility's current debt cost ratio multiplied by the utility's

weighted long-term debt cost rate.” This provision is consistent with the Commission’s overall approach of using “reasonably-developed company averages” in the investment formula rather than “spot” or “customer-specific” data, as the Commission explicitly stated in its October 7, 1996 final Order. 27 Pa. Bull. 801 (Note 3). Just as the Commission does not use customer-specific data for the Bona Fide Service Applicant’s revenue or the expenses of serving that applicant, so too, it does not attempt to “unbundle” the utility’s various debt issuances to identify those used to finance the specific main extension requested by the applicant.

Second, it would be inherently unfair to “target” a low-cost PennVest interest rate to a specific project while continuing to use the Company’s weighted average long-term debt cost for all other main extension requests. This theory implies that a specific interest rate is “targeted” to a particular main extension only when it is lower than the Company’s average debt cost. The effect of Ms. Kraus’ proposed modification is to always require the lower of: (1) the interest rate for the specific debt instrument financing a particular main extension; or (2) the Company’s weighted average long term debt cost rate.

Nothing in the Commission’s regulation supports that interpretation, and there is good reason to reject it. Because the low PennVest interest rates “targeted” to specific projects would have to be removed from the weighted average debt cost calculated for all other projects,¹⁸ the non-PennVest funded projects would carry a correspondingly higher debt component and lower Company-required investment than would otherwise be the case

¹⁸ The “targeted” funding could not be counted twice – once to calculate the “targeted” investment for specific main extensions and again in the calculation of the Company’s average debt cost for all other projects.

(PAWC St. 3.1, p. 11). In short, it is a zero-sum game, with some applicants benefiting a great deal and others actually suffering a detriment. To prevent such differential treatment of applicants based on differences in funding sources, the Commission specified the use of the weighted average cost of debt for all main extensions.

Third and finally, Ms. Kraus overlooked the significant ratemaking implications of what she proposed. At page 8 of OCA Statement No. 2A, she states that, in PAWC's next base rate case, "this PennVest loan would be added to the total debt in PAWC's capital structure at the appropriate rate, i.e., either 1.378%, 2.774% or a combination thereof . . ."¹⁹ As Mr. Diskin explained (PAWC St. 3.1, pp. 11-12), this is the regulatory equivalent of the OCA eating its cake and having it too, by counting the same low-interest rate twice (Tr. 357-58). First, Ms. Kraus proposes to use the PennVest loan rate in the formula to calculate the Company-required investment. This can be done only if it is conclusively presumed that the PennVest money finances the main extensions in question. Indeed, Ms. Kraus admitted as much (Tr. 427-28). However, she also proposes to include the same funds – and their associated low interest rate – a second time in calculating the Company's weighted debt cost in a subsequent base rate case. To do so requires the further – and inconsistent – assumption that the very same funds are used to finance, on a pro-rata basis, all the rest of PAWC's rate base (PAWC St. 3.1, pp. 11-12).

¹⁹ This proposal by Ms. Kraus appears in the context of a broader discussion, the thrust of which is that, because PAWC will eventually put these main extensions in its rate base, it does not matter how much PAWC invests to fund them. As explained above, because of the inter-relationship between the interest rate used in the revenue-justified investment formula and the debt cost rate used in a subsequent rate case, this issue matters very much to PAWC. Ms. Kraus errs for an additional reason. She ignores the impact of her proposal on PAWC's other customers – who are also important stakeholders in all of this.

Obviously, both cannot be true. By appropriating the benefit of low-interest PennVest financing twice, the OCA assures that one of those “benefits” comes out of the Company’s pocket.²⁰ In fact, Mr. Diskin was able to quantify this effect. Mr. Diskin explained the concept underlying his calculations, as follows (PAWC St. 3.1, p. 12):

If the 1.387% loan rate is assumed to finance only the Mount Pleasant Township main extensions, as Ms. Kraus proposes, then that interest rate would be applied to determine the Company’s return on that specific investment ($\$6,290,499 \times 1.387\% = \$87,249$). Pennsylvania-American’s debt ratio and debt cost, without regard to the PennVest financing, should, therefore, be used to calculate PAWC’s weighted overall cost of capital for ratemaking for all other rate base. The ratios and cost rates determined in the Company’s last rate case are shown on Exhibit No. 3.3, as applied to Pennsylvania-American’s Commission-determined rate base in that case of \$1,297,613,716. As shown, the return is \$112,892,393. Adding the return from the PennVest funded assets, the total is \$112,979,642.

Thus, Exhibit No. 3.3 shows the total return when the PennVest loan rate is applied to the main extension investment financed with those funds. Then, in Exhibit No. 3.4, Mr. Diskin calculated PAWC’s total return as Ms. Kraus proposed and explained the results, as follows (PAWC St. 3.1, pp. 12-14):

The \$6,290,499 PennVest loan balance, at a cost rate of 1.387%, was included in PAWC’s weighted cost of capital, to calculate an overall rate of return that was applied to a

²⁰ The OCA’s insistence on doubling-up on the benefits of PennVest financing is part of its attempt to characterize its proposal as “win-win” for all of the stakeholders in this process (*See* Tr. 357-58). As the OCA portrays it, Bona Fide Service Applicants benefit by getting a higher Company-required investment, while the Company’s existing customers benefit from a lower debt cost rate in a subsequent base rate case. Overlooked in this “everybody is a winner” scenario is the fact that one of those “benefits” is at the direct – unreimbursed – cost of the Company.

total rate base that includes the \$6,290,499 investment for the main extensions Mr. Fought proposes. The total annual return is \$112,657,342 or \$322,318 less than that calculated on Exhibit No. 3.3. Over the five year period that the 1.387% rate is in effect, the total cumulative effect of that annual underrecovery would be substantial.

As Mr. Diskin demonstrated, in just the first five years of the PennVest loan, the cumulative impact on PAWC of the OCA's "double-dip" would be as much as \$1.6 million (\$322,318 per year x 5 years). However, the effect gets worse over the term of the PennVest loan, as Mr. Diskin also demonstrated (PAWC St. 3.1, p. 13):

Exhibits Nos. 3.5 and 3.6 show the same two calculations set forth in Exhibit Nos. [3.3] and [3.4], but reflecting two changes. First, the 2.774% interest rate in effect for the last 15 years of the PennVest loan term is used. Second, the PennVest loan balance has been reduced to reflect the principal that would have been repaid by the Company to PennVest over the preceding five years. As shown on Exhibit No. 3.6, the annual amount of Pennsylvania-American's underrecovery in year six of the PennVest loan is \$370,368. The annual underrecovery would continue in subsequent years, but would decrease in magnitude as the outstanding balance of the PennVest loan is paid down by the Company.

The cumulative effect of Ms. Kraus's proposal over the PennVest loan term would amount to several million dollars because the Company would bear the cost of the difference between its weighted average debt cost rate and the much lower PennVest loan rate on the approximately \$6.3 million of PennVest funded facilities installed in Mount Pleasant Township. As Mr. Diskin has clearly shown, under the OCA's proposal, not everyone is a winner.

It might be possible for the Commission to remedy the problem created by the OCA's proposal, but any such remedy would require a major change in the way return is

calculated in rate proceedings. And, since that change would, in turn, impact the calculation of revenue requirement, it could only be made in a base rate case or by giving due notice to the customers whose rates would be affected. *See Barasch v. Pa. P.U.C.*, 119 Pa. Cmwlth. 81, 104, 546 A.2d 1296, 1306 (1988) (“*Milesburg I*”) (Customers entitled to notice and opportunity to be heard before the PUC may make binding decisions likely to increase customers’ rates in a subsequent rate proceeding.) Adopting the OCA’s proposal without making a concomitant change in the way return is calculated for rate purposes would be a prescription for confiscation of PAWC property.

Analyzing the ratemaking implications of the OCA’s proposal is important not only because of the financial impact on PAWC, but also because it emphasizes, once again, the interconnectedness of the various elements of the Commission’s regulation on line extensions. The discussion of that regulation began by noting the considerable effort the Commission expended to achieve the correct “balance” of competing interests affected by its decision. Examining the individual components of the OCA’s proposal shows why each has a cascading effect that would ultimately undo the careful balance the Commission designed into its regulation.

C. Mount Pleasant Township Has Rejected A Public-Private Partnership That Would Facilitate The Introduction Of Water Service

In this case, the Complainants seek the installation of facilities to furnish water service throughout the populated portions of an entire rural township located in Washington County. While requests to serve an entire municipality are not common, neither are they unique. In fact, PAWC receives – and expects to continue to receive – many such requests throughout its service territory, which encompasses over 350

municipalities in 35 counties in Pennsylvania. To a very large extent, these service requests are resolved amicably and fairly by a public-private partnership between the Company and the municipal and/or county governments involved. Indeed, a public-private partnership is essential to addressing regional water supply issues caused by external forces – such as the pervasive coal-mining activities that, over time, have degraded the quality and quantity of groundwater supplies. The problems are too large, and the burdens – financial and otherwise – are too great to be shouldered entirely by water utilities.

Moreover, as the evidence in this case demonstrates (PAWC St. 1.1, pp. 9-11; PAWC St. 3.1, pp. 9-10; Tr. 159), the affected municipality may have contributed to regional water supply problems and, in the end, will reap substantial benefits from a public water supply (e.g., lower direct and indirect expenses, a greater tax base and enhanced fire protection capability). Under these circumstances, it is not unreasonable to expect a municipality to share some of the burden of bringing water service to its residents. Many municipalities through out the State reached the same conclusion and worked cooperatively with PAWC to address regional water supply issues (PAWC St. 1.1, pp. 8-9).

Mr. Lucas provided three recent examples in Washington County where municipalities partnered with PAWC to complete main extension projects for their residents by paying the cost in excess of the Company investment determined in accordance with Rule 27 and the Commission's regulation (PAWC 1.1, pp. 8-9). One of those projects involved Chartiers Township, located immediately adjacent to Mount Pleasant Township, which contributed \$880,000 to fund the installation of mains and a

booster pumping station that brought water service to its northern tier (PAWC St. 1.1, p. 8).²¹

Public-private partnerships do not always require a financial commitment by municipalities. In virtually every such partnership, the municipality adopted a mandatory connection ordinance, which requires the owner of improved property to connect to a public water main, if one is installed adjacent to its lot (PAWC St. 1.1, pp, 6-8). With such an ordinance, it is possible to get a fix on the number of customers that will attach to the main extensions. By eliminating this variable, the total utility-required investment can be determined with some certainty, and the amount of any contribution can be calculated.²² In addition, a mandatory connection ordinance will maximize the number of customers that must attach to the main, thereby maximizing the Company-required investment and minimizing the customer contribution, if one is needed (PAWC St. 1.1, p. 7).

A municipality can also help nail down the number of customers by underwriting

²¹ Chartiers' contribution funded the Gretna Booster, which is the pump station that would be used to supply Mount Pleasant Township (PAWC St. 2.1). Mr. Fought contends that the Gretna booster is sufficient, without the addition of a storage tank in Mount Pleasant, to serve the entirety of the Township (OCA St. 1A, p. 8). Thus, not only would Mount Pleasant benefit from the financial contribution of another municipality, but Mr. Fought proposes that the existing capacity of the Gretna Booster, which is currently available to serve potential future growth in Chartiers, be appropriated for Mount Pleasant, which is unwilling to contribute anything to bring water to its own citizens.

²² An applicant may be reluctant to agree to a main extension if the exact amount of the customer contribution is not known in advance. A mandatory connection ordinance or a municipal guaranty of a minimum number of connections (as explained above) are two ways that a public-private partnership can provide the specificity applicants desire.

a specific number of customers. That is, it could agree to pay the initial customer contribution for the difference between the underwritten "target" and the number of customers that actually materialize. If any of the property owners on whose behalf the municipality pays a contribution do not take service, but later decide to do so, the municipality can seek reimbursement (PAWC St. 1.1, p. 8). Thus, even if the municipality were unwilling to pay the entire difference between the project cost and the utility-required investment, it could "underwrite" a portion thereof, eliminate the customer count as a variable and, thereby, reduce the contribution that customers might have to pay.²³

Mount Pleasant Township's unwillingness to share any part of the burden of solving its regional water supply problem has a telling effect in this case. Short of paying all of the customer contributions, the Township could either pass a mandatory connection ordinance to assure that potential customers actually take service or it could "underwrite" the same number of customers. The OCA contends that the potential accounts located within the "footprint" of its proposed project might be as much as the equivalent of 744 residential customers, which would yield a total Company-required investment of \$4,612,800 (PAWC St. 1.1, p. 6). If these numbers are correct, the additional project cost of \$1,677,699 (\$6,290,499 - \$4,612,800) would require a per-customer contribution of \$2,255 (PAWC St. 1.1, p. 10).

²³ Municipalities, if they choose, can charge those costs back to their residents by *increases in property taxes or special utility assessments*. In either case, the recovery mechanism will assess taxpayers in proportion to the value of their property, which makes a good deal of sense, since one of the principal benefits of (continued).

As Mr. Diskin explained, a customer contribution of \$2,255 could be financed with a home equity loan (based on interest rates in effect in October 2002) with a monthly pre-tax payment of \$24.51 (PAWC St. 3.1, p. 7). (On an after-tax basis, the cost would be even less.) That amount, plus the cost of PAWC's average residential water bill (approximately \$35), is actually below the monthly water supply expenses most Mount Pleasant homeowners would cease to incur when public water is available. Homeowners would also realize insurance cost savings and increases in the fair market value of their homes (PAWC St. 3.1, pp. 9-10). If the homeowner did not want to pursue bank financing, then, he or she could obtain financing from PAWC at a monthly payment of \$46.58 (one-third down and the balance over three years with interest at PAWC's long-term debt cost), in accordance with PAWC's Rule 27 and the Commission's line extension regulation.

While there are many things Mount Pleasant Township could do to facilitate the resolution of its regional water supply problems, it is apparently unwilling to do any of them.²⁴ As a result, the OCA contends that PAWC must take up the slack and bear the entire burden of solving the regional water supply problems that affect the Township. That proposal is contrary to both the letter and spirit of the Commission's line extension

constructing a public water supply is to increase the market value of the property in the municipality (Tr. 159).

²⁴ Mount Pleasant's inaction stems in part from the significant number of residents who actively oppose the introduction of a public water supply. As a former Supervisor revealed, in 1989, the Township had the public funding in place to partner with PAWC for the installation of a water supply system throughout Mount Pleasant. However, this plan was never implemented because the Township Supervisors withdrew it in the face of strong public opposition (Tr. 107-108).

regulations. It is also inequitable to PAWC and its existing customers. And, most significantly, it sends exactly the wrong message to other municipalities throughout the Commonwealth that are looking for ways to address regional water supply issues.

Approving a departure from the Commission's regulations in order to address concerns within Mount Pleasant Township should not be viewed as a one-time, once-and-done matter. These kinds of problems persist throughout the State. Up to now, PAWC has been successful in creating effective public-private partnerships that share the burden of resolving such problems. In those cases, the municipalities and other stakeholders directly benefiting from the projects bore some part of the costs -- and took other non-monetary steps -- to facilitate project completion. These partnerships also maximized the effect of public grants that are available to municipalities, but not to PAWC. The continued success of these types of partnerships will come to a grinding halt if, as the OCA would lead municipalities like Mount Pleasant to believe, they can use the regulatory process to coerce public utilities (and ultimately the utilities' existing customers) to bear the entire burden of solving regional water supply problems. Indeed, other municipalities have already picked up this cue. *See Township of Collier v. Pennsylvania-American Water Company*, Docket No. C-20016207 (Complaint filed October 4, 2001).

D. The OCA Has Understated The Cost Of The Project Needed To Meet The Service Requirements Within Its Proposed "Footprint"

The OCA asks the Commission to accept an unrealistically low estimate of the cost of the facilities necessary to provide the service it and the other Complainants propose. The OCA's estimate (\$5,303,352) excludes the cost of both a storage tank and

the incremental cost of installing 12-inch diameter (rather than 8-inch diameter) mains in certain critical locations. The storage tank and the 12-inch mains are both needed to provide adequate capacity for general and/or fire protection service throughout the “footprint” delineated by the OCA (OCA St. 2.1). The storage tank is also essential to establish and stabilize system water pressure and to meet well-accepted standards for service reliability given the size of the service area, its the population and the lengthy runs of main needed to get to the Mount Pleasant/Hickory area (PAWC St. 2.1, pp.2-3).

At the outset, the Company’s Commission-approved tariff must be consulted.

PAWC’s Tariff Rule 27.1 (B) (Tariff Water-PA P.U.C. No.4, page 71) states as follows:

The Company shall have the exclusive right to determine the type and size mains to be installed and the other facilities required to render service.

The foregoing provision has been in the Company’s tariff for many years and has been reviewed and accepted by the Commission on many occasions, including the Commission’s approval of the tariff supplement filed by PAWC in response to the Commission’s line extension regulation. Similar provisions exist in the tariffs of other major water utilities.

The need for tariff provisions like Rule 27.1(B) is evident. Under Section 1501 of the Public Utility Code, a utility has the non-delegable duty to assure safe and reliable service to its customers. That duty must be accompanied by the authority to determine the size and character of the facilities the utility will install to meet its statutory obligation. Were that not the case, applicants for service who must bear the cost of a facility extension would always opt for the cheapest way out regardless of the potential

for adverse effects on service quality and reliability down the road. For that reason, the cases are legion where the Commission has enforced tariff rules like the Company's. For example, in *Barna v. Western Pennsylvania Water Company*, 53 Pa. P.U.C. 500, 503 and 504 (1979), the Commission upheld a utility tariff rule under which a 6-inch main extension had to be installed to serve the applicant despite the applicant's protestations that a one-inch service line was adequate for his needs and was the "least cost" alternative to providing the service he requested:

While it is true that the complainant has an interest in obtaining water service at the cheapest possible expense, the respondent also has an interest in promoting an efficient water delivery system.

* * *

To allow complainants to run a one-inch service line up or down Orchard Street would not only violate respondent's tariff but it would also foster bad waterworks. . . . The ultimate goal of the commission's regulations and the respondent's tariff . . . is the development of a safe and efficient water delivery system that will benefit all ratepayers.

Furthermore, the Company's tariff rule reflects a principle repeatedly reaffirmed by the Commission and succinctly stated in its holding in *Radoff v. The Langhorne Spring Water Company*, 47 Pa. P.U.C. 690, 692 (1976):

It is the prerogative of respondent's management to determine the character, size and location of all water main facilities necessary to provide adequate and reasonable continuous service to customers throughout its authorized service area.

Accord Hershey Church of the Nazarene v. Keystone Water Company, Docket No. C-844227 (May 13, 1985) (The utility's decision to install 12-inch rather than smaller

diameter mains would not be second-guessed.); *Duane Flaherty v. Western Pennsylvania Water Company*, Docket No. C-850157 (November 13, 1985) (A utility's decision as to the size and character of facilities to be installed will not be overturned unless it is "unreasonable or unfairly discriminatory."); *Petition of John M. and Paula D. Blair*, Docket No. P-860184 (January 14, 1987) ("[W]e will not consider the financial convenience of an applicant-customer when it conflicts with the orderly extension of public water service facilities into an area which may be subject to development.")

As the case law shows, the facilities to be installed to satisfy a service request need not be the "least cost" to the service applicant nor the minimum size necessary to serve that applicant alone. *Accord Collier Township v. Pennsylvania-American Water Company*, Docket No. C-00934978 (Initial Decision issued August 18, 1996, pp. 24-25, and affirmed by final Order entered March 18, 1996). Rather, the proposed facilities should be reasonable in light of the facts and circumstances. And, in making that assessment, the utility's judgment should not be set aside unless there is no reasonable basis for installing the facilities it proposes. Thus, while the utility's discretion is not unfettered, neither is it subject to second-guessing or micro-management. That is the only standard of review that comports with the PUC's decision to defer to the "prerogative of respondent's management." *Radoff, supra*. See also *Lynch v. Pa. P.U.C.*, 140 Pa. Cmwlth. at 606, 594 A.2d at 819 ("PSWC did not have the burden of proving the reasonableness its charges."). Applying the appropriate legal standard to the facts in this case, there is no basis for accepting Mr. Fought's proposal to down-size the storage and distribution main capacity needed to meet service requirements within the OCA-proposed "footprint."

1. The Need For A Storage Tank

The reasonableness of PAWC's decision to install a storage tank is not in dispute. Mr. Fought does not contend that the Company's decision is unreasonable or that it fails to comport with good waterworks practice. In fact, he conceded that the installation of the tank is "desirable" and, when pressed for an explanation, offered several cogent reasons why a tank should be installed (Tr. 398-99). Therefore, under the applicable legal standard, there is no basis, in law or fact, for rejecting the Company's inclusion of the tank in the cost of this project.

Mr. Fought's opposition to the tank has nothing to do with the reasonableness of the Company's decision. Rather, his explicit motivation is to suppress the cost of the project in order to make it "fit" within the Company-required investment calculated by Ms. Kraus (OCA St. 1A, p. 6) ("The project that I have recommended . . . is economically justified under the terms of the PAWC Tariff using a 'least-cost' approach to estimate project costs and project financing . . .") "Least-cost" is not the correct legal standard. For that matter, it does not make any sense even as a practical guide to determining the size of facilities, as Mr. Fought eventually acknowledged on cross-examination (Tr. 395-98).

Mr. Fought contends that the storage tank, while "desirable," is not "necessary," by which he apparently means it might be possible to provide water service to the potential customers without building the tank (Tr. 398-99). Not only is that the wrong legal standard, it is a proposition unsupported by the facts. There are several pressing reasons why the tank is needed (PAWC St. 2.1).

First, the tank is essential for meeting a minimum level of service reliability given the distance from the terminus of the Company's existing facilities to the Hickory/Mount Pleasant service area, as Mr. Hankey explained (PAWC St. 2.1, p. 2):

[T]he booster pump referenced by Mr. Fought (OCA St. 1A, p. 8) is the Gretna Booster Station located in Chartiers Township, which was constructed principally to serve demands in Chartiers Township, where there are currently approximately 233 customers. The main on the suction side of the Gretna Booster is approximately 30,000 feet in length. Once that main leaves the Company's Washington distribution grid, it is single main, and a single feed into the Gretna Booster, for its entire 30,000 foot length. The main that Mr. Fought proposes be installed from the discharge side of the Gretna Booster to Main Street in Hickory would be approximately 19,780 feet in length. A break in the main on either the suction or discharge side of the booster would put the Mt. Pleasant Township system out of service. This is a particular concern given the cumulative length of these two mains. With a storage tank located in Mt. Pleasant Township, sufficient storage would be available to meet demands while a main break or other emergency is being addressed and corrected.

Mr. Fought had no credible response to this analysis. In fact, his only response was to observe that the Company did not propose a storage tank to serve Chartiers alone when it designed the facilities to meet that Township's service request (OCA St. 1A. pp. 5-6). That observation is beside the point. Mount Pleasant Township would become a large additional service area located almost 4 miles farther away from the Gretna Booster and would (by the OCA's count) triple the number of customers to be served from the booster. Sound waterworks practice dictates that, under those circumstances, storage capacity should be installed near the service area. Moreover, when not constrained to "fit" a project's under a predetermined ceiling, Mr. Fought testified that accepted standards of service reliability necessitated a second main to back-up a single "feed" of

only 1.3 miles in length serving far fewer customers than would be served from the proposed tank (Tr. 407-409). In short, Mr. Fought, in other contexts, willingly adopted reliability criteria far stricter than those Mr. Hankey used in this case.

Second, irrespective of the distance from the booster to the Mount Pleasant service area, a distribution storage tank would be required based solely on the number of customers to be served, as Mr. Hankey explained (p. 2):

In addition, even without the lengthy runs of main on the suction and discharge sides of the Gretna Booster, the number of customers that would be served from that booster, when the Chartiers' demand (233 customers) and Mr. Fought's estimate for Mt. Pleasant (568) are combined, would exceed the level at which well accepted engineering design criteria for water systems dictate that distribution storage should be provided. Water storage on a system of this size is necessary to provide stable pressure and reliable service.

In addition, the storage tank, in conjunction with air release valves to be installed on the approach main, are needed to deal with air pressure and "water hammer" that could result from main breaks and subsequent refilling of the main line. Without the additional pressure-stabilizing effect of the tank – and given the lengthy main from the Gretna Booster – the air pressure and "water hammer" problems could cause serious, catastrophic damage to the Company's and customers' facilities. The precise failure mechanisms a tank would prevent were described in detail by Mr. Hankey (PAWC St. 2.1, p. 3). Mr. Fought's only response was a terse assertion that air release valves alone should do the trick (OCA St. 1A, p. 6). That conclusory statement was not accompanied by any empirical evidence, risk assessment or identification of existing facilities that were actually built to Mr. Fought's specifications.

Finally, absent a storage tank, the Gretna Booster could not simultaneously meet peak customer demand and fire flow requirements, which is an essential design criterion, as Mr. Hankey also explained (PAWC St. 2.1, p. 3):

Q. Is Mr. Fought correct that the Gretna Booster could meet the general and fire protection demands of both Chartiers Township and the customers desiring service in Mt. Pleasant Township?

A. No. The Gretna Booster was designed to meet the instantaneous demand of approximately 200 customers plus the fire flow requirements for the Chartiers' system. The additional instantaneous demand from customers that Mr. Fought estimates would take service on the Mt. Pleasant Township system is greater than the design flow of that booster.

Mr. Fought does not disagree that the capacity of the Gretna Booster is insufficient to meet both fire flow requirements and the "instantaneous" peak demand of general service customers. Rather, he contends that Mr. Hankey used the wrong standard, because the capacity requirements should be measured on the basis of average usage over the entire hour of peak customer demand (Tr. 404). Stated another way, he assumed that customers' demands during each interval of the "peak" hour would be uniform, even though that assumption is contrary to reality, as Mr. Fought conceded (Tr. 404-405). During many intervals within the peak hour, customer demand would substantially exceed the average hourly demand and, in that event, the cumulative general and fire service demand would exceed the capacity of the Gretna Booster.²⁵ If that were

²⁵ The defects in Mr. Fought's analysis become apparent when his assumed level of "peak" customer use is quantified. Although he did not examine these data before filing his testimony, he agreed on cross-examination that his "peak hour" design criterion assumes each customer would use water at a flow rate of less than one quart per minute during the period of "peak" usage (Tr. 404-405). Since peak (continued).

to occur, the consequences could be significant, since the booster pump itself could be damaged by operating beyond its capacity, even for a short time. Certainly, the applicable legal standard, previously described, does not require a utility to design facilities with no margin for safety. Yet, Mr. Fought insists on that approach, or worse.

2. The Need For 12-Inch Mains In Critical Areas

Mr. Fought also wants to shave \$217,350 from the project cost by the installation of 8-inch rather than 12-inch mains in certain areas (OCA St. 1A, p. 4). PAWC's design criteria call for 12-inch mains in these locations in order to meet a fire flow of 750 gpm at a pressure of not less than 20 psi, which is the minimum fire flow for new main installations for PAWC and, to its knowledge, other water systems as well (PAWC St. 2.1, pp. 3-4). Mr. Fought does not dispute that 12-inch mains are needed to produce a fire flow of 750 gpm. Instead, he contends 500 gpm is sufficient and that flow rate could be achieved with 8-inch mains in the locations in question. However, there is no valid basis for using the minimum flow requirement he recommends.

Mr. Fought's 500 gpm recommendation is derived from conversations with Department of Environmental Protection ("DEP") personnel; it is not reflected in any DEP planning or guidance documents (Tr. 400). It is not a guideline as to what DEP considers appropriate for any particular situation. Rather, according to Mr. Fought, it is the minimally sufficient flow a main must be able to produce before DEP will even

usage occurs when shower, toilet, sink and kitchen faucets are in use more or less simultaneously, it is apparent that one quart per minute does not come close to capturing flow rates likely to be achieved during subsidiary intervals within the "peak hour."

permit a hydrant to be installed (Tr. 391, 400). The Insurance Service Office (“ISO”), which assesses fire protection capability for insurance companies, considers 500 gpm adequate only where development is limited to detached single-family houses spaced far apart (Tr. 331-32). It is not ISO’s recommended standard where, as here, houses in the affected areas are not so far apart²⁶ and fire flow capability must be adequate for businesses (e.g., restaurants, machine shops) and large, flammable agricultural structures (e.g., hay and livestock barns) (Tr. 332, 389-90).

As the foregoing shows, PAWC’s design criteria incorporate a reasonable standard for fire flow capability. And, while that standard is only slightly higher than the one Mr. Fought proposed, it could not be met throughout the proposed service area if only 8-inch mains were installed in the critical areas, as Mr. Fought wants to do (PAWC St. 2.1, pp. 3-4). Providing appropriate fire flow capability in association with the extension of Company facilities is particularly important because the Pennsylvania Supreme Court has held that a public water utility may be held liable for direct and consequential fire damage causally related to insufficient flows and pressures in its mains. *DeFrancesco v. Western Pennsylvania Water Company*, 499 Pa. 374, 453 A.2d 595 (1982). And, the adequacy of the utilities’ facilities may be decided by a jury – not the PUC. *DeFrancesco, supra*. If facilities are installed that are inadequate to the task of fire protection, the Company could eventually pay the price.

The facilities designed by PAWC are needed to meet the service requirements of

²⁶ Even if existing house spacing were far enough apart to squeak by with the 500 gpm flow standard, the construction of just a few homes in the intervening lots could make that minimum insufficient.

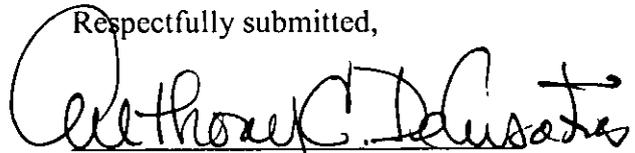
existing residents and businesses within the OCA-proposed “footprint.” However, there is no question that any material “growth” within the Township (along the lines predicted by witnesses at the September 9 public hearing), would rapidly exceed the capacity of the 8-inch mains Mr. Fought proposes. As a matter of sound waterworks practice, it is appropriate to consider the potential for increased future demand when sizing new facilities, as even Mr. Fought acknowledged (Tr. 395). Furthermore, from a legal standpoint, the PUC certainly expects future growth to be taken into account in designing main extensions for Bona Fide Service Applicants. *E.g. Collier Township v. Pennsylvania-American Water Company, supra.*

In summary, PAWC has conducted sound and reasonable engineering analyses to determine the facilities that would have to be installed to provide the service proposed by the Complainants. The alternatives offered by the OCA would result in a system insufficient to meet the service demands within the “footprint” it defined.

V. CONCLUSION

For all of the reasons set forth above, the Pennsylvania Public Utility Commission should deny and dismiss, with prejudice, the Complaints of Cindy Parks, Richard T. Minutello and the Office of Consumer Advocate and should further find and conclude that the Complainants' service requests should be fulfilled only in accordance with the terms of the Company's Tariff Rule 27 and the Commission's line extension regulation.

Respectfully submitted,



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