



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

December 8, 1993

IN REPLY PLEASE  
REFER TO OUR FILE

L-00930089

JEFFREY S OSMAN CHAIRMAN  
NATIONAL ASSOCIATION OF WATER COMPANIES,  
PENNSYLVANIA CHAPTER  
c/o YORK WATER COMPANY  
130 EAST MARKET STREET  
YORK PA 17405-7089

Advance Notice of Proposed Rulemaking Re Line Extensions

Dear Sir:

This is to advise you that the Commission at Public Meeting held November 10, 1993 adopted an Order in connection with the above entitled proceeding.

A copy of the Order is enclosed for your records.

Very truly yours,

John G. Alford, Secretary

JZ  
Encls.  
Certified Mail  
Receipt Requested

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held November 10, 1993

COMMISSIONERS PRESENT:

David W. Rolka, Chairman  
Joseph Rhodes, Jr., Vice-Chairman  
John M. Quain  
Lisa Crutchfield  
John Hanger

Advance Notice of Proposed Rulemaking  
Re Line Extensions

Docket No.  
L-930089

O R D E R

BY THE COMMISSION:

At the public meeting held August 20, 1992, the Commission adopted a policy statement regarding utility line extensions and, in particular, the circumstances in which the customer would be obligated to provide a contribution-in-aid-of-construction in order to obtain service. The policy statement was published in the Pennsylvania Bulletin on September 19, 1993 and became effective on that date.<sup>1/</sup>

The policy statement is based on the Commission's interpretation of Pennsylvania common law governing the propriety of a utility requesting a contribution-in-aid-of-construction

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<sup>1/</sup> A policy statement represents an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications; it does not establish "a binding norm on the agency but merely interprets binding common law precedent." 22 Pa.B. 4699, 4703 (Sept. 19, 1992); see Pa. Human Relations Commission v. Norristown Area School District, 473 Pa. 334, 374 A.2d 671 (1977).

prior to extending service and facilities to a service applicant. The policy statement provides, in pertinent part, that an applicant for utility service to a primary residence, or a place of business where the person or business resides, will be required to provide a contribution-in-aid-of-construction only if the extension of service "would materially handicap the utility in securing a fair return on its investment or would place an undue burden on utility customers as a result of rate increases . . . ." 52 Pa. Code §69.171(b).<sup>2/</sup>

The Commission's line extension policy statement is equivalent to a broad statement of law that requires the development of some practical subsidiary standards by which it can be applied to specific cases. Indeed, experience with our policy statement to date has created problems in implementation and, consequently, problems in providing predictability regarding the outcome of specific cases. At present, there are inconsistencies between the utilities' tariffs and the policy statement, as well as arguments regarding the correctness of the basic legal standard articulated in the policy statement. Moreover, it is noted that the policy statement was adopted in the context of a telephone service line extension controversy;

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<sup>2/</sup> This policy statement is based primarily on the Pennsylvania Superior Court's discussion and holding in Ridley Township v. Pa. P.U.C., 172 Pa. Superior Ct. 472, 94 A.2d 168 (1953), which addressed, in some detail, a utility's fundamental public service obligation to patrons located in its franchised service territory versus the economics of an individual line extension.

since the economics of telephone service line extensions may differ from other utility types, it may be appropriate to develop separate rules for each industry group, or even for large and small companies.

In the Commission's judgment, an advance notice of proposed rulemaking should be instituted to provide a forum for discussion and resolution of the problem areas and uncertainty associated with the present line extension policy statement. As noted above, it may well be that much of the uncertainty associated with the policy statement can be eliminated with the development of practical subsidiary standards by which the broad statement of policy set forth in the policy statement can be applied to specific cases. Two examples of some practical standards are (a) total revenues from the customer must equal or exceed the cost of construction within ten years and/or (b) annual revenues must equal or exceed the utility's annual operating and maintenance expense and depreciation charges for the line extension. Other and more sophisticated standards may also be reasonable and consistent with Pennsylvania law.<sup>3/</sup>

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<sup>3/</sup> The existing policy statement (based on Ridley) may be analogized to the general statement of law that a utility is entitled to earn a fair rate of return on its property. This broad, general statement of law regarding fair rate of return requires the Commission to establish practical subsidiary standards for its application to specific cases -- which has been done by adopting, for example, DCF-based cost of capital data as the major practical standard to implement the law in the area of rate of return.

In addition, this advance notice will include a list of questions to which the Commission will invite responses from interested parties; the answers will be used to evaluate the present policy statement and to draft proposed line extension regulations. As to the fixed utility service industry groups, we will direct that these entities provide responses to the list of questions either through their associations or as individual companies. Respondents to the advance notice are also invited to provide draft regulations to address outstanding problems and inconsistencies, and to offer any other recommendations which they believe will resolve the existing controversies.

In the interim, the Commission will consider the appropriateness of applying the existing line extension policy statement at 52 Pa. Code §69.171 on a case by case basis. In order for the Commission to consider other remedies, a utility must provide evidence that application of the policy statement is in direct conflict with and will materially handicap its financial viability. Alternatively, the Commission will also consider evidence which demonstrates that application of the policy statement will adversely impact the utility's ratepayers as a whole.

Given the above-noted problems and uncertainty associated with the existing policy statement regarding utility line extensions, the Commission will issue an advance notice of

proposed rulemaking to consider the issues highlighted in this order, and to provide a forum for discussion and resolution of these regulatory issues. We are also soliciting responses to the questions set forth in Appendix A, and draft proposed regulations from fixed utilities and other interested parties. Accordingly, pursuant to the Commission's authority under 66 Pa. C.S. §§501, 1301 and 1501 and the Commonwealth Documents Law (45 P.S. §§1201-08) and the regulations promulgated thereunder at 1 Pa. Code §§7.1 - 7.4, we are considering the promulgation of regulations regarding utility line extensions; THEREFORE,

IT IS ORDERED:

1. That a rulemaking proceeding is hereby instituted to consider the promulgation of regulations regarding utility line extensions.

2. That this rulemaking proceeding shall commence by the issuance of an advance notice of proposed rulemaking to be published in the Pennsylvania Bulletin.

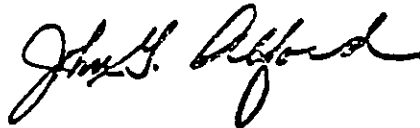
3. That the fixed utility trade associations, on behalf of their member companies, shall submit, within forty-five (45) days from the date this advance notice is published in the Pennsylvania Bulletin, responses to the questions set forth in

Appendix A and draft proposed regulations regarding line extensions.

4. That all other interested parties are invited to submit, within forty-five (45) days from the date this advance notice is published in the Pennsylvania Bulletin, responses to the questions set forth in Appendix A and draft proposed regulations regarding line extensions. The contact person for this matter is Bohdan R. Pankiw, First Deputy Chief Counsel, Law Bureau (717) 783-3190.

5. That a copy of this order and Appendix A shall be served upon the Pennsylvania Electric Association, the Pennsylvania Telephone Association, the Pennsylvania Gas Association, the water utility trade associations, the Office of Consumer Advocate, the Office of Trial Staff and the Office of Small Business Advocate.

BY THE COMMISSION,



John G. Alford  
Secretary

ORDER ADOPTED: November 10, 1993

ORDER ENTERED: December 8, 1993

## APPENDIX A

### Advance Notice of Proposed Rulemaking Re Line Extensions

1. Should our new regulations be generic in nature? Or should they be industry specific?
2. Do we need a complete revamping of the current tariff provisions? Should these tariff provisions be industry specific? Should there be a tariff distinction between large and small companies? If so, how should we define small and large companies?
3. At what point does a line extension to a residential customer become uneconomic? Should the tariff provisions be based on some detailed cost analysis? Please provide details and methodology for calculation. 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 ratepayer. Provide details.
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?
  - (c) Should we consider deferral accounting procedure for investment in line extension? If so, provide details for the methodology and calculation.
5. In reference to the policy statement which is supported by common law and our statute at §1501, what factors should be considered 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?
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.

7. Provide an explanation of your main extension practices within the requirements of Ridley and other court decisions.
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/cost based standard.
9. In all answers 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.
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 served by the extension.
11. Specifically indicate how or whether distinction should be made for primary or secondary homes, commercial or industrial uses, or other uses, or other user distinctions.
12. Indicate proposed tariff filing requirements for data, assumptions, economic or policy and legal support.

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg PA 17105-3265

Public Meeting held June 16, 1994

Commissioners present:

David W. Rolka, Chairman  
Joseph Rhodes, Jr., Vice Chairman, Dissenting, Statement attached  
John M. Quain, Statement attached  
Lisa Crutchfield  
John Hanger.

Proposed Rulemaking Re Line  
Extensions  
52 Pa. Code Chapter 66

Docket No. L-930089

O R D E R

BY THE COMMISSION:

The Commission initiated a rulemaking proceeding at this docket at public meeting held November 10, 1993 to provide a public forum for discussion and resolution of the problem areas and uncertainty associated with the present utility service extension policy as it appears in 52 Pa. Code §69.171. An advance notice of proposed rulemaking was published in the Pennsylvania Bulletin on December 18, 1993. By notice published February 5, 1994, the comment period was extended from 45 to 60 days, making comments due on or before February 19, 1994.

The advance notice was served on the Pennsylvania Electric Association, the Pennsylvania Gas Association, the water utility trade associations, the Office of Consumer Advocate, the Office of Trial Staff, and the Office of Small Business Advocate. It sought detailed answers to a series of specific questions which were to be used to evaluate the present policy statement and to

draft proposed line extension regulations. Respondents were also encouraged to submit draft regulations and to offer recommendations which they believe will solve controversies.

In the interim, the policy statement was applied on a case-by-case basis.

The policy statement is based on the Commission's interpretation of Pennsylvania case law governing the propriety of utilities' requesting a contribution-in-aid-of-construction prior to extending service and facilities to service applicants. The policy statement states the Commission's opinion that an applicant for utility service to a primary residence, or a place of business where the person resides, will be required to provide a contribution-in-aid-of-construction only if the extension of service "would materially handicap the utility in securing a fair return on its investment or would place an undue burden on utility customers as a result of rate increases...." 52 Pa. Code §69.171(b).

The purpose of this rulemaking is to eliminate the uncertainty which has arisen under the policy statement by developing practical subsidiary standards by which the broad legal boundaries set forth in the policy statement can be applied to specific cases.

We received numerous comments from utilities, associations, and public advocacy offices representing a wide range of interests in the line extension question. All of the comments were carefully reviewed and evaluated in developing this proposed

regulation. Concerns and viewpoints vary too widely to allow incorporation of them all, but each was considered in turn, and the main concerns of the commentators will be addressed below.

Our reading of the case law has been equally meticulous.

As early as 1927, the Superior Court said:

We are not to be understood as holding that the extension of service of a public utility is dependent on the profit which may reasonably be expected therefrom; in proper cases such extension may be ordered though the immediate result of the expansion may entail financial loss to the company; but the company should not be subjected to unreasonable expenditures, nor the consuming public be unduly burdened, because of the overdevelopment of scattered sections of the city in advance of its normal growth, when there is no rational expectation of the event justifying the expenditure.

Sherman v. Public Service Commission, 90 Pa. Superior Ct. 523 (1927) (affirming Commission order dismissing a complaint by residents requesting water service to their dwellings at a site higher than the company's gravity system facilities).

Sherman set the tone for the cases which followed.

"The primary object of the public service laws is not to establish a monopoly or to guarantee the security of investment in public service corporations, but first and at all times to serve the interests of the public." Ridley Township v. Pa. P.U.C., 172 Pa. Superior Ct. 472, 94 A.2d 168 (1953).

The OCA stresses that case law emphasizes that 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. OCA

also points out that, in cases deciding whether a contribution is warranted, the extent of the revenues which are to be generated through use of the extension are part of the background considered.

There is, of course, a limit to that service, since a bankrupt utility serves no one's interests. "A utility rendering reasonably adequate service should not be subjected to unreasonable expenditures, or the consuming public burdened because of the unusual or extraordinary demands of one customer." Colonial Products Co. v. Pa. P.U.C., 188 Pa. Superior Ct. 163, 94 A.2d 816 (1958).

In our study of the line extension issue, the Commission considered several different approaches. We realize that we need to balance our policy goal of universal service availability against the economic realities of running an effective, efficient utility company, and that this balance must fall within the purview of the appellate court cases governing this area.

We instituted an investigation at Docket No. I-880083 and entered our order June 14, 1989, where we stated our belief that there are several basic principles to be considered. Extension policies should:

1. Be non-discriminatory.
2. Be based on business principles.
3. Assure that the extensions will be self-supporting.
4. Provide for developer/customer participation in the financing of extensions, into localities within the utility service territory and where service is

needed, if the anticipated revenue is insufficient to warrant the utility making the extension unassisted.

5. Be implemented by the adoption and promulgation of comprehensive rules.
6. Be reviewed periodically.

National Fuel Gas Distribution Corporation (NFG) points out that we have already established some regulations regarding gas service extensions at 52 Pa. Code which set guidelines for proper refusal of service extensions. 52 Pa. Code §§59.26, 59.27. Gas utilities may deny service if the applicant has not complied with Commonwealth, municipal or company regulations, if the installation of equipment would be hazardous or improper, or if the service requested would be unreasonable and improper. NFG's concern is that the policy statement fails to take into consideration the cumulative impact of individual line extension expenditures in a given year. Its "load-justified investment" policy should require little adjustment to fall within the proposed regulation, since we have included some consideration of the economic factors.

The National Association of Water Companies - Pennsylvania Chapter (NAWC), supported by Philadelphia Suburban Water Company (PSW), proposed four different tests. NAWC stated that it couldn't recommend one single standard because of the differences among water companies. It stressed that developers should have to foot the bill for extensions in advance, and our regulation will allow that requirement to continue. NAWC prefers

cost-based methodologies because they place the burden on those who will benefit by the service extension.

Our regulation will also place the burden of unreasonable service extensions on the beneficiaries. The cost-based method that we propose will insulate companies from bearing the extraordinary costs of service extensions.

Pennsylvania Electric Association (PEA) believes that there is no problem with keeping the status quo in the electric utility industry and that no dramatic change is warranted. PECO Energy's electric division concurs, noting that electric utilities accept the premise that electricity is an essential service and will require contributions from residential customers only in extreme circumstances. The Commission recognizes that very few of the contribution conflicts arise from the electric industry, and application of the proposed regulation should not change that fact.

The Pennsylvania Gas Association (PGA), asks for modification of the policy statement to recognize a market-oriented approach to customer contributions where the proposed service is non-essential or where alternative service is available.

The Peoples Natural Gas Company (Peoples) goes further, claiming that the policy statement ignores Huntingdon, Inc. v. Pa. P.U.C., 76 Pa. Commonwealth Ct. 387, 64 A.2d 601 (1983), and Lynch v. Pa. P.U.C., 140 Pa. Commonwealth Ct. 599, 594 A.2d 816 (1991), which affirm customer contribution even though the companies would not have had to seek additional revenues in a rate case. However, the distinction between those cases and those which generally

require utilities to fund line extensions is that in Huntingdon and Lynch, the Commission made no finding of "need." Under this regulation, the result would be the same since the applicants would not fall within the definition of "bona fide service applicant."

We believe that the test we are adopting in the proposed regulations best suits the public interest overall and is legally supportable as well. Although few commentators submitted proposed regulations for our review, the Law Bureau Prosecutory staff submitted two options. Staff recommended its Option A, which is characterized as an Annual Revenue/Annual Depreciation Break-Even Analysis. That proposal would require utilities to fund ordinary line extensions without customer contribution where the expected annual revenues equal or exceed annual depreciation expense of the extension computed consistent with the utility's Commission-approved book depreciation rate, except for those utilities whose depreciated plant in service amounted to less than \$10 million.

In our opinion, that option was too restrictive for the utilities, in that it contains no recognition of the ongoing operating and maintenance expenses associated with the provision of safe and adequate service. Accordingly, we are adopting Option B, with a few minor modifications, which addresses this issue.

#### **Summary of Proposed Regulation.**

**Definitions.** The first part will provide definitions for "bona-fide service applicant" and "special utility service." Although not detailed in the proposed regulation, it is to be understood that "service" in "bona fide service applicant" refers

to ordinary and reasonable service as it commonly understood within the respective industries.

The Pennsylvania Telephone Association (PTA) recommends that we differentiate between residential and business standards because some businesses have remote locations for storage tanks, pumping stations or other facilities, and other ratepayers shouldn't have to subsidize their service. Under the law as it exists, that type of service wouldn't be "ordinary and reasonable," but would fall into the category of "special utility service." This regulation will not change that.

OSBA notes that the policy statement does not discriminate between primary residences and businesses and recommends that the regulation follow suit. The regulation does not discriminate, requiring only that the service requested be "ordinary and reasonable."

**General rule.** Here we spell out the duty of each utility to provide line extensions without customer contribution where annual expected revenues equal or exceed annual estimated operating and maintenance expenses, plus annual book depreciation expenses associated with the line extension. General and administrative expenses, the expected financing charges associated with funding the line extension and other common overhead expenses may not be included.

We recognize that implementation of this economic standard may require the use of company averages and/or expense allocators; we do not expect companies to determine customer-

specific operating and maintenance expenses. We also recognize that this economic standard could be converted into a distance standard in the field; however, any such conversion should be done internally, on an individual company-specific basis, but should not be reflected in the company's tariff.

If the analysis indicates that annual revenues will equal or exceed the company's operating and maintenance expenses plus depreciation, no customer contribution will be permitted. Alternatively, if annual revenues cover only a portion of the company's expenses plus depreciation for the line extension, a contribution may be required of the customer in proportion to the cost of construction not covered by annual revenues.

Thus, any customer contribution allowed will be limited to the amount which allows the utility to recover that portion of its cost of construction not covered by the customer's expected annual revenues as defined herein. The basis for this customer contribution would be that, absent the contribution, the utility would experience a negative (less than zero) rate of return on the line extension. Indeed, it appears to us that a line extension which yields a negative rate of return (considering only operating and maintenance expenses plus depreciation) is one that begins to materially handicap the utility in securing a fair return on all of its operations within the meaning of Ridley and, therefore, represents a situation in which a customer contribution can be legitimately required.

PAWC continues to seek AFUDC accounting treatment despite having been denied the right to claim it by our order of December 15, 1993 issued in response to PAWC's petition for declaratory order at Docket No. P-930717, but we are not inclined to grant it here. Our regulation allows the utilities to recover depreciation, and to allow AFUDC in addition would be inappropriate and contrary to our reading of Pennsylvania case law.

We will also require utilities to give the contributing customer the option of paying over a period of at least three years to limit the impact of any contribution on any customer, and thus reduce this capital cost barrier to obtaining a basic human service. Of course, any utility is free to extend the payment period to a longer period if it wishes.

OTS expressed concern that the financing difficulties experienced by smaller companies might justify special rules. The regulation provides a safety net provision for utilities with depreciated plant in service of less than \$10 million to be exempted from the general rule set forth in these proposed regulations in favor of the basic Ridley test: customer contributions can be required if the line extension cost will materially handicap the utility's ability to secure an adequate rate of return on all of its operations or unduly burden other ratepayers. For a very small utility, we anticipate that many line extension expenditures would justify a requirement of customer contribution.

Special utility service. Here the regulation specifically limits the application of this regulation by not including "special utility service."

The concerns expressed by the commentators can be addressed within the application of this standard.

Based on the comments received to the advance notice, we have developed a set of proposed regulations to address the issue of line extensions. We believe that the proposed regulations represent an appropriate balance between consumers and providers of public utility services that is consistent with Pennsylvania law. Nevertheless, we are interested and are therefore soliciting comments on these proposed regulations, particularly as to the practical ramifications of their implementation.

Attached are two lists of questions which solicit additional specific information which we believe would aid us in fine-tuning this regulation. Attachment 1 contains the list promulgated by Commissioner Hanger and seeks information from all interested parties. Attachment 2 contains questions contributed by Commissioner Crutchfield which are to be addressed by the utilities. Attachment 3 contains an illustration prepared by the Law Bureau of the required level of customer contribution at various levels of construction cost based on the proposed regulations and certain assumptions. We encourage comments on this as well.

Pursuant to Chairman Rolka's suggestion, our intent is to publish a model line extension tariff with the final regulation, and suggestions regarding its form will be welcomed.

Accordingly, pursuant to Section 501, 504, 505, 506, 1301 and 1501 of the Public Utility Code. 66 Pa. C.S. §§501, 504, 506, 1301, and 1501, and the Commonwealth Documents Law, 45 P.S. §1201 et seq., and the regulations promulgated thereunder at 1 Pa.Code §§7.1 - 7.4, the Commission proposes adoption of the proposed regulation for Line Extensions, 52 Pa. Code Chapter 66, as described above and set forth in Annex A, THEREFORE,

IT IS ORDERED:

1. That the Commission's regulations are hereby amended by adding a new Chapter 66 as set forth in Annex A.
2. That the Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
3. That the Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. That the Secretary shall submit this order and Annex A for informal review by the designated standing committees of both houses of the General Assembly, and for informal review and approval by the Independent Regulatory Review Commission.
5. That the Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin. Interested persons may submit written comments, an original and ten (10) copies, to John G. Alford, Secretary, Pennsylvania Public Utility Commission, and shall have

45 days from the date this order is published to submit comments. The contact person is Susan D. Colwell, Assistant Counsel, Law Bureau (717) 783-3190.

6. That a copy of this order shall be served upon all persons who submitted comments in this rulemaking proceeding.

BY THE COMMISSION,

  
John G. Alford  
Secretary

(SEAL)

ORDER ADOPTED: June 16, 1994

ORDER ENTERED: JUL 1 1994

Legal, Policy & Economic Issues

All interested parties are asked to provide responses to the following questions:

1. Given that other customers may utilize the main extension, in determining the economics of the investment, should we consider the anticipated revenues for all customers who might be expected to use the new line? Should we consider the contributions which might be made in 3, 5 or 10 years as well?
  - (a) Are the foregoing or other adjustments required by the leading cases of Sherman and Ridley?
  - (b) Do these cases require consideration of the surrounding growth or a multi-year time frame to determine whether or not the investment is reasonably economic?
  - (c) Does the case law permit requiring contributions solely because the investment is not expected to yield a positive return within a one-year or any other time frame?
2. Should the utilities be permitted to anticipate revenues on a case by case basis or should certain standards (e.g. average residential gas water heating bill is X) be included in the regulations? If so, what should those standards be?
3. Should the regulations specify that all or certain contributions are refundable if additional revenues are received within some time period? Should the regulations make distinctions between advances for construction which are refundable and contributions in aid of construction which are not?
4. Should the regulations define or otherwise clarify the distinction between main extensions on public property which are designed to serve the public, and line extensions from a main to a structure which are designed to service only the single structure?
5. Should the regulation define "bona fide service applicant" as any potential customer ready and able to utilize the service? Should the definition include nonprofit or governmental institutions as well as residents and businesses?

6. Should special utility service be limited to those potential customers who require a special character of service such as higher voltage or pressure? Should this exception include distinctions between necessary or merely desirable service? Is any such language legally supportable given the language of Section 1501?
7. Is the inclusion of an estimate of operations and maintenance expense along with the depreciation expense of the new extension desirable or necessary considering its proportionately low cost?

Technical and Cost Issues

Regulated utilities are asked to answer the following questions, noting that each answer should be divided into the two categories created by the proposed definitions of "bona fide service applicant" and "special utility service." Furthermore, all data provided should indicate whether it refers to individual customer service lines or mains.

1. What is the number of line extensions completed for each of the past five years?
2. What is the range in actual footage of the line extensions for each of the past five years?
3. What is the shortest line extension for each of the last five years?
4. What is the longest line extension for each of the last five years?
5. What is the average length of a line extension for each of the last five years?
6. What is the range in the total cost of the line extensions over the last five years?
7. What is the costliest line extension for each of the last five years?
8. What is the least costly line extension for each of the last five years?
9. What is the average cost of the line extensions for each of the last five years?
10. What is the cost range of customer contributions per line in terms of footage and cost over the past five years?
11. What was the lengthiest line extension for which a customer contribution was required for each of the last five years?
12. What was the shortest line extension for which a customer contribution was required for each of the last five years?
13. What was the average length of the line extensions for which a customer contribution was required for each of the last five years?
14. What was the costliest line extension for which a customer contribution was required for each of the last five years?

15. What was the least costly line extension for which a customer contribution was required for each of the last five years?
16. What was the average cost of the line extensions for which a customer contribution was required for each of the five years?
17. What is the range of the amount of the gross-up portion of the customer contributions, pursuant to the Tax Reform Act of 1986, required per line over the past five years?
18. What is the costliest amount of the gross-up portion for each of the last five years?
19. What was the least costly amount of the gross-up portion for each of the last five years?
20. What was the average cost of the gross-up portion for each of the last five years?

Illustration of Required Level of  
Customer Contribution at Given Level of Const. Cost

Construc. Cost	Annual Deprec.	O&M	Annual Revenue	Pretax Cust. Amt.	Total Cust. Amt.
\$1,000	\$20	\$15	\$300	\$0	\$0
2,000	40	15	300	0	0
3,000	60	15	300	0	0
4,000	80	15	300	0	0
5,000	100	15	300	0	0
6,000	120	15	300	0	0
7,000	140	15	300	0	0
8,000	160	15	300	0	0
9,000	180	15	300	0	0
10,000	200	15	300	0	0
11,000	220	15	300	0	0
12,000	240	15	300	0	0
13,000	260	15	300	0	0
14,000	280	15	300	0	0
15,000	300	15	300	714	1,143
16,000	320	15	300	1,672	2,675
17,000	340	15	300	2,634	4,214
18,000	360	15	300	3,600	5,760
19,000	380	15	300	4,570	7,311
20,000	400	15	300	5,542	8,867
21,000	420	15	300	6,517	10,428
22,000	440	15	300	7,495	11,991
23,000	460	15	300	8,474	13,558
24,000	480	15	300	9,455	15,127
25,000	500	15	300	10,437	16,699

## Assumptions:

O&M	\$15
Annual Revenue	\$300
Depreciation	50 Years
Tax Factor	1.6

Attachment 4

List of Commentators to  
Proposed Form Regulations

Equitable Gas  
Law Bureau Prosecutory Staff  
National Association of Water Companies - Pennsylvania Chapter  
Office of Consumer Advocate  
Office of Small Business Advocate  
Office of Trial Staff  
PECO Energy  
Penn Fuel Gas, Inc.  
Pennsylvania-American Water Company  
Pennsylvania Electric Association  
Pennsylvania Gas and Water Company  
Pennsylvania Gas Association  
Pennsylvania Telephone Association  
Philadelphia Suburban Water Company  
T.W. Phillips Gas and Oil Company  
The Peoples Natural Gas Company

Annex A  
TITLE 52. PUBLIC UTILITIES  
PART 1. PUBLIC UTILITY COMMISSION  
SUBPART C. FIXED UTILITIES  
CHAPTER 66. LINE EXTENSIONS

66.1 Definitions. The following terms are defined as stated for purposes of this section only:

Bona fide service applicant - A resident or business which applies for service to a primary residence or place of business which is necessary for the accommodation, necessity or convenience of the public.

Special utility service - Utility service in addition to or in excess of that required for ordinary residential purposes or service for which there is an adequate, affordable alternative to meet the applicant's utility needs.

66.2 Duty of public utility to make line extensions. A utility shall construct all line extensions within its franchised territory consistent with the following directives:

(a) Line extensions shall be funded without customer contribution where the annual expected revenues equal or exceed annual estimated operating and maintenance expenses plus annual book depreciation expenses associated with the line extension, computed consistent with the utility's Commission-approved book depreciation rate. General and administrative expenses, as well as expected financing charges associated with funding the line extension shall not be included in operating and maintenance expenses.

(b) A contribution may be required from a service applicant only in an amount which allows the utility to recover the

portion of its cost of construction and associated annual operating and maintenance expenses over the life of the line extension not covered by the annual expected revenues.

(c) Where customer contributions are required, each fixed utility shall give the service applicant the option of paying the customer contribution over a period of not less than three years following service connection, and shall not require the contribution in advance of extending service. Where a payment term is selected, a utility may recover financing costs accrued at the lower of either 6% or its cost of debt associated with initially funding the construction over the repayment term.

(d) Utilities with depreciated plant in service of less than \$10 million are relieved from the requirement of subsection (a) and (b) and may require customer contributions from service applicants to the extent that the funding of the single line extension will materially handicap the utility's ability to secure an adequate rate of return on all of its operations or unduly burden other ratepayers.

66.3 Special utility service. Subsection (b) shall not apply to special utility service as defined herein.



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

DECEMBER 28, 1995

PROPERTY OF THE

L-00930089

TO ALL PARTIES:

Final Rulemaking Re: Line Extensions  
52 Pa. Code §§65.21, 65.22

To Whom It May Concern:

This is to advise you that an Order has been adopted by the Commission in Public Meeting on December 7, 1995 in the above entitled proceeding.

A copy of this Order has been enclosed for your records.

Very truly yours,

  
John G. Alford, Secretary

smk  
encls.  
cert. mail

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held December 7, 1995

Commissioners present:

John M. Quain, Chairman  
Lisa Crutchfield, Vice Chairman  
John Hanger, Concurring & Dissenting in part—Statement attached  
David W. Rolka, Dissenting - Statement attached  
Robert K. Bloom

Final Rulemaking Re Line  
Extensions  
52 Pa. Code §§65.21, 65.22

Docket No. L-930089

O R D E R

BY THE COMMISSION:

I. INTRODUCTION

Pursuant to Section 1501 of the Public Utility Code, public utilities are obligated to provide "reasonable service" to the public, including the obligation to make line extensions "to such service and facilities as may be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa. C.S. §1501. At the same time, Pennsylvania case law has recognized that a public utility's duty to provide line extensions is not unlimited and, therefore, will not obligate the public utility to make line extensions which are uneconomic or unreasonable. Sherman v. Public Service Commission, 90 Pa. Superior Ct. 523 (1927); Ridley Township v. Pa. P.U.C., 172 Pa. Superior Ct. 472, 94 A.2d 168 (1953); Colonial Products Co. v. Pa. P.U.C., 188 Pa. Superior Ct. 163, 94 A.2d 816 (1958).

In Colonial Products, for example, the court explained this limitation on the general obligation to make line extensions as follows:

A utility rendering reasonably adequate service should not be subjected to unreasonable expenditures, or the consuming public unduly burdened because of the unusual or extraordinary demands of one customer.

Id. at 173, 146 A.2d at 663. 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<sup>1</sup>. 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.

## II. HISTORY OF THE PROCEEDING

This rulemaking was initiated at public meeting held November 10, 1993 to provide a public forum for discussion and resolution of the problem areas and uncertainty associated with the present utility service extension policy as it appears in 52 Pa.

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<sup>1</sup>According to Law Bureau Prosecutory Staff, as of February 1994, there were between 50 and 75 formal line extension cases currently pending before the Commission, and "many more on an informal basis." Law Bureau Prosecutory Staff Comments, p. 11.

Code §69.171. The advance notice of proposed rulemaking was published in the *Pennsylvania Bulletin* on December 18, 1993. By notice published February 4, 1994, the comment period was extended from 45 to 60 days.

The advance notice was served on the utility associations and concerned governmental offices seeking detailed answers to a series of specific questions which would be used to evaluate the present policy statement and to draft proposed line extension regulations. Respondents were also encouraged to submit draft regulations and to offer recommendations which they believed would solve controversies.

Following review of the comments and the applicable Pennsylvania case law, the Commission adopted a proposed rulemaking at the June 16, 1994 public meeting, entered July 1, 1994. The proposal was published in the *Pennsylvania Bulletin* on October 8, 1994, commencing a 45-day comment period. Again, numerous comments were received, many of which provided specific answers to the questions we had set forth in the proposal.<sup>2</sup> Although the public

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<sup>2</sup>Comments to the proposed regulations were filed by the following: Pennsylvania Electric Association (PEA), UGI Utilities, Inc., Duquesne Light, Pennsylvania Electric Company, PECO Energy, Penn Power, Pennsylvania Power & Light Co., West Penn Power Co., Pennsylvania Gas Association (PGA), Columbia Gas of Pennsylvania, Equitable Gas, National Fuel Gas Distribution Corporation, Peoples Natural Gas Company, Pennsylvania Gas and Water Co., T.W. Phillips Gas and Oil Co., Pennsylvania Telephone Association (PTA), National Association of Water Companies - Pennsylvania Chapter (NAWC-PA), Pennsylvania-American Water Company, Philadelphia Suburban Water Co., York Water Co., George S. Emmons, Representative Teresa E. Brown, Office of Consumer Advocate, Green Valleys Association, Pennsylvania State Association of Township Supervisors, South Coventry Township Board of Supervisors, French & Pickering Creeks Conservation Trust Inc., and twenty-two individuals who filed form

comments are too numerous to discuss individually here, each was carefully reviewed and considered, and we thank each commentator for the cooperation and information forwarded to us. In addition, by letter dated February 22, 1995, we received comments from the Independent Regulatory Review Commission (IRRC) regarding the proposed-form regulation.

What struck us as we reviewed the entire file is that, with few exceptions, concerned parties, from utilities and associations to governmental offices exhibited a genuine concern that we develop a regulation which would be fair to all parties: the individual desiring a line extension, the public utility and its stockholders, and the public utility's existing customers. We also realized that the electric and telephone industries were not subject to the same level of uncertainty and litigation regarding line extension issues as are the water and gas industries. See PEA Comments, pp.1-3 (recommending that the electric utility industry be excluded given the existing regulations for electric utility line extensions at 52 Pa. Code §57.19 and the lack of controversy in that industry); PTA Comments, pp. 3-4 (recommending line extension requirements of 500 feet on private property and 2,640 on public rights-of-way). In addition, for the natural gas industry it has become increasingly clear that, in the residential

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letters expressing their concern that the regulation would result in the imposition of public water and sewer in historic watershed areas near the French and Pickering Creeks. Since the regulation does not address the way in which a public utility defines its own service area nor does it require an extension of a service area, then these fears are unfounded.

energy market, the ready availability of alternative fuels and electric utility service make natural gas largely a matter of customer choice. See PGA Comments, pp. 1-3; Columbia Gas comments, p. 3. As such, it appears that in most circumstances, a request for a natural gas line extension would be deemed to be a request for "special utility service" -- that is, service which exceeds that required for ordinary residential purposes or service for which there is a safe, adequate and competitively priced alternative. See Bonneau v. North Penn, Docket No. C-946274 (Order entered June 23, 1995); Babyak v. Peoples, Docket No. F-218963 (Order entered November 29, 1994).

Under these circumstances, it is better to target the real problem area, and we are no longer proposing that the line extension regulation apply across the board. Rather, the new proposal is limited to water utilities and has been placed in the appropriate chapter in Title 52 of the Pennsylvania Code. We will not hesitate to institute a similar rulemaking in the future, however, if the kinds of problems that we see in the water industry begin to occur regularly in electric, telephone and gas line extension cases.

Moreover, even in the absence of mandatory regulations for the electric, telephone and natural gas industries, we suggest that the proposed water regulations serve as the appropriate economic concept and provide guidance for line extensions in the other utility industries. These regulations reflect the Commission's view regarding line extensions and may prove

instructive in adjudicating complaint cases involving line extensions in any industry.

In preparing our present proposal, staff consulted informally with industry representatives, as well as with the Offices of Consumer Advocate and Small Business Advocate. Although not all concerns and viewpoints can be satisfied, we believe that we have developed a predictable economic standard which treats all parties fairly and satisfies the requirements of Section 1501 and Pennsylvania case law.

### III. SUMMARY OF PROPOSED REGULATION

As in the proposed-form regulation published October 8, 1994, these regulations establish the duty of each public utility to provide line extensions without a customer contribution where the annual expected revenues equal or exceed the annual expenses and capital costs associated with the new line. Based on the comments to the proposed-form regulations, we have made a number of refinements to the revenue, expense and capital elements that may be included in this economic test, most notably the inclusion of debt costs as recommended by several commentators. See PEA Comments, pp. 5-6; PGA Comments, p. 5; NAWC-PA Comments, p.3.

The overall concept behind this regulation, however, remains the same: 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. 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.<sup>3</sup> 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.<sup>4</sup>

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, as recommended by IRRC, that utilities will "fund all line extensions that are

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<sup>3</sup>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.

<sup>4</sup>An illustration of how the economic test would be applied for a hypothetical company for a variety of line extension construction costs is set forth in Table III, attached hereto. Moreover, we anticipate that all utilities will voluntarily share with prospective service applicants the calculations and assumptions used to determine whether a customer contribution would be required and its amount.

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. IRRRC Comments, p.2.

The following discussion will summarize the further changes and refinements made to the proposed-form regulations published October 8, 1994.

Section 65.1 - Definitions In addition to the definitions for bona fide service applicant" and "special utility service" set forth in the proposed regulation which appeared at 24 Pa. B. 5103, we have added definitions for six other terms which now appear in the body of the regulation and need to be defined. All of these definitions are specific to the subject of line extensions and, accordingly, are not to be viewed as controlling for ratemaking purposes or in other regulatory contexts.

**Annual line extension costs.** This specifies the cost elements which may be included in comparing line extension costs to the annual revenues of a particular line extension. The cost elements include the additional annual operating and maintenance costs, debt costs and depreciation charges associated with the line extension. Equity return has been specifically excluded as a cost element.

**Annual revenue.** The definition specifies the method of calculating the revenue which a utility may count as expected for a line extension. We note here that if for the purpose of

determining "annual revenue" there are no existing customers "similar in nature and size to the bona fide service applicant," the utility may use the service applicant's projected average annual usage based on customer-specific factors such as dwelling size, location and appliances.

**Bona fide service applicant.** This term provides the answer to the threshold question of which persons or entities within a public utility's service are entitled to line extensions. It includes the individual seeking service for his or her own primary residence or place of business, provided that the level of service to that primary business does not exceed that of a residence.

**Debt Costs.** The definition is needed because the term is now included in the definition of "annual line extension costs." Debt costs are the utility's additional annual cost of debt associated with financing the line extension investment; the annual amount is determined by multiplying the proportion of line extension investment financed by debt times the utility's debt cost rate. Due to the infrequency of base rate cases for some companies, we have decided to use a company's current debt cost data. The cost of preferred stock, however, has been specifically excluded since it is a relatively minor component of any utility's cost of service and would needlessly complicate the economic standard for a line extension.

**Depreciation charges.** This defines another expense element which is allowed under the definition of "annual line

extension costs." The annual depreciation charge allowance will be line extension-specific to recognize the differing capital costs of the various sized main line extensions necessary to provide service.

**Operating and maintenance costs.** These are costs associated with serving an additional customer, including customer accounting, billing, collections, and costs specific to the water industry. Costs recovered pursuant to Section 1307, however, are specifically excluded since the dollar-for-dollar associated revenues are also excluded in the definition of annual line extension revenues.

**Line extension.** Defined as "an addition to the utility's main line which is necessary to serve the premises of a customer," the term is meant to differentiate between a line extension within the meaning of this rulemaking and the addition of a service line.

**Special utility service.** The economic test provided in this rulemaking for whether a customer contribution may be required, will not apply to the request for any residential or business service which exceeds that required for "ordinary residential purposes" or service for which there is a "safe, adequate and competitively priced alternative" to meet the applicant's utility needs.<sup>5</sup> For special utility service, the rates, terms and conditions set forth in a utility's currently effective

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<sup>5</sup>Although the phrase "competitively priced" may be inexact, we prefer to develop the metes and bounds of this concept by Commission precedent since disputes on this type of issue are expected to be fact-driven and dependent upon unique circumstances.

tariff will control. Thus, for a water service applicant seeking special utility service, the water utility's tariffed terms and conditions will control treatment of the incremental costs incurred by the water utility to provide the special service needs.

Section 65.21 - Duty of public utility to make line extensions. 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 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 contribution 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 revenues.

In keeping with our previous order at Docket No. I-880083<sup>6</sup>, 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.

**Section (c).** This section provides that utilities which have \$10 million or more in gross annual revenues shall give the applicant the option of paying the customer contribution over a period of not less than three years following the service connection, given the potentially large cost of some line extensions.<sup>7</sup> Our original proposal required all utilities to offer that option, but after consideration of the many comments we received in protest and after realizing that many of the smaller companies are unable to raise the necessary capital to allow them to exercise this provision, we are limiting the requirement to those utilities which have over \$10 million in gross annual revenues. Furthermore, in order to mitigate the risk to the utility, we are adding two provisions: (1) the utilities may require a deposit in advance in an amount up to one-third of the

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<sup>6</sup>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.)

<sup>7</sup>At Pennsylvania American Water Company, for example, the average cost of a line extension for a bona fide service applicant between 1989 and 1993 was approximately \$25,000.

total contribution, and (2) the utilities may recover financing costs equal to the cost of debt associated with initially funding the construction.

With these additions, we do not believe it to be necessary to provide that a failure to honor the payment plan will be an independent reason to terminate service. Such a provision would conflict with the existing termination regulation at 52 Pa. Code §56.83(3). We also believe that these provisions reflect a fair compromise between the positions advocated on behalf of service applicants and the utilities. Indeed, the addition of financing costs should make utilities whole for the capital expended in advance for a line extension.

**Section (d).** This section requires a utility to provide for refunding a portion of the customer contribution if an additional customer or customers attach service lines to the main extension within ten years. Specifics are to be spelled out in each utility's tariff.

**Section (e).** This provides the utilities with the authority to require that customers and developers pay a reasonable charge in advance for service lines and equipment installed on private property for the exclusive use of the customer. A reasonable charge for this service should be based on the utility's actual cost of the installation.

**Section 65.22 - Special utility service.** Special utility service is specifically exempted from the strict provisions of these line

extension regulations with the exception of Section (d), which provides for reimbursement of contributions if another customer attaches to the main extension within ten years. That the extension was made to benefit a single customer, to a development or to an industrial site is not a legitimate reason to exempt the utility from reimbursing some portion of the contribution if additional customers attach to the main line extension.

#### IV. APPLICATION OF THE REGULATION

In addition to the above refinements to the economic test for line extensions, we also requested data to assist us in evaluating the results of applying the economic test to the four largest investor-owned water utilities in Pennsylvania: Philadelphia Suburban Water Company (PSW), Pennsylvania-American Water Company (PA-American), Pennsylvania Gas & Water Company (PG&W), and York Water Company (York). This analysis was prompted by the IRRC suggestion that we evaluate whether the new regulations will achieve "an appropriate balance between the benefits afforded to new customers and the costs that all existing ratepayers will incur as a result of the utilities' contribution." IRRC Comments, p. 3. To this end, the water industry was able to provide company-specific estimates of the customer contribution threshold for new service applicants based on current cost data. However, an analysis of future revenue requirement changes, based necessarily on a projected number of new line extensions under the new

regulations, was deemed to be too speculative to generate any reliable data and, therefore, was not provided.

Nevertheless, the data available from the four largest water companies does provide a good estimate of the effect of this regulation on new service applicants as to the customer advance threshold and the maximum footage allowance related to that threshold. Based on their current revenues, operating and maintenance expenses, and capital costs, these companies have estimated that the point at which a customer would be required to begin to make a contribution to the total cost of a line extension would be in excess of \$3,400 and as high as \$5,300.

Table I

Average Per Line Revenues, Costs & Customer Advance Threshold

	PSW	PA-American	PG&W	York
Annual Revenue	\$269	\$333	\$300	\$257
O & M Costs	33	21	15	30
Depreciation	54	116	57	38
Debt Costs	182	196	228	189
Cust. Adv. Threshold	\$4,000	\$4,000	\$5,300	\$3,400

Moreover, although the cost per foot of a given line extension can vary considerably depending upon the size of the pipe and the location of the line, it appears that the economic test set forth in this regulation will result in a substantially greater amount of footage at no cost to the new customer than the so-called 35-foot rule included in many water company's existing tariffs.<sup>8</sup> Using the industry association's figure of \$25 as the average cost per foot of a line extension, a new customer would obtain between 136 and 212 feet of line extension with no customer contribution required, depending on the company. Using a more conservative

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<sup>8</sup>According to Law Bureau Prosecutory Staff, many water companies now employ a so-called "35-foot rule" which places a tremendous economic burden on new service applicants even though the utility's facilities may be "well within the sight of the service applicant's residence." Law Bureau Prosecutory Staff Comments, pp. 9-10.

§65.21. Duty of public utility to make line extensions. Each public utility shall file with the Commission, as part of its tariff, a rule setting forth the conditions under which facilities will be extended to supply service to an applicant within its service area. Upon request by a bona fide service applicant, a utility shall construct line extensions within its franchised territory consistent with the following directives:

(a) Line extensions to bona fide service applicants shall be funded without customer advance where the annual revenue from the line extension will equal or exceed the utility's annual line extension costs.

(b) If the annual revenue from the line extension will not equal or exceed the utility's annual line extension costs, a bona fide service applicant may be required to provide a customer advance to the utility's cost of construction for the line extension. The pre-tax customer advance amount shall be determined by multiplying the utility's cost of construction by the percent of annual line extension costs not covered by annual revenue. Unless otherwise directed by the Commission, the total customer advance amount may include a gross-up factor to account for applicable income taxes.

(c) If a customer advance is required from a bona fide service applicant for service from a company with gross annual receipts of \$10 million or more, said utility shall give the customer the option of paying the customer advance over a period of not less than three years following service connection provided that the utility may require a customer deposit in an amount up to

one-third of the total advance amount prior to extending service. When a payment term is selected, a utility may recover financing costs equal to its cost of debt associated with initially funding the construction.

(d) When a customer advance is required of a service applicant and an additional customer or customers attach service lines to the main extension within ten years, the utility shall refund a portion of the advance to the customer in accordance with the utility's currently effective tariff. Deposits made for additional facilities other than the main extension, such as booster pumps, storage tanks and the like, are contributions in aid of construction and need not be refunded.

(e) A utility may require a customer to pay a reasonable charge, including applicable income taxes, payable in advance for service lines and equipment installed on private property for the exclusive use of the customer.

§65.22. Special utility service. Section 65.21 (a), (b), (c) and (e) shall not apply to special utility service.

# RULES AND REGULATIONS

## Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 65 AND 69]

[L-930089]

### Line Extensions

The Pennsylvania Public Utility Commission (Commission) on October 3, 1996, adopted a revised order promulgating final-form regulations regarding line extensions. The final-form regulations will require water utilities to provide line extensions without a customer contribution where the annual expected revenues equal or exceed the annual estimated operating and maintenance expenses, plus annual book depreciation and debt expenses associated with the extension. Each company will figure variables appropriate for its own use and will apply these variables into the formula created by the regulation. The contact person is Susan D. Colwell, Assistant Counsel, Law Bureau (717) 783-3459 or 783-3190.

#### Executive Summary

The Commission instituted a rulemaking proceeding at this docket at the November 19, 1993, public meeting to provide a public forum for discussion and resolution of the problem areas and uncertainty associated with the present main line extension policy in § 69.171. The advance notice of proposed rulemaking was published in the *Pennsylvania Bulletin* on December 18, 1993, with comments due on or before February 19, 1994.

The proposed regulations were adopted by order entered July 1, 1994, which proposed to require water utilities whose depreciated plant in service amounts to more than \$10 million to fund ordinary line extensions without customer contribution where the expected annual revenues equal or exceed annual depreciation expense of the extension computed consistent with the utility's Commission-approved book depreciation rate. These were published in the *Pennsylvania Bulletin* on October 8, 1994, with a 45-day comment period. Due to an early sine die by the Legislature, the comment period was extended to January 22, 1995.

The Commission entered a final order adopting regulations on December 28, 1995, which will require water utilities to provide line extensions without a customer contribution where the annual expected revenues equal or exceed the annual estimated operating and maintenance expenses, plus annual book depreciation and debt expenses associated with the extension. Each utility will figure variables appropriate for its own use and will apply these variables into the formula created by the regulation.

On April 12, 1996, the Commission elected to temporarily withdraw the regulation from formal Independent Regulatory Review Commission (IRRC) review to consider some additional issues raised by IRRC staff, and notice was published in the *Pennsylvania Bulletin*. This final order, adopted October 3, 1996, and entered October 7, 1996, reflects our consideration of the IRRC staff comments, a recent change to Federal income tax law applicable to customer advances, and some language changes to the regulation itself for clarification.

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of the final rulemaking, which was published as proposed at October 8, 1994, 24 Pa.B. 5103, and served on September 23, 1994, to IRRC and the Chairpersons of House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Commission has considered the comments received from IRRC, the Committees and the public.

No action was taken on these final-form regulations by the House Committee on Consumer Affairs prior to sine die. The final-form regulations were approved November 13, 1996, by the Senate Committee on Consumer Protection and Professional Licensure, and were approved by IRRC on November 21, 1996, in accordance with section 5(c) of the Regulatory Review Act.

Public Meeting held  
October 3, 1996

*Commissioners present:* John M. Quain, Chairperson; Lisa Crutchfield, Vice Chairperson; John Hanger, Concurring and Dissenting in part—Statement follows; David W. Rolka, Dissenting; and Robert K. Bloom

#### Revised Order

*By the Commission:*

#### I. HISTORY OF THE PROCEEDING

This rulemaking was initiated at public meeting held November 10, 1993, to provide a public forum for discussion and resolution of the problem areas and uncertainty associated with the present utility service extension policy as it appears in § 69.171. The advance notice of proposed rulemaking was published in the *Pennsylvania Bulletin* on December 18, 1993. By notice published February 4, 1994, the comment period was extended from 45 to 60 days.

The advance notice was served on the utility associations and concerned governmental offices seeking detailed answers to a series of specific questions which would be used to evaluate the present policy statement and to draft proposed line extension regulations. Respondents were also encouraged to submit draft regulations and to offer recommendations which they believed would solve controversies.

Following review of the comments and the applicable Pennsylvania case law, the Commission adopted a proposed rulemaking at the June 16, 1994, public meeting, entered July 1, 1994. The proposal was published in the *Pennsylvania Bulletin* on October 8, 1994, commencing a 45-day comment period. Again, numerous comments were received, many of which provided specific answers to the questions we had set forth in the proposal.<sup>1</sup> Although the

<sup>1</sup>Comments to the proposed regulations were filed by the following: Pennsylvania Electric Association (PEA), UGI Utilities, Inc., Duquesne Light, Pennsylvania Electric Company, PECO Energy, Penn Power, Pennsylvania Power & Light Co., West Penn Power Co., Pennsylvania Gas Association (PGA), Columbian Gas of Pennsylvania, Equitable Gas, National Fuel Gas Distribution Corporation, Peoples Natural Gas Company, Pennsylvania Gas and Water Co., T.W. Phillips Gas and Oil Co., Pennsylvania Telephone Association (PTA), National Association of Water Companies—

public comments are too numerous to discuss individually here, each was carefully reviewed and considered, and we thank each commentator for the cooperation and information forwarded to us. In addition, by letter dated February 22, 1995, we received comments from IRRC regarding the proposed-form regulation.

Based upon our consideration of these comments to the proposed-form rulemaking, the Commission adopted a final-form rulemaking at the December 7, 1995, public meeting, entered December 28, 1995. However, given the nature of some additional issues raised by the IRRC staff on April 8, 1996, regarding §§ 65.1, 65.21(b), 65.22 and 65.21(c), the Commission elected, on April 12, 1996, to temporarily withdraw the regulation from formal IRRC review in order to give further consideration to those issues. Notice of the temporary withdrawal and of the issues raised by IRRC's staff was provided to all parties; a notice was also published in the *Pennsylvania Bulletin* on April 27, 1996, at 26 Pa.B. 2061. Further comments were due on or before May 3, 1996.

The only further comment filed in response to the Commission's notice was from the PGA which reaffirmed its position that natural gas utilities should be excluded from the scope of this line extension rulemaking. Accordingly, the further changes in this revised order will reflect our consideration of the April 8, 1996, IRRC staff comments, a recent change to Federal income tax law applicable to customer advances, and some language changes to the regulation for clarification purposes.

## II. Discussion

Under section 1501 of the Public Utility Code, public utilities are obligated to provide "reasonable service" to the public, including the obligation to make line extensions "to such service and facilities as may be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa. C.S. § 1501. At the same time, Pennsylvania case law has recognized that a public utility's duty to provide line extensions is not unlimited and, therefore, will not obligate the public utility to make line extensions for which there is no "public need" *Colonial Products Co. v. Pa. P.U.C.*, 188 Pa. Superior Ct. 163, 146 A.2d 657 (1958), *Airlines Transportation Co. v. Pa. P.U.C.*, 63 Pa. Commonwealth Ct. 298, 437 A.2d 1283 (1981), or to make line extensions which are uneconomic or unreasonable. *Sherman v. Public Service Commission*, 90 Pa. Superior Ct. 523 (1927); *Ridley Township v. Pa. P.U.C.*, 172 Pa. Superior Ct. 472, 94 A.2d 168 (1953).

In *Colonial Products*, for example, the court explained this limitation on the general obligation to make line extensions as follows:

A utility rendering reasonably adequate service should not be subjected to unreasonable expenditures, or the consuming public unduly burdened because of the unusual or extraordinary demands of one customer.

*Id.* at 173, 146 A.2d at 663. More recently, in *Lynch v. Pa. P.U.C.*, 594 A.2d 816 (Pa. Cmwlth. 1991), the court explained that in order to obtain a line extension, the applicant must show (1) that there is a "public necessity

for the service requested" and (2) that the extension will result in "a return of investment for the utility." *Id.* at 604. 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.<sup>2</sup> 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.

At the same time, the Commission recognizes that the electric and telephone industries are not subject to the same level of uncertainty and litigation regarding line extension issues as are the water and gas industries. See PEA Comments, pp.1-3 (recommending that the electric utility industry be excluded given the existing regulations for electric utility line extensions in § 57.19 and the lack of controversy in that industry); PTA Comments, pp. 3-4 (recommending line extension requirements of 500 feet on private property and 2,640 on public rights-of-way).

In addition, for the natural gas industry it has become increasingly clear that, in the residential energy market, the ready availability of alternative fuels and electric utility service make natural gas largely a matter of customer choice. See PGA Comments, pp. 1-3; Columbia Gas comments, p. 3. As such, it appears that in most circumstances, a request for a natural gas line extension would be deemed to be a request for "special utility service" — that is, a service request which exceeds that required for ordinary residential service or a service request that does not involve a "public necessity for the service requested" given the existence of a safe, adequate and competitively priced alternative. See *Bonneau v. North Penn.*, Docket No. C-946274 (Order entered June 23, 1995); *Babyak v. Peoples*, Docket No. F-218963 (Order entered November 29, 1994); *Lynch v. Pa. P.U.C.*, 594 A.2d 816 (Pa. Cmwlth. 1991).

Under these circumstances, it is better to target the real problem area, and we are no longer proposing that the line extension regulation apply across the board. Rather, the new proposal is limited to water utilities and has been placed in the appropriate chapter in Title 52 of the *Pennsylvania Code*. We will not hesitate to institute a similar rulemaking in the future, however, if the kinds of problems that we see in the water industry begin to occur regularly in electric, telephone and gas line extension cases.

Moreover, even in the absence of mandatory regulations for the electric, telephone and natural gas industries, we suggest that the proposed water regulations serve as the appropriate economic concept and provide guidance for line extensions in the other utility industries. These regulations reflect the Commission's view regarding line extensions and may prove instructive in adjudicating complaint cases involving line extensions in any industry.

In preparing our present proposal, staff consulted informally with industry representatives, as well as with the Offices of Consumer Advocate and Small Business Advocate. Although not all concerns and viewpoints can be satisfied, we believe that we have developed a predictable

Pennsylvania Chapter (NAWC-PA), Pennsylvania-American Water Company, Philadelphia Suburban Water Co., York Water Co., George S. Emmons, Representative Teresa E. Brown, Office of Consumer Advocate, Green Valleys Association, Pennsylvania State Association of Township Supervisors, South Coventry Township Board of Supervisors, French & Pickering Creeks Conservation Trust Inc., and 22 individuals who filed form letters expressing their concern that the regulation would result in the imposition of public water and sewer in historic watershed areas near the French and Pickering Creeks. Since the regulation does not address the way in which a public utility defines its own service area nor does it require an extension of a service area, then these fears are unfounded.

<sup>2</sup>According to Law Bureau Prosecutory Staff, as of February 1994, there were between 50 and 75 formal line extension cases currently pending before the Commission, and "many more on an informal basis." Law Bureau Prosecutory Staff Comments, p. 11.

economic standard which treats all parties fairly and satisfies the requirements of Section 1501 and Pennsylvania case law.

### III. Summary of Proposed Regulation

As in the proposed-form regulation published October 8, 1994, these regulations establish the duty of each public utility to provide line extensions without a customer contribution where the annual expected revenues equal or exceed the annual expenses and capital costs associated with the new line. Based on the comments to the proposed-form regulations, we have made a number of refinements to the revenue, expense and capital elements that may be included in this economic test, most notably the inclusion of debt costs as recommended by several commentators. See PEA Comments, pp. 5-6; PGA Comments, p. 5; NAWC-PA Comments, p.3.

The overall concept behind this regulation, however, remains the same: 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. 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.<sup>3</sup> 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.<sup>4</sup>

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, as recommended by IRRIC, 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. IRRIC Comments, p.2.

The following discussion will summarize the further changes and refinements made to the proposed-form regulations published October 8, 1994.

**Section 65.1—Definitions.** In addition to the definitions for "bona fide service applicant" and "special utility service" set forth in the proposed regulation which appeared at 24 Pa. B. 5103, we have added definitions for six other terms which now appear in the body of the regulation and need to be defined. All of these definitions are specific to the subject of line extensions and, accordingly, are not to be viewed as controlling for ratemaking purposes or in other regulatory contexts.

**Annual line extension costs.** This specifies the cost elements which may be included in comparing line exten-

sion costs to the annual revenues of a particular line extension. The cost elements include the additional annual operating and maintenance costs, debt costs and depreciation charges associated with the line extension. Equity return has been specifically excluded as a cost element.

**Annual revenue.** The definition specifies the method of calculating the revenue which a utility may count as expected for a line extension. We note here that if for the purpose of determining "annual revenue" there are no existing customers "similar in nature and size to the bona fide service applicant," the utility may use the service applicant's projected average annual usage based on customer-specific factors such as dwelling size, location and appliances.

**Bona fide service applicant.** This term provides the answer to the threshold question of which persons or entities within a public utility's service are entitled to line extensions. It includes the individual seeking service for his own primary residence or place of business, provided that the level of service to that primary business does not exceed that of a residence.

**Debt costs.** The definition is needed because the term is now included in the definition of "annual line extension costs." Debt costs are the utility's additional annual cost of debt associated with financing the line extension investment; the annual amount is determined by multiplying the proportion of line extension investment financed by debt times the utility's debt cost rate. Due to the infrequency of base rate cases for some companies, we have decided to use a company's current debt cost data. The cost of preferred stock, however, has been specifically excluded since it is a relatively minor component of any utility's cost of service and would needlessly complicate the economic standard for a line extension.

**Depreciation charges.** This defines another expense element which is allowed under the definition of "annual line extension costs." The annual depreciation charge allowance will be line extension-specific to recognize the differing capital costs of the various sized main line extensions necessary to provide service.

**Operating and maintenance costs.** These are costs associated with serving an additional customer, including customer accounting, billing, collections and costs specific to the water industry.

**Line extension.** Defined as "an addition to the utility's main line which is necessary to serve the premises of a customer," the term is meant to differentiate between a line extension within the meaning of this rulemaking and the addition of a service line.

**Special utility service.** The economic test provided in this rulemaking for whether a customer contribution may be required, will not apply to the request for any residential or business service which exceeds that required for "ordinary residential purposes" or service for which there is a "safe, adequate and competitively priced alternative" to meet the applicant's utility needs since these circumstances would not involve a public necessity for the service requested. The special service needs of one or a few customers should not be borne by the public at large within the utility's service territory.<sup>5</sup> For special utility service, the rates, terms and conditions set forth in a utility's currently effective tariff will control. Thus, for a water service applicant seeking special utility service, the

<sup>3</sup>Implementation of this economic test may require the use of reasonably-developed company averages and/or expense allocation; in other words, we will not require companies to determine customer-specific operating and maintenance expenses.

<sup>4</sup>An illustration of how the economic test would be applied for a hypothetical company for a variety of line extension construction costs is set forth in Table III, attached hereto. Moreover, we anticipate that all utilities will voluntarily share with prospective service applicants the calculations and assumptions used to determine whether a customer contribution would be required and its amount.

<sup>5</sup>Because this regulation will apply only to the water industry, the "safe, adequate and competitively priced alternative" language contained in the order adopted December 7, 1995, has been deleted as unnecessary.

water utility's tariffed terms and conditions will control treatment of the incremental costs incurred by the water utility to provide the special service needs.

*Section 65.21—Duty of public utility to make line extensions.* 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 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.

*Sections (b) and (c).* These sections set forth the circumstances under which a utility may require (a utility is not obligated to require) a customer contribution in order to extend a main for service and a formula for calculation of the customer contribution amount. The formula is designed to take into account the utility's cost of construction, as well as the annual expenses and expected revenues from the line extension.

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 amount of the customer contribution will be determined by subtracting the utility's minimum required investment for the line extension from the total construction costs. The utility's minimum level of investment for the line extension is that portion of the total investment which causes the utility to incur annual line extension costs equal to the expected annual revenue from the line extension. 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 revenues.

We note here that the April 8, 1996, comments of the IRRC staff recommend replacing the word "may" with "shall," which would result in the creation of a rule requiring a utility to charge a customer contribution in all circumstances if the formula reveals that the projected annual revenue from the line extension will not exceed the utility's annual line extension costs. In developing this regulation, we intended to create a rule which sets the *minimum* dollar amount which utilities must pay toward the cost of a line extension. However, it was not our 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. Utilities do not, as a rule, make uneconomic or irrational business decisions by offering to fund their own line extensions when they are permitted to ask for a reasonable customer contribution.

Further, a mandatory customer contribution amount would serve no useful purpose since it would create a situation where a utility which desires to fund more of a given line extension than is contemplated by the formula must come before the Commission and ask for a waiver of the rule. It would be the creation of a burdensome regulation which places undue restrictions on the regu-

lated community and would be contrary to Governor Ridge's Executive Order 1996-1, which states that a regulation should be promulgated only after a determination that it is necessary to address "a compelling public interest." The minimum line extension funding requirement on utilities does address a compelling public interest, that is, ensuring that the bona fide service applicant pays only for that portion of the line extension which exceeds the utility's annual line extension costs. However, changing the minimum requirement to a hard and fast rule would mean that companies wishing to be more generous would have to seek a waiver of the rule and, in our judgment, make this regulation unnecessarily burdensome and inflexible, contrary to the principles outlined in EO 1996-1. Realistically, these companies would probably not bother, and it is the bona fide service applicant which would end up paying more as a result.

Lastly, given President Clinton's signing on August 20, 1996, of H.R. 3448, contributions in aid of construction and customer advances are no longer taxable to the utility; thus, the gross-up factor to account for this tax referred to in our earlier orders is no longer necessary. This change in Federal income tax law will substantially reduce the cost of line extensions to bona fide service applicants.

*Section 65.22. Customer advance financing, refunds and facilities on private property.*

*Section (a).* This section provides that utilities which have \$10 million or more in gross annual revenues shall give the applicant the option of paying the customer contribution over a period of not less than 3 years following the service connection, given the potentially large cost of some line extensions.<sup>6</sup> Our original proposal required all utilities to offer that option, but after consideration of the many comments we received in protest and after realizing that many of the smaller companies are unable to raise the necessary capital to allow them to exercise this provision, we are limiting the requirement to those utilities which have over \$10 million in gross annual revenues. Furthermore, in order to mitigate the risk to the utility, we are adding two provisions: (1) the utilities may require a deposit in advance in an amount up to one-third of the total contribution, and (2) the utilities may recover financing costs equal to the cost of debt associated with initially funding the construction.

With these additions, we do not believe it to be necessary to provide that a failure to honor the payment plan will be an independent reason to terminate service. Such a provision would conflict with the existing termination regulation in § 56.83(3). We also believe that these provisions reflect a fair compromise between the positions advocated on behalf of service applicants and the utilities. Indeed, the addition of financing costs should make utilities whole for the capital expended in advance for a line extension.

*Section (b).* This section requires a utility to provide for refunding a portion of the customer contribution if an additional customer or customers attach service lines to the main extension within 10 years. Specifics are to be spelled out in each utility's tariff.

*Section (c).* This section provides that the utilities must require customers and developers to pay a reasonable charge in advance for service lines and equipment installed on private property for the exclusive use of the

<sup>6</sup>At Pennsylvania American Water Company for example, the average cost of a line extension for a bona fide service applicant between 1989 and 1993 was approximately \$25,000.

customer. A reasonable charge for this service should be based on the utility's actual cost of the installation.

*Section 65.23—Special utility service.* Special utility service is specifically exempted from the strict provisions of these line extension regulations with the exception of § 65.22(b), which provides for reimbursement of contributions if another customer attaches to the main extension within 10 years. That the extension was made to benefit a single customer, to a development or to an industrial site is not a legitimate reason to exempt the utility from reimbursing some portion of the contribution if additional customers attach to the main line extension.

IV. Application of the Regulation

In addition to the above refinements to the economic test for line extensions, we also requested data to assist us in evaluating the results of applying the economic test to the four largest investor-owned water utilities in Pennsylvania: Philadelphia Suburban Water Company (PSW), Pennsylvania-American Water Company (PA-American), the former Pennsylvania Gas & Water Company (PG&W), and York Water Company (York). This analysis was prompted by the IRRC suggestion that we evaluate whether the new regulations will achieve "an appropriate balance between the benefits afforded to new customers and the costs that all existing ratepayers will incur as a result of the utilities' contribution." IRRC Comments, p. 3. To this end, the water industry was able to provide company-specific estimates of the customer contribution threshold for new service applicants based on current cost data. However, an analysis of future revenue requirement changes, based necessarily on a projected number of new line extensions under the new regulations, was deemed to be too speculative to generate any reliable data and, therefore, was not provided.

Nevertheless, the data available from the four largest water companies does provide a good estimate of the effect of this regulation on new service applicants as to the customer advance threshold and the maximum footage allowance related to that threshold. Based on their current revenues, operating and maintenance expenses, and capital costs, these companies have estimated that the point at which a customer would be required to begin to make a contribution to the total cost of a line extension would be in excess of \$3,400 and as high as \$5,300.

Table I

Average Per Line Revenues, Costs & Customer Advance Threshold	PA-			
	PSW	American	PG&W	York
Annual Revenue	\$269	\$333	\$300	\$257
O & M Costs	33	21	15	30
Depreciation	54	116	57	38
Debt Costs	182	196	228	189
Cust. Adv. Threshold	\$4,000	\$4,000	\$5,300	\$3,400

Moreover, although the cost per foot of a given line extension can vary considerably depending upon the size of the pipe and the location of the line, it appears that the economic test set forth in this regulation will result in a substantially greater amount of footage at no cost to the new customer than the so-called 35-foot rule included in

many water company's existing tariffs.<sup>7</sup> Using the industry association's figure of \$25 as the average cost per foot of a line extension, a new customer would obtain between 136 and 212 feet of line extension with no customer contribution required, depending on the company. Using a more conservative figure of \$40 based on the historic data contained in the water company's comments, the length of a line extension before a customer contribution would be required is still considerable, ranging between 85 feet and 133 feet.

Table II

Maximum Footage Allowance Without Customer Contribution

	Industry Estimate	Conservative Est.
	\$25 per foot	\$40 per foot
Philadelphia Suburban	160	100
Pennsylvania American	160	100
PG&W	212	133
York	136	85

Whatever cost per foot estimate is used, it appears that the economic test in these regulations for determining when an individual must begin to provide a contribution to the cost of a line extension will provide a generous footage allowance to new service applicants without damaging the economic soundness of the public utility or causing existing customers to unreasonably subsidize new customers. We believe that the balance among those interests struck by this regulation is fair, reasonable and consistent with Pennsylvania law.

Lastly, since these regulations for the water industry also reflect with greater specificity the Commission's views with respect to line extensions and, in particular, the parameters of a lawful economic test for customer contributions and the definition of special utility service, the existing policy statement in § 69.171, which is general in nature, shall be rescinded, effective on the publication date of these final-form line extension regulations.

Table III

Illustration of Required Level of Customer Contribution

*Assumptions:*  
 Annual Revenues (AR) at \$300 per year  
 Operating and Maintenance Expenses (OM) of \$15 per year per customer  
 Depreciation Rate (D) for Account 322 of 333%  
 Interest Expense Rate (I) of 2.75%, based on long-term debt ratio of 55.0% and long-term debt cost rate of 5.00%

*Thus:*  
 Utility Investment  
 Break-even Point = [AR-OM] divided by [I+D]  
 =[\$300-15]/[0.0275+0.0333] = \$4,688

Construction Cost	Utility Investment	Customer Contribution
\$1,000	\$1,000	0
\$2,000	\$2,000	0
\$3,000	\$3,000	0
\$4,000	\$4,000	0
\$5,000	\$4,688	\$312

<sup>7</sup>According to Law Bureau Prosecutory Staff, many water companies now employ a so-called "35-foot rule" which places a tremendous economic burden on new service applicants even though the utility's facilities may be "well within the sight of the service applicant's residence." Law Bureau Prosecutory Staff Comments, pp. 9-10.

Construction Cost	Utility Investment	Customer Contribution
\$6,000	\$4,688	\$1,312
\$7,000	\$4,688	\$2,312
\$8,000	\$4,688	\$3,312
\$9,000	\$4,688	\$4,312
\$10,000	\$4,688	\$5,312

Accordingly, pursuant to sections 501, 504, 505, 506, 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 505, 506, 1301 and 1501, and the Commonwealth Documents Law (45 P.S. § 1201 et seq.), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, the Commission adopts as final the regulations for Line Extensions, §§ 65.1, 65.21, 65.22 and 65.23, as described above and set forth in Annex A. Therefore,

*It is Ordered That:*

1. This revised order shall supersede the order adopted December 7, 1995, at this docket.
2. The Commission's regulations, 52 Pa. Code Chapters 66 and 69, are amended by amending § 65.1, by adding §§ 65.21—65.23 and by deleting § 69.171 to read as set forth in Annex A.
3. The Commission's regulations are hereby amended by the rescission of the policy statement in § 69.171 effective upon publication in the *Pennsylvania Bulletin*.
4. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
5. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
6. The Secretary shall submit this order and Annex A for formal review by the designated standing committees of both houses of the General Assembly, and for formal review and approval by IRRC.
7. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
8. These amendments shall become effective upon publication in the *Pennsylvania Bulletin*.
9. The public utilities affected by these line extension regulations shall file appropriate compliance tariffs by April 16, 1997.
10. A copy of this order shall be served upon all persons who submitted comments in this rulemaking proceeding.

*By the Commission*

JOHN G. ALFORD,  
Secretary

*(Editor's Note: The proposal to add §§ 66.1—66.3 as proposed at 24 Pa.B. 5103 (October 8, 1994) has been withdrawn by the Commission. The amendment of § 65.1 and the addition of §§ 65.21—65.23 and the deletion of § 69.171 was not included in the proposal at 24 Pa.B. 5103.*

A proposal to amend § 65.1, amended in this document, remains outstanding at 26 Pa.B. 2325 (May 18, 1996).)

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5915 (December 7, 1996).)*

**Statement of Commissioner John Hanger**

This rulemaking has involved consideration of complex issues for which there is no simple answer. This Commission has been asked to resolve many line extension disputes in recent years, leading not only to a large volume of time consuming cases, but also to murky, at times undecipherable, Court and Commission policies and precedent. Cases sometimes are decided through pro forma applications of "rules" which are not reflected in any written standards. Sometimes the results bear little or no relationship to the underlying policies or rationales for the "rule." While the Regulations adopted today do adopt clear standards, those standards incorporate some misplaced considerations and sometimes do not adequately meet the guidance of either case law or important policy considerations.

Because it is essential that this Commission establish clear standards for line extensions, I concur and dissent with the Regulations proposed by the Law Bureau. While certain aspects of the Regulations applied to water utilities raise important concerns, as indicated below, I hope that passage will permit most water line extension cases to proceed expeditiously and fairly. I must dissent to the extent that the Regulations fail to include gas utilities.

The basic legal standard governing line extensions must reflect the primary "duty to serve" embodied in Section 1501 of the Public Utility Code, and the Regulations recommended by the Law Bureau do not do so. Section 1501 clearly states that:

"Every public utility ... shall make all such ... 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."

Thus, every case starts with a presumption that a utility which has been granted a service territory has the obligation to provide line extensions at system cost. The Courts have given the Commission some latitude to permit customer contributions when extensions are not presently required to serve actual customers or will benefit only an individual need at uneconomic public expense. This Commission does not have the authority under Section 1501 of the code, however, to declare that the duty to serve does not apply wholesale to large categories of customers.

There are extraordinary ramifications to the Law Bureau recommendation that utilities need not provide line extensions for customers who have "a safe, adequate and competitively priced alternative." Section 1501 imposes the duty to serve to include the "accommodation" and "convenience" of the public, without limiting the duty to situations in which the extension is a practical or economic necessity.

The staff recommendation suggests that gas service is always "special utility service" and that gas utilities do not have any duty to make a line extension because all uses of gas can instead be served by electricity, oil, propane or other fuels. While it is true that there are alternatives to gas, there is no legal or policy basis for suggesting that gas utilities are exempt from the duty to serve embodied in Section 1501 and a large body of appellate case law.

For these reasons, I concur and dissent.

**Fiscal Note:** Fiscal Note 57-152 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED UTILITY SERVICES

CHAPTER 65. WATER SERVICE

§ 65.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Annual line extension costs*—The sum of a utility's additional annual operating and maintenance costs, debt costs and depreciation charges associated with the construction, operation and maintenance of the line extension.

*Annual revenue*—The utility's expected additional annual revenue from the line extension based on the utility's currently effective tariff rates and on the average annual usage of customers similar in nature and size to the bona fide service applicant.

*Bona fide service applicant*—A person or entity applying for water service to an existing or proposed structure within the utility's certificated service territory for which a valid occupancy or building permit has been issued if the structure is either a primary residence of the applicant or a place of business. An applicant will not be deemed a bona fide service applicant if one of the following applies:

- (i) The applicant is requesting water service to a building lot, subdivision or a secondary residence.
- (ii) The request for service is part of a plan for the development of a residential dwelling or subdivision.
- (iii) The applicant is requesting special utility service.

*Company's service line*—The connection between the distribution facilities or pipeline extensions of the utility which connects any main with the inlet connection of a service line of a customer at the curb or property line.

*Customer*—A party contracting with a public utility for service.

*Customer's service line*—The service line extending from the curb, property line or utility connection to a point of consumption.

*Debt costs*—The utility's additional annual cost of debt associated with financing the line extension investment based on the current debt ratio and weighted long-term debt cost rate for that utility or that of a comparable jurisdictional water utility.

*Depreciation charges*—The utility's additional annual depreciation charges associated with the specific line extension investment to be made based on the current depreciation accrual rates for that utility or that of a comparable jurisdictional water utility.

*Line extension*—An addition to the utility's main line which is necessary to serve the premises of a customer.

*Main*—The pipe of a public utility system, excluding service connections, located in a public highway, street, alley or private right-of-way which pipe is used in transporting water.

*Nonessential uses of water*—Nonessential uses of water include:

(i) The use of hoses, sprinklers or other means for sprinkling or watering of shrubbery, trees, lawns, grass, plants, vines, gardens, vegetables, flowers or other vegetation.

(ii) The use of water for washing automobiles, trucks, trailers, trailer houses or another type of mobile equipment.

(iii) The washing of streets, driveways, parking lots, service station aprons, office buildings, exteriors of homes, sidewalks, apartments or other outdoor surfaces.

(iv) The operation of an ornamental fountain or other structures making a similar use of water.

(v) The use of water for filling swimming or wading pools.

(vi) The operation of any water-cooled comfort air conditioning which does not have water-conserving equipment.

(vii) The use of water from fire hydrants for construction purposes or fire drills.

(viii) The use of water to flush a sewer line or sewer manhole.

(ix) The use of water for commercial farms and nurseries other than a bare minimum to preserve plants, crops and livestock.

*Operating and maintenance costs*—The utility's average annual operating and maintenance costs associated with serving an additional customer, including customer accounting, billing, collections, water purchased, power purchased, chemicals and other variable costs based on the current total company level of the costs, as well as costs particular to the specific needs of that customer, such as line flushing.

*Public utility*—Persons or corporations owning or operating equipment or facilities in this Commonwealth for diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation. The term does not include a person or corporation not otherwise a public utility who or which furnishes service only to himself or itself, or a bona fide cooperative association which furnishes service only to its stockholders or members on a nonprofit basis.

*Short-term supply shortage*—An emergency which causes the total water supply of a public utility to be inadequate to meet maximum system demand.

*Special utility service*—Residential or business service which exceeds that required for ordinary residential purposes. The term may include installation of facilities such as oversized mains, booster pumps and storage tanks as necessary to provide adequate flows or to meet required pressure criteria and service to large water consuming commercial and industrial facilities.

§ 65.21. Duty of public utility to make line extensions.

Each public utility shall file with the Commission, as part of its tariff, a rule setting forth the conditions under which facilities will be extended to supply service to an applicant within its service area. Upon request by a bona fide service applicant, a utility shall construct line extensions within its franchised territory consistent with the following directives:

- (1) Line extensions to bona fide service applicants shall be funded without customer advance if the annual revenue from the line extension will equal or exceed the utility's annual line extension costs.

(2) If the annual revenue from the line extension will not equal or exceed the utility's annual line extension costs, a bona fide service applicant may be required to provide a customer advance to the utility's cost of construction for the line extension. The utility's investment for the line extension shall be the portion of the total construction costs which generate annual line extension costs equal to annual revenue from the line extension. The customer advance amount shall be determined by subtracting the utility's investment for the line extension from the total construction costs.

(3) The utility's investment for the line extension shall be based on the following formula, where X equals the utility's investment attributed to each bona fide applicant:

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

**§ 65.22. Customer advance financing, refunds and facilities on private property.**

(a) If a customer advance is required from a bona fide service applicant for service from a company with gross annual receipts of \$10 million or more and the bona fide applicant is unable to advance the entire amount due, the utility shall do one of the following:

(1) 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. The utility may require the applicant to deposit up to one-third of the total customer advance prior to extending service.

(2) Provide information to the customer on financial institutions that may offer financing to the customer for the line extension.

(b) When a customer advance is required of a service applicant and an additional customer or customers attach service lines to the main extension within 10 years, the utility shall refund a portion of the advance to the customer in accordance with the utility's currently effective tariff. Deposits made for additional facilities other than the main extension, such as booster pumps, storage tanks and the like, are contributions in aid of construction and need not be refunded.

(c) A utility shall require a customer to pay, in advance, a reasonable charge for service lines and equipment installed on private property for the exclusive use of the customer.

**§ 65.23. Special utility service.**

Sections 65.21 and 65.22 (a) and (c) (relating to duty of public utility to make line extensions; and customer advance financing, refunds and facilities on private property) do not apply to special utility service.

**CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES**

**§ 69.171. (Reserved).**

[Pa.B. Doc. No. 97-213. Filed for public inspection February 14, 1997, 9:00 a.m.]

## FINDINGS OF FACT

1. The Complainants, Cindy Parks, Richard T. Minutello and the Office of Consumer Advocate ("OCA"), demand that Pennsylvania-American Water Company ("PAWC" or the "Company") install the facilities to provide general and public fire protection within an area they have defined in Mount Pleasant Township, Washington County, Pennsylvania.

2. PAWC will provide the requested service in accordance with the terms of its tariff (PAWC St. 3.0 and 3.1).

3. The facilities that would have to be installed to provide the service requested by the Complainants have an estimated cost of \$6,290,499 (PAWC St. 1.1, p. 4; PAWC St. 2.1). These facilities include a storage tank and 12-inch diameter mains to be installed in certain critical areas (PAWC St. 2.1).

4. The size and character of the facilities that PAWC would install to serve the area defined by the Complainants are reasonable and are based upon sound engineering analyses and well-accepted reliability and fire service criteria (PAWC St. 2.1).

5. The alternatives proposed by the OCA's witness, Mr. Fought, do not meet accepted standards for reliability and fire flow capability and do not comply with sound waterworks principles and practices (PAWC St. 2.1; Tr. 398-99).

6. The Company's Tariff Rule 27 incorporates the revenue-justified investment formula set forth in the Commission's line extension regulation at 52 Pa. Code §65.21 *et seq.* (PAWC St. 3.1, pp. 4-5).

7. The Company-required investment calculated in the manner set forth in Tariff Rule 27 is \$6,200 per Bona Fide Service Applicant (PAWC St. 3.1, p. 5).

8. The number of Bona Fide Service Applicants within the area defined by the OCA and its witnesses is not known. The OCA estimates that there are 568 "potential customers" within that area, based on (1) answers to a Questionnaire and (2) the OCA's attempt to determine the desire of residents that did not return the Questionnaire (OCA St. 2A, p. 4).

9. The evidence presented is insufficient to find that the number of Bona Fide Service Applicants that would take service if the project were constructed would be as high as 568.

10. Even if 568 Bona Fide Service Applicants were to take service when the project is completed, the Company-required investment (\$3,521,600) would be less than the project cost (\$6,290,499) and customer contributions totaling \$2,768,899 would be required (PAWC St. 1.1, p. 4; PAWC St. 3.1, p. 5).

11. If less than 568 Bona Fide Service Applicants were used in the calculation, the customer contribution required would be even greater.

12. The OCA's proposal to use the interest rate for a loan from the Pennsylvania Infrastructure Investment Authority ("PennVest") to recalculate the utility-required investment under the formula in PAWC's Tariff Rule 27 represents a departure from the terms of the Company's Commission-approved tariff and the Commission's line extension regulation (PAWC St. 3.1, pp. 10-13).

13. The OCA understates the PennVest loan rate by using only the introductory rate for the first five years. The weighted average loan rate for a PennVest loan in Washington County is 2.427% (PAWC St. 3.0, p. 5).

14. Even if a PennVest loan rate of 2.427% were used in the formula in Tariff Rule 27 and the OCA's estimate of "potential customers" (568) were adopted, the resulting Company-required investment figure (\$5,183,000) is less than the project cost, and a customer contribution would be required (PAWC St. 3.0, p. 5; PAWC St. 3.1, pp. 4-5; PAWC St. 1.1, p. 4).

15. Use of a PennVest loan rate in the formula set forth in Tariff Rule 27 and the Commission's line extension regulation would result in significant inconsistencies that would work to the detriment of applicants requesting main extension that are not funded with PennVest loans (PAWC St. 3.1, p. 11).

16. Use of a PennVest loan rate in the formula set forth in Tariff Rule 27 and the Commission's line extension regulation without changing the manner in which the Company's return is calculated for ratemaking purposes would result in an improper "double count" of the benefit of the low rate of interest of the PennVest loan and would understate PAWC's revenue requirement by several million dollars over the term of the PennVest loan (PAWC St. 3.1, pp. 11-12; PAWC Ex. 3.3 through 3.6).

17. PAWC has entered into effective public-private partnerships with other townships in Washington County to introduce public water supplies while complying with the terms of Tariff Rule 27 and the Commission's regulation. Such townships have paid the customer contribution on behalf of their residents and passed mandatory connection ordinances (PAWC St. 1.1, p. 9).

18. Chartiers Township, located immediately adjacent to Mount Pleasant, incurred the \$880,000 liability for the customer contributions associated with a PAWC project to introduce a public water supply in the northern tier of that Township (PAWC St. 1.1, pp. 9-10).

19. A mandatory connection ordinance can help with a main extension project by providing certainty as the number of customers with will have to connect to the mains when installed. It also maximizes the number of customers and, thereby, minimizes the per-customer contribution, if one is required (PAWC St. 1.1, 6-8). The same effect could be achieved if a municipality were to "underwrite" or guaranty a

minimum number of customers to take service after the project is built (PAWC St. 1.1, pp. 6-8).

20. Mount Pleasant Township is not willing to enter into a public-private partnership with PAWC. The Township's unwillingness derives from opposition by a segment of the public within the Township that does not want a public water supply built within the Township (Tr. 107-108).

21. The degradation of the groundwater supplies in Mount Pleasant Township stems from malfunctioning or improperly installed septic systems; substantial areas devoted to livestock pasture; and the effects of underground coal mining (PAWC St. 1.1, pp. 10-11).

22. At one time, Mount Pleasant Township did not require permits for on-lot septic systems, which resulted in improperly installed systems and septic tanks installed in areas that do not "percolate," which assured the groundwater would be affected (Tr. 100, 198-202). Although the Township now requires permits before septic systems may be installed, it still does not conduct monitoring or inspections to detect problems or malfunctioning systems and does not require homeowners to fix problems that could affect public health and contaminate groundwater (Tr. 203; PAWC St. 1.1, p. 11).

23. Much of the Township is without public sewers, and the Township is only now taking steps to come into compliance with the Pennsylvania Sewage Facilities Act (Tr. 198-202; Gallagher St. 1-S).

24. The introduction of a public water supply will provide benefits to the Township in the form of lower direct and indirect expenses, an increasing tax base and enhanced fire protection capability (PAWC St. 1.1, p. 9; Tr. 67, 99, 118, 152, 159, 189, 224 and 256).

25. If Mount Pleasant Township were to take steps like those of other municipalities that entered into public-private partnerships with PAWC, by passing a mandatory connection ordinance or "underwriting" 744 equivalent residential customers (the number a mandatory connection ordinance is likely to produce), the per-customer contribution could be reduced to \$2,250 (PAWC St. 1.1, p. 10; PAWC St. 3.1, p. 7).

26. A per customer contribution of \$2,250 could be financed with a home equity loan for a monthly payment of \$24.51 (PAWC St. 3.1, p. 7). Financing is also available from the Company at a monthly cost of \$46.58 (PAWC St. 3.1, pp. 5-6).

27. If a public water supply were introduced in Mount Pleasant Township, homeowners would be relieved of expenses they currently incur to obtain water on their own; their fire insurance premiums would be reduced; and the market value of their homes would increase (PAWC St. 3.1, pp. 9-10).

28. A monthly loan payment (pre-tax) of \$24.51 plus the expense of a monthly water bill from PAWC (\$35 for an average residential customer) is the same or less than the expenses most Mount Pleasant residents would cease to incur if a public water supply were introduced. On an after-tax basis, the cost would be less because the interest on the home equity loan is tax deductible (PAWC St. 3.1, pp. 9-10).

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Company and over the issues raised in the Complainants' Complaints.
2. The Complainants have the burden of proof in this case.
3. This case is governed by 52 Pa. Code §65.21 *et seq.*, which is a duly adopted regulation of the Commission. As such, it has the force and effect of law, is binding upon the Commission as well as the parties and is finally determinative of the issues it addresses.
4. The Company's Tariff Rule 27 has been approved by the Commission and, therefore, is entitled to the presumption that it is just and reasonable.
5. PAWC has complied with the terms its Tariff Rule 27.
6. The OCA proposal in this case represents a departure from the terms of both PAWC's Tariff Rule 27 and the Commission's line extension regulation.
7. The Complainants have failed to sustain their burden of proof that Tariff Rule 27 is unjust, unreasonable or unlawfully discriminatory.
8. The Complainants' position in this case is contrary to the express terms of the Commission's line extension regulation.
9. The Complainants are not entitled to the relief they request.
10. The Complainants' Complaints should be dismissed with prejudice.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>CINDY PARKS,</b>	:	<b>DOCKET NO. C-00015337</b>
	:	
<b>RICHARD MINUTELLO, AND</b>	:	<b>DOCKET NO. C-20028177</b>
	:	
<b>IRWIN A. POPOWSKY, CONSUMER ADVOCATE</b>	:	<b>DOCKET NO. C-20028361</b>
	:	
<b>v.</b>	:	
	:	
<b>PENNSYLVANIA-AMERICAN WATER COMPANY</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Initial Brief of Pennsylvania-American Water Company and accompanying compilation of unreported authorities (hard copy service only) 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  
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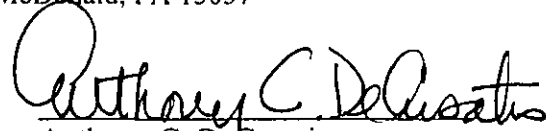
**VIA OVERNIGHT DELIVERY**

Cindy Parks  
447 Fort Cherry Road  
McDonald, PA 15057

**VIA OVERNIGHT DELIVERY**

Richard T. Minutello  
110 Pleasant Road  
McDonald, PA 15057

Dated: February 10, 2003



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

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FEB 10 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

COMMONWEALTH OF PENNSYLVANIA



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ORIGINAL

February 10, 2003

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FEB 21 2003  
**DOCUMENT**

PA PUBLIC  
UTILITY  
COMMISSION  
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09 FEB 10 PM 10:21

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

Re: Cindy Parks, Richard Minutello, and Irwin A.  
Popowsky, Consumer Advocate  
v.  
Pennsylvania-American Water Company  
Docket Nos. C-00015377, C-20028177 and  
C-20028361

Dear Secretary McNulty:

On behalf of Formal Complainant Richard Minutello, the Office of Consumer Advocate hereby files this letter as his Main Brief in the above-referenced matter. As per below, a copy of this letter is being provided to Administrative Law Judge Gesoff and all parties of record. Please contact me if you should have any questions or comments about his filing.

Very truly yours,

Joel H. Cheskis  
Assistant Consumer Advocate

Enclosures

cc: Hon. Larry Gesoff, ALJ (via Federal Express)

All parties of record

72775.wpd;1/JHC/smm

104

RICHARD & ROBIN MINUTELLO  
110 PLEASANT RD  
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February 7, 2003

Administrative Law Judge Larry Gesoff  
Pennsylvania Public Utility Commission  
11<sup>th</sup> Floor State Office Building  
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Pittsburgh PA 15222

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PUBLIC  
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Dear ALJ Gesoff:

In my original complaint before the Pennsylvania Public Utility Commission, I stated that I, "lived on a residential street and they (PAWC) plan to service ALL the houses around my own, except for my family". The answer to that, as signed by Anthony C. DeCusatis, was that, "Pleasant Road is a local road in a predominantly rural area with scattered homes. PAWC does not serve the houses around the Minutello residence." He also went on to write that PAWC is willing to provide service as long as the terms and conditions of Rule 27.1 were met.

This was a very creative answer. My road *is* a residential street. The homes on one side for two miles are on three-five acre lots. And, yes I do live in a rural area. This description by Mr. DeCusatis also describes accurately many areas that PAWC *does* service. I'm sure that your Honor is familiar with the Fox Chapel area. Fox Chapel is also a community of widely scattered homes in a rural-like setting. To the best of my knowledge, residents of that township do not have to go down to the creek, from time to time, to obtain water as I do.

Mr. DeCusatis also wrote that PAWC does not service any of the homes around the Minutello residence. I never said they did. The whole point is that they don't serve *any* of our homes.

Also, in the original meeting that PAWC had with the township residents, where their initial plan was unveiled, PAWC's maps indicated that they did plan to serve **all** the homes on Pleasant and Casey Roads except for mine. I confirmed this with PAWC's Jay Lucas at that meeting. I also inquired as to why, as a possible customer, I was never contacted by PAWC, at any time, to determine what type of water users my family of four would be. In fact we hoped to install a pool and an in-ground lawn irrigation system if "city water" was ever available. In my case, this business was curiously unconcerned about seeking new customers.

It seems to me that clearly the water company's position is, that if the residents pay enough for the infra structure, they're more than willing to put the water lines in. What I don't understand is why this does not make us partners with the water company. They're asking for, in some cases, low-income families to pay for the infrastructure of a monopoly, which puts water lines in designed to last 100 years. Then we have also pay for the water that we use, that flows thru the pipes we also paid for, but don't own in any way. As a monopoly, they shouldn't they be required to install water in areas that are difficult, along with the areas

that are easy. That's one of the responsibilities and advantages of being a monopoly. Remember, we have no other water company to deal with.

As I testified before you, I have a family of four and we frequently run out of water. My children cannot take showers unless ask they first ask permission. This has to be coordinated with laundry use. It is not uncommon to do have to do laundry after midnight.

Malfunctioning toilets will cause our well to go dry leaving us without water. This happened again this past Saturday night.

Power outages also prevent our well from pumping, and so if we have no power, we have no water. It's not unusual during a storm to store water in the bathtub in case we lose power. In fact, we've lose power so often that the power company recently sent out a card by mail apologizing for the inconvenience.

My water also has a sulfur smell, and leaves a stain on the walls in the bathroom due to condensation. We purchase all of our drinking water separately and thus incur that expense.

During testimony, I was asked by PAWC counsel if I obtained a construction loan with the well I have. I think that he was trying to demonstrate that our well couldn't be that bad if the bank gave me money to build a house. My home was built in 1996 and we moved in 1997. I constructed my home during one of the wettest springs in 20 years. Since that time, we have had several drought warnings. These, of course, have impacted our well since that time.

Additionally, any plan we had to expand my home, finish the basement, add another garage or purchase any form of water storage, has been put on hold until I can determine first if we will get water and second where will the lines run? Based on the promise by PAWC of water, my wife and I started making these plans. Now we're in limbo. Do I spend thousands on water storage or not? It's going to be another interesting summer.

We are currently a township where septic systems are leaking into drinking water. Homes are burning down because there is not enough water to fight the fires. Insurance cannot be obtained in some cases as a result. Some residents must funnel their gutter water into cisterns and drink that. Coyote systems have animals and bugs in them. Children get sick from the water they drink. This sounds like a third world country, and not a township in the state of Pennsylvania in 2003.

Growth is coming to our area. PAWC, it seems to me, wants everybody to build first, incur the expense of obtaining ground water and then when the area is saturated with enough growth, they want to come along and profit. The residents in my area have already paid a price for bad water and to obtain limited potable water.

I hope that you will be responsive to the needs of my community. We *will* have city water. We just need it now.

Sincerely,

Richard T. Minutello

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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I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Letter regarding Richard Minutello's Main Brief, 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 10th day of February, 2003.

SERVICE BY FEDERAL EXPRESS

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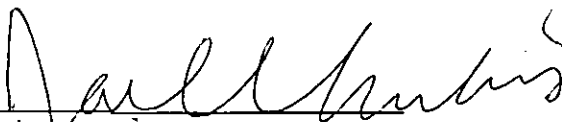
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>CINDY PARKS,</b>	:	<b>DOCKET NO. C-00015337</b>
	:	
<b>RICHARD MINUTELLO, AND</b>	:	<b>DOCKET NO. C-20028177</b>
	:	
<b>IRWIN A. POPOWSKY, CONSUMER ADVOCATE</b>	:	<b>DOCKET NO. C-20028361</b>
	:	
<b>v.</b>	:	
	:	
<b>PENNSYLVANIA-AMERICAN WATER COMPANY</b>	:	

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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 Reply To Exceptions upon the persons and in the manner set forth below, in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA OVERNIGHT DELIVERY**

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

Cindy Parks  
447 Fort Cherry Road  
McDonald, PA 15057

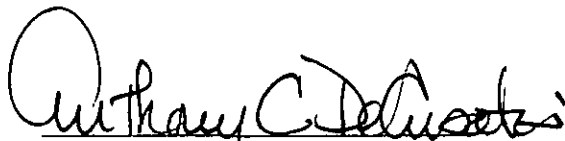
Richard T. Minutello  
110 Pleasant Road  
McDonald, PA 15057

**VIA HAND DELIVERY**

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Joel Cheskis, Esq.  
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Cheryl Walker Davis, Director  
Office of Special Assistants  
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Dated: May 30, 2003



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February 10, 2003

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

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

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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 nine (9) copies of the Main Brief 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,

Dianne E. Dusman  
Senior Assistant Consumer Advocate

Enclosures

cc: Hon. Larry Gesoff, ALJ (via Federal Express)  
All parties of record

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Cindy Parks, Richard Minutello, and  
Irwin A. Popowsky, Consumer Advocate

v.

Docket Nos. C-00015337, C-20028177  
and C-20028361

Pennsylvania-American Water Company

---

MAIN BRIEF OF THE  
OFFICE OF CONSUMER ADVOCATE

---

Dianne E. Dusman  
Senior Assistant Consumer Advocate

Joel H. Cheskis  
Assistant Consumer Advocate

Assisted by Erin Zimmerer,  
Legal Intern

For:  
Irwin A. Popowsky  
Consumer Advocate

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DATED: February 10, 2003  
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## I. INTRODUCTION

Complainants have met the burden of proving that the community within Mount Pleasant Township needs access to public water and that Pennsylvania-American Water Company ("PAWC" or "the Company") should be directed to provide it.

The Office of Consumer Advocate ("OCA") has extensively investigated the issue of providing Mount Pleasant Township with access to public water. The investigation included surveys of all of the residents of Mount Pleasant Township which showed, among other things, substantial and widespread substandard water conditions, including both inadequate supply and poor quality. The OCA's investigation revealed that many residents use water sources that are unsafe or spend large sums of money to have water hauled to their home for all household purposes, despite drastic conservation measures in many cases. Many residents indicated that they limit water usage, particularly during summer months, by limiting bathing, toilet flushing and washing clothes. The OCA's investigation also revealed that the lack of public fire protection has resulted in the loss of homes and property in Mount Pleasant Township.

As will be discussed further below, the PAWC, as a regulated public utility, has the obligation under the Public Utility Code, 66 Pa.C.S. §1501, *et seq.* to meet this need and can do so without material financial hardship consistent with its tariff rules. Yet, the Company has refused to extend mains to Mount Pleasant Township without what it perceives to be a mandatory customer contribution from each of the Mount Pleasant Township residents who would be served.

It is within the power of the Public Utility Commission ("PUC" or "Commission") to direct PAWC to extend its mains to Mount Pleasant Township without mandatory customer

contributions in order to meet the compelling public need for service. All told, the Company, its shareholders, its existing ratepayers and future Mount Pleasant Township customers will *all* benefit if service is extended to Mount Pleasant Township as the OCA has recommended. The Commission is obligated to act in the public interest. No greater opportunity exists than in the instant case for the Commission to meet its inherent obligation to require that safe, adequate and reasonable utility service be provided to the residents Mount Pleasant Township to end the conditions that have engendered grave health and public safety concerns for decades.

## **II. SUMMARY OF THE PROCEEDINGS**

On May 3, 2001, Cindy Parks filed a formal complaint against PAWC stating that she lives in a community, Mount Pleasant Township, Washington County, Pennsylvania, that desires public water service. Ms. Parks further stated in her Formal Complaint that her community has experienced well water contamination and other problems affecting the supply of potable water in Mount Pleasant Township. Ms. Parks requested that PAWC extend their water mains into Mount Pleasant Township to meet the need for public water service without further delay. On May 24, 2001, PAWC filed an answer containing a general denial of the allegations.

On June 14, 2001, the OCA filed a Notice of Intervention and Public Statement asserting that, by intervening, the OCA seeks to assist Ms. Parks and the other residents of Mount Pleasant Township in need of service in obtaining that service at the lowest reasonable cost to them. Ms. Parks' Formal Complaint was assigned to Administrative Law Judge ("ALJ") Larry Gesoff and a Prehearing Conference was held on October 29, 2001. Pursuant to the procedural schedule, the OCA and PAWC served written direct and responsive testimony on December 7, 2001 and January 4, 2002, respectively.

On January 25, 2001, the parties requested that ALJ Gesoff grant an indefinite stay. ALJ Gesoff approved the parties' request and indefinitely suspended the litigation schedule in this proceeding in his Fourth Interim Order dated January 28, 2002. ALJ Gesoff noted in his Order that an agreement in principle had been reached between the parties which involved the Company applying for a PennVest loan by the next deadline in May, 2002. However, the parties were unable to consummate the agreement in principle and no such PennVest application was filed. On July 18, 2002, the parties informed ALJ Gesoff of this development and requested that the litigation schedule be reinstated with appropriate modifications. A second prehearing conference was held on July 30, 2002 during which a new litigation schedule was established.

On July 15, 2002, Richard T. Minutello filed a Formal Complaint against PAWC alleging that the Company would not provide service to his home in Mount Pleasant Township. The Consumer Advocate also filed a Formal Complaint in this matter on August 21, 2002 alleging that an investigation has revealed, among other things, substandard water supplies in Mount Pleasant Township, including both inadequate supply as well as poor water quality. In general, the Consumer Advocate determined that the water situation in Mount Pleasant Township has been unsafe or otherwise hazardous to the health of the residents who live there. By Order dated September 5, 2002, ALJ Gesoff granted the OCA's Motion to Consolidate the Formal Complaints filed by Mr. Minutello and the OCA with Ms. Parks' Formal Complaint.

In accordance with the new litigation schedule, an evidentiary hearing was held on September 9, 2002 in the Mount Pleasant Township Volunteer Fire Department Hall. During that hearing, sixty-two people testified as to, among other things, the quality and quantity of their water sources. Among those sixty-two people were state, county and local elected officials,

representatives from several Mount Pleasant Township businesses, the President of the Mount Pleasant Township Volunteer Fire Department, a representative from the local high school, a representative from a local church, numerous residents of Mount Pleasant Township (including those who have lived in Mount Pleasant Township for periods ranging from less than one year to more than fifty years) and people who were considering moving to Mount Pleasant Township. Approximately four hundred people were in attendance throughout the hearings. Two hundred and thirty-six (236) pages of transcript were developed during the two hearings which lasted approximately five hours. A summary of the hearing transcript is attached to this Main Brief as Appendix D.

In further accord with the new procedural schedule, the OCA filed Supplemental Direct Testimony of Terry L. Fought and Marilyn J. Kraus on September 27, 2002; PAWC filed Supplemental Direct Testimony of Jay Lucas, Jerry Hankey and Paul Diskin on October 25, 2002; and the OCA filed Rebuttal Testimony of witnesses Fought and Kraus on November 15, 2002. A further evidentiary hearing was held on December 4, 2002 in Harrisburg. Patrick M. Gallagher, the Chairman of the Mount Pleasant Township Water Authority, who testified at the September 9<sup>th</sup> hearing, also provided surrebuttal testimony telephonically at that hearing.

The OCA files this Main Brief pursuant to the procedural schedule established in this proceeding.

### **III. BURDEN OF PROOF**

Section 332(a) of the Public Utility Code provides that the party seeking affirmative relief from the Commission has the burden of proof. 66 Pa.C.S. §332(a). In this proceeding, the Complainants have requested that the Commission direct PAWC to extend its mains in to

portions of Mount Pleasant Township where there is not currently a public water supply system. The complainants are the parties seeking affirmative relief from the Commission and, thus, are the parties 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 PaPUC 300 (1976).

In addition to determining whether the complainants have 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. 2 Pa.C.S. §704. The term "substantial evidence" has been defined by the Pennsylvania Supreme Court, Superior Court and Commonwealth Court 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. Super. 278, 166 A.2d 96 (1961); and Murphy v. Comm. Dept. of Public Welfare, White Haven Center, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

It is the OCA's position, as detailed further below, that the Complainants in this proceeding have met their burden of proof, that all complaints should be sustained and that PAWC should be required to extend service to Mount Pleasant Township without customer "contributions in aid of construction."

#### **IV. STATEMENT OF QUESTION INVOLVED**

Should Pennsylvania-American Water Company be required to provide water utility service to Mount Pleasant Township without mandatory "contributions in aid of construction" to meet the compelling public need for domestic water and public fire service pursuant to its obligation to serve under the Public Utility Code, Commission regulations and its tariff rules governing main extensions to bona fide service applicants,?

*Suggested Answer: Yes.*

#### **V. SUMMARY OF ARGUMENT**

PAWC, as a public utility, has an obligation to serve customers in need of water service within its franchised territory pursuant to the Public Utility Code, specifically Section 1501, 66 Pa.C.S. §1501, as interpreted by the appellate courts and the Public Utility Commission. Ridley Township v. Pa. P.U.C., 172 Pa. Super. 472, 94 A.2d 168 (1952). Specifically, public utilities are obligated to make line extensions to provide "such service and facilities as may be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa.C.S. §1501. On the other hand, a public utility should not be subjected to unreasonable expenditures, or the consuming public unduly burdened because of the unusual or extraordinary demands of one customer. *See, e.g., Colonial Products v. Pa. P.U.C.*, 188 Pa. Super. 163, 94 A.2d 816 (1958). The Commission considered these competing interests when it established standards to be applied in formulating tariff rules to govern main extensions by

promulgating final regulations now codified at 52 Pa. Code §§69.1, and 65.21, *et. seq.* Re Line Extensions, 27 Pa. B. 799 (Feb. 15, 1997). Pursuant to the Order and the regulations, water utilities submitted tariff pages incorporating these standards.

The OCA submits that, pursuant to PAWC's approved tariff, the main extension project to serve Mount Pleasant Township would be "economic" and should be constructed without customer contributions. A least-cost approach to estimating the costs of construction and financing of the Mount Pleasant Township project, as supported by OCA witnesses Kraus and Fought, can lead to no other result than that service should be provided to meet the compelling public need, as amply supported by the testimony of the many Mount Pleasant Township residents. The evidence offered by the OCA and the residents demonstrates beyond doubt that PAWC would *not* experience a material negative impact on its ability to earn a return on its investment in the near term and in the coming years, if the Mount Pleasant Township project were constructed without customer payments toward construction. Many witnesses, both residents and public officials, testified that, if water service were to become available, growth would be stimulated and additional residential and business customers would add to the revenues to be produced by those currently residing in the Township.

Finally, assuming *arguendo* that the Commission were to accept the Company's position that it may mandate "contributions in aid of construction" for every applicant for service where the "break-even" point is not reached, an exception should be made and PAWC should nonetheless be directed to provide service to Mount Pleasant Township as a result of this adjudication. As the Commission has noted in prior cases, tariff rules are intended to apply to frequently recurring factual patterns so that substantial equality of treatment may be achieved

without full-scale hearings on plainly repetitious matters. *See, e.g., Polson v. Citizens Water Co. of Washington*, 41 PaPUC 594 (1964)(“Polson”). In Polson, the Commission specifically rejected a water company’s attempt to require three applicants for service to pay a contribution toward construction of a main designed to serve two hundred customers. The Commission reasoned that tariff rules are not inflexible guides for deciding consumer complaints; they are subject always to a complainant’s right to show that the rule is unreasonable in its application to the particular situation at hand. *Id.* at 598; *see also Palm Beach Mall v. Dauphin Consolidated Water Co.*, 63 PaPUC 140, 143-144 (1987) and Barone v. Pa. P.U.C., 485 A2d 579 (Pa. Commw.)(To ensure adequate service, Commission can order utility to do more than regulations and tariff require.).

In the instant case, acceptance of the Company’s interpretation of the regulation and tariff as establishing a maximum rather than a minimum contribution would result in Mount Pleasant Township never receiving the public water service it desperately needs. This result would be unreasonable. The OCA, Complainants and sixty other witnesses have demonstrated that this is an exceptional case which justifies a Commission order requiring PAWC to provide service without mandatory customer payments toward construction. Such a Commission order would be entirely consistent with the primary objective of the Public Utility Code, which is first and at all times to serve the interests of the public. Ridley Township, supra; citing Hoffman v. Public Service Commission, 99 Pa. Super. 417, 429 (1943).

## VI. ARGUMENT

### A. PAWC, As A Public Utility, Has An Obligation To Extend Service Where Needed Within Its Franchised Service Territory.

1. *Existing Statutory and Case Law Requires That PAWC Extend Its Mains To Meet The Substantial and Compelling Public Needs Of the Residents Of Mount Pleasant Township.*

The Public Utility Code, and the decades of case law that has interpreted the Code, supports the Commission directing PAWC to extend its mains in to Mount Pleasant Township to meet the substantial and compelling need of the residents of Mount Pleasant Township which has been irrefutably established by the evidentiary record. In particular, the Pennsylvania General Assembly specifically requires in Section 1501 of the Code that

... Every public utility shall furnish and maintain adequate, efficient, safe and 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 reasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. §1501 (emphasis added). This provision, considered by many to be the cornerstone of all public utility regulation, specifically requires public utilities to extend their facilities, as part of providing reasonable service for the benefit of the public.

A plain reading of Section 1501 of the Code requires PAWC to extend their mains to the residents of Mount Pleasant Township to meet the public need for service. A public utility's obligation to meet a public need is supported by decades of jurisprudence developed by the federal and state appellate courts as well as by this Commission. The statutory obligation of the regulated utility to serve the public pursuant to Section 1501 of the Code was recognized by the

United States Supreme Court in Duquesne Light Co. v. Barasch, 488 U.S. 299, 307 (1989).

Decades earlier, the United States Supreme Court case addressed the issue of extensions of service in the context of public transportation, stating that a railway company could not escape its obligation to serve the public simply because a particular area of its franchise contract was not profitable. Milwaukee Elec. Ry. Co. v. Milwaukee, 252 U.S. 100, 105 (1920).

The issue of extensions of service within a utility's service territory was also addressed in 1952 by the Superior Court of Pennsylvania, which heard appeals from Pennsylvania administrative agencies at that time. Indeed, the facts of Ridley Township v. Pa. P.U.C., 172 Pa. Super 472, 94 A.2d 168 (1952) ("Ridley Township") are directly parallel, but the facts in the instant case are far more compelling.

In Ridley Township, twelve property owners sought an extension of Philadelphia Suburban Water Company's facilities in a residential section of the township, a part of which was already served by the Company. The Township requested the installation of a fire hydrants and the property owners needed water for domestic purposes. The Commission had determined that the annual net income, after giving effect to operation and maintenance, depreciation and income tax charges, would be \$65.71, a return of .95% on the investment. The evidence showed that the extension would entail the expenditure of less than one-fourth of one per cent of the Company's current and accrued assets. *Id.* at 170. The Commission did not require the extension, concluding that it was "not economically feasible" for the utility to do so at its sole cost. *Id.*

The customers appealed and, in its decision, the Superior Court, based upon the mandate of Section 1501 of the Code, that a utility may not select and serve only presently profitable

territory covered by its franchise. *Id.* at 171. The Superior Court continued that, if a portion of the territory served is not profitable, but the entire service produces a fair return on the investment, the utility may be required to serve the unprofitable portion if the rendering of such service does not result in an unreasonable burden on its existing customers. *Id.* The Superior Court determined that there was no evidence that showed that an extension would be an unfair burden on the water company's other customers. The Court specifically stated that "the purpose of an inquiry upon a complaint for refusing an extension of facilities is not to establish rates but merely to determine the effect of an extension upon the total return from the overall operation of the entire system." *Id.* at 170. The Court added:

A public utility cannot collect the cream in its territory and reject the skimmed milk. A public service corporation may not 'pick and choose' only presently profitable territory covered by its franchise. ***If a portion of the territory served is not profitable, but the entire service produces a fair return on the investment, the utility may still be required to serve the unprofitable portion, if the rendering of such service does not result in an unreasonable burden on its other service.*** . . . Although the Company does not enjoy a monopoly in the Township it is obliged to render service within a reasonable distance from its distribution system, and if it takes only the profitable business no other water company will enter the area to pick up the unprofitable business which it declines. No other company will become 'a snapperup of unconsidered trifles.'

*Id.* at 171 (citations omitted; emphasis added).

The Superior Court continued that the action of the Commission must "rest upon evidence which shows that, without the contribution or loan of the consumers, the cost of construction would materially handicap the utility in securing a fair return on all its operations."

*Id.* The Superior Court added that

[t]he obligation imposed upon the Commission to exercise its powers and discretion reasonably applies as well to patrons and the public as to the utilities. The Commission operates on a two-way street. The primary object of the public

service laws is not to establish a monopoly or to guarantee the security of investment in public service corporations, *but first and at all times to serve the interests of the public.*

*Id.* at 171 (emphasis in original), *citing*, Hoffman v. Public Service Commission, 99 Pa. Super 417, 429 (1943). Finally, the Court concluded that "these people are entitled to fire protection and domestic water service without subsidizing a large and prosperous utility." *Id.* at 172.

Again, and as discussed further below, the facts of Ridley Township are directly analogous to the facts of this case which supports requiring PAWC to extend its mains to meet the substantial needs of the residents of Mount Pleasant Township. PAWC should not be allowed to serve only what it perceives to be the more profitable areas of Mount Pleasant Township by interpreting its approved tariff in a manner most likely to require mandatory contributions by applicants for service. As more fully discussed below, PAWC will be able to extend its mains without material financial hardship or burdening the existing customers, consistent with the terms of its tariff. In contrast to the facts in Ridley Township which involved only twelve homes, the outcome of this proceeding will affect hundreds of families, 1200 households and a population of over 3000. Moreover, in contrast to Ridley Township, PAWC does have a monopoly in Mount Pleasant Township – no other entity can lawfully provide service.

The vast majority of Mount Pleasant Township residents lack access to an adequate supply of potable water, have water of substandard quality, do not have adequate fire protection, and incur exorbitant expense for hauled water and in-home systems. Even after more than fifty years, Ridley Township remains good law and the Commission's approved tariff rules must be read consistent with that holding.

As such, the OCA submits that existing statutory and case law require that PAWC extend its mains to meet the substantial and compelling public needs of the residents of Mount Pleasant Township. PAWC, as a public utility, has an obligation to extend service where needed within its franchise territory. The record clearly demonstrates a substantial and compelling public need. PAWC would incur no material financial harm overall, nor will existing customers be in any way burdened if the project is conducted as the OCA has proposed.

2. *Even if the Commission Accepts PAWC's Interpretation of Its Tariff, The Commission has The Power To Require An Exception To That Tariff.*

PAWC has argued extensively that it will provide service to residents of Mount Pleasant Township, but only in strict accordance with its tariff rule. This, in the Company's view, requires a mandatory payment per household of \$2,255 at its estimated project cost of \$6,290,499- and that is if all 744 households within the Township were required to connect by Township ordinance. PAWC St. 1.1 at 10. Counsel for PAWC indicated that "basically, the Company's position is that it's going to do exactly what the Commission's regulations mandate, and the Commission's regulations have been adopted on issues of main extensions and water service after a fairly lengthy proceeding." Tr. 182; *see also*, Tr. 53-55, 182-184. The OCA submits that the regulations of the Commission and the tariff rules must be read in a manner consistent with Section 1501 and the appellate law discussed above. Even if one were to disagree that the tariff permits service to be provided without mandatory customer payments toward construction, case law supports the Commission's authority to require a utility to do more than it believes it is required to do pursuant to the literal language of its tariff rules.

In Barone v. Pa. P.U.C., 86 Pa. Commw. 393, 485 A.2d 579 (Pa. Commw. 1984)(“Barone”), for example, homeowners testified that their water pressure was inadequate and, despite the Company’s evidence that pressure standards were met, the ALJ agreed that PGW was in violation of Section 1501 of the Code. In reversing the ALJ’s recommendation, the Commission did not require the Company to correct the water pressure problem. On appeal, however, the Commonwealth Court, held that the customers’ evidence supported a Commission order against PG&W to remedy the inadequate service even where other evidence showed compliance with Commission regulations. *Id.* at 522; *see also*, Donelgewicz v. Oneida Water Company, Docket Nos. C-00924012, Opinion and Order (Dec. 5, 1994)(the PUC has authority to require improvements incorporating standards other than those set forth in the regulations); Bellotti v. Duquesne Light Co., 44 D&C3d 425 (Pa. Com. Pl. 1987) (tariff provision regarding limitation of liability that conflicted with the requirements of section 1501 of the Code could not be valid); *see also* Matenkoski, et al. v. Kawon, Inc., Docket Nos. C-00935089, Opinion and Order (Oct. 20, 1994). The Barone Court remanded the matter and the Commission then determined that PG&W was to implement the least-cost option to remediate the low pressure problems. Bianchi v. Pennsylvania Gas And Water Co., 61 PaPUC 385 (1986).

The impact of Commission rules and regulations was also explained in Palm Beach Mall v. Dauphin Consolidated Water Co., 63 PaPUC 140 (1987)(“Palm Beach Mall”) and in Polson v. Citizens Water Co. of Washington, 41 Pa PUC 594 (1964)(“Polson”) which is particularly pertinent. In ordering a water company to extend service to Complainants without mandating payment toward construction of the main as the utility believed its tariff required, the Commission stated as follows:

Perhaps a clearer understanding of the concept of our function in these matters will be aided by an analysis of the principles governing rules and regulations of public utility companies. Such rules are intended to apply to frequently recurring factual patterns so that substantial equality of treatment may be achieved without full-scale hearing on plainly repetitious matters. Hence, the rule with the widest application is usually the rule with the greatest number of exceptions. On the other hand, to attempt to have a rule for each and every possible factual situation would be to negate the very purpose of the rules.

*Thus, it immediately becomes clear that such rules, so long as they are on file and permitted to continue in general effect by this Commission, are not inflexible guides for the adjudication of customer complaints.* Rather, they are rules for determining in the first instance whether respondent may lawfully demand compliance therewith, *subject always to a complainant's right to show the rule to be unreasonable in its application to the particular situation at hand.* In a sense it may be said that all such rules are subject to a showing of justifiable variance.

In the instant proceeding we recognize the basic validity of respondent's rules in their common application, but we also recognize complainants' right to demonstrate an exceptional application.

Polson, supra, at 598(emphasis added); *see also Palm Beach Mall, supra*, at 143-144. The Commission's authority to make exceptions to utility company's tariff rules and to require more than a tariff rule would is thus clear and particularly appropriate under unique circumstances where strict applications would yield unreasonable results, as in the instant case.

PAWC should not be permitted to continue to deny the residents of Mount Pleasant Township access to water service by requiring customer payments toward construction that are cost-prohibitive. PAWC, as a public utility, has an obligation to extend service where needed within its franchise territory. Even if requiring PAWC to extend their mains as the OCA has proposed in this proceeding were deemed somehow contrary to the Company's tariff, which the OCA maintains it is not, the substantial evidence of record in this proceeding regarding compelling need dictates a waiver of that tariff provision.

3. *PAWC's Interpretation Of Its Tariff Is Contrary To The PUC's Intent In Promulgating The Main Extension Regulation Because The Break-Even Analysis Creates a Minimum, Not A Maximum Level Of Company Investment.*

The Commission's main extension rulemaking commenced in December 1993 and concluded in 1997. Re Line Extensions, 27 Pa. B. 799 (Feb. 15, 1997) The "break-even" formula as initially proposed was not substantially different as it appeared in the final regulations with 'X' equaling the utility's investment attributed to each bona fide applicant:

X = [AR - OM] divided by [I + D]; and

AR = the utility's annual revenue [from the bona fide customers];

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.

*Id.* at 7. This formula, however, is intended to determine the minimum company investment, not a maximum; thus, customer payments toward construction may not be considered to be mandatory in every instance.

The Commission's regulation clearly states as follows:

If the annual revenue from the line extension will not equal or exceed the utility's annual line extension costs, a bona fide service applicant *may* be required to provide a customer advance to the utility's cost of construction for the line extension.

52 Pa. Code §65.21(2)(emphasis added). PAWC witness Diskin agreed that there is no language in the regulation itself that makes customer contributions mandatory. Tr. 341. This constitutes the major difference between the Company's application of this formula to main extension

scenarios and the OCA's application: the Company views its break-even point as a "ceiling," while the OCA submits that the break-even point is a "floor." In finally approving this regulation, the Commission directly addressed this point as follows:

We note here that the April 8, 1996 comments of the IRRC<sup>1</sup> staff recommend replacing the word "may" with "shall," which would result in the creation of a rule requiring a utility to charge a customer contribution in all circumstances if the formula reveals that the projected annual revenue from the line extension will not exceed the utility's annual line extension costs. In developing this regulation, we intended to create a rule which sets the *minimum* dollar amount which utilities must pay toward the cost of a line extension. However, it was not our 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.

*Id.* at 7 (emphasis in original; footnote added). Thus, the Commission's express intent was to create a rule that would set a "floor" for Company investment in main extension projects, not a "ceiling."

The Company insists that its Tariff Rule 27 "was prepared in compliance with the terms of the Commission's regulation at 52 Pa Code §65.2" and that it is willing to act in accordance with it. PAWC St. 3.1 at 3. It is worth noting, however, that the Company's practices vary from both the regulation and Rule 27 in several significant ways. For example, the regulation defines "annual revenues" as "[t]he utility's expected additional annual revenue from the line extension based upon the utility's currently effective tariff rates and on the average annual usage of customers similar in nature and size to the bona fide service applicants." 52 Pa. Code § 65.1 Yet, the Company does not include surcharge revenues in its analysis (OCA St. 2A at 15-16) and did not take into account the additional revenues expected from the business applicants until the

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<sup>1</sup> "IRRC" stands for Independent Regulatory Review Commission. The IRRC comments were published at 26 Pa.B. 5915 (Dec. 7, 1996).

OCA provided a quantification of those revenues. *Cf.* OCA St. 1A and PAWC St. 1.1 at 6; *see also* Tariff Water- Pa. P.U.C. No. 4, First Revised Page 73 at 27.1(D)(2)(a)-(b). While the regulation makes no mention of “overhead costs,” the tariff rule states that “all estimated or actual cost figures referred to in the Extension Deposit Agreement . . . shall include a reasonable allowance for overhead costs.” Tariff Water - Pa. P.U.C. No. 4, 3<sup>rd</sup> Rev. Page 72, Rule 27.1(B); *see* Tr. 346-348. Mr. Diskin agreed that where costs are higher, applicants for service are required to pay more. Tr. 340-341, 344-345, 347. Similarly, the result of understating revenues is that the Company requires applicants to pay more.<sup>2</sup>

Most important, however, despite the Company’s insistence that customers are required to pay if the break-even point is not reached, no language appears in the Commission regulation nor anywhere other than in the Company’s tariff rule that supports this. Tr. 341. While PAWC has submitted tariff pages that require customers to make up the difference between the justified Company investment and the cost of construction, this Commission has the power and authority to direct a utility to do something other than its tariff would normally require in an instance where a utility’s application of its tariff has an unreasonable result in a particular case. *See* Section VI.A.2., *infra*.

The primary position of the OCA is that, in light of the compelling need for service, the Mount Pleasant Township community should be served without mandatory customer payments toward construction, pursuant to the Company’s obligation to serve as imposed by the Public

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<sup>2</sup> There are other disparities that do not directly affect the “break-even analysis.” The regulation states that applicants should make any mandatory payment to the Company over a period of “not less than three years,” but Rule 27 requires the payment to be in “36 equal monthly installments” and no more. Tr. 349-350. In addition, the Company’s practice with regard to refunds differs from what the tariff language would require. Tr. 348-349.

Utility Code. The Commission has determined that the break-even analysis within the regulation is a reasonable limitation on a utility's obligation to serve the public; however, it clearly does not require that customers be charged in every single instance where that break-even point is not met. While the Company maintains that it may not be required to invest any more than is required to break-even pursuant to the regulation, case law interpreting Section 1501 clearly indicates that the Commission has authority to require extensions of service at the Company's expense where there is a public need for utility service and the Company would not experience material financial harm. As discussed in detail below, the evidence substantiates a compelling need for service in Mount Pleasant Township clearly justifying an order requiring service to be extended, even where it may be interpreted to require a higher Company investment than a strict interpretation might indicate. Moreover, a fair application of the regulation and the tariff rules indicates that, indeed, service to Mount Pleasant Township would not impair the Company's ability to earn a return on its investment overall and "contributions in aid of construction" need not be required.

B. Testimony By The Citizens And Officials Of Mount Pleasant Township Demonstrates A Compelling Need For A Reliable Water Supply.

1. *Mount Pleasant Township experiences considerable water potability problems and health problems related to the current water supply.*

Many Mount Pleasant Township residents testified that they do not have a source of potable water and to the health concerns which result. Such health concerns range from worry over washing cuts and scrapes with water from existing sources to severe illnesses resulting from exposure or consumption of the water. Many residents of Mount Pleasant Township have to limit toilet flushing and bathing. Many have had their water quality tests indicate the water from existing sources should not be consumed. Many witnesses testified that they, or a family

member, became ill from drinking their existing source of water. A detailed summary of the testimony of the residents is attached to this Main Brief in Appendix D.

Patrick Gallagher, the Chairman of the Mount Pleasant Township Water Authority, testified that a DEP sampling of wells in the Township revealed that 22 of the 46 wells tested were positive for coliform bacteria and were not to be used for human consumption. Tr. 198, *see also*, Gallagher Exh. No. 1. Mr. Gallagher also testified that eleven out of 25 wells in the Township tested positive for the presence of fecal coliform bacteria and that the DEP report ultimately concluded that "there is clearly a need for safe and reliable water in this area." Tr. 198-199. Mr. Gallagher testified that 81% of 341 homes studied showed a need for sewage improvements. Tr. 200-201. In fact, many residents testified that they had their water officially tested which indicated their water was undrinkable or "unfit for human consumption." Tr. 95, 127 (contains DEP tests show coliform bacteria), 140, 150 (bacteria), 188 (E-coli), 205, 214 (high sulfur content), 238 (fecal contamination), 247, 254. Furthermore, one survey showed that 44% of well are contaminated with e-coli and that 70% of septic systems in the Township were not in compliance with DEP standards. Tr. 59.

Christopher Lauff had his water tested by Canonsburg Hospital which showed a positive result for coliform bacteria and was considered undrinkable. Tr. 226; *see also*, Lauff Exh. Nos. 1 and 2. Then, a few years later, his two-year old son became seriously ill with a parasite, *dientamoeba fagilas*, that was able to penetrate the purification system. Tr. 227. Unfortunately, this is not an uncommon occurrence in Mount Pleasant Township. Formal Complainant Cindy Parks testified that she and her children drank the water and suffered from various infections including urinary tract infections and sore throats. Tr. 63. Catherine Taggart testified that her son

has asthma that was brought on by a virus in the water. Tr. 93. Kathleen Farmer testified that one of her sons had some intestinal problems attributed to bacteria in the water. Tr. 150. Douglas Sethner testified that his entire family became sick from drinking the water. Tr. 254. His test results were positive for fecal contamination. *Id.* Russell Kobally also testified that his children were ill when they were young and that they spent a lot of money on medication until they found out that their well was contaminated. Tr. 256.

Many Mount Pleasant Township residents are forced to buy drinking water or else risk becoming ill. Tr. 63, 80, 86, 91, 96, 132, 140, 188, 214, 228, 230, 236, 242, 246. Residents can buy bottled water to drink, but they must use their well water for their other needs. Children are brushing their teeth with water that is undrinkable. Tr. 68, 71, 230, 238. Parents are concerned with the effects of washing their children's cuts and scrapes in water that is not drinkable. Tr. 68.

Larry Grimm, the Director of Public Safety in Mount Pleasant Township, testified that many residents do not have enough water for basic sanitation needs. Tr. 117. Washington County Commissioner Bracken Burns testified that he believes that the water situation in Mount Pleasant Township is a public health hazard that can cause serious health issues for the community. Tr. 59. These statements were confirmed by the testimony of individual residents of Mount Pleasant Township who testified that they limit taking a shower or bathing (Tr. 66, 80, 133, 138, 259) or that they limit toilet flushing (Tr. 63, 236, 241, 255).

Water that is undrinkable is not the only problem. Some report high lime content in their water which clogs pipes and destroys fixtures. Tr. 189. One resident had to replace a new toilet in five years because it was clogged with lime. *Id.* The water is also high in sulfur and iron content which gives it an odor and stains fixtures. Tr. 154, 188, 214. One resident reported

having to buy an industrial strength water softener, because “the one that Sears sells cannot rectify the problem.” Tr. 154. Some of the water is corrosive and destroys kitchen items and household appliances. Tr. 154, 264.

Those that have water must usually install expensive treatment systems to deal with problems such as these. Tr. 122, 154, 227, 217, 254, 257, 261. People use ultraviolet lights and chlorine tablets just to make water fit to bathe in. Tr. 138. Water must be conditioned to drink or people use bottled water. Tr. 63, 80, 86, 91, 96, 132, 140, 188, 214, 228, 230, 236, 242, 246. Water softeners are common but are only useful in homes that have an adequate supply of water. Tr. 155, 189. In homes that have a limited supply of water, having to back-flush the water softener with what little water they have is a luxury they can ill afford. Tr. 155, 244. If water is drinkable, residents must pay for testing to make sure it stays that way. Tr. 188, 227, 256.

As such, the Mount Pleasant Township community experiences extensive water potability and supply problems, resulting in substantial and daily health concerns. PAWC should be directed to extend its mains into Mount Pleasant Township so as to eliminate the widespread public health and safety concerns that continue to grow due to the lack of public water.

2. *Many Mount Pleasant Township residents have insufficient water quantity, despite drastic conservation measures.*

The poor quality of water is not the only concern of Mount Pleasant Township residents; they also have insufficient quantities to meet their daily needs. Tr. 66, 71, 91, 105, 133, 139, 154, 157, 246, 259. Many residents report very low amounts of water from their wells. Tr. 66, 127, 155. One resident testified that he can get only 50 gallons of water a day from his well, while another can only run his well pump 20 seconds every 90 minutes. Tr. 138, 214. This

results in expense, because many need to pay for supplemental water. Tr. 91, 139, 140, 157, 186, 214, 217, 220, 235, 238, 240, 247, 259. Residents have water hauled in to cisterns when their wells cannot produce. In fact some people only have cisterns for their water supply, because their wells ran dry and they knew it was pointless to re-drill. Tr. 133, 205, 238, 240.

But having cisterns installed does not solve their problems. PADEP does not sample roof collection cisterns or springs because their design does not prevent contamination by surface waters and the agency counts such systems as contaminated. OCA St. 1, Exh. TLF-1. Moreover, many people cannot afford to have their cisterns cleaned. Tr. 271. Of those that can afford it, many find that the cisterns that hold the water they use to cook and bathe are full of dirt and debris. Tr. 186. They also must plan their lives on when the next load of water is going to be delivered. Tr. 91, 134. Residents are often embarrassed when their friends and family visit, because they may run out of water and must remind them that they cannot flush the toilet every time it is used Tr. 63, 133, 236. One resident reported that when friends or family visit, her first worry is not what will we have to eat, it is "do I have enough water?" Tr. 134. When they do run out of water they must go to friends' homes to shower and take water home in buckets to be able to flush the toilet. Tr. 91, 236.

Residents repeatedly reported not having enough water to be able to bathe everyday. Tr. 60, 63, 236, 259. This includes families with small children and infants. Tr. 80. Another family reported that his children must shower together. Tr. 71. It is a common occurrence to run out of water while showering. Tr. 92, 230. In other households, children must ask for permission to take a bath because family members must take turns. Tr. 66.

The lack of water has other effects on their daily lives. People cannot flush the toilet after every use because they must conserve every way that they can. Tr. 63. Little things like washing their cars or even letting the water run while brushing teeth are not possible where they live. Tr. 80, 238, 259. People are unable to grow gardens and are even concerned with owning pets because their water supply is so limited. Tr. 148, 156, 236. One resident reported having to melt snow to provide water for his horse. Tr. 156. They no longer keep animals because of there is insufficient water. *Id.*

One woman reported that her son was diagnosed with asthma when he was very young. Tr. 93. Their doctor recommended taking him into the bathroom and running a hot shower to allow him to breathe in the steam. They had so little water that they were unable to do this. Tr. 94. She worries whether something in the water caused her son's illness. Tr. 93.

Many people in Mount Pleasant township must use laundromats because doing laundry at home requires water that they do not have. Tr. 71, 80, 95, 141, 155, 187, 230, 236, 238, 240, 255. Residents drive to other towns to do their laundry one to two times a week, in some cases traveling up to 25 minutes away. Tr. 236. Those that can afford to, buy water saving appliances to help conserve the water. Tr. 92, 244. But some of the residents are on fixed incomes and cannot afford new appliances or to have water delivered. Tr. 269. They also cannot afford to treat their water. These residents are forced to go without bathing regularly and to use water that is or may be contaminated. As such, it is clear that many residents of Mount Pleasant Township experience severe water quality problems, even for below normal water usage.

3. *The public safety of Mount Pleasant Township is in jeopardy every day that the community lacks public fire protection.*

The impact of the lack of water on public safety for residents of Mount Pleasant Township is egregious. In addition to lacking the most fundamental basic human need and the health hazards associated with this deprivation, the residents of Mount Pleasant Township are also at risk due to extremely limited fire protection. Perhaps, there is no clearer example of the danger than the moving testimony of Sandra Lesnick, whose home was totally destroyed by fire after the firefighters ran out of water several times while trying to extinguish it. As Ms. Lesnick testified:

John and I lost our home, our beloved cat, Dusty, and all of our possessions. Yes, our house fire was a total loss. Could this have been prevented? The answer is yes. We could have saved something, not everything, but many things, maybe photos, John's Lionel train collection that he started as a young boy, our marriage certificate, birth certificates, wedding bands. Oh, boy, the list is so long.

The fact is they [the fire department] ran out of water several times in fighting this fire. It was a losing battle. A person who has not experienced a major devastation cannot even begin to imagine what this experience is like. It only begins with the fire. It lingers on a lifetime because after all, all we have are memories. . . .

Yes, we have a fantastic fire department and are so lucky to [have] equal neighboring fire departments as well. All the fire fighters are extremely dedicated. . . . However, even the greatest need equipment and supplies to be successful. We do need water for fire fighting to save, most importantly, lives. . . .

Water is a necessity of life. It is a basic need. None of us would be here without water. We want our basic need met, we want our basic right granted, we want the promise to bring water to Mount Pleasant Township kept.

In closing, please give us, the people of Mount Pleasant Township, our water. After all, wars cannot be won without proper equipment and supplies. Fires cannot be put out without water. Thank you.

Tr. 142-144; *see also*, Lesnick Exh. 2. PAWC has the ability, and the obligation, to provide public water service so that further tragedies such as the Lesnicks' might be prevented.

Furthermore, this Commission has the authority and the obligation to require PAWC to do so.

Unfortunately, the Lesnicks, while the most severe, are not the only example of devastation and loss of property in Mount Pleasant Township due to fire. Cathy Obenour, while located only six-tenths of a mile from the end of a water main, also lost a 40 by 70 foot barn with 110 sheep that perished. Tr. 147; *see also*, Obenour Exh. No. 1. Only seven sheep survived the fire but they were badly burned. Ms. Obenour testified:

The fire department did everything that they could, and barns are difficult to save even if you have water on hand.

What they [the fire department] had to go through to even try to save the buildings around the barn was they had to drive to Westland to fill one tanker and then they had to drive to Route 50 to another fire hydrant in Cecil Township. So this was a back and forth thing.

...[W]e have a 90 acre farm and we have been on this farm for ...over 40 years, and through the Conservation District, we have developed springs, which when you have higher rainfall, the springs work, but we haven't had water in two of the troughs since, probably, a month now.

We do drill a well, and this drilled well will give you all the water that you want, but when we draw it up to put it in the watering trough for the cattle or sheep, it turns orange and it settles to the bottom of the watering trough.

Tr. 147-148. The fire company as well is frustrated with its inability to fight fires as effectively as it could with public fire hydrants. Brian Bell, the president of the Mount Pleasant Township Volunteer Fire Department testified on September 9<sup>th</sup> that Mount Pleasant Township needs access to the public water system for purposes of firefighting. Tr. 206. Mr. Bell continued:

Yes, this department has for years been fighting fires in this community without city water, but this is 2002, not 1902. The days of the bucket brigades are over, but that's just what we still have to do, only today we use trucks to haul our water, sometimes several miles depending on the location of the water source in relation to the fire location.

Currently, we have three trucks that haul water that have approximately 4,000 gallons at our initial disposal. Believe me, on a fire, 4,000 gallons doesn't go very far. Actually it will last less than five to ten minutes.

In the meantime, we have to wait for neighboring departments to respond and for our tanker truck to go [to] the nearest water source to reload and return. Depending on the proximity of the fire and the water source, this can take as much as 20 minutes or more.

Neighboring departments are several miles away and they are volunteers as well, and sometimes their response is delayed if they even respond, depending on the time of day. How, as a fireman, do you think [you] would feel when you are in a fully involved house fire and the water hose goes limp because the water supply ran out? . . .

Just last week one of the largest structures in our township, with the exception of barns, was reported as a structure fire. Do you think that had the church actually been on fire, that 4,000 gallons would have put out a fire of that size?

Granted, the fire department a few years ago had two tanks installed at our expense to give us a water source, one at the fire hall and the other at the intersection of Route 18 and 50. However, with these tanks, we are still limited on our water supply and may still have to travel several miles to one of these two locations.

Our resources are even more limited when you factor in drought years, snow conditions and terrain conditions which limit our access to farm ponds, creeks and streams. Furthermore, when these resources are used, we stand a chance of picking up stones and debris that can damage the pump to the truck. Over the last ten years, this department has spent well in excess of \$700,000 on trucks alone, as well as over \$10,000 on installing those holding tanks that I mentioned.

As you can see, the fire department has spent monies on items to ensure water both for consumption and for fire fighting that could have been spent on fire fighting equipment and training.

Tr. 206-209.

That the public is in jeopardy without hydrants is also evident in the testimony of other witnesses. Another volunteer fireman, Shane Maga, who is also a Mount Pleasant Township Supervisor, testified that he has witnessed many tragic accidental fires in the township and that it

is his belief that some homes could have been saved if public fire service was provided. Tr. 115. Also, Larry Grimm, the Director of Public Safety and a Mount Pleasant Township Supervisor, commented on the need for fire hydrants as a safety factor. Tr. 117. Mr. Grimm also noted that residents of Mount Pleasant Township would receive a reduction in their homeowners insurance if fire hydrants were installed. Tr. 118.

Many residents of Mount Pleasant Township have also testified as to their concerns over the lack of public fire hydrants. Paul Nimal testified that he has fears that if his house would catch on fire, he would lose it. Tr. 72. Lee Clayton, the owner of a mobile home park, expressed his concern that the local fire company has to fight fires with tankers. Tr. 86. John Caldwell, a resident of Mount Pleasant Township for the past fifty years, has concerns about the lack of fire hydrants in Mount Pleasant Township. Tr. 102. Shawn Staley also testified as to his concern about the safety and protection of his property without fire hydrants. Tr. 129. Fred Grose was a volunteer fireman and has witnessed fires that could have been stopped had the firefighters had sufficient water. Tr. 152. Anita Steigerwald testified that she is upset by the inability of the fire company to effectively fight fires. Tr. 205; *see also*, Tr. 250 (Larry Chome), and 271 (Marian Piri). James White, on behalf of the Hickory United Presbyterian Church, testified that the church is not currently in compliance with the Pennsylvania Statewide Uniform Building Code in regard to fire safety and is only able to be occupied because of grandfather clauses. Tr. 217. He added that the church is only able to be in compliance if they add a sprinkler system which is not possible because it is too costly to store the amount of water necessary to do that. *Id.*

The public safety of Mount Pleasant Township residents is in jeopardy every day that they are without public water service. Yet, it is within PAWC's power to alleviate this by extending

its mains in to Mount Pleasant Township as the OCA has recommended in this proceeding.

PAWC should be compelled to do exactly that in accordance with the recommendations set forth below.

4. *The lack of public water in Mount Pleasant Township has caused economic detriment to the entire Township and its residents.*

In deciding this complaint case, the Commission should examine not only the costs to PAWC of extending its mains, but also the continuing costs to Mount Pleasant Township and its residents of never having access to water service. The record in this proceeding clearly reflects a wide variety of costs to this community. For individual customers, such costs range from the need to replace water heater elements or appliance fixtures frequently to the exorbitant costs of having water hauled to holding tanks for below normal water usage and even the inability to sell homes for reasonable prices. For the Township, tax revenues are lost or reduced due to people not moving into or not building within the Township.

More specifically, residents of Mount Pleasant Township testified that some have had to incur costs of as much as \$7,000 to install Coyote systems. Tr. 57, 81, 102, 128, 158, 235, 246, 260, 261. Many residents of Mount Pleasant Township testified that they pay exorbitant amounts to have water hauled to their homes. Tr. 57, 63, 86 (\$10,000 to \$15,000 a year for having water hauled to a mobile home park), 91 (\$1,820 per year), 96, 128, 134, 205 (\$10,000 over a five year period), 230, 260 (\$80 per month), or to buy bottled water. Tr. 67 (\$200 per year), 80, 132, 188, 246. Many residents of Mount Pleasant Township pay for water treatments ranging from chlorine tablets and other additives, Tr. 63 (\$50 each month), to expensive ultraviolet treatment systems, Tr. 138 (\$700 installation plus \$50 each year for bulbs), 254, while other residents

spend significant amount of money taking their laundry to the laundromat. Tr. 71 (\$50 per month); 80 (\$80 per month), 255.

Other costs residents of Mount Pleasant Township incur as a result of a lack of safe water source include repeated replacing of water heater elements, Tr. 63, testing costs, Tr. 89 (\$3,000 per year for a mobile home part), drilling wells, Tr. 105, buying water softeners, Tr. 154, 188, 257, purchasing new appliances, Tr. 188, 244, or cleaning costs. Tr. 271 (\$500 per cleaning). There are also non-monetary costs such as hours taking care of the water systems. Tr. 214 (80 hours per year).

Economic development in the entire Township is stifled because businesses are unwilling to locate in a community without a good supply of water. Tr. 159. In fact, an officer for Mount Pleasant Township testified that he has seen first hand people who would not build in the Township due to the water situation. Tr. 96. State Representative Victor Lescovitz testified that he is concerned about the effect on both residential and economic growth of the lack of a public water supply. Tr. 56. State Senator J. Barry Stout testified that Mount Pleasant Township is primed for economic growth due to a proposed beltway around Pittsburgh that will run near the Township. Tr. 84; *see also*, Tr. 120 and Township Ex. 1 (Cross Creek Region Comprehensive Plan). Organizations within the Township have also incurred great costs due to the lack of public water. The Mount Pleasant Township Volunteer Fire Department had to purchase a \$300,000 pumper-tanker. Tr. 116. In fact, the president of the Fire Department testified that they have spent over \$700,000 on trucks alone as well as over \$10,000 for installing water tanks. Tr. 209. A representative of the Fort Cherry High School in Mount Pleasant Township testified that the school needs to install a new water line because the one they have now is leaking. Tr. 78. If

water is brought to Mount Pleasant Township, they would only have to run a line 1/10 of a mile instead of replacing the existing one mile long line. Tr. 79. This yet another expense that the taxpayers will have to bear on top of the many other extra costs.

Many residents of Mount Pleasant Township testified to the effect of a lack of public water on their purchase or sale of property in Mount Pleasant Township. Tr. 74, 86, 125, 152, 187, 222 (purchased home because owner said water was coming), 224 (paid more for property because they thought water was coming), 270 (still could not sell home despite lowering price \$25,000). Finally, some residents testified to an increase in homeowners insurance they pay as a result of the lack of fire service. Tr. 189 (\$200 more per year). Some have had difficulty in procuring homeowners insurance at all. Tr. 145.

As such, the OCA submits that the lack of public water in Mount Pleasant Township has caused severe economic detriment to the entire Township and individual residents. The Commission should consider such economic impacts on the Township of not having access to public water and require the Company to extend its mains in to Mount Pleasant Township as recommended by the OCA.

##### 5. *Conclusion.*

The record clearly demonstrates that many Mount Pleasant Township residents experience considerable water quality problems and that such problems have caused health problems for many residents. Many Mount Pleasant Township residents also experience water quantity problems, even with severe conservation measures. The record further demonstrates that the lives and property of Mount Pleasant Township residents are in jeopardy every day due to the lack of public fire hydrant service. Finally, the record shows that the lack of public water

in Mount Pleasant Township has caused severe economic detriment to the entire Township and individual residents.

As such, PAWC should be required to extend its mains in to Mount Pleasant Township as recommended by the OCA.

C. Service To Mount Pleasant Township Would Be Economic Under PAWC's Tariff Rules, Therefore, Service Should Be Provided Without Customer Contributions.

1. *Introduction.*

PAWC's erroneous conclusion that the Mount Pleasant Township project cannot be done economically without requiring customers to pay a portion of the construction costs is driven by several factors. First, the estimated costs of the construction are inflated due to the inclusion of the cost of mains that are sized larger than necessary to serve the applicants and the cost of a tank that is not necessary to providing service. Second, the Company's position on an appropriate customer number should be rejected, as the OCA testimony and survey responses, the only probative evidence relevant to an appropriate customer number, justify the use of 568 customers for the "break-even" analysis. Third, low-cost capital is available for construction of projects such as this through PennVest, in lieu of investor-supplied capital at market rates. The failure to take this into account results in an understatement of the justified investment and the concomitant overstatement of what the Company perceives as a mandatory customer contribution. Finally, plant constructed and placed in rate base upon the conclusion of PAWC's 1989 base rate proceeding was intended to serve, among other areas, Mount Pleasant Township, so the existing ratepayers have already been paying a return of and on that plant for many years.

For all of these reasons, PAWC should be required to provide water utility service to Mount Pleasant Township without mandatory "customer contributions in aid of construction" (CIAC) and the Company's overly conservative break-even analysis should be rejected.

2. *Substantial Evidence Supports That The Break-even Point Would Be Met Or Exceeded If PAWC Served The Township. .*

The OCA has extensively investigated not only the need for service in Mount Pleasant Township, but also the scope of the infrastructure required to satisfy the needs of Mount Pleasant Township that could be constructed without material financial harm to PAWC. Regrettably, even acceptance of the OCA's recommendation would not result in service to every single Mount Pleasant Township household in need of service. The OCA submits, however, that the recommendations of its witnesses strikes a reasonable balance of the many competing cost and need factors at issue in the instant case. As such, it is a reasonable and well-supported start and should be adopted in full to surmount the impasse that has deprived Mount Pleasant Township of much needed public water service for many years.

The OCA's recommended project was initially presented on December 7, 2001 through the Direct Testimony of OCA witness Terry L. Fought<sup>3</sup> in conjunction with the economic testimony presented on the same date through the Direct Testimony of OCA witness Marilyn J.

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<sup>3</sup> Terry L. Fought is a consulting engineer with more than forty years experience as a civil engineer. Mr. Fought is a certified Professional Engineer in Pennsylvania, New Jersey and Virginia and is a certified Professional Land Surveyor in Pennsylvania. Mr. Fought has prepared studies related to and designed water supply, treatment, transmission, distribution and storage facilities for private and municipal water suppliers. He has also served as a consultant to the OCA for numerous main extension complaint cases since 1995. Mr. Fought's background and qualifications are attached to his Direct Testimony, as Appendix A.

Kraus.<sup>4</sup> After the failed settlement attempts, Mr. Fought and Ms. Kraus submitted Supplemental Direct Testimony in September 2002 setting forth a revised recommended project scope and economic analysis, which took into account information received since the initial testimony as well as the evidence taken during the September 9, 2002 hearings in Mount Pleasant Township.

As Mr. Fought testified, his initial investigation consisted of field inspections of the proposed water main extension alignments and the adjacent areas, meetings with the members of the Mount Pleasant Township Water Authority, survey responses received from residents, review of PAWC's responses to interrogatories and a review of Commission and DEP requirements for water mains, pumping stations and storage tanks. OCA St. No. 1 at 2. Mount Pleasant Township lies within PAWC's franchise territory and the Hickory area, the center and most populous portion of Mount Pleasant Township, is surrounded by PAWC's distribution system, some of which extends into the Township. PAWC Exh. 2.2. As Mr. Fought testified, PAWC's existing distribution system is located approximately 2.8 miles east of Hickory, 1.7 miles south of Hickory, 3.3 miles north of Hickory and 7.3 miles west of Hickory. OCA St. 1 at 3.

In response to the OCA's initial survey to all of Mount Pleasant Township, as of the time of the filing of the Direct Testimony in December 2002, 258 completed surveys had been returned. Of those responses received, 75%, or 194, of the respondents within the then-proposed project indicated that they were willing to connect to the system as soon as it was available if

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<sup>4</sup> Marilyn J. Kraus is a certified public accountant currently employed by the OCA as a Senior Regulatory Analyst. Ms. Kraus' responsibilities include 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 OCA. Ms. Kraus has provided testimony or substantial assistance in over 85 proceedings, including main extension complaint proceedings as well as the Commission's rulemaking which led to the promulgation of the regulation at 52 Pa. Code §65.1, 65.21, *et seq.* Ms. Kraus' background and qualifications are attached to her Direct Testimony, as Appendix I.

they had to pay only for the cost of installing the service line from their home to the curb, a \$30 application fee and their monthly water bill. OCA St. 1 at 12. At the time of the submission of the initial testimony, the PAWC-calculated CIAC per customer was \$5,883.<sup>5</sup> OCA St. 1 at 5; OCA St. 2 at 4. As both Mr. Fought and Ms. Kraus observed, an inverse relationship exists between the amount of the CIAC required by PAWC and the number of customers willing and able to pay it. OCA St. 1 at 6; OCA St. 2A at 7-8. To this extent, the way in which the Company applies its main extension tariff is self-defeating, in that the higher the mandatory CIAC amount imposed, the lower the number of customers, which generates an even higher amount of CIAC, and so on. In addition, while the Company accuses the OCA of “speculating” about the customer number, PAWC itself makes little effort to determine in advance what the maximum number of customers would be. *See, generally*, Tr. 290-294.

In September 2002, Supplemental Direct Testimony by both Mr. Fought and Ms. Kraus was served in order to provide updated information on four issues:

- The modified proposed project scope and cost estimates;
- The revised projection of the number of customers willing to take service;
- The increased justified Company investment per customer resulting from the January 25, 2002 base rate order; and
- Additional evidence relevant to the compelling public need for service throughout the Township.

OCA St. 1A at 1; OCA St. 2A at 1-2. The additional evidence of the compelling public need has already been addressed in Section VI.B., *supra*. The OCA will address in turn each of the issues

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<sup>5</sup> This CIAC amount was based on a then-estimated project cost of \$4,176,696; PAWC investment per customer of \$5,655 (for a total of \$2,047,110); and 362 customers. In other words, the 362 customers would have been required to invest \$2,129,586 or \$5,883 per household. OCA St. 1 at 5.

which drives the Company's erroneous conclusion that the project would not be economic without CIAC.

3. *The Evidence Supports The Use Of 568 Customers In The Break-even Calculation.*

In March 2002, PAWC presented to the residents of Mount Pleasant Township at a public meeting a map delineating its new proposed project scope. OCA St. 1A at 4; *see* PAWC Exh. 2.2.<sup>6</sup> The map used at the March 2002 meeting was Mr. Fought's starting point for defining the economically justified project presented in his Supplemental Testimony. OCA St. 1A at 4. By September 2002, 430 out of 530, or 81%, of the respondents within the revised project footprint stated they would connect to the public water system if CIAC was not required. OCA St. 1A at 4-5. As Mr. Fought testified, applying the same percentage to the potential customers who did not return the survey (only 171 of a total of 701) indicates that approximately 138 more customers would connect to the system if no CIAC were required, for a total of 568. *Id.* at 5.

Use of a projected number is appropriate in light of the high number of survey responses returned to the OCA. As Ms. Kraus testified:

Based on this large percentage of response (76%), it is reasonable to project that the small portion of customers from whom no responses were received would have responded "yes" or "no" at the same percentages as those who did respond. I should note that, at the meeting held in Mount Pleasant Township on March 20, 2002 regarding the Hickory project, a Company representative indicated that approximately 600 customers were expected to connect to the new system, even with a smaller project footprint than Mr. Fought is proposing in this case. This also confirms the reasonableness of the projection of 568 customers based upon the OCA surveys from a larger group.

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<sup>6</sup> PAWC Exhibit 2.2 is a replication of the map used to illustrate the revised project scope at the March 2002 public meeting; however, it also includes a key which shows where the witnesses that appeared to testify to their need for public water service reside.

OCA St. 2A at 5. Indeed, on cross-examination by the OCA, PAWC witness Jay Lucas recalled that it was somewhere "in the area" of 600 potential customers in the Company's proposed project area. He further accepted, subject to check, that he had stated at least twice during the March 2002 meeting that there were about 600 people within the project footprint presented that night. Tr. 301-302. It is therefore reasonable to use the projected number of 568 for purposes of calculating whether CIAC could be required, as that number was corroborated by Mr. Lucas' statements to the Mount Pleasant Township residents and his sworn testimony on December 3, 2002 relative to a project smaller in scope than that now proposed by the OCA.

In terms of the revenues anticipated from the potential customers, Mr. Fought noted that seventeen non-residential customers responded to the survey indicating they would connect to the system if CIAC were not required. These customers have an estimated daily usage of 9,350 gallons per day, which is equivalent to that of 60 residential customers. OCA St. 1A at 5.<sup>7</sup> PAWC has not refuted the OCA's calculation of the additional residential revenue equivalents that would be generated by these non-residential entities. As Ms. Kraus also pointed out, the potential Distribution System Improvement Charge revenues from the customers is not taken into account in the break-even analysis, either. OCA St. 2 at 15-16. The OCA witnesses' final economic analysis pursuant to the main extension tariff, however, does not incorporate these additional revenues; this information is provided simply to illustrate the potential for additional

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<sup>7</sup> Those customers are the Hickory UP Church, the Wabash Community Center, Mount Pleasant Township Fire Co., Hickory Junction Tavern, Old Hickory Inn, Hickory Dickory Doc Animal Hospital, a law office, Village Green Golf Course, Mount Pleasant Township Building, Fort Cherry Grill, Costello Door Co., Donate Machine Shop, PC Whip, Hickory Telephone Co., Battery Specialists, Corwins' AMC, and the Red Fox Lodge. OCA St. 2A at 5. Many of these governmental and business entities sent representatives to testify at the Sept. 9, 2002 hearings.

economic gain to PAWC, beyond what is reflected by the break-even analysis, if the project goes forward.

Mr. Fought presented his final recommended project on the map entered into the record as OCA Exhibit TLF-1A.<sup>8</sup> OCA Exhibit TLF-2A presents the specific locations of the mains shown on Exhibit TLF-1A, as well as the projected number of customers within and the costs of these segments. All of the evidence taken together amply supports the use of a customer number of 568 to determine whether CIAC may be required.<sup>9</sup> In conjunction with the adjusted project and financing cost and the increased Company contribution resulting from the last rate case, no question reasonably remains that the Mount Pleasant Township area should be served without requiring customer payment toward construction of PAWC's system.

4. *PAWC's Estimated Project Cost Should Be Reduced For CIAC Purposes Because It Includes Plant Sized Larger Than Necessary To Serve The Applicants For Service.*

At least one other major utility company has committed to applying least-cost principles in calculating CIAC.<sup>10</sup> Such an approach is also consistent with Gabauer v. Western Pennsylvania Water Company, 67 Pa PUC 448 (1988), wherein Administrative Law Judge Gesoff determined that the water company could charge the complainant for only a six-inch

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<sup>8</sup> This map updates and supercedes the recommended project footprint provided in OCA Exhibit TLF-1, which was attached to OCA Statement No. 1, dated December 7, 2001.

<sup>9</sup> In fact, as Mr. Fought noted, considering the lower cost PennVest financing (and all other factors held constant), PAWC would achieve the "break-even" point with only 409 customers. Tr. 393.

<sup>10</sup> In Joint Application of Philadelphia Suburban Water Co., et al., Docket No. A-212370F0048, et al., Order of Dec. 18, 1998, approving Initial Decision of Dec. 9, 1998, at 4, referencing Joint Petition at 7-8, the PUC approved a settlement containing a provision through which the Company committed to apply least-cost principles in determining whether CIAC would be required of applicants for service. Copies of the Order, the Initial Decision and pertinent attachments are included in Appendix E.

water main -- even if it actually installed an eight-inch water main -- because a six-inch main was adequate to serve the complainant. This principle was also applied in Polson case, in which the Commission refused to permit the utility to require CIAC of three applicants for service because the main to be installed was sized to serve many more customers. Polson v. Citizens Water Company of Washington, PA., 41 PaPUC 594 (1964). Therein, the Commission stated:

The record justifies the conclusion that comparatively few additional customers may be expected by respondent in the area here involved for some considerable period of years. Under these circumstances it seems clearly unwarranted to require complainants to advance the cost of installing a main with over a hundred times the physical capacity of a private tap-off, and probably adequate for the service of over 200 families. There is no more justification for requiring the water customer nearest the plant to finance the cost of the largest main at that point, than there is to require a sewer customer who is at the lowest point on a sewage collection trunk line to finance the cost of the trunk line sewer fronting his premises.

Polson, *supra*, at 599. As in Polson, albeit on an exponentially larger scale, PAWC in the instant case seeks to calculate the mandatory customer contributions to construction of the system using a base cost that includes over \$1 million more in plant than is actually necessary to provide adequate and reasonable service to Mount Pleasant Township.

Consistent with the Commission decisions, the OCA applied "least-cost" principles to construction and financing to determine whether any customer contribution was warranted. As such, Mr. Fought's analysis included determining whether the construction costs PAWC included in its estimate involved only plant required to provide service to the group of potential customers in Mount Pleasant. His conclusion was that PAWC's cost estimates, based upon information provided in response to OCA discovery, included facilities that are either oversized or not needed to provide the initial applicants reasonable and adequate service consistent with both PUC and

DEP-established design criteria. OCA St. 1 at 5-6; OCA St. 1A at 7-8. Specifically, Mr. Fought excluded the cost of a new storage tank from the project cost used to determine CIAC; he also substituted costs for smaller sized mains where to do so was consistent with accepted design standards for domestic and public fire service. OCA St. 1 at 7-8, App. C ; OCA St. 1A at 7-8.

As Mr. Fought testified:

The Company has included the cost of a tank in its base cost. I have excluded this cost and the main within the tank site because, according to the Company's response[s]. . . , the booster pump station in Chartiers Township will serve 233 customers in Chartiers, have a capacity of approximately 1,000 gallons per minute and is designed to pump into a closed system without a water storage tank. This pumping station is adequate to also provide domestic and fire service to the proposed customers in Mount Pleasant Township without a water storage tank.

OCA St. 1A at 8.

PAWC has argued that a water storage tank is needed to provide reliable service and meet generally accepted design criteria for this project. PAWC St. 2.1 at 2. Mr. Hankey testified that the water storage tank would provide sufficient storage to meet the demands of these customers while a main break or other emergency is being addressed and corrected. *Id.* While this may be true, it does not refute Mr. Fought's testimony that service can be provided to both groups of customers without the new tank. In response to Mr. Hankey, Mr. Fought testified that the cost of the tank should not be included in the estimated project cost used to determine customer contributions, if any, because Mr. Hankey's arguments could apply just as well to only the existing 233 customers in Chartiers Township. OCA St. 1S at 6. In other words, while the tank may be a desirable addition to the system for either group, it is simply not needed to serve either or both groups. In fact, Mr. Hankey admitted this on cross-examination by the OCA, when he

agreed that the Gretna Booster Station has sufficient capacity to provide a fire flow of 750 gallons per minute and a peak hourly demand for both sets of customers. Tr. 330.

In a further attempt to rebut Mr. Fought, PAWC has also argued that the Gretna Booster pumping station currently in operation in Chartiers was designed "to meet the instantaneous demand of approximately 200 customers plus the fire flow requirements for the Chartiers' system" and that serving the "instantaneous demand" of Mount Pleasant Township would exceed the design flow of the Gretna booster. PAWC St. 2.1 at 3. Mr. Fought refuted this assertion by reference to DEP fire protection requirements which use peak hourly demand as a design parameter, not "instantaneous demand." OCA St. No. 1S at 7. On cross-examination, Mr. Hankey conceded that the DEP Pennsylvania Water Supply Manual makes no reference to "instantaneous demand"; rather, it requires that system provide for "maximum daily and peak hourly demand." Tr. 327-328. According to PAWC's responses to OCA discovery, and assuming a 750 gallon per minute fire in Chartiers Township, approximately 1,250 customers could also be served by the 1,000 gallon per minute Gretna Booster Pump Station, which is now serving only 233 customers. OCA St. 1A at 7 and App. A, PAWC Responses to OCA Set II-14, IV-9 and IV-11. As such, PAWC's arguments regarding the Gretna Booster Pump Station are without merit. The cost of a new tank in Mount Pleasant should therefore not be included when determining the overall cost of PAWC extending service to the Township for purposes of determining customer contributions. This adjustment is entirely consistent with least-cost principles and the Gabauer and Polson cases.

Concerning the cost of 12-inch mains for which Mr. Fought has substituted the cost of 8-inch mains, PAWC has argued that these facilities are not oversized, but are necessary to provide

appropriate fire protection. In particular, PAWC witness Hankey states that 12-inch mains are needed to provide a fire flow of 750 gallons per minute. PAWC St. 2.1 at 4. In response, OCA witness Fought referenced DEP's minimum acceptable fire flow for new systems which is 500 gallons per minute; this level of flow can be achieved using 8-inch mains. OCA St. 1S at 4. On cross-examination by the OCA, PAWC witness Hankey acknowledged that the 750 gallons per minute level is the "accepted company standard for new pipeline." Tr. 331. In other words, it is only the Company's internally adopted standard that would require 750 gallons per minute - not DEP or ISO.<sup>11</sup> Therefore, the cost of 8-inch mains should be used when determining the overall cost of PAWC extending its mains in to Mount Pleasant Township for purposes of determining a customer contribution, if any.

Mr. Fought testified again, that if PAWC chooses to install more facilities than are required to serve the Mount Pleasant Township customers, it should do so at its own expense. OCA St. 1A at 5; *see also* OCA St. 2 at 6-7. It would be a gross economic injustice to require this group of customers, who are already so burdened with the cost of installing and maintaining their own water systems and the cost of water purchases from haulers, to subsidize PAWC's "gold-plating."

Eliminating the tank, its related water main and substituting the cost of smaller sized mains reduces the base cost used to determine CIAC by \$1,067,350, *i.e.*, from \$6,290,499 to \$5,223,149. OCA St. 1S at 3. The OCA submits that Mr. Fought's conclusions support

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<sup>11</sup> "ISO" stands for "Insurance Services Office" which rates communities in terms of their ability to extinguish fires by assessing, among other things, the pressures in public water systems and hydrants.

\$5,223,149 as the appropriate project cost to be used to determine whether CIAC should be required.

5. *The Appropriate Cost Of Debt To Use For Calculation of CIAC Is Low-Interest PennVest Debt.*

In 1988, the General Assembly passed into law the Pennsylvania Infrastructure Investment Authority Act, 35 P.S. § 751.2. The Authority created by this law is commonly known as "PennVest." While neither the OCA nor the Commission can dictate how a public utility finances its construction projects, the fact that the Mount Pleasant Township project so closely matches the express legislative intent and objectives in the PennVest statute simply cannot be overlooked. In enacting the PennVest statute, the General Assembly declared, in pertinent part, as follows:

- (1) The health of millions of citizens of this Commonwealth is at risk due to substandard and deteriorated water supply . . .
- (2) Many water . . . systems in this Commonwealth are aging, outmoded, inadequate, deteriorating and operating above capacity, and many areas have to limit their growth solely due to lack of proper water supply . . .
- (3) The economic revitalization of this Commonwealth is being stifled by a lack of clean water and adequate sewage facilities. . . .
- (5) Financing of water . . . projects at affordable cost is not currently available in many areas of this Commonwealth.

35 P.S. § 751.2(1)-(3), (5). The fundamental reason for creating PennVest was to provide financing for projects to protect the health and safety of the citizens of Pennsylvania and to promote economic development. 35 P.S. §751.2(7). The PennVest Annual Report reflects that upwards of \$1.1 billion in loans and grants were made available for water projects in Pennsylvania in the 2001-2002 fiscal year. OCA Exh. 2S. PAWC has already taken advantage

of this source of funding for many projects throughout its service territory; PAWC witness Lucas acknowledged that PAWC has been “fairly successful” in acquiring such loans for projects and that PAWC intended to seek a PennVest loan to finance the Mount Pleasant project described at the March 2002 meeting with the residents. Tr. 313-314.

Moreover, the Company’s Schedule of Debt at September 30, 2002 reflects that eleven PennVest loans are currently in its capital structure, at interest rates ranging from 1.0% to 3.25%. OCA Cross Ex. Exh. at 6. PAWC witness Paul Diskin acknowledged that PennVest financing lowers the overall embedded cost of debt and that it benefits the Company and its shareholders to seek the lowest cost financing available. Tr. 355, 357. Mr. Diskin also acknowledged that procuring lower cost financing between rate cases leaves more funds available for return or for company investment in its system. Tr. 137. In fact, Mr. Diskin elaborated on cross-examination as follows:

Q. Yet, apparently the company is not willing to seek PENNVEST funding for this Mt. Pleasant Township project, is it?

A. I don’t believe the company has made that statement. The company has no problem with trying to get PENNVEST funds to finance projects of this magnitude. We also do not have a problem with the low interest rates that PENNVEST offers us. *Like you said, it benefits everyone. . . .*

Q. . . . So, basically, we don’t have any losers if Pennsylvania-American funds this project with 1 percent taxpayer-supplied PENNVEST funding, do we?

A. No, we do not.

Tr. 357 (emphasis added.)

Mr. Diskin went on to say that the Company’s problem was with Ms. Kraus’ position in “trying to get the benefit twice for ratepayers, once whenever the calculation is done for the

investment for these customers and secondly, whenever that project is rolled into a base rate case.” Tr. 358. Clearly, Mr. Diskin was confused, as it is the Company which is attempting to deprive the future customers of the benefit of this low cost funding – not the OCA trying to get the benefit for ratepayers twice.

The main extension regulation promulgated by the Commission pursuant to which the Company submitted its tariff defines “debt costs” as “the utility’s *additional* annual cost of debt associated with financing the line extension investment based upon the current debt ratio and weighted long-term debt cost rate for that utility. . .”. 52 Pa. Code §65.1 (emphasis added.) Admittedly, the definition is somewhat ambiguous. It is important to note, however, that at the time the regulation was promulgated, PennVest funds had not been sought by large utilities to fund projects such as the one in the instant case and the Commission had no reason to contemplate other sources of financing which might be lower than the utility’s weighted cost of debt. OCA St. 2 at 15. The use of the word “additional” in the definition and the phrase “associated with financing the line extension,” however, indicate an intent that the break-even analysis be performed using just that: the cost of debt associated with the particular project required to meet a public need for service.

In contrast, however, the Company’s tariff rule defines the “debt cost” component of the formula as follows:

The weighted cost of debt shall be the Company’s long-term debt costs as determined in the Company’s last approved general rate increase.

Supp. No. 26 to Tariff Water - Pa. P.U.C. No. 4, First Rev. Page 73. In the instant case, with PennVest funding available to finance the Mount Pleasant Township mains, use of the

Company's weighted long-term debt as of the last rate case would be patently unfair to the applicants for service. As Ms. Kraus testified, substituting the actual cost of debt that would be incurred by the Company to finance the Mount Pleasant Township project, 1.08%, would justify a Company investment per customer of \$12,971. OCA St. 2A at 9. The Company has not disputed this calculation. Multiplying \$12,971 by the 568 customers expected to connect to the system yields \$7,367,528, well in excess of the total project cost of \$5,303,352, as estimated by Mr. Fought. *Id.* at 9. In fact, using the PennVest cost of debt for CIAC calculation purposes yields *more than would be required to fund the project even using the Company's inflated cost estimate of \$6,370,702*. PAWC St. 1.1 at 4, PAWC Exh. 1.3. Moreover, as Mr. Fought pointed out, taking this lower cost debt into account, the break-even point would be achieved if only 409 customers took service. Tr. 393-394.

The Company's explanation of why this calculation is not appropriate does not make any sense. As noted above, use of an actual debt cost associated with the line in question is consistent with the language of the Commission's regulation; contrary to Mr. Diskin's testimony. PAWC St. 3.0 at 4; St. 3.1 at 10-11. To the extent that the tariff rule would require the use of the Company's weighted cost of debt in the last base rate proceeding in a case where lower cost funding is used, it should be disregarded as patently unreasonable. Mr. Diskin's second point in response to Ms. Kraus' position contains fundamental and factual errors:

Ms. Kraus wants to "target" the PennVest rate to the Company-required investment calculation because that rate is lower than the Company's weighted average cost of debt. However, she presumably would want to continue to use the weighted average cost of debt for all non-PennVest-funded main extensions. In short, she wants to "target" a specific financing rate to a specific project only when that rate is lower than the Company's weighted average debt cost. If specific interest rates are to be "targeted" to specific projects, that would have to

be done across the board. Since the Company's incremental debt cost rate (i.e., the rate for new projects that are not funded by PennVest loans) is higher than its weighted average embedded debt cost rate, all non PennVest-funded projects would have a correspondingly higher debt component and lower Company-required investment.

PAWC St. 3.1 at 11 (emphasis in original). PAWC's Earnings Disclosure Report for the year ended Sept. 20, 2002 (OCA Cross Exam Exh. 1) shows that Mr. Diskin was plainly wrong when he stated that the Company's incremental debt cost is *higher* than its weighted average embedded debt cost rate and he admitted this on cross-examination. Tr. 352-353. The weighted debt cost rate was 6.76% as of Sept. 30, 2002; the embedded cost of debt as of the last rate order on January 25, 2002 was 7.26%.<sup>12</sup> Tr. 355. Mr. Diskin was also in error when he asserted that all non-PennVest funded projects would have a higher CIAC and a lower Company investment as a result of Ms. Kraus' position -- there is absolutely no support for this statement. Ms. Kraus made no comment on whether *any* factor at all should be adjusted relative to non-PennVest-funded main extension projects.

Having said that, however, it is irrefutable that the Company's use of the current debt cost, which is lower than the weighted cost of debt as of the last rate case, would justify an even higher Company investment per customer across-the-board, any issue of PennVest funding notwithstanding. In other words, if the language of the regulation requiring the use of a "current" debt cost is to be afforded any meaning, applicants for service are being overcharged throughout the Company's territory because the CIAC calculation is based upon the embedded long-term

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<sup>12</sup> PAWC's persistent assertions that this difference was driven by the Citizens Utilities acquisition really have no bearing on this discussion and should be disregarded. Tr. 364-365. As Mr. Diskin conceded, the ratemaking formula is blind to the reasons for changes in the debt costs and if PAWC were to have filed as of Sept. 30, 2002, the debt cost used to determine revenue requirement would be 6.78%, not 7.26%. Tr. 372-373.

cost of debt as of the last rate case, rather than the lower incremental long-term debt cost associated with the specific construction projects.<sup>13</sup>

The overcharge is magnified in the present case, however, because of the clear availability of PennVest funding for projects such as Mount Pleasant Township and the Company's proven track record in procuring it. Mr. Lucas testifies, however, that PAWC stands ready to provide service to Mount Pleasant Township *only* upon payment by each of the residents of \$2,255.<sup>14</sup> PAWC St. 1.1 at 13. It would be a gross economic injustice for PAWC to collect \$2,255 from each of these applicants for service --as if the project were funded with ordinary investor-supplied capital -- while approximately \$1.1 billion of taxpayer-supplied funds is available to the Company for the specific purpose of meeting the water supply needs of communities such as Mount Pleasant Township, whose economic growth has been stymied by its substandard natural water supply.

Even PAWC witness Lucas suggested that when PennVest funding is sought, the Company itself may simply disregard the main extension tariff rule. He stated on cross-examination by the OCA: "I guess it depends on how the project moves forward, *whether it's done specifically by us through our normal PUC main extension tariff or whether it's done through a PENNVEST loan.*" Tr. 304 (emphasis added.) The Company has thus recognized that

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<sup>13</sup> Construction projects are ordinarily funded with short-term debt, which is even lower. As Mr. Diskin noted, the combination of short-term debt rates and long-term debt rates reflected on OCA Cross Exam Exh. 1 was 6.65%. Tr. 352.

<sup>14</sup> It should be noted that this figure is based upon 744 residential-equivalent applicants, which would only be possible if the Township passed a mandatory connection ordinance. PAWC St. 1.1 at 10. Mr. Patrick Gallagher, Chair of the Mount Pleasant Township Water Authority, provided the many reasons why a mandatory connection ordinance would generate substantial public opposition to a water project. Gallagher St. 1. at 2-4. It was the prospect of a mandatory connection ordinance in part that resulted in the failure of the 1989 planned water project. Tr. 107-108; *see also* 190-192.

low-cost PennVest funding eliminates the need even to apply the main extension tariff rule. Essentially, Ms. Kraus' analysis shows precisely what PAWC acknowledges internally, as Mr. Lucas testified. Customer investment in the system simply should not be mandated if a project is funded by PennVest.

Mr. Diskin's third erroneous point in response to Ms. Kraus is that there are "significant ratemaking implications" to her proposal and the Company will be "short-changed" unless the Commission approves a major change in its ratemaking approach. PAWC St. 3.1 at 11-12. That PAWC would be "short-changed" if Ms. Kraus' analysis were accepted is an absurd notion. What really would happen is that PAWC would not be able to overcharge applicants for service as it otherwise would – hardly a "short-change" scenario from the Company's perspective. Mr. Diskin's statement must be rejected out of hand. On cross-examination, Mr. Diskin could not identify a single dollar that PAWC would *not* collect using Ms. Kraus' approach that it otherwise would, completely debunking the myth that PAWC would be "short-changed" if the PennVest rate were reflected in the CIAC calculation. Tr. 360-361.

In response to Mr. Diskin's testimony, Ms. Kraus explained not only why PAWC would not be not "short-changed" if her approach were accepted, but also, how substantially it gains long-term by financing through PennVest:

While it is true that the return on the PennVest-funded rate base would not be fully recovered over the term of the loan, the Company would continue to receive a return on the PennVest -funded facilities long after the loan is fully repaid. This is true because the PennVest loan terms, normally twenty years, are generally much shorter than the service lives of the plant items which are financed with this debt. This means that, generally, during the first twenty years of the service life of the property funded with PennVest loans while the loan is included in the capital structure, the debt ratio is higher and the average cost of debt is lower, resulting in a lower overall rate of return than would be experienced absent the PennVest debt.

However, at the end of the twenty-year period, when the loan is fully repaid, the plant which was funded with the loan is not fully depreciated. Thus, all else equal, the debt ratio decreases, the average cost of debt increases and the overall rate of return increases. This rate of return will be applied to the net balance of the plant funded with that PennVest loan throughout the rest of its service life. In this case, the mains have a service life of approximately ninety two years. Thus, **while the loan would be repaid in twenty years, the Company would continue to earn a return on the net balance of the plant for another seventy-two years.** Overall, the Company is certainly not "short-changed" with respect to the return on its PennVest-funded plant.

OCA St. 1S at 9-10. As Ms. Kraus also noted, if the Company is so concerned about constructing plant to serve Mount Pleasant that would not be in rate base for the period before the conclusion of its next general rate case, it could use its PennVest surcharge tariff to collect the debt service payments, dollar-for-dollar, over the life of the loan. Supp. No. 45 to Tariff Water Pa. P.U.C. No. 4, Fifth Rev. Page 12A.

In conclusion, Ms. Kraus' analysis is consistent with both the letter and the spirit of the Commission's regulation on main extensions. Contrary to the Company witnesses' testimony, the OCA's position is completely in line with fundamental ratemaking principles and would require no change in them at all. As such, Ms. Kraus' conclusions, together with Mr. Fought's recommendations, form a sound evidentiary basis for a Commission order requiring service to be extended without CIAC.

6. *The Fact That PAWC Ratepayers Have Paid A Return Of and On Plant Constructed To Serve Mount Pleasant Township Since 1989 Is Yet Another Reason Why No CIAC Should Be Required.*

In October 1989, the Commission issued a Final Order in Pa. P.U.C. v. Pennsylvania-American Water Co., 71 PaPUC 210 (1989), which involved a request for a base rate increase in the amount of \$15,069,940 or 11.79%. Among the issues raised in that case was a rate base

adjustment proposed by the OCA premised upon excess capacity. PAWC had installed a 10,112-foot twenty-four inch main, referred to in the case as the Robinson Run Road Pipeline, which the OCA asserted was sized to serve future demand related to a planned co-generation plant in the McDonald District, as well as areas in Smith, Cross Creek, Independence and Mount Pleasant Townships. *Id.* at 236-237. The OCA proposed to reduce rate base by \$190,000, the difference between the cost of a 16-inch main and a 24-inch main and the adjustment was rejected. *Id.* at 237. Consequently, since 1989, PAWC ratepayers have been paying a return of and on plant installed in part to serve Mount Pleasant Township--without receiving the benefit of the revenues that would have been generated by this group of customers throughout that period.

PAWC witness Diskin acknowledged this fact on cross-examination by the OCA:

Q. . . . Mr. Diskin, can you accept subject to check that the large transmission mains, . . . the 24-inch mains, that the company put in rate base in 1989 were justified in part by the need to serve people in Hickory, PA?

A. I would agree with that subject to check.

Q. Consequently, the existing ratepayers have been paying a return of and on those pipes ever since the conclusion of that 1989 rate case, haven't they?

A. If the property was included in rate base and accepted by the Commission, that is correct.

Tr. 362. The witness went on to agree that, while there are a few customers in Mount Pleasant Township that are served by PAWC, the village of Hickory is not. Tr. 363. PAWC did not refute that it intended to serve Mount Pleasant Township including the village of Hickory via the 24-inch main at issue in the 1989 base rate case.

The fact that ratepayers have been paying a return of and on this plant, which was sized in part to serve Hickory for a period of nearly thirteen years, without the benefit of the additional

revenues that would have been generated by the Mount Pleasant customers, is yet another reason why PAWC should not be permitted to charge these applicants for service CIAC.

D. Many Mount Pleasant Township Residents Relied To Their Detriment On PAWC's Statements That Public Water Service Would Be Provided; Therefore, PAWC Should Be Estopped From Withholding Service To Mount Pleasant Township.

PAWC should be held to their assertions that they would extend their mains in to Mount Pleasant Township through the doctrine of equitable estoppel. There are three elements to the doctrine of equitable estoppel. "[E]stoppel arises when a party intentionally or negligently misrepresents a material fact, knowing or having cause to know that another will rely on the misrepresentation, and that the other justifiably relies upon the misrepresentation to his detriment." Police Pension Fund Ass'n Bd. v. Hess, 127 Pa. Commw. 498, 504, 562 A.2d 391, 394 (1989)("Hess").

Several witnesses at the September 9, 2002 hearing testified about their belief that PAWC's intention to proceed with the project was announced at a public meeting held in Mount Pleasant Township on March 21, 2002 where PAWC said it would install facilities to serve applicants that desired water service at no cost to the applicants. On cross-examination, Mr. Lucas stated that he, and another representative of PAWC, attended the public meeting as a normal part of their responsibilities as a PAWC employee and as authorized representatives of the Company. Tr. 299. Mr. Lucas also recognized that approximately 250 residents of Mount Pleasant Township were present at that meeting. Tr. 300.

During cross-examination by the OCA, Mr. Lucas indicated that, during that meeting a specific project footprint was discussed:

Q. . . [D]o you recall what you discussed at that meeting that night?

A. Yes.

Q. Could you elaborate on that a little?

A. A project footprint was laid out to the residents. My portion of the meeting was to state where that project footprint was and the layout, what the end point – what the end house number was on each of the spur streets and kind of give a general overview of where the project was going to start, what the facilities were needed to serve those residents, an approximate project number of residents, project count of number of people in that footprint, as well as some basis costs. Then I went on to discuss basis – how they would become customers of Pennsylvania-American Water Company, the mechanics of hooking up their service lines, how they would get a meter set, how they would disconnect their well and those kinds of specifics

Tr. 300-301. Throughout the transcript of the September 9<sup>th</sup> hearing, many residents of Mount Pleasant Township stated that they believed that the assertions made by Mr. Lucas that evening were true and that PAWC was going to extend its mains to many areas within Mount Pleasant Township, as Mr. Lucas had indicated. Unfortunately, many Mount Pleasant Township residents reasonably relied on those assertions and acted upon them to their detriment.

PAWC should be held to their specific assertions that they would extend their mains to Mount Pleasant Township. The residents of Mount Pleasant Township reasonably relied on the assertions and actions of the PAWC representatives to their detriment, as PAWC did not seek funding to install those water lines, as the Company representative stated it would do. All three elements of a successful claim for detrimental reliance are supported on this evidentiary record and PAWC should be required to extend their mains in to Mount Pleasant Township as represented.

The first element of equitable estoppel is when a party intentionally or negligently makes a misrepresentation of material fact. In Hess, *supra*, the Commonwealth Court held that the critical elements of equitable estoppel are "misrepresentation and justifiable reliance." Id. PAWC led the residents of Mount Pleasant Township to believe that their request for service would be granted when Mr. Lucas gave specific information on where water lines were going to be installed and the residents were justified in relying upon these statements. "Equitable estoppel is a doctrine that prevents one from doing an act differently than the manner in which another was induced by words or actions to expect." Id. The Commission has recognized the doctrine of estoppel, *see e.g.*, Re: Equitable Gas Company, 68 PaPUC 574, 596 (1988), and should apply that doctrine in the instant case to require PAWC to provide service as represented.

Approximately 250 residents of Mount Pleasant Township were present when Mr. Lucas said that PAWC was going "to start laying pipe for water in early 2003." Tr. 190. Maps were used to show the footprint and terminal addresses were given where the pipes would end on certain roads. Tr. 193. Because this was presented at a town meeting and such specific information was given, the town believed that water was really coming and some residents acted based on that information. As Formal Complainant Cindy Parks testified:

The March meeting we had, the water company pretty much laid it on the table that the water was coming. Not once did they tell us this was a tentative agreement."

Tr. 62. The presentation made by Mr. Lucas that evening was summarized in an article by the vice-chairman of the Mount Pleasant Township Municipal Authority in the *Hickory Talk* newsletter entitled "Water, Water Everywhere." *See*, Caldwell Exh. No. 1. As noted in the article:

Hickory is finally going to get public water. After at least 30 years of bitter wrangling over the pros and cons of public water in the Hickory Area, a cost feasible water project is coming through the village and a reasonable portion of its side streets. Not everyone will have access to the new lines, but at least it will address the areas that have had contaminated wells over the years.

*Id.* The article proceeded to detail specific roads and portions of roads where the water mains will be extended.

Furthermore, Mr. Lucas indicated during the March 21<sup>st</sup> 2002 public meeting that PAWC intended to go forward with an application to Penn Vest to fund the project. In the past, funding was a key issue in the public water debate because it had involved a mandatory hook-up fee. Because PAWC was going to PennVest directly, the mandatory hook-up issue was eliminated. Tr. 190; *see also*, Caldwell Exh. No. 1. PAWC even discussed what fees would be charged at the meeting. Residents were told they would have to pay about thirty (30) dollars to set up an account, and pay to run the line from the street to their home. Tr. 190. Residents were also told there would be no tap-in fee or front footage fee. Tr. 191. The specific information given at this meeting led the residents to believe that water service would definitely be available to them soon.

As Formal Complainant Rick Minutello testified:

In March of 2002, I also was at a meeting where I heard Mr. Lucas say that water was coming, it was a done deal. The only thing was that we had to go for a PennVest loan and we've never been turned down for those . . .

Tr. 86. Mr. Lee Clayton stated: “. . . I feel that we had an oral agreement with PAWC to start their project this spring and it should be completed.” Tr. 86.

The second element of equitable estoppel is knowing or having cause to know that another will rely on the misrepresentation. PAWC has a history with Mount Pleasant Township and knows of their need for water. As many residents testified, discussions between Mount

Pleasant Township officials and PAWC personnel have continued for many years. For example, Jack Caldwell testified as a former Supervisor in Mount Pleasant Township that he was aware of six proposals to bring public water in to the Township. As Mr. Caldwell testified:

There was one in 1969 with the water coming from Southview for 170 customers. Then there was an Englehart Power study in 1986 with the water coming from Westland.

In 1988, American Waterworks had a meeting and they announced the reorganization plan for five municipalities, Burgettstown, Smith, Crosscreek, Independence and Mount Pleasant. All have since been completed except Mount Pleasant.

Then there was a Cerone plan in 1988 with water coming from Crosscreek Dam for about 550 customers. Finally in 1989, there was a plan that I worked with, a Pennvest approved plan, that was stopped because of the mandatory connection issue and litigation against the supervisors.

Tr. 103-104. Therefore, there is a clear history of PAWC's involvement with Mount Pleasant Township. After these numerous prior attempts by Mount Pleasant Township to have PAWC extend their mains to serve its residents, the Company knew or should have known that the Township would rely on the assertions made by Mr. Lucas at the public meeting that they would be extending their mains into the Township and that the information they supplied would cause members of the township to take action based on that information.

The last element of an equitable estoppel claim is that the other person justifiably relies upon the misrepresentation to his detriment. Where a party acts or fails to act to his detriment in reasonable reliance on the statements of another, the promissor may be estopped from repudiating his promise even in the absence of legal consideration. See Travelers Insurance Company v. Hartford Accident and Indemnity Company, 222 Pa. Super. 546, 294 A.2d 913 (1972).

In this case, many residents of Mount Pleasant Township either took action in buying property in anticipation of coming public water, or failed to act in making needed improvements. "The two essential elements of equitable estoppel are inducement and justifiable reliance on that inducement. The inducement may be words or conduct and the acts that are induced may be by commission or forbearance provided that a change in condition results in causing disadvantage to the one induced." Novelty Knitting Mills, Inc. v. Siskind, 500 Pa. 432, 434, 457 A.2d 502, 503 (1983).

Some people bought property in Mount Pleasant Township because they were told that PAWC would be extending their mains to the area. Tr. 74-75. In fact, Vickie Bonzo and her husband bought enough land so they could build a home and their daughter could also build a house close to them. Tr. 74. Now their plans are on hold until they know if they will have a reliable source of water. Tr. 75. Had they known that water was not coming, they would not have bought the property.

Some people bought homes based on the sellers' attendance at the March meeting and the promise of water. Richard Walsh bought his home because the owner told him water was coming. Tr. 222. Dean Schlebusch and his wife bought property because the previous owner told them that water was coming. Tr. 223. Residents also went to the expense of having property surveyed and perked based on the information given at the March meeting. Deona Miller had already bought property but was not going to build on it until public water was available. Tr. 109. Her friends that attended the meeting in March told her that water was definitely coming. Tr. 109. She then had engineers come to the property to develop a subdivision plan in anticipation of building approximately twenty homes on the eighty acre plot.

Tr. 109-110. Now that water is not coming, her plans have stopped. She would not sell the property to people knowing they may not be able to get water. Tr. 110. She has also put off building her own home there. Tr. 110.

Dawn Harber read about the March 2002 meeting in the newspaper and visited the Township building to confirm the location of the water lines on the PAWC map and the time table. Based on the information that PAWC provided, she hired a surveyor to have land perked and a subdivision plan made. Tr. 232. Now she does not know if she can ever use that plan because it was based on the water line plan PAWC submitted. Tr. 232. James White went to the extent of building an addition on his home after he heard that PAWC would be extending their mains in to Mount Pleasant Township. Tr. 214. The addition covers his well, which he believed he would soon no longer need. Tr. 215; *see also*, James White St. No. 1. In addition, the uncertainty about public water will impact the plans of Hickory United Presbyterian Church, where he serves as chair of the Building and Property Committee, to build a new facility. Tr. 217-218. The costs will likely increase if public water and fire service is not available. *Id.*; James White St. 2. Edwin Swartz put off repairs to his cisterns because he heard water was coming. Tr. 125. Donald Miller had considered getting a water softener, but refrained because he was convinced water was coming. Tr. 264.

“Pennsylvania jurisprudence has accepted the notion that where a party acts or fails to act to his detriment in reasonable reliance upon the promise of another, the promisor may be estopped from repudiating his promise, even in the absence of legal consideration.” Travelers Insurance Company v. Hartford Accident and Indemnity Company, 222 Pa. Super. 546, 551, 294 A.2d 913, 915 (1972). The Supreme Court of Pennsylvania recognized this doctrine in Novelty

Knitting Mills, 500 Pa. at 435, 457 A.2d at 503, holding that “equitable estoppel recognizes that an informal promise implied by one’s words, deeds or representations which lead another to rely justifiably thereon to his own injury or detriment may be enforced in equity.” In this case, many people spent money in anticipation of public water or refrained from making needed improvements based upon PAWC’s statements, its timetable and its map delineating where mains were to be extended. If PAWC does not extend their mains in to Mount Pleasant Township, many people will have spent money in vain. In some cases, people will have property that they may never be able to build on. In other cases, people may never be able to recoup the money they spent on the land because they will not be able to resell or improve the land without public water. “Equitable estoppel is a doctrine that prevents one from doing an act differently than the manner in which another was induced by words or actions to expect.” Hess, supra, at 504, 562 A.2d 394.

The people of Mount Pleasant Township ask that PAWC’s promise of water be enforced, as they relied on the representations made to them. In cases in which there is an absence of consideration between the parties so that there is no valid contract, detrimental reliance constitutes a substitute for consideration, or a sufficient reason for enforcement of the promise without consideration. Corbin on Contracts §8.12 (2001).

As such, the OCA submits that PAWC should be required to extend their mains to Mount Pleasant Township as the OCA has recommended in this proceeding. The Commission should require PAWC to make good on its assertions that Mount Pleasant Township would be served by enforcing an implied promise, as many residents of Mount Pleasant Township detrimentally relied on those assertions.

VII. CONCLUSION

For all of the foregoing reasons, the Formal Complaints of Cindy Parks, the Office of Consumer Advocate, and Rick Minutello should be sustained and Pennsylvania-American Water Company should be ordered to extend public water and fire hydrant service to Mount Pleasant Township without mandatory customer contributions toward construction, in accordance with the foregoing recommendations.

Respectfully submitted,



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Dated: February 10, 2003

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Cindy Parks, *et al.*

v.

Pennsylvania-American Water Company

Docket No. C-00015337, *et al.*

## Appendix A

### Proposed Finding of Fact

## Proposed Findings of Fact

1. Findings Based Upon Evidence Taken At Mount Pleasant Township Hearings On September 9, 2002.
  1. Victor Lescovitz is the State representative for the 46<sup>th</sup> Legislative district. He remarked on the community's need for public safe drinking water in Mount Pleasant Township. His office has been contacted for the last 20 years by residents in need of public safe water. He is concerned this has effected both residential and economic growth. He commented on the increased costs of putting in cisterns and holding tanks many residents face. He also expressed concern for people faced with drought situations, in this year and many years in the past, who were forced to pay to have water hauled to them. Residents are concerned that their wells are contaminated by septic systems and leech beds and have to use bottled water for drinking. The vast majority of residents need or want public water. Tr. 56-57.
  2. Bracken Burns is the Washington County Commissioner and was also a director of emergency services for Washington County for 30 years. He stated there was a study that indicated approximately 44 percent of the wells in this community are contaminated with E-coli bacteria. He believes that this is a public health hazard. He further noted approximately 70 percent of septic systems are not in compliance with DEP regulations and said that this can cause serious health issues for the community. For example, people that are low on water have to make daily decisions whether they can bathe or do laundry. Tr. 59-60.
  3. Cindy Parks lives at 447 Fort Cherry Road and has a well for her source of water. However, both the quantity and quality are bad. When she first moved to Hickory, she was not aware of the poor quality of the water. She and her children drank the water and suffered from various infections including urinary tract infections and sore throats. Now she has to buy drinking water in order to keep her family healthy. Her children are unable to bathe every night. Due to the low amount of water she has available to her, her family is not able to flush the toilet every time they go to the bathroom. They have the further embarrassment of having to remind family and friends of this when they visit. Tr. 62-63.
  4. The lack of water available and its poor quality have caused Cindy Parks other problems. In order to combat corrosion, rust and scale in the pipes of her home, she must put a chlorine tablet in her well once a week. The element in her water heater must be replaced every two months. In order to replace that heater element, she must dig eight to fourteen inches of sediment build up out of the water heater. She also spends about \$50 a month on water additives to get her clothes clean. Tr. 63. She spends between \$75 and \$100 per month. Tr. 65.

5. Richard T. Minutello lives at 110 Pleasant Road and has a well for his source of water. His well produces two to five gallons of water a minute. In his house, you must ask before you may take a shower. In the past year, his well has run dry more than seven times. One day he tried to do four loads of laundry, this caused his well to run dry. He spends around \$200 a year on bottled water because his water smells like sulphur. He is concerned for his children's health because many people in their area have undrinkable water. He is concerned about what will happen if his children go to a friend's house and drink contaminated water or if children bathe in that water or wash cuts and scrapes with it. The area lost power about twelve times in past year and when there's no power, there's no water. They carry water from a spring and fill up the tub when a storm is coming. Tr. 66-68.
6. Paul Nimal lives at 139 Main Street and has lived in Hickory for two years. His family is unable to drink their water. Nor do they have enough water. His children are forced to shower together. He spends about \$20 a month on bottled water and \$50 a month going to the laundromat. In the two years he has lived there, he has replaced the pump on his well twice. He fears that his well may run dry and also has fears that if his house would catch on fire he would lose it. Tr. 71-72.
7. In Hickory they do not have fire hydrants; they wait for a tanker truck to bring in water to fight fires. Tr. 72.
8. Vicki Bonzo is not a resident of Mount Pleasant Township but recently purchased 4135 Henderson Road in anticipation of building a house when she and her husband heard public water would be coming to the area. They bought enough land so their daughter could also build a house on the property. They are waiting to build because of the water situation. Tr. 74.
9. Gary Farner is president of the Board of Directors of the Fort Cherry School District in McDonald, Pa, Mount Pleasant Township. They currently have a water line that runs towards another town. However, this was installed over 40 years ago. They have started to develop leaks in the line and will need to run a new line. If water is brought in they will be able to reduce costs by having to run a line a shorter distance. Currently they have to go over a mile to get to the nearest water supply instead of only having to go about 1/10 of a mile. Tr. 78-79.
10. Carl Armstrong lives at 39 Washington Avenue and has been a resident of Mount Pleasant Township for 23 years. His family is forced to buy drinking water. They must take turns showering or bathing every night, including their baby. He has never had the luxury of washing his car at home. His wife has to go to a laundromat at a cost of up to \$80 a month. Id. He receives Social Security Disability and is on a limited income. The water situation only makes it worse for his family. A Coyote system will help their household get enough water to make it through the day, but it would cost approximately

\$5,000 to \$7,000 to install. They cannot afford it so until public water is brought in he and his family are forced to bathe in water that is of substandard quality. Tr. 80-82.

11. Senator J. Barry Stout represents the 46<sup>th</sup> Senatorial District in Washington County. He has been fighting for 10 years to get public water in Hickory. He has seen the Hickory residents' need for water be met with one obstacle after another. The lack of water has stymied growth in the Hickory community. Residents not only face the current problem of a limited and dwindling water supply, but also future problems with sewage overflows, agriculture problems and population expansion. If water is provided, growth could occur, giving safe drinking water for Hickory residents. He also commented on a proposed beltway around southern Pittsburgh that would run a few miles north of Hickory and could bring major economic growth and development to this portion of Washington County. Tr. 83-84.
12. Lee Clayton lives at 92 Clayton Court Road, Washington, PA and commented on the water shortage and the costly water hauling that has become more frequent. He believes the water table is dropping due to lack of rain and more people drilling wells. He expressed his concern that the local fire company has to fight fires with tankers. He also believes public water would increase property values and lower insurance rates. Tr. 86.
13. Lee Clayton not only has concerns for his personal use but also his business use. He owns a mobile home park and has costs that most other mobile park owners would not have. He spends \$10,000 to \$15,000 a year having water hauled in to the park. He also spends about \$24,000 a year on pump repairs and \$200 a month on electric bills. He has drilled twenty-two holes on his property looking for suitable water but only five give enough water to be worth using. He spends about \$3,000 a year on testing the water for his residents. Tr. 86-89.
14. Catherine Taggart lives at 208 Washington Avenue and has lived there for the past thirteen years with her husband and two children. During that time, they drilled two wells and they are both dry. They now have a 1,000 gallon water tank and have water hauled in every week at a yearly cost of \$1,820. There are other companies that deliver water, but they charge more than double this amount. In order to conserve water, they have the rain water from their gutters run to their tank. They have many more costs in their household than people in other towns. They are forced to buy drinking water. There are times when the water delivery company cannot make it to their house. They are then forced to go to relatives or neighbors to shower or use the bathroom. Taking a shower without worrying about running out of water with soap in your hair is a common occurrence in their household. All appliances in their home are water savers. Tr. 91-92.
15. Catherine Taggart is unable to drink her water. When her son first became ill, their doctor recommended taking him into the bathroom and running a hot shower, letting him breathe in the hot steam. They have never been able to do this for their son because they

do not have enough water. She worries if contaminated water some how caused his condition. Tr. 93-94.

16. Robert Loughry lives at 41 Main Street Hickory and has lived in Hickory for 51 years. He is the Zoning Officer, a member of the Water Authority, Secretary of the Planning Commission and Chair of the Midway Sewer Authority. He has had to use a laundromat for the past 32 years because they do not have enough water to do laundry at home. He had his water tested by the Washington Hospital Laboratory and the results show that it is not fit for human consumption. Therefore, they buy their drinking water. He is also an officer for Mount Pleasant Township, where he has seen first hand people who will not build in Hickory due to the water situation. He has only issued seven building permits this year. He is frustrated about the underdevelopment of the area due to the water problem. Tr. 95-97.
17. John Caldwell lives at 26 Washington Avenue and has lived in his home for 50 years with his family. He has had 48 years experience with a 90 foot well and a 1,500 gallon cistern. In fact, he has had to have wells drilled three or four times because they ran dry. He has dealt with many problems over the years including: loss of water for drinking, showers and laundry and time down for repairs. Recently, his 96 year old mother-in-law moved in with them. With even more pressure on their already low water supply he chose to install a Coyote system at a cost of \$4,000. This has helped with the water supply in his home, but he still has concerns about the lack of fire hydrants in his town. Tr. 101-102, see also, Caldwell Exh. No. 1.
18. Deona Colton Miller does not live in Mount Pleasant Township but bought 80 acres of land in Mount Pleasant Township in 1999. She and her family purchased the property with the hopes of developing. They knew they would have to wait for water to come to be able to develop. She started to make plans to have her home built on the property. She had two engineers go over the property in order to come up with a subdivision plan. Now her plans have stopped. She does not want to sell property to people knowing they may not be able to get water. Tr. 108-110.
19. Priscilla Bernard lives at 25 Mccarrell Road and worked in the Mount Pleasant Township office for twenty two and a half years. She has seen first hand residents who could not sell their homes due to the lack of water. Sometimes, people could not get financing because the bank would not approve the loan for a house that could not have water. Tr. 113.
20. Shane Maga is a Mount Pleasant Township Supervisor and a volunteer fireman. As a volunteer fireman, he has witnessed first hand many tragic incidents in the township. It is his belief that some homes could have been saved if water was available to the fire company. The lack of fire hydrants also makes fighting fires more expensive for Hickory. Recently they had to purchase a \$300,000 pumper-tanker. He recently bought land

- outside of Hickory, because he refuses to build a house that will not have water. Tr. 115-116.
21. Larry Grimm is a Mount Pleasant Township Supervisor and has been a resident of Mount Pleasant Township for 28 years. He is currently the Director of Public Safety. He believes that many residents don't have enough water for basic sanitation needs and that the quality of the water is also very poor. He believes that many people have high coliform and lime which causes clogged water lines and ruins hot water tanks and water softeners. This forces many people in the community to use laundromats. Tr. 116-117.
  22. Larry Grimm also commented on the need for fire hydrants as a safety factor. If fire hydrants are installed, many people would get a reduction in their homeowners insurance. He is frustrated that everyone around them is able to get public water, yet the water company refuses to bring it to their town. With their location 25 minutes from Pittsburgh, Mount Pleasant Township is a natural choice for growth, especially with the impending 1,400 acre industrial park, being built twelve miles north of Hickory. Tr. 117-118.
  23. William Dinsmore is a Township Supervisor and submitted the Crosscreek Region Comprehensive Plan to show in more detail the Township Supervisors' plan for growth. Tr. 120; see also, Township Exh. No. 1.
  24. John Bernard lives at 25 McCarrell Road and owns rental property in Hickory that use wells and cisterns. His water is not drinkable unless it is conditioned. He has become accustomed to conserving his water. However, a major concern for him is a running toilet. In Hickory, if your toilet runs, you run out of water. He has lived in Hickory for 40 years, and knows that people do all they can to conserve. Tr. 122.
  25. Mr. Benard is also concerned with the quality of water. He believes that almost all the septic systems in Hickory do not work. There is a large amount of sand mounds and the absorption of water is very poor so there is a lot of runoff. Most people in the township are unable to build because they cannot pass a perk test. Tr. 123.
  26. Edwin B. Swartz lives at 32 Grandview Avenue and is currently trying to sell his property. He has been advised by his realtor that if public water is brought in, his property value would go up \$8,000 - \$10,000. He is 91 years old and needs the extra sale value of his home. He has also put off repairs to his cistern, because he heard that water was coming. Tr. 125.
  27. Shawn Staley lives at 327 Fort Cherry Road and built a home in 1995. He has a well that produces less than a gallon of water a minute. He had to install a holding tank in order to be able to take a shower. He has to purchase water once or twice a month. He spent \$2,600 installing his well, \$2,000 on storage tanks and \$30 a month having water

delivered. Had he been spending that money towards a water bill through public water, he would have spent about \$35 a month, but he would have had all the water he needed. Tr. 127-128.

28. For Shawn Staley, quantity is not the only issue, quality is also a problem. His water contains coliform bacteria. The Department of Environmental Protection's Bureau of Water has documented the water contamination. He believes that a public water system would improve the health of their town. He is also concerned with the safety and protection of his property without fire hydrants. Tr. 128.
29. Shawn Staley believes that other problems with wells are that, without power you have no water, and power shortages are a problem in Hickory. Washington County has been on the drought watch list many times in the recent years, which puts more of a burden on their wells. He finds it further frustrating that all the towns around them seem to have public water stating that "Mount Pleasant Township is an island in the network of the PAWC public water system." Tr. 129.
30. Grier Adamson is the Treasurer and Chief Executive Officer of Hickory Telephone Company and must buy bottled water for his employees to drink. Tr. 132.
31. Lynne Cowden lives at 10 Eleanor Drive and moved to Hickory with her family in 1976. In 1988, her well completely dried up. Her sole water supply is now a 1,200 gallon cistern. If she has family visiting, she must remind them not to flush the toilet unless absolutely necessary. In her house they do not rinse dirty dishes, they can not let water run while brushing their teeth and they can never take a long shower. There are times when relatives stay overnight that she must call for a water delivery service to bring water during the visit. If her family or guests call and say they are coming, her first thought is not what will they eat, it is: do I have enough water? If people are coming and her cistern is half full, she must make the decision to pay full price for the delivery truck to deliver half a load that costs the same as a full load or wait for the cistern to be low enough for a full delivery and hope the delivery truck makes it there in time. She does not understand why they can not get public water service in Hickory. She also remarked that it is hard to adequately convey how hard it is to live with a limited amount of water to someone who has never experienced it. Tr. 133-135.
32. Betty Allison lives at 10 Wabash Avenue and represented the Mount Pleasant Township Community Center which has a day care center for about 20 children. They also house a class of Intermediate Unit 13 children once a week. They open their doors to many other groups including: a dance school, drama club, model railroad enthusiasts, girl scouts, lions club, senior citizens and 4-H. In a period of a week they have 100 - 125 children in their building. They need clean water to have a sanitary environment for the children. They would appreciate whatever can be done to facilitate such a need. Tr. 135-137.

33. William Donati lives at 8 Washington Avenue and moved to Hickory in 1964 to raise his family of five. He had to re-drill his well almost immediately which still did not provide him with enough water so he also uses a cistern. Currently, his pump can only run for 20 seconds every 90 minutes. Because of this, he relies heavily on rain water collected from run off from his roof. He is concerned with whether this water is clean. When there is not enough rain, they also pay to have water hauled in to the cistern. He requested that he have water that is not only fit to drink but fit to bathe in. Tr. 137-139.
34. The poor quality of water is also a concern for Mr. Donati. He has tried many things to sanitize the water such as using Clorox in the water, but found this was not very efficient. He then tried an ultraviolet light, which cost him about \$700. He has to replace the bulb every year for \$50. His water is not fit to bathe in without being filtered. He pays approximately \$50 a month for drinking water. He is also concerned with the absence of a sewer system. They can not have sewer installed until water is available. Currently he is surrounded by properties with septic systems. He is in a low spot, therefore the runoff from their septic systems runs on to his land. He believes the situation is a Catch -22 as "Without the water, we can't have sewage, and with the sewage we have, we can't use the water that we do get from our wells." Tr. 138-139.
35. Jack Rupert lives at 350 Ridge Road and built a home in Hickory thirteen years ago. His first well only produces a half a gallon of water a minute. He then drilled a second well. This one is not much better. He later installed a holding tank and a coyote system. In the last three years, he has been unable to get sufficient water from the two wells. There are only two people living in his home. He now has water delivered. His water is also contaminated and not fit to drink. They can not wash their clothing at home they must take it to the laundromat. He commented if he could find a place to take his dirty dishes he would do that to. If things don't improve he will have to put in a third well or another cistern in order to get enough water. Tr. 140-141.
36. Sandra Lesnick lives at 36 Johnston Road and lost her home and pet cat to a house fire. They lost everything in the fire. The fire company ran out of water several times in fighting the fire. This experience has lingered with her because all she has now are "memories". She and her husband are unable to get homeowners insurance on their new home because of the fire. They need the water in order for their fire department to "save, most importantly, lives." Tr. 142-143; see also, Lesnick Exh. Nos. 1 and 2.
37. Cathy Obenour lives at 245 Hornhead Road which is located six-tenths of a mile from a Westland water line. She also lost property in a fire as her barn, with 110 sheep in it, burned to the ground. Their well produces water, but the water turns orange. She believes that not only do the people need clean water, but the animals in the area do also. Tr. 147-148; see also, Obenour Exh. No. 1.

38. Kathleen Farmer lives at 55 Woodland Road and is a 19 year resident of Hickory. She owns three properties in the township: her home, one she rents to elderly family members and an undeveloped parcel. She believes that there are more people that are interested in water than PAWC knows about. She is also very concerned about the quality of her water because her water contains bacteria. One of her sons had some intestinal problems attributed to the water. She urges PAWC to bring public water to their town. Tr. 149-150.
39. Fred Grose lives at 29 Main Street and is unable to sell his home because his water will not pass the lending institutions test. He and his wife own two other properties in Mount Pleasant Township that they would like to sell. They would like to use the money for retirement, but without water they can not sell them. He was a volunteer fireman and he has witnessed fires that could have been stopped had they had water. Tr. 151-152.
40. Arthur Mueller lives at 1532 Millers Run Road since 1972. At that time they had enough water, but the quality was poor. It had a bad taste and was corrosive. Tea kettles in their home would last six months, a hot water tank two years and the water was undrinkable. He tried to correct the water by buying a water softening system. The model that Sears sold could not handle the problem. He had to get an industrial water softener which cost \$4,500 fifteen years ago. When he back-flushes the softener to clean it, they have salt water for a couple of days. This includes water they would normally drink, shower with and cook with. He remarked that in order to understand what this is like, to try drinking coffee made from salt water. His family can no longer do laundry at home. They have had to go to a laundromat for the last eight years, which costs \$25 to \$30 per month. A Coyote system for his property would cost \$6,500 to \$7000. Tr. 153-156.
41. Arthur Mueller has tried to improve the water situation for his family. He noticed that his well started to run dry when more houses came to the area. He had his well cleaned and a new pump installed, but the situation did not improve. He looked into getting another well dug, but was advised against it. Three well drilling companies told him it would be a waste of money; the result would not improve. His well can produce 1 gallon every 10 minutes on a "good day". There have been times when they were out of water for so long they had to melt snow to give their horse water. They no longer keep animals because of the lack of water. Tr. 155-156.
42. John Bedillion lives at 32 Washington Avenue and has lived in Hickory for 50 years. His well has not worked at all for the last four to five years. He now must use a cistern. They have not re-drilled because they know that Hickory is surrounded by city water users, and thought it would not be long until water came to them. Tr. 157.
43. John Bedillion owns business property in the community. He has had to invest in Coyote systems on the rental properties to make sure that they have water. This is very expensive because the pumps and systems need to be replaced often. He is also a member of the

planning commission of Mount Pleasant Township. He remarked how hard it is to plan the future of the township without public water. They are not able to attract businesses to the community because they do not have public water. In fact, the regional plan would call for low density development without public water. Tr. 158-161.

44. John Mawhinney lives at 4261 Henderson Road and moved into the township with his wife in 1993. In six months they ran out of water. They must use a cistern to have water in their home. This means that they are unable to do laundry at home. They recently cleaned out their cistern to find pine needles and dirt. They were storing the water they used to bathe and cook with in there. They are considering moving because they do not want to live the rest of their lives without water. Tr. 186-187.
45. David Moorehead lives at 1531 Millers Run Road, McDonald and built his home in 1988. He first heard that public water was coming in 1989. At that time, it was just he and his wife, so the five quarts of water a minute his well produced was sufficient, but the quality of water was poor. His well was contaminated with E-coli and undrinkable. Today his water is so contaminated with iron and lime that appliances in their home are ruined. He had to replace a newly installed toilet in five years because it could not flush from the lime build up. His toilets are permanently stained from the iron content. He tried to rectify the situation by buying a water softener to try to filter some of the iron out, but it has not worked. They tried to install a hot tub but it was ruined by their water. He has spent a lot of money on his water system but they still must purchase bottled water. Tr. 188-189.
46. Not having water has caused Dave Moorehead other problems. He has been trying to change his homeowners insurance. Most companies will not even insure him because their town does not have water. The companies that will insure him charge about \$200 a year more than they would charge for a house in a town with water. Tr. 189.
47. Patrick Gallagher lives at 1613 Millers Run Road, McDonald and is the chairman of the Mount Pleasant Township Municipal Authority. DEP came into Mount Pleasant Township to sample their wells. Of the forty-six wells they tested, twenty-two tested positive for total coliform bacteria. Wells that test for coliform are not to be used for human consumption unless a properly designed disinfection system is in place. DEP also tested for the presence of fecal coliform bacteria from either animals or on-lot-septic. Of the 25 wells that were tested eleven tested positive. DEP reported that by the results of the survey there is "clearly a need for safe and reliable water in this area." Tr. 196-199; see also, Gallagher Exh. Nos. 1 and 2.
48. Patrick Gallagher testified that Mount Pleasant is also trying to have sewage brought to the area. In order to do that, they surveyed the on-lot septic systems within the township. Of the 341 residences they looked at, 170 were considered malfunctioning and 109 more were considered possible malfunctioning. He is concerned that the failing septic systems

are flowing into the ground water. According to the study, 81% of the homes in the plan area have sewage needs. Tr. 199-201.

49. Anita Steigerwald lives at 311 Fort Cherry Road, McDonald and moved into the area about five years ago. Shortly after moving in, her well collapsed. Because her neighbors have bacteria in their wells and she is afraid of her septic system contaminating her water, she has not re-drilled her well. In five years, she estimated she has paid \$10,000 for water delivery. She is also upset about the inability of the fire company to effectively fight fires. Tr. 205-205.
50. Brian Bell lives at 922 Old Ridge Road, Hickory and is president of the Mount Pleasant Township Volunteer Fire Company. The fire company must haul water for miles sometimes to be able to fight fires. Their trucks can hold 4,000 gallons which will last five to ten minutes. It can take as long as twenty minutes for the truck to reload and return. The fire department had two water tanks installed in the town but still cannot effectively fight fires. They can pump water from ponds and streams, but with the drought over the past couple of years, they are worried about pumping in stones and debris which would damage the pump. He believes that homeowner's insurance would go down if the town had fire hydrants. Over the last ten years, the fire department has spent over \$700,000 on trucks alone, as well as over \$10,000 installing the water tanks. Tr. 206-209.
51. James White lives at 25 Grandview Avenue and moved to Hickory in 1969 with his parents. When he was a child, he thought it was quaint to have to pump water from their well with a hand pump. Now he lives in Hickory with his wife and three children and does not think it is so quaint. Their well is about 30 years old and produces less than 50 gallons a day. It tested potable, but the high sulfur content odor makes it undrinkable and it is high in iron content. He spends about \$1,500 a year for water and about 81 hours a year taking care of the system. When he heard that water was coming, they built an addition on their home. Now, if water does not come, that addition is on top of were they would need to drill for a new well. Tr. 214-215; see also, James White Exh. No. 1.
52. James White also spoke on behalf of the Building and Property Committee of Hickory United Presbyterian Church. He is concerned with the long term plans of his church. The building is in use seven days a week. Because of all the activities at the church, the current system is not capable of supplying enough water and the church must purchase water. He is also a professional engineer, with expertise in fire protection and plumbing systems. The church is not currently in compliance with the Pennsylvania Statewide Uniform Building Code in regard to fire safety and is only able to be occupied because of Grandfather clauses. They are unable to be in compliance without adding a sprinkler system. Because water is not readily available, it would cost too much to store the amount of necessary water. They are currently planning on expanding the property and their costs will be increased as a result of not having a reliable water supply. At this

- point, they are unsure of how to proceed with building, because they do not know if water is going to be coming. Tr. 216-218; see also, James White Exh. No. 2.
53. Dr. James A. Ford, Jr. lives at 1564 Millers Run Road and runs Hickory Dickory Doc Animal Hospital, a small animal and equine veterinary hospital. He has a tremendous need for water and uses about a thousand gallons of water a day. They were looking forward to water coming to Mount Pleasant soon. Tr. 219.
  54. Richard B. Walsh lives at 1535 Millers Run, McDonald and moved here a few months ago. He was used to having all the water he needed where he lived before. Now he pays for supplemental water every month. He wanted to get out of the city but had no idea what he was getting into. He is concerned about having clean water his family can drink. He bought the home because the old owner told him that water was coming. Tr. 220-222.
  55. Dean Schlebusch lives at 321 North McDonald Street, McDonald and had been looking for property in Hickory for a long time. He and his wife recently purchased property because the previous owner told them that water was coming. They did not want to buy until they knew water was coming because they heard of the problems with well water. They even paid more for the property because they thought water was coming. Tr. 223-224.
  56. Christopher Lauff lives at 317 Cherry Road, McDonald and has a Bachelor of Science degree in both biology and chemistry. He and his wife moved to McDonald five years ago. They had their water tested by the Canonsburg Hospital when they moved in. It tested positive for coliform bacteria and was considered undrinkable. They installed a purification system to make it drinkable. In June of 2000, his youngest son, who was two at the time, became seriously ill. He had a parasite, *dientamoeba fragilis*, that was able to penetrate the purification system. They have bought drinking water since their son became ill. Tr. 226-228; see also, Lauff Exh. Nos. 1 and 2.
  57. William Smith lives at 29 Elm Road, Hickory and has a great need for water. Currently, his wife is pregnant and they have a toddler. They must purchase water because their well does not provide adequate purity or fluoride, causing their son to take prescribed supplements. It is almost an everyday occurrence to run out of water while they shower. It can take them a day to do one or two loads of laundry. He is concerned their problem will only worsen as their family grows. Tr. 230.
  58. Dawn Harber has recently inherited a one-third interest in 238 Fort Cherry Road, McDonald. The property is a 76 acre farm. With the death of her parents, she and her siblings are interested in subdividing the farm into five lots. When she heard that water was coming, she visited the township building to confirm the location of the water lines and the time table. The anticipation of the water coming has affected the way in which

the property has been subdivided. They hired a surveyor and are in the process of perking the land. Tr. 231-233.

59. Jeffrey W. Zofchak lives at 36 Cascy Road, McDonald and has been a resident of Mount Pleasant Township for 18 years. When he bought his property he was told that Mount Pleasant would have water in ten years. His neighbors have wells that are insufficient so he installed a 9,000 gallon cistern. He spends about \$800 a year on water for his cistern. Now his cistern is leaking and he is afraid to put money into replacing the system when water could be coming. Tr. 234-235.
60. Linda Armstrong lives at 39 Washington Avenue, Hickory and has been a resident for 23 years and is in favor of public water. She must purchase her drinking water. She must travel into Washington, 25 minutes away, to do her laundry because she does not have enough water at home. She and her family stagger bathing and washing the dishes. She is concerned her well will run dry when friends and family visit. When their well does run dry, their friends and neighbors allow them to shower at their homes and take water home in buckets so they can flush their toilets. She is unable to water her flowers, grow a garden, or wash her car. Tr. 236-237.
61. Jo Ann Bilski lives at 325 Fort Cherry Road, McDonald and moved to the area in 1993. At that time, their well was sufficient. They did have to add a water softener, but that is not used now because their well ran dry in 2000. Now they have water hauled in to a cistern. They have not re-drilled in the hopes that water was coming to Hickory. Even when their well worked, they could not drink the water because it had fecal contamination. They would like to have fluoride in their water for their children. They can not wash their car or do laundry. Her mother-in-law takes their laundry and does it at her house. Tr. 238.
62. Clair McCracken lives at 15 Dire Drive, Hickory and has been a resident for 37 years. For the first 12 years, her well produced enough water. As more people came to Hickory, she began to run out of water. She drilled a second well – but it was dry. She drilled a third time but it only produces half a gallon per minute. She now has a cistern and coyote system and must buy drinking water. She is frustrated that the deal promised to them fell through. Tr. 238-240.
63. Rebecca Johnson lives at 127 Avela Road, Hickory and grew up in Hickory. She now owns her own home. Recently her parents passed away but she is unable to sell their house because they did not have public water. She grew up in a house where you could not always flush the toilet, and you never could take a long shower. She remarked that they need water for health reasons. Tr. 241-242.
64. Bonnie Komec lives at 30 Cherry Valley Road, McDonald and has lived in Mount Pleasant Township for twenty years. She has only had trouble with water in the last three

- years, when she and her family moved into her father-in-law's home. She is unable to do more than two loads of laundry or her washer will fill up with mud or sludge. They had to buy a washer that reuses the wash water to be able to do two loads a day. They are unable to use their water softener, because it wastes too much of the little water they have. There are four people living in her home, including her 80 year old mother-in-law, and they are unable to flush the commode every time they use it or they will run out of water. Tr. 243-244.
65. Walt Moorehead lives at 1 Grandview Avenue, Hickory and uses a well and cistern. About seven years ago, he came home from vacation to find slimy, black, stinky water coming out of his faucet. Since then, he has had to buy water for cooking and drinking and only uses the water from the cistern for his other needs. Tr. 245-246.
66. Dennis Lucas lives at 120 Kelso Road, McDonald and bought his house in 1994. He runs out of water every year in July and his well does not fill up again until January. Mr. Lucas testified that it is hard to try to raise small children with a limited water supply. He has installed a cistern and a coyote system to increase his quantity of water. As for the quality, it tested undrinkable by the DEP. Tr. 246-247; *see also*, Lucas Exh. No. 1 and 2.
67. Larry Chome lives at 100 Main Street. He is mainly concerned with the quality of the water. He believes that the water is unsanitary to drink. He is also concerned with the safety of residents because their fire department cannot fight fires efficiently. While property can be replaced, lives can not be and they are in danger. He wants water to come soon, because it will only cost more the longer they wait. Tr. 249-251.
68. Marie Schurr lives at 62 Main Street, Hickory and has a biology degree from Carnegie-Mellon. She has worked as a medical bacteriologist and a chemistry and physics teacher. She wants public water. Tr. 251-252.
69. Douglas Sethner lives at 25 Plum Run Road, McDonald and bought his property eight years ago. The first day in their house, his entire family became sick from drinking the water. He had his water tested and it came back with fecal contamination. He then installed an ultraviolet purification system. Now they buy supplement vitamins and fluoride treatments for their youngest daughter. He has enough water, but is concerned with the quality. Tr. 253-254.
70. Lisa McGraw lives at 616 Westland Road, Hickory and has a well that produces 14 ounces of water a minute. There are four people living in her home, including her thirteen year old daughter. She can not do laundry at home and must go to the laundromat twice a week. They can not flush their toilet every time they use it. She stated that she treats her water "like gold." She brought in letters from her neighbors that are supporting public water. Tr. 255; *see also*, McGraw Exh. Nos. 1 and 2.

71. Russell Kobally lives at 114 McCarrell Road, Hickory and has lived in Hickory for 20 years. When his children were young they were very ill. They spent a lot of money on medication until they found out what was wrong: their well is contaminated. Over the last twenty years, they had their water tested three times; it was always found to be contaminated and is still undrinkable. They had to put in a softening system to avoid replacing hot water tanks, toilets and sinks. His wife would have to deal with many of the water problems alone, because he is in the military and often out of the country. They are reluctant to add on to their home without public water. He has tried to improve his home but with contaminated water, he knows he will have a hard time selling the property. When he was young, his house caught on fire and they barely made it out alive. Tr. 256-258.
72. Donald Kovac lives at 126 McCarrell Road, Hickory and built his house in 1984. At first his well was sufficient, but now it is not. He has a cistern and a coyote system, but has to buy water because it has been so dry this year. He stated that they have to be careful about when they shower, when they wash their clothing and they can never wash their car. He pays \$80 a month for water delivery and the coyote system cost him about \$4,000, although he provided most of the labor. Tr. 259-260.
73. Christine Delestiene lives at 93 Primrose Road and bought her home about fourteen years ago. She and her husband could not get a mortgage until the sellers put in a water treatment system. They have a clarifier, water softener and fluorinator. They had to split the cost of the system with the sellers to get the house. She does not like to buy white clothing, because it comes out tan from their water. Their well caved in once, and they had to dig it out themselves, with no water to wash themselves when they were done. Their neighbors have been out of water for two months. Tr. 261-262.
74. Donald Miller lives at 132 Main Street, Hickory and has lived in Hickory his entire life. His water quality is bad. It has such a high amount of calcium that it ruins washing machines and razor blades. He put off getting a water softener when he heard that PAWC was bringing water to their town. His son lives eight miles away in Cross Creek Village where PAWC brought water to his home for less than \$50 a person. Tr. 264.
75. Gary Cowden lives at 40 Cladwell Road, Hickory and has had four generations of his family live in Hickory. Currently, he must treat his water because the quality is poor. His concern is for his four children and their friends. He is concerned as to what will happen when his children visit their friends, and what happens if they drink contaminated water or brush their teeth at a home with contaminated water. He has a degree in civil engineering. He believes that if water is brought to them, it would help other towns by the increase in the number of lines. He believes that more lines would be more economical for PAWC. The more lines you have, the less resistance there is, which means less pumping. Tr. 265-267.

76. Marian Pirih lives at 10 McCarrell Road, Hickory and has been a resident of Mount Pleasant Township for 45 years. She built a home in 1993, with the understanding that water was coming in two years. She had them lay a water line to the road in anticipation of hooking up to the main. Her fixtures have already corroded because the water quality is so poor. Her fixtures are nine years old and she must replace all of them. She can not afford a water softener or a purifier because she lives alone. Due to financial difficulties, she tried to sell her home last year. In eleven months, five people looked at her home. Most people did not want to buy her house because they were afraid of not having public water. She lowered the price by \$25,000, but it still did not sell. She is no longer trying to sell until water comes through. Tr. 269-270.
77. Marian Pirih's mother lives next door and has a low supply of water. Marian must do her mothers laundry because her mother does not have enough water. Her mother runs out of water often and can not afford to drill a new well, so she relies on her daughter when she runs out. She is also concerned for the residents in the case of a fire. With the limited resources their fire department has, she knows it is difficult for them to fight fires. Tr. 270-271.
78. Patricia Golobish lives at 9 Washbash Avenue, Hickory and has no water. She has a 1,000 gallon cistern that she has water delivered to almost every week. She has never had her cistern cleaned because she can not afford to pay someone \$500 to clean it. To see if she is running low on water, she must crawl underneath her porch, lift the lid to the cistern and look in with a flashlight. She is 47 years old, and is concerned with what she will do when she is older. She can not afford to move. Tr. 271-272.

II. Proposed Findings Based upon Expert Testimony.

79. OCA witness Terry L. Fought is a consulting engineer with more than forty years experience as a civil engineer. Mr. Fought is a certified Professional Engineer in Pennsylvania, New Jersey and Virginia and is a certified Professional Land Surveyor in Pennsylvania. Mr. Fought has prepared studies related to and designed water supply, treatment, transmission, distribution and storage facilities for private and municipal water suppliers. He has also served as a consultant to the OCA for numerous main extension complaint cases since 1995. Mr. Fought's background and qualifications are attached to his Direct Testimony, OCA St. 1, Appendix A.
80. Marilyn J. Kraus is a certified public accountant currently employed by the OCA as a Senior Regulatory Analyst. Ms. Kraus' responsibilities include 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 OCA. Ms. Kraus has provided testimony or substantial assistance in over 85 proceedings, including main extension complaint proceedings as well as the Commission's rulemaking which led to the promulgation of the regulation at 52 Pa. Code §65.1, 65.21, *et seq.* Ms. Kraus'

background and qualifications are attached to her Direct Testimony, OCA St. 2, as Appendix 1:

81. Mount Pleasant Township lies within PAWC's service territory and is virtually surrounded by served areas, within PAWC distribution systems located approximately 2.8 miles east of Hickory, 1.7 miles south, 3.3 miles north and 7.3 miles west. OCA St. 1 at 3.
82. Residents have been attempting to get public water service for over ten years primarily because of contaminated wells and inadequate supply. Pennsylvania Department of Environmental Protection (PaDEP) tests showed that over 40% of the wells tested contained coliform. Sixteen springs and sixty-two cisterns are being used in the area; PaDEP considers these sources to be contaminated. 14% of the residents stated that they use a water hauling service. OCA St. 1 at 2-3.
83. Service has not been possible because an insufficient number of residents have been able or willing to pay the "Contributions in Aid of Construction" as calculated by PAWC. OCA St. 1 at 4.
84. The break-even analysis within the Company's tariff can be illustrated by a formula as follows:  
  
$$\text{Company Investment per customer} = [\text{Average Annual Revenue minus Operation and Maintenance Expense}] \text{ divided by } [\text{Depreciation Rate and weighted cost of debt}].$$
 OCA St. 1 at 4.
85. Prior to the base rate proceeding that concluded on January 25, 2002, the formula yielded a company investment of \$5,655. The Company multiplies this amount by the number of expected customers and deducts the total from the total estimated costs of construction. OCA St. 1 at 4-5. The current Company investment per customer is \$6,200. OCA St. 2A at 9.
86. In the initial phase of the case, PAWC estimated the cost of construction at \$4,176,696. Assuming an investment of \$5,655 per customer and 362 customers, the remainder to be financed by the customers was \$2,129,586, resulting in CIAC per customer of \$5,883 ( $\$2,129,586 \div 362$ ). OCA St. 1 at 5; OCA St. 2 at 4..
87. PAWC's construction cost estimates generally include facilities that are oversized to serve the applicants. Water mains are sized to provide fire protection in addition to domestic service and some mains are oversized to serve future customers. OCA St. 1 at 5.

88. Costs of pumping stations and tanks are included in the estimates to be borne in part by the applicants, even though such items are designed with capacity to serve many more customers than have applied for service. OCA St. 1 at 5.
89. Inclusion of oversized plant or large plant items intended to serve future growth drives the cost estimate for the project much higher than necessary to meet the needs of the applicants. OCA St. 1 at 6.
90. Customer contributions should be based upon estimates of the portion of the proposed facilities that are necessary to provide the applicants with service, not those proposed to improve existing service or provide for future demand. The Company could also seek low-interest financing by applying to PennVest for funding and adjust the Company contribution accordingly. OCA St. 1 at 7.
91. If an applicant for service requests facilities other than those that are necessary to provide adequate service, the facilities requested by the applicant 'will be installed by, owned by, maintained by and will become the sole responsibility of the Bona Fide Service Applicant. (Tariff Water - Pa. P.U.C. No. 4, 3<sup>rd</sup> Rev. Page 71, ¶27.1[B].) Since in this case it is PAWC that opts to install plant larger than necessary to provide adequate service to the Hickory residents, PAWC should be financially responsible for the additional cost that results. OCA St. 2 at 7.
92. Procurement of a PennVest loan would substantially reduce the amount of CIAC to be paid by the Hickory residents. This is because the "justified Company investment" per customer is higher when the PennVest financing rate, 1% as of December 2001, is used in place of the Company's weighted cost of debt in the formula used to calculate CIAC. OCA St. 1 at 11.
93. In Ms. Kraus' opinion, PennVest funds should be sought for the Mount Pleasant Township project because PennVest was formed in order to provide Pennsylvania residents with the means to acquire safe, adequate water supplies and it is able to offer low-cost loans for water and sewer projects due to taxpayer supported PennVest financing. OCA St. 1 at 13.
94. As of September 2002, the proposed project had been revised by changing the connection point to the existing PAWC system from near Primrose northeast of Hickory to Route 18 which runs to Chartiers Township south of Hickory. This affected the number of potential customers, the type of customers and the scope and the cost of the project. OCA St. 1A at 2.
95. As of September 2002, the mains alignment proposed would serve an additional eighty-seven customers and more business customers than that initially proposed and deleted only a few. OCA St. 1A at 2.

96. The new alignment requires a longer pipe length and this increased the estimated cost of the project. OCA St. 1A at 2.
97. OCA witness Fought was able to define an economically justified project using the project footprint present by PAWC at a public meeting on March 20, 2002. OCA St. 1A at 4. The project recommended by OCA witness Fought is detailed in scope and cost on OCA Exh. TLF-1A and is illustrated on a Township map in the record as OCA Exh. TLF-2A.
98. Mr. Fought recommends that the water storage tank be eliminated from the estimated base cost used to calculate CIAC. OCA St. 1A at 7-8. Mr. Fought also included estimates for 8-inch mains rather than the 12-inch mains used by PAWC in the cost estimate. OCA St. 1A at 8. Elimination of these costs reduces the cost of the overall project from \$6,290,499 to \$5,223,149. OCA St. 1S at 3.
99. Mr. Fought recommends that eleven additional mains be included in the project based upon additional information provided by customers who need service; these are also shown on Exh. TLF-A.
100. Mr. Fought concluded that within his proposed project footprint, based upon responses to the OCA customer survey, 430 residential customers would connect to the water system. OCA St. 1A at 4-5.
101. Using the same percentage that responded favorably to the survey (81%), it is reasonable to project that those who did not respond would connect by the same proportion. Thus, the total projected customer number is 568. OCA St. 1A at 4-5; OCA St. 2A at 4-5.
102. PAWC witness Lucas testified that he had stated at the March 2002 meeting in Mount Pleasant Township that about 600 people would be served in the then-proposed project footprint. Tr. 301-302.
103. The seventeen non-residential customers who would connect, all told, have an estimated daily usage of 9,350 gallons per day, which is equivalent to that of 60 residential customers. OCA St. 1A at 5.
104. The higher the revenues to be generated by potential customers, the more likely a project is to be considered "economic" under the PAWC main extension tariff. OCA St. 1A at 5.
105. The PAWC-calculated Company investment per customer is now \$6,200. OCA St. 1A at 6.

106. In the Company's view, it would only invest a total of \$3,521,600 of Mr. Fought's recommended project (66%), leaving the remainder, \$1,781,752 to be supplied by the customers. (\$3,137 per household). OCA St. 1A at 6.
107. The tariff formula does not take into account the Distribution System Improvement Charge revenues. OCA St. 2A at 15. As of September 17, 2002, PAWC's surcharge tariff is 0.73% which is what the future Mount Pleasant customers would pay toward the cost of improvements in other areas of the system. OCA St. 2A at 16. In contrast, if the uneconomic portion of the Mount Pleasant project, in the Company's view, were placed in rate base, the impact upon total residential revenues allowed in the last case would have been approximately 0.10%. *Id.*
108. PennVest financing lowers the overall embedded cost of debt and it benefits the Company and its shareholders to seek the lowest cost financing available. PennVest funding benefits everyone, including present and future ratepayers. Tr. 357-359; OCA St. 2A at 9-10; OCA St. 1S at 7-10.
109. PAWC's most recent financial statement reflects that it has over \$109 million in income available for return. OCA Cross-Ex. Exh. 1.
110. Substituting the PennVest cost of debt of 1.08% for the weighted long-term debt cost as of the last rate case justifies a company investment per customer of \$12,971. OCA St. 2A at 9.
111. Multiplying \$12,971 by the customer number of 568 yields \$7,367,528, well in excess of both Mr. Fought's estimated project cost of \$5,303,352 and PAWC's estimated cost of \$6,290,499. OCA St. 2A at 9; PAWC St. 1.1 at 4; PAWC Exh. 1.3.
112. The Robinson Run Road 24-inch mains that have been in rate base since 1989 were intended to serve, among other areas, Mount Pleasant Township. Ratepayers have been paying a return of and on that plant since then. Tr. 362.
- III. Proposed Findings In Support Of Equitable Estoppel.
113. Mr. Lucas stated that he, and another representative of PAWC, attended the public meeting in March 2002 as a normal part of their responsibilities as a PAWC employee and as authorized representatives of the Company. Mr. Lucas also recognized that approximately 250 residents of Mount Pleasant Township were present at that meeting. Tr. 299-300.
114. Mr. Lucas indicated that, during that meeting a specific project footprint was discussed and his portion of the meeting was to state where that project footprint was and the layout, what the end house number was on each of the spur streets and to give a general

overview of where the project was going to start, what the facilities were needed to serve those residents, an approximate project number of residents, project count of number of people in that footprint, as well as some basic costs. Then he went on to discuss how the residents would become customers of Pennsylvania-American Water Company, the mechanics of hooking up their service lines, how they would get a meter set, how they would disconnect their well and those kinds of specifics. Tr. 300-301.

115. Approximately 250 residents of Mount Pleasant Township were present when Mr. Lucas said that PAWC was going to start laying pipe for water in early 2003. Maps were used to show the footprint and terminal addresses were given where the pipes would end on certain roads. Tr. 190-193.
116. The presentation made by Mr. Lucas that evening was summarized in an article by the vice-chairman of the Mount Pleasant Township Municipal Authority in the *Hickory Talk* newsletter entitled "Water, Water Everywhere." As noted in the article:

Hickory is finally going to get public water. After at least 30 years of bitter wrangling over the pros and cons of public water in the Hickory Area, a cost feasible water project is coming through the village and a reasonable portion of its side streets. Not everyone will have access to the new lines, but at least it will address the areas that have had contaminated wells over the years.

....

Through an agreement reached by the Pennsylvania-American Water Company and the Office of Consumer Advocate, the requirements for "mandatory tap-ins" and "tap-in fees" have been eliminated.

The article proceeded to detail specific roads and portions of roads where the water mains will be extended. *See*, Caldwell Exh. No. 1.

117. Jack Caldwell testified as a former Supervisor in Mount Pleasant Township that he is aware of six proposals to bring public water in to the Township. Tr.103-104.
118. Some people bought property in Mount Pleasant Township because they were told that PAWC would be extending their mains in to Mount Pleasant Township. In fact, Vickie Bonzo and her husband bought enough land so not only they could build a home, but so their daughter could also build a house close to them. Now their plans are on hold until they know if they will have a reliable source of water. Had they known that water was not coming, they would not have bought the property. Tr. 74-75.

119. Some people bought homes based on the sellers' attendance at the March meeting and the promise of water. Richard Walsh bought his home because the old owner told him water was coming based on the statements at the March meeting. Dean Schlebusch and his wife bought property because the previous owner told them that water was coming based on the March meeting. They would not have bought the property otherwise because they are worried about not having enough water or having water that is contaminated. Tr. at 222-223.
120. Some people also went to the expense of having property surveyed and "perked" based on the information given at the March meeting. Deona Miller had already bought property but was not going to build on it until public water was available. After the March meeting, she paid engineers to come up with a subdivision plan. Now that water is not coming, her plans have stopped. She is afraid she can not sell property to people knowing they may not be able to get water. She has also put off building her own home there. Tr. at 109-110.
121. Dawn Harber was told that water was coming by friends who attended the March 2002 meeting. She visited the township building to confirm the location of the water lines and the time table. Based on the information that PAWC submitted at the meeting, she hired a surveyor to have land perked and a subdivision plan made. Now she does not know if she can use that plan because it was based on the water line plan PAWC submitted. Without public water, she would not have tried to develop the land because she cannot guarantee sufficient water to potential buyers. Tr. 232.
122. James White went to the extent of building an addition on his home after he heard that PAWC would be extending their mains in to Mount Pleasant Township. If water is not brought to Mount Pleasant Township, he will have to remove that addition or alter it because that part of the house is located where they would need to drill a new well. Tr. at 214-215; *see also*, James White St. Nos. 1 and 2.
123. While not all residents went to the extent of buying homes or property, others did not make needed repairs or begin building based on the water companies' assertions. Hickory United Presbyterian Church wants to expand their property but is unsure how to proceed. If water is coming their costs would be greatly reduced, so they have halted their plans for now. Edwin Swartz put off repairs to his cistern because he heard water was coming. Donald Miller put off getting a water softener. Tr. 125, 218, 264.

Cindy Parks, *et al.*

v.

Pennsylvania-American Water Company  
Docket No. C-00015337, *et al.*

Appendix B

Proposed Conclusions of Law

## Proposed Conclusions of Law

### I. Jurisdiction

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S §701, 703(b).

### II. Burden of Proof

2. Section 332(a) of the Public Utility Code provides that the party seeking affirmative relief from the Commission has the burden of proof. 66 Pa.C.S. §332(a).

3. The Pennsylvania Supreme Court has held that the term "burden of proof" means a duty to establish a fact by a preponderance of the evidence such that one party has presented evidence which is more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950).

4. In addition to determining whether the complainants have 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. 2 Pa.C.S. §704.

5. Complainants have met their burden of proving that PAWC's failure to serve Mount Pleasant Township constitutes a violation of Section 1501 of Public Utility Code, 66 Pa.C.S. §1501.

6. Substantial evidence of record supports an order requiring PAWC to extend service to the residents of Mount Pleasant Township, pursuant to Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501.

### III. Statutory and Case Law

7. A utility may not select and serve only presently profitable territory covered by its franchise. Ridley Township v. Pa. P.U.C., 172 Pa. Super 472, 94 A.2d 168, 171 (1952).

8. If a portion of the territory served by a utility is not profitable, but the entire service produces a fair return on the investment, the utility may be required to serve the unprofitable portion, if the rendering of such service does not result in an unreasonable burden on its other service. *Id.*

9. The primary object of the public service laws is not to establish a monopoly or to guarantee the security of investment in public service corporations, *but first and at all times to serve the interests of the public.* *Id.* at 171 (emphasis in original), *citing*, Hoffman v. Public Service Commission, 99 Pa. Super 417, 429.

10. Applicants for service are entitled to fire protection and domestic water service without being required to subsidize a large and prosperous utility. *Id.* at 172.

11. Under all of the circumstances presented, PAWC is required to serve the residents of Mount Pleasant Township without mandating customer payments toward construction.

#### IV. The Commission's Main Extension Regulation and PAWC's Tariff Rule

12. Considering the facts presented, the prospect of future revenues, the estimated cost of construction of the plant needed to serve just the current applicants for service and the availability of low-interest PennVest funding for such projects such as Mount Pleasant Township, PAWC will break-even or better without mandatory customer contributions if service is provided to Mount Pleasant Township.

13. The Commission has the authority to order a utility to provide adequate service even if the Commission had otherwise determined that the utility complied with Commission regulations. Barone v. Pa. P.U.C., 485 A.2d 519, 522 (Pa. Commw. 1984).

14. The Commission has the authority to require an exception to a Commission-approved tariff rule where Complainants, as here, have demonstrated that the Company's application of the rule yields an unreasonable result, *i.e.*, the compelling need for water utility service in Mount Pleasant Township would never be met. Polson v. Citizens Water Company of Washington, Pa., 41 PaPUC 594 (1964).

15. Rules are intended to apply to frequently recurring factual patterns so that substantial equality of treatment may be achieved without full-scale hearing on plainly repetitious matters. Hence, the rule with the widest application is usually the rule with the greatest number of exceptions. On the other hand, to attempt to have a rule for each and every possible factual situation would be to negate the very purpose of the rules. *Id.*; *see also* Palm Beach Mall v. Dauphin Consolidated Water Co., 63 Pa PUC 140 (1987).

16. Rules, so long as they are on file and permitted to continue in general effect by this Commission, are not inflexible guides for the adjudication of customer complaints. Rather, they are rules for determining in the first instance whether respondent may lawfully demand compliance therewith, subject always to a complainant's right to show the rule to be unreasonable in its application to the particular situation at hand. In a sense it may be said that all such rules are subject to a showing of justifiable variance. *Id.*

#### V. The Doctrine Of Detrimental Reliance

17. Estoppel arises when a party intentionally or negligently misrepresents a material fact, knowing or having cause to know that another will rely on the misrepresentation, and that the other

justifiably relies upon the misrepresentation to his detriment. Police Pension Fund Ass'n Bd. v. Hess, 127 Pa. Commw. 498, 504, 562 A.2d 391, 394 (1989).

18. In light of the statements and representations made to the citizens of Mount Pleasant Township on March 20, 2002, the residents' justifiable reliance on those statements, and the subsequent inaction or action taken to their detriment as a consequence, PAWC should be estopped from refusing to provide water utility service to Mount Pleasant Township without CIAC.

VI. Conclusion

19. PAWC shall provide water service, consistent with its obligation to serve pursuant to the Public Utility Code, Commission regulations and its tariff rule, to Mount Pleasant Township without mandatory CIAC and without further delay.

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Cindy Parks, *et al.*

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Pennsylvania-American Water Company  
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Appendix C

Proposed Ordering Paragraphs

**Proposed Ordering Paragraphs**

IT IS HEREBY ORDERED THAT:

1. The Complaints of Cindy Parks, Docket No. C-00015337, Richard T. Minutello, Docket No. C-20028177, and the Office of Consumer Advocate, Docket No. C-20028361, are hereby sustained.
2. The Pennsylvania-American Water Company shall extend its mains into Mount Pleasant Township as set forth in OCA Exhibits TLF-1A and TLF-2A, without CIAC and without further delay.

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Honorable Larry Gesoff

Cindy Parks, *et al.*

v.

Pennsylvania-American Water Company

Docket No. C-00015337, *et al.*

## Appendix D

Summary of Community Evidentiary Hearings

**Office of Consumer Advocate**  
v.  
**Pennsylvania- American Water Company**  
**Docket No. C-00015377, C-20028177, C-20028361**

**Summary of Community Evidentiary Hearings**

**Mount Pleasant Township**  
**Volunteer Fire Company**  
**106 Main Street**  
**Hickory, PA**  
**September 9, 2002**  
**2:00 PM**

**Victor Lescovitz**, State representative for the 46<sup>th</sup> Legislative district, remarked on the community's need for public safe drinking water in Mount Pleasant Township. Tr. 56. His office has been contacted for the last 20 years by residents in need of public safe water. Id. He is concerned this has effected both residential and economic growth. Tr. 57. He commented on the increased costs of putting in cisterns and holding tanks many residents face. Id. He also expressed concern for people faced with drought situations, in this year and many years in the past, who were forced to pay to have water hauled to them. Tr. 57. Residents are concerned that their wells are contaminated by septic systems and leech beds and have to use bottled water for drinking. Id. The vast majority of residents need or want public water. Id.

**Bracken Burns**, Washington County Commissioner, was also a director of emergency services for Washington County for 30 years. Tr. 59. He stated there was a study that indicated approximately 44 percent of the wells in this community are contaminated with E-coli bacteria. Tr. 59. He believes that this is a public health hazard. Id. He further noted approximately 70 percent of septic systems are not in compliance with DEP regulations. Id. This can cause serious health issues for the community. For example, people that are low on water have to make daily decisions whether they can bathe or do laundry. Tr. 60.

**Cindy Parks**, 447 Fort Cherry Road, has a well for her source of water. However, both the quantity and quality are bad. Tr. 62. When she first moved to Hickory, she was not aware of the poor quality of the water. Tr. 63. She and her children drank the water and suffered from various infections including urinary tract infections and sore throats. Id. Now she has to buy drinking water in order to keep her family healthy. Tr. 63. Her children are unable to bathe every night. Id. Due to the low amount of water she has available to her, her family is not able to flush the toilet every time they go to the bathroom. Id. They have the further embarrassment of having to remind family and friends of this when they visit. Id.

The lack of water available and its poor quality have caused other problems. In order to combat corrosion, rust and scale in the pipes of her home, she must put a chlorine tablet in her well once a week. Tr. 63. The element in her water heater must be

replaced every two months. Id. In order to replace that heater element, she must dig eight to fourteen inches of sediment build up out of the water heater. Id. She also spends about \$50 a month on water additives to get her clothes clean. Id.

**Richard T. Minutello**, 110 Pleasant Road, has a well for his source of water. His well produces two to five gallons of water a minute. Tr. 66. In his house, you must ask before you may take a shower. Tr. 66. In the past year, his well has run dry more than seven times. Id. One day he tried to do 4 loads of laundry, this caused his well to run dry. Id. He spends around \$200 a year on bottled water because his water smells like sulphur. Tr. 67. He is concerned for his children's health because many people in their area have undrinkable water. Tr. 68. What happens if they go to a friend's house and drink contaminated water? Tr. 68. What happens when his children bathe in that water or wash cuts and scrapes with it? Tr. 68.

**Paul Nimal**, 139 Main Street, has lived in Hickory for two years. His family is unable to drink their water. Tr. 71. Nor do they have enough water. Tr. 71. His children are forced to shower together. Tr. 71. He spends about \$20 a month on bottled water and \$50 a month going to the laundromat. Id. In the two years he has lived there, he has replaced the pump on his well twice. Id. He also has fears that if his house would catch on fire he would lose it. Tr. 72. In Hickory they do not have fire hydrants; they wait for a tanker truck to bring in water to fight fires. Tr. 72.

**Vicki Bonzo**, recently purchased 4135 Henderson Road in anticipation of building a house when she and her husband heard public water would be coming to the area. Tr. 74. They bought enough land so their daughter could also build a house on the property. Id. They are waiting to build because of the water situation. Tr. 74. She stated that they bought the property because they were led to believe at the March meeting that water would be coming. Tr. 75. Now they do not know when or if they will ever be getting water. Tr. 75.

**Gary Farner**, represented the Fort Cherry School District. He is president of the Board of Directors in McDonald, Pa, Mount Pleasant Township. Tr. 78. They currently have a water line that runs towards another town. Tr. 78. However, this was installed over 40 years ago. Tr. 78. They have started to develop leaks in the line and will need to run a new line. Tr. 78. If water is brought in the way the plan calls for they will be able to reduce costs by having to run a line a shorter distance. Id. Currently they have to go over a mile to get to the nearest water supply. Tr. 79. The new plan would have them only go about 1/10 of a mile. Tr. 79.

**Carl Armstrong**, 39 Washington Avenue, has been a resident for 23 years. His family is forced to buy drinking water. Tr. 80. They must take turns showering or bathing every night, including their baby. Id. He has never had the luxury of washing his car at home. Id. His wife has to go to a Laundromat at a cost of up to \$80 a month. Id. He receives Social Security Disability and is on a limited income. Tr. 81. The water situation only makes it worse for his family. Tr. 81. There is a system that will help their household get enough water to make it through the day, the Coyote, but it would cost approximately

\$5,000 to \$7,000 to install. Tr. 81. They cannot afford it so until public water is brought in he and his family are forced to bathe in water that is undrinkable. Tr. 82.

**Senator J. Barry Stout**, represents the 46<sup>th</sup> Senatorial District in Washington County. He has been fighting for 10 years to get public water in Hickory. Tr. 83. He has seen the Hickory residents' need for water be met with one obstacle after another. *Id.* While understanding that there are concerns for both sides, the lack of water has halted growth in the Hickory community. Tr. 84. Resident's not only face the current problem of a limited and dwindling water supply, but also future problems with sewage overflows, agriculture problems and population expansion. Tr. 83. If water is provided, growth could occur, giving safe drinking water for Hickory residents and increased revenue for American Water Company. Tr. 84. He also commented on the Findlay Connector, a proposed beltway around southern Pittsburgh that would run a few miles north of Hickory. *Id.* This could bring major economic growth and development to this portion of Washington County. *Id.* This will also bring a larger drain on their already unmet need for water. *Id.*

**Lee Clayton**, 92 Clayton Court Road, Washington, PA., commented on the water shortage and the costly water hauling that has become more frequent. Tr. 86. He believes the water table is dropping due to lack of rain and more people drilling wells. Tr. 86. He expressed his concern that the local fire company has to fight fires with tankers. *Id.* He also believes public water would increase property values and lower insurance rates. *Id.*

He not only has concerns for his personal use but also his business use. Tr. 86. He owns a mobile home park and has costs that most other mobile park owners would not have. Tr. 86. He spends \$10,000 to \$15,000 a year having water hauled in to the park. Tr. 86. He also spends about \$24,000 a year on pump repairs and \$200 a month on electric bills. *Id.* He has drilled 22 holes on his property looking for suitable water; only 5 give enough water to be worth using. Tr. 88. He spends about \$3,000 a year on testing the water for his residents. Tr. 89.

**Catherine Taggart**, 208 Washington Avenue, has lived there for the past 13 years with her husband and 2 children. Tr. 91. During that time, they drilled 2 wells: they are both dry. *Id.* They now have a 1,000 gallon water tank and have water hauled in every week at a yearly cost of \$1820. *Id.* There are other companies that deliver, but they charge more than double this amount. Tr. 92. In order to conserve water, they have the rain water from their gutters run to their tank. Tr. 91. They have many more costs in their household than people in other towns. Tr. 91. They are forced to buy drinking water. *Id.* There are times when the water delivery company cannot make it to their house. *Id.* They are then forced to go to relatives or neighbors to shower or use the bathroom. Tr. 92. What most people take for granted, taking a shower without worrying about running out of water with soap in your hair, is a common occurrence in their household. Tr. 92. All appliances in their home are water savers. *Id.*

They are unable to drink their water because their son has asthma brought on by a virus in the water. Tr. 93. When her son first became ill, their doctor recommended taking him into the bathroom and running a hot shower, letting him breathe in the hot

steam. Tr. 94. They have never been able to do this for their son because they do not have enough water. Tr. 94. She worries if contaminated water some how caused his condition. Tr. 93.

**Robert Loughry**, 41 Main Street Hickory, has lived in Hickory for 51 years. Tr. 95. He has had to use a Laundromat for the past 32 years because they do not have enough water to do laundry at home. Tr. 95. He had his water tested by the Washington Hospital Laboratory; it is not fit for human consumption. Tr. 96. Therefore, they buy their drinking water. He is also an officer for Mount Pleasant Township, where he has seen first hand people who will not build in Hickory due to the water situation. Id. He has only issued seven building permits this year. Tr. 98. He is frustrated about the underdevelopment of the area due to the water problem. Tr. 97.

**John Caldwell**, 26 Washington Avenue, has lived in his home for 50 years with his family. Tr. 101. He has had 48 years experience with a 90 foot well and a 1500 gallon cistern. Id. In fact, he has had to have wells drilled three or four times because they ran dry. Tr. 105. He has dealt with many problems over the years including: loss of water for drinking, showers and laundry and time down for repairs. Tr. 101-102. Recently, his 96 year old mother-in-law moved in with them. Tr. 102. With even more pressure on their already low water supply he chose to install a Coyote system at a cost of \$4,000. Tr. 102. This has helped with the water supply in his home, but he still has concerns about the lack of fire hydrants in his town. Id.

**Deona Colton Miller**, 56 Price Road Presto, bought 80 acres of land in Mount Pleasant Township in 1999. Tr. 108. She and her family purchased the property with the hopes of developing. Tr. 109. They knew they would have to wait for water to come to be able to develop. Tr. 109. She had friends who attended the water company meeting in March. She was told that water would be coming, so she started to make plans to have her home built on the property. Id. She had two engineers go over the property in order to come up with a subdivision plan. Id. Now, upon hearing that the water company is not coming, her plans have stopped. Tr. 110. She does not want to sell property to people knowing they may not be able to get water. Id.

**Priscilla Bernard**, 25 Mccarrell Road, worked in the Mount Pleasant Township office for twenty two and a half years. Tr. 113. She has seen first hand residents who could not sell their homes due to the lack of water. Id. Sometimes, people could not get financing because the bank would not approve the loan for a house that could not have water. Id.

**Shane Maga**, Mount Pleasant Township Supervisor, said that he agreed with everyone else who already spoke at the meeting. Tr. 115. He not only works for the township, but he is a volunteer fireman and resident. Id. As a volunteer fireman, he has witnessed first hand many tragic incidents in the township. Id. It is his belief that some homes could have been saved if water was available to the fire company. Id. The lack of fire hydrants also makes fighting fires more expensive for Hickory. Recently they had to purchase a \$300,000 pumper-tanker. Tr. 116. He recently bought land outside of Hickory, because he refuses to build a house that will not have water. Id.

**Larry Grimm**, Mount Pleasant Township Supervisor, has been a resident for 28 years and is currently the Director of Public Safety. Tr. 116. He reiterated the point that many residents don't have enough water for basic sanitation needs. Tr. 117. The quality of the water is also very poor. Id. Many people have high coliform and lime. Id. The lime causes clogged water lines and ruins hot water tanks and water softeners. Id. This forces many people in the community to use laundromats. Id.

He also commented on the need for fire hydrants as a safety factor. Id. If fire hydrants are installed, many people would get a reduction in their homeowners insurance. Tr. 118. He is frustrated that everyone around them is able to get public water, yet the water company refuses to bring it to their town. Tr. 118. "The water lines are surrounding our property." Id. He also was frustrated because the water company promised them in March that they would have water within a year. Tr. 118. Now they backed out of the deal. Id. He understands their need for profit, and believes they can profit in Hickory as their town is poised for growth. Tr. 118. With their location 25 minutes from Pittsburgh, they are a natural choice for growth, especially with the impending 1,400 acre industrial park, being built 12 miles north of Hickory. Tr. 119.

**William Dinsmore**, Township Supervisor, thanked everyone for attending the meeting. Tr. 120. He wanted to focus on the positive aspects of a proposed water system, including improving health, development issues, the coming highway and the industrial park. Id. He submitted the Crosscreek Region Comprehensive Plan to show in more detail the Township Supervisors' plan for growth. Id.

**John Bernard**, 25 McCarrell Road, is a resident and owns rental property in Hickory. Tr. 122. His properties use wells and cisterns. Id. His water is not drinkable unless it is conditioned. Id. He has become accustomed to conserving his water. Tr. 122. However, like everyone else in Hickory, a major concern for him is a running toilet. Tr. 122. In Hickory, if your toilet runs, you run out of water. Id. In dry summers, people have to have water hauled in. Tr. 123. He has lived in Hickory for 40 years, and knows that people do all they can to conserve. Tr. 122.

He is also concerned with the quality of water. Tr. 123. He believes that almost all the septic systems in Hickory do not work. Tr. 123. There is a large amount of sand mounds and the absorption of water is very poor so there is a lot of runoff. Id. Most people in the township are unable to build because they can't pass a perk test. Tr. 123. He believes that Pennsylvania-American Water Company is a monopoly. Tr. 123. The people of Hickory are stuck with waiting for them to decide to bring them water, because they have no competition in that area. Tr. 124. He finished with a story of a recent vacation he took to Italy. Tr. 124. He wonders how Pompeii in 97 AD was able to have a public water system and Hickory in 2002 does not. Id.

**Edwin B. Swartz**, 32 Grandview Avenue, is currently trying to sell his property. Tr. 125. He has been advised by his realtor that if public water is brought in, his property value would go up \$8,000 - \$10,000. Tr. 125. He is 91 years old and needs the extra sale value of his home. Id. He has also put off repairs to his cistern, because he heard that water was coming. Id.

**Shawn Staley**, 327 Fort Cherry Road, built a home in 1995. Tr. 127. He has a well that produces less than a gallon of water a minute. Tr. 127. He had to install a holding tank in order to be able to take a shower. Id. He has to purchase water once or twice a month. Tr. 128. He spent \$2,600 installing his well, \$2,000 on storage tanks and \$30 a month having water delivered. Tr. 128. Had he been spending that money towards a water bill through public water, he would have spent about \$35 a month, but he would have had all the water he needed. Tr. 128.

But quantity is not the only issue, quality is also a problem. Tr. 128. His water contains coliform bacteria. Id. The DEP's Bureau of Water has documented the water contamination. Tr. 129. He believes that a public water system would improve the health of their town. Id. He is also concerned with the safety and protection of his property without fire hydrants. Id.

Other problems with wells are that, without power you have no water, and power shortages are a problem in Hickory. Tr. 129. Washington County has been on the drought watch list many times in the recent years, which puts more of a burden on their wells. Id. He finds it further frustrating that all the towns around them seem to have public water. Tr. 129. "Mount Pleasant Township is an island in the network of the PAWC public water system." Id.

**Grier Adamson**, Treasurer and Chief Executive Officer of Hickory Telephone Company, sympathizes with the town's water problem. Tr. 132. He must buy bottled water for his employees to drink. Tr. 132.

**Lynne Cowden**, 10 Eleanor Drive, moved to Hickory with her family in 1976. Tr. 133. In 1988, her well completely dried up. Id. Her sole water supply is now a 1200 gallon cistern. Tr. 133. If she has family visiting, she must remind them not to flush the toilet unless absolutely necessary. Id. In her house they do not rinse dirty dishes, they can not let water run while brushing their teeth and they can never take a long shower. Id. There are times when relatives stay overnight that she must call for a water delivery service to bring water during the visit. Tr. 134. If her family or guests call and say they are coming, her first thought is not what will they eat, it is: do I have enough water? Id. If people are coming and her cistern is half full, she must make the decision to pay full price for the delivery truck to deliver half a load that costs the same as a full load or wait for the cistern to be low enough for a full delivery and hope the delivery truck makes it there in time. Id. She does not understand why they can not get public water service in Hickory. "Water is a basic essential of life." Tr. 134. She also remarked that it is hard to adequately convey how hard it is to live with a limited amount of water to someone who has never experienced it. Tr. 135.

**Betty Allison**, 10 Wabash Avenue, represented the Mount Pleasant Township Community Center. Tr. 135. The Community Center has a day care center for about 20 children. Tr. 136. They also house a class of Intermediate Unit 13 children once a week. Id. They open their doors to many other groups including: a dance school, drama club, model railroad enthusiasts, girl scouts, lions club, senior citizens and 4-H. Tr. 136. In a period of a week they have 100 – 125 children in their building. Id. They need clean

water to have a sanitary environment for the children. Tr. 136. They would appreciate whatever can be done to facilitate such a need. Tr. 137.

**William Donati**, 8 Washington Avenue, moved to Hickory in 1964 to raise his family of five. Tr. 137. He had to re-drill his well almost immediately. Tr. 137. This still did not provide him with enough water so he also uses a cistern. Tr. 137. Currently, his pump can only run 20 seconds every 90 minutes. Tr. 138. Because of this, he relies heavily on rain water collected from run off from his roof. He is concerned with whether this water is clean. Id. When there is not enough rain, they also pay to have water hauled in to the cistern. Tr. 139. He requested that he have water that is not only fit to drink but fit to bathe in. Id.

The poor quality of water is also a concern. Tr. 138. He has tried many things to sanitize the water. Tr. 138. First he dumped Clorox in the water, but found this was not very efficient. Tr. 138. He then tried an ultraviolet light, which cost him about \$700. He has to replace the bulb every year for \$50. Id. His water is not fit to bathe in without being filtered. Tr. 138. He pays approximately \$50 a month for drinking water. Id. He is also concerned with the absence of a sewer system. Tr. 139. They can not have sewer installed until water is available. Currently he is surrounded by properties with septic systems. He is in a low spot, therefore the runoff from their septic systems runs on to his land. Tr. 139. He believes the situation is a Catch -22. Tr. 139. "Without the water, we can't have sewage, and with the sewage we have, we can't use the water that we do get from our wells." Tr. 139.

**Jack Rupert**, 350 Ridge Road, built a home in Hickory 13 years ago. Tr. 140. His first well only produces a half a gallon of water a minute. Tr. 140. He then drilled a second well. Tr. 140. This one is not much better. Tr. 140. He later installed a holding tank and a coyote system. Id. In the last three years, he has been unable to get sufficient water from the two wells. Tr. 140. There are only two people living in his home. Tr. 140. He now has water delivered. Id. His water is also contaminated and not fit to drink. Id. They can not wash their clothing at home they must take it to the laundromat. Tr. 141. He commented if he could find a place to take his dirty dishes he would do that to. Id. If things don't improve he will have to put in a third well or another cistern in order to get enough water. Id.

**Sandra Lesnick**, 36 Johnston Road, spoke for her family. Tr. 142. They lost their home and their pet cat to a house fire. Tr. 142. In fact, they lost everything in the fire. Tr. 142. The fire company ran out of water several times in fighting the fire. Id. This experience has lingered with her because all she has now are "memories". Id. She and her husband are unable to get homeowners insurance on their new home because of the fire. Tr. 145. She asked that PAWC keep their agreement to bring them water. Tr. 144. They need the water in order for their fire department to "save, most importantly, lives." Tr. 143.

Her family agreed to give PAWC a right-of-way on their property to run water lines. Tr. 143. Now PAWC has backed out of that agreement. Tr. 144. "Water is a necessity of life. It is a basic need. We want our basic need met, we want are basic right granted, we want the promise to bring water to Mount Pleasant Township kept." Tr. 144.

**Cathy Obenour**, 245 Hornhead Road, is located six-tenths of a mile from a Westland water line. Tr. 147. She also lost property in a fire. Tr. 147. Her barn, with 110 sheep in it, burned to the ground. Tr. 147. Their well produces water, but the water turns orange. Tr. 148. Not only do the people need clean water, but the animals in the area do also. Tr. 148.

**Kathleen Farner**, 55 Woodland Road, is a 19 year resident of Hickory. Tr. 149. She owns three properties in the township: her home, one she rents to elderly family members and an undeveloped parcel. Tr. 149. She remarked about the surveys that PAWC sent to residents last year. Tr. 150. She believes that there are more people that are interested in water than PAWC knows about. Id. She is also very concerned about the quality of her water because her water contains bacteria. Tr. 150. One of her sons had some intestinal problems attributed to the water. Id. She urges PAWC to bring public water to their town. Tr. 150.

**Fred Grose**, 29 Main Street, is unable to sell his home because his water will not pass the lending institutions test. Tr. 152. He and his wife own two other properties that they would like to sell. Tr. 152. They would like to use the money for retirement, but without water they can not sell them. Tr. 152. He was a volunteer fireman and he has witnessed fires that could have been stopped had they had water. Id. He is upset that the water company has not kept their promise to bring water to Hickory. Tr. 153.

**Arthur Mueller**, 1532 Millers Run Road, moved into his home in 1972. At that time they had enough water, but the quality was poor. Tr. 154. It had a bad taste and was corrosive. Tr. 154. Tea kettles in their home would last six months, a hot water tank two years and the water was undrinkable. Id. He tried to correct the water by buying a water softening system. Tr. 154. The model that Sears sold could not handle the problem. He had to get an industrial water softener. Tr. 154. When he back-flushes the softener to clean it, they have salt water for a couple of days. Tr. 154. This includes water they would normally drink, shower with and cook with. Tr. 155. He remarked that in order to understand what this is like, to try drinking coffee made from salt water. Tr. 155. His family can no longer do laundry at home. Tr. 155. They have had to go to a laundromat for the last eight years. Id.

He has tried to improve the water situation for his family. Tr. 155. He noticed that his well started to run dry when more houses came to the area. Id. He had his well cleaned and a new pump installed, but the situation did not improve. Tr. 155. He looked into getting another well dug, but was advised against it. Id. Three well drilling companies told him it would be a waste of money; the result would not improve. Tr. 155. His well can produce 1 gallon every 10 minutes on a good day. Tr. 156. There have been times when they were out of water for so long they had to melt snow to give their horse water. Id. They no longer keep animals because of the lack of water. Id.

**John Bedillion**, 32 Washington Avenue, has lived in Hickory for 50 years. Tr. 157. His well has not worked at all for the last four to five years. Tr. 157. He now must use a

cistern. Tr. 157. They have not re-drilled because they know that Hickory is surrounded by city water users, and thought it would not be long until water came to them. Id.

He also owns business property in the community. Tr. 158. He has had to invest in coyote systems on the rental properties to make sure that they have water. Tr. 158. This is very expensive because the pumps and systems need to be replaced often. Tr. 159. He is also a member of the planning commission of Mount Pleasant Township. Tr. 159. He remarked how hard it is to plan the future of the township without public water. Id. They are not able to attract businesses to the community because they do not have public water. Tr. 160. In fact, the regional plan would call for low density development without public water. Tr. 161.

Mount Pleasant Town Volunteer Fire Company  
106 Main Street Hickory Pennsylvania,  
Monday September 9, 2002  
7:00 PM

**John Mawhinney**, 4261 Henderson Road, moved into the township with his wife in 1993. Tr. 186. In six months they ran out of water. Tr. 186. They must use a cistern to have water in their home. Tr. 186. This means that they are unable to do laundry at home. Tr. 187. They recently cleaned out their cistern to find pine needles and dirt. Tr. 187. They were storing the water they used to bathe and cook with in there. Id. They are considering moving because they do not want to live the rest of their lives without water. Id.

**David Moorehead**, 1531 Millers Run Road, Mcdonald, built his home in 1988. Tr. 188. He first heard that public water was coming in 1989. Tr. 188. At that time, it was just he and his wife, so the 5 quarts of water a minute his well produced was sufficient, but the quality of water was poor. Tr. 188. His well was contaminated with E-coli and undrinkable. Tr. 188. Today his water is so contaminated with iron and lime that appliances in their home are ruined. Tr. 188. He had to replace a newly installed toilet in five years because it could not flush from the lime build up. Tr. 189. His toilets are permanently stained from the iron content. Tr. 189. He tried to rectify the situation by buying a water softener to try to filter some of the iron out, but it has not worked. Tr. 189. They tried to install a hot tub but it was ruined by their water. Tr. 189. He has spent a lot of money on his water system but they still must purchase bottled water. Tr. 188.

Not having water has caused them other problems. Tr. 189. He has been trying to change his homeowners insurance. Tr. 189. Most companies will not even insure him because their town does not have water. Tr. 189. The companies that will insure him charge about \$200 a year more than they would charge for a house in a town with water. Tr. 189.

He also testified as a member of the Municipal Authority. Tr. 190. He is vice-chairman of the Mount Pleasant Township Municipal Authority. Tr. 190. In May or June of 2001, the municipality met as a water committee at their engineer's office. Tr. 190. PAWC representative, Mr. Bob Crooker, Jay Lucas and Sam Taylor were there. Tr. 191. The water committee presented PAWC with a survey they had done on who wanted water. Tr. 191. The percentage was 65 – 67 percent of those surveyed. Tr. 191. At the meeting, Mr. Croker stated that PAWC was not sure if they wanted to enter into a project in Mount Pleasant Township because they were “burned by the political implications before, spent a lot of money and gotten no business out of it.” Tr. 191. They discussed that fact with him in the hopes that they could get past it. Tr. 191. They believed that they had a solution when PAWC said that they would go directly to PennVest for financing. Tr. 191. This would alleviate the problem of mandatory tap-in required by PennVest if the Township applies for financing. Tr. 191. With this requirement out of the way, the political implications had pretty much gone away. Tr. 191. There was still a small minority of people that did not want water because of development issues; mainly they wanted Mount Pleasant to remain a small town. Tr. 192.

He also chaired the meeting in March that PAWC attended. Tr. 190. About 200 to 250 people from town attended the meeting. Tr. 193. He heard them say that they were going to start laying pipe for public water in early 2003. Tr. 190. That night, maps were used to show the footprint and terminal addresses were given where the pipes would end on certain roads. Tr. 193. PAWC stressed that if there was anybody else that was interested they needed to contact them in the next week or so, because they wanted to go to PennVest for funding. Tr. 193. Because this project was presented to the town at a meeting, they felt that it was a “done deal”. Tr. 193. In fact, PAWC was going to go directly to PennVest for funding; they did not ask the municipality to do so. Tr. 193. By doing that, they eliminated the controversial problem that they had with the water; the mandatory tap-in ordinance required by PennVest as a guarantee on the loan if the community applies for it. Tr. 190. By putting that into the agreement, people were very excited that water really was going to be coming. Tr. 193. Fees were even discussed. Tr. 193. They told the town they would have an approximate \$30 service fee to set up an account, and the cost of running the line from the street to their home and plumb it in. Tr. 190. There would be no tap in fee and no front footage fee. Tr. 190. Residents who did not want water would not be required to tap in. Tr. 191. He remarked that he believes there are 3,422 people in Hickory. Tr. 194. But he was not aware how many wanted water. Tr. 195.

**Patrick Gallagher**, 1613 Millers run road, Mcdonald, is the chairman of the Mount Pleasant Township Municipal Authority. Tr. 196. He wanted to voice his support for Mr. Moorehead's testimony. Tr. 196. He had a letter from the DEP that he admitted into evidence. Tr. 197. DEP came into their area to sample their wells. Tr. 198. Of the forty-six wells they tested, twenty-two tested positive for total coliform bacteria. Id. Wells that test for coliform are not to be used for human consumption unless a properly designed disinfection system is in place. Id. DEP also tested for the presence of fecal coliform bacteria from either animals or on-lot-septic. Tr. 198. Of the 25 wells that were tested eleven tested positive. Tr. 199. DEP reported that by the results of the survey there is “clearly a need for safe and reliable water in this area.” Id.

Mount Pleasant is also trying to have sewage brought to the area. Tr. 199. In order to do that, they surveyed the on-lot septic systems within the township. Tr. 199. Of the 341 residences they looked at, 170 were considered malfunctioning and 109 more were considered possible malfunctioning. Tr. 200. He is concerned that the failing septic systems are flowing into the ground water. Tr. 201. According to the study, 81% of the homes in the plan area have sewage needs. Id.

**Anita Steigerwald**, 311 Fort Cherry Road, McDonald, moved into the area about five years ago. Tr. 204. Shortly after moving in, her well collapsed. Tr. 205. Because her neighbors have bacteria in their wells and she is afraid of her septic system contaminating her water, she has not re-drilled her well. Id. She thought that water was definitely coming because of the meeting last spring. Id. In five years, she estimated she has paid \$10,000 for water delivery. Id. She is also upset about the inability of the fire company to effectively fight fires. Id.

**Brian Bell**, 922 Old Ridge Road, Hickory, is president of the Mount Pleasant Township volunteer fire company. Tr. 206. The fire company must haul water for miles sometimes to be able to fight fires. Tr. 207. Their trucks can hold 4,000 gallons; that will last five-ten minutes. Tr. 207. It can take as long as twenty minutes for the truck to reload and return. Id. The fire department had 2 water tanks installed in the town but still cannot effectively fight fires. Tr. 208. They can pump water from ponds and streams, but with the drought over the past couple of years, they are worried about pumping in stones and debris which would damage the pump. Id. He believes that homeowner's insurance would go down if the town had fire hydrants. Tr. 209. Over the last ten years, the fire department has spent over \$700,000 on trucks alone, as well as over \$10,000 installing the water tanks. Id.

**John Bevic**, 1110 Union Street, Canonsburg, is chairman of the board of commissioners of Washington County. Tr. 211. He is sympathetic to the obstacles that Mount Pleasant is experiencing trying to get potable water. Tr. 211. He offered any assistance to help accelerate the negotiations between Mount Pleasant and PAWC. Tr. 211. He is sympathetic to both sides and feels that everyone should work together for a feasible cost-effective water solution. Tr. 212.

**James White**, 25 Grandview Avenue, moved to Hickory in 1969 with his parents. Tr. 214. When he was a child, he thought it was quaint to have to pump water from their well with a hand pump. Tr. 214. Now he lives in Hickory with his wife and three children and does not think it is so quaint. Tr. 214. Their well is about 30 years old and produces less than 50 gallons a day. Id. It tested potable, but the high sulfur content odor makes it undrinkable and it is high in iron content. Id. He spends about \$1,500 a year for water and about 81 hours a year taking care of the system. Id. When he heard that water was coming, they built an addition on their home. Tr. 214. Now, if water does not come, that addition is on top of where they would need to drill for a new well. Tr. 215.

He also spoke on behalf of the Building and Property Committee of Hickory United Presbyterian Church. Tr. 216. He is concerned with the long term plans of his church. The building is in use 7 days a week. Tr. 216. Because of all the activities at the

church, the current system is not capable of supplying enough water and the church must purchase water. Tr. 217. He is also a professional engineer, with expertise in fire protection and plumbing systems. Tr. 215. The church is not currently in compliance with the Pennsylvania Statewide Uniform Building Code in regard to fire safety and is only able to be occupied because of Grandfather clauses. Tr. 217. They are unable to be in compliance without adding a sprinkler system. Tr. 217. Because water is not readily available, it would cost too much to store the amount of necessary water. Id. They are currently planning on expanding the property and their costs will be increased as a result of not having a reliable water supply. Tr. 218. At this point, they are unsure of how to proceed with building, because they do not know if water is going to be coming. Id.

**Dr. James A. Ford, Jr.**, 1564 Millers Run Road, runs Hickory Dickory Doc Animal Hospital, a small animal and equine veterinary hospital. Tr. 219. He has a tremendous need for water and uses about a thousand gallons of water a day. Tr. 219. They were looking forward to water coming to Mount Pleasant soon. Tr. 219.

**Richard B. Walsh**, 1535 Millers Run, McDonald, moved here a few months ago. Tr. 220. He was used to having all the water he needed where he lived before. Tr. 220. Now he pays for supplemental water every month. Tr. 220. He wanted to get out of the city but had no idea what he was getting into. Tr. 221. He is concerned about having clean water his family can drink. Tr. 221. He bought the home because the old owner told him that water was coming. Tr. 222.

**Dean Schlebusch**, 321 North McDonald Street, McDonald, had been looking for property in Hickory for a long time. Tr. 223. He and his wife recently purchased property because the previous owner told them that water was coming. Tr. 223. They did not want to buy until they knew water was coming because they heard of the problems with well water. Tr. 223. They even paid more for the property because they thought water was coming. Tr. 224.

**Christopher Lauff**, 317 Cherry Road, McDonald, has a Bachelor of Science degree in both biology and chemistry. Tr. 226. He and his wife moved to McDonald five years ago. Tr. 226. They had their water tested by the Canonsburg Hospital when they moved in. Tr. 226. It tested positive for coliform bacteria and was considered undrinkable. Id. They installed a purification system to make it drinkable. Tr. 227. In June of 2000, his youngest son, who was 2 at the time, became seriously ill. Id. He had a parasite, *dientamoeba fragilis*, that was able to penetrate the purification system. Id. They have bought drinking water since their son became ill. Tr. 228.

**William Smith**, 29 Elm Road, Hickory, has a great need for water. Tr. 230. Currently, his wife is pregnant and they have a toddler aged son. Tr. 230. They must purchase water because their well does not provide adequate purity or fluoride, causing their son to take prescribed supplements. Id. It is almost an everyday occurrence to run out of water while they shower. Tr. 230. It can take them a day to do one or two loads of laundry. Id. He is concerned their problem will only worsen as their family grows. Tr. 230.

**Dawn Harber**, has recently inherited a one-third interest in 238 Fort Cherry Road, McDonald. Tr. 231. The property is a 76 acre farm. Tr. 231. With the death of her parents, she and her siblings are interested in subdividing the farm into five lots. Tr. 231. When she heard that water was coming, she visited the township building to confirm the location of the water lines and the time table. Tr. 232. The anticipation of the water coming has affected the way in which the property has been subdivided. Id. They hired a surveyor and are in the process of perking the land. Tr. 232. She asked the PUC to enforce the promise of water. Tr. 233. She encouraged the Court to consider the potential growth of the area if water was available. Id.

**Jeffrey W. Zofchak**, 36 Casey Road, McDonald, has been a resident of Mount Pleasant Township for 18 years. Tr. 234. When he bought his property he was told that Mount Pleasant would have water in ten years. Id. His neighbors have wells that are insufficient so he installed a 9,000 gallon cistern. Tr. 235. He spends about \$800 a year on water for his cistern. Tr. 235. Now his cistern is leaking and he is afraid to put money into replacing the system when water could be coming. Tr. 235.

**Linda Armstrong**, 39 Washington Avenue, Hickory, has been a resident for 23 years and is in favor of public water. Tr. 236. She must purchase her drinking water. Tr. 236. She must travel into Washington, 25 minutes away, to do her laundry because she does not have enough water at home. Tr. 236. She and her family stagger bathing and washing the dishes. Tr. 236. She is concerned her well will run dry when friends and family visit. Id. When their well does run dry, their friends and neighbors allow them to shower at their homes and take water home in buckets so they can flush their toilets. Id. She is unable to water her flowers, grow a garden, or wash her car. Tr. 237. She asked that water be brought to Hickory as promised in the March meeting. Id.

**Jo Ann Bilski**, 325 Fort Cherry Road, McDonald, moved to the area in 1993. Tr. 238. At that time, their well was sufficient. Tr. 238. They did have to add a water softener, but that is not used now because their well ran dry in 2000. Tr. 238. Now they have water hauled in to a cistern. Tr. 238. They have not re-drilled in the hopes that water was coming to Hickory. Tr. 238. Even when their well worked, they could not drink the water because it had fecal contamination. Id. They would like to have fluoride in their water for their children. Id. They can not wash their car or do laundry. Tr. 238. Her mother-in-law takes their laundry and does it at her house. Id.

**Clair McCracken**, 15 Dire Drive, Hickory, has been a resident for 37 years. For the first 12 years, her well produced enough water. Tr. 238. As more people came to Hickory, she began to run out of water. Tr. 240. She drilled a second well – but it was dry. Tr. 240. She drilled a third time but it only produces half a gallon per minute. Tr. 240. She now has a cistern and coyote system and must buy drinking water. Tr. 240. She is frustrated that the deal promised to them fell through. Tr. 240.

**Rebecca Johnson**, 127 Avelia Road, Hickory, grew up in Hickory. Tr. 241. She now owns her own home. Tr. 241. Recently her parents passed away but she is unable to sell their house because they did not have public water. Tr. 241. She grew up in a house

where you could not always flush the toilet, and you never could take a long shower. Id. She remarked that they need water for health reasons. Tr. 241. She was very upset when she received the notice that water will not be coming to Hickory. Tr. 242.

**Bonnie Komec**, 30 Cherry Valley Road, McDonald, has lived in Mount Pleasant Township for 20 years. Tr. 243. She has only had trouble with water in the last three years, when she and her family moved into her father-in-laws home. Tr. 243. She is unable to do more than two loads of laundry or her washer will fill up with mud or sludge. Id. They had to buy a washer that reuses the wash water to be able to do two loads a day. Tr. 244. They are unable to use their water softener, because it wastes too much of the little water they have. Tr. 244. There are four people living in her home, including her 80 year old mother-in-law, and they are unable to flush the commode every time they use it or they will run out of water. Id.

**Walt Moorehead**, 1 Grandview Avenue, Hickory, uses a well and cistern. Tr. 245. About seven years ago, he came home from vacation to find slimy, black, stinky water coming out of his faucet. Tr. 246. Since then, he has had to buy water for cooking and drinking and only uses the water from the cistern for his other needs. Id.

**Dennis Lucas**, 120 Kelso Road, McDonald, bought his house in 1994. Tr. 246. He runs out of water every year in July and his well does not fill up again until January. Tr. 246. It is hard to try to raise small children with a limited water supply. Id. He has installed a cistern and a coyote system to increase his quantity of water. Tr. 247. As for the quality, it tested undrinkable by the DEP. Tr. 247.

**Larry Chome**, 100 Main Street, has a well that can produce enough water to support his family. Tr. 249. He is mainly concerned with the quality of the water. Tr. 250. He believes that the water is unsanitary to drink. Tr. 250. He is also concerned with the safety of residents because their fire department cannot fight fires efficiently. Id. While property can be replaced, lives can not be and they are in danger. Id. He thought that water was definitely coming because he was at the meeting in March. Id. He wants water to come soon, because it will only cost more the longer they wait. Tr. 251.

**Marie Schurr**, 62 Main Street, Hickory, has a biology degree from Carnegie-Mellon. Tr. 251. She has worked as a medical bacteriologist and a chemistry and physics teacher. Tr. 251. She does want public water but is concerned about the price. Id.

**Douglas Sethner**, 25 Plum Run Road, McDonald, bought his property eight years ago. Tr. 253. *The first day in their house, his entire family became sick from drinking the water.* Tr. 254. He had his water tested and it came back with fecal contamination. Tr. 254. He then installed an ultraviolet purification system. Id. Now they buy supplement vitamins and fluoride treatments for their youngest daughter. Tr. 254. He has enough water, but is concerned with the quality. Id.

**Lisa McGraw**, 616 Westland Road, Hickory, has a well that produces 14 ounces of water a minute. Tr. 255. There are four people living in her home, including her thirteen

year old daughter. Tr. 255. She can not do laundry at home and must go to the laundromat twice a week. Id. They can not flush their toilet every time they use it. Id. She stated that she treats her water "like gold." Id. She brought in letters from her neighbors that are supporting public water. Id.

**Russell Kobally**, 114 McCarrell Road, Hickory, has lived in Hickory for 20 years. Tr. 256. When his children were young they were very ill. Tr. 256. They spent a lot on medication until they found out what was wrong; their well is contaminated. Id. Over the last 20 years, they had their water tested 3 times; it was always found to be contaminated and is still undrinkable. Id. They had to put in a softening system to avoid replacing hot water tanks, toilets and sinks. Tr. 257. His wife would have to deal with many of the water problems alone, because he is in the military and often out of the country. Tr. 257. They are reluctant to add on to their home without public water. Id. He has tried to improve his home but with contaminated water, he knows he will have a hard time selling the property. Tr. 258. When he was young, his house caught on fire and they barely made it out alive. Id. He thinks that PAWC should honor their agreement even if not in writing but as a "gentlemen's agreement". Id.

**Donald Kovac**, 126 McCarrell Road, Hickory, built his house in 1984. Tr. 259. At first his well was sufficient, but now it is not. Tr. 259. He has a cistern and a coyote system, but has to buy water because it has been so dry this year. Id. He stated that they have to be careful about when they shower, when they wash their clothing and they can never wash their car. Id. He pays \$80 a month for water delivery and the coyote system cost him about \$4,000, although he provided most of the labor. Tr. 260.

**Christine Delestiene**, 93 Primrose Road, bought her home about 14 years ago. Tr. 261. She and her husband could not get a mortgage until the sellers put in a water treatment system. Tr. 261. They have a clarifier, water softener and fluorinator. Tr. 261. They had to split the cost of the system with the sellers to get the house. Id. She does not like to buy white clothing, because it comes out tan from their water. Tr. 261. Their well caved in once, and they had to dig it out themselves, with no water to wash themselves when they were done. Tr. 262. Their neighbors have been out of water for 2 months. Tr. 262. She thinks that PAWC should stick to their oral agreement to supply water. Tr. 263.

**Donald Miller**, 132 Main Street, Hickory, has lived in Hickory his entire life. Tr. 264. He is able to get enough water from his cistern and well, but the quality is bad. Tr. 264. It is drinkable but has such a high amount of calcium that it ruins washing machines and razor blades. Tr. 264. He put off getting a water softener when he heard that PAWC was bringing water to their town. Tr. 264. His son lives eight miles away in Cross Creek Village where PAWC brought water to his home for less than \$50 a person. Tr. 264. He does not understand why there is such a double standard. Id.

**Gary Cowden**, 40 Cladwell Road, Hickory, has had four generations of his family live in Hickory. Tr. 265. Currently, he has a well that produces enough water, but he must treat it because the quality is poor. Tr. 265. His concern is for his four children and their

friends. Tr. 265. What happens when his children visit their friends? Tr. 265. What happens if they drink contaminated water or brush their teeth at a home with contaminated water. Tr. 265. He has a degree in civil engineering. Tr. 266. He believes that if water is brought to them, it would help other towns by the increase in the number of lines. Id. He believes that more lines would be more economical for PAWC. Tr. 266. The more lines you have, the less resistance there is, which means less pumping. Tr. 267.

**Marian Pirih**, 10 McCarrell Road, Hickory, has been a resident of Mount Pleasant Township for 45 years. Tr. 269. She built a home in 1993, with the understanding that water was coming in 2 years. Id. She had them lay a water line to the road in anticipation of hooking up to the main. Id. She has an adequate water supply from her well, but her fixtures have already corroded because the quality is so poor. Tr. 269. Her fixtures are nine years old and she must replace all of them. Id. She can not afford a water softener or a purifier because she lives alone. Tr. 269. Due to financial difficulties, she tried to sell her home last year. Tr. 269. In eleven months five people looked at her home. Most people did not want to look at her house because they were afraid of not having public water. Id. She lowered the price by \$25,000, but it still did not sell. Tr. 270. She is no longer trying to sell until water comes through. Tr. 270.

Her mother lives next door and has a low supply of water. Tr. 270. Marian must do her mothers laundry because her mother does not have enough water. Tr. 270. Her mother runs out of water often and can not afford to drill a new well, so she relies on her daughter when she runs out. Id. She is also concerned for the residents in the case of a fire. Tr. 271. With the limited resources their fire department has, she knows it is difficult for them to fight fires. Tr. 271.

**Patricia Golobish**, 9 Washbash Avenue, Hickory, has no water. Tr. 271. She has a 1,000 gallon cistern that she has water delivered to almost every week. Tr. 271. She has never had her cistern cleaned because she can not afford to pay someone \$500 to clean it. Id. To see if she is running low on water, she must crawl underneath her porch, lift the lid to the cistern and look in with a flashlight. Tr. 272. She is 47 years old, and is concerned with what she will do when she is older. Id. She can not afford to move. Tr. 272.

Cindy Parks, *et al.*

v.

Pennsylvania-American Water Company  
Docket No. C-00015337, *et al.*

Appendix E

Unpublished Orders

Cindy Parks, *et al.*

v.

Pennsylvania-American Water Company

Docket No. C-00015337, *et al.*

Leon R. Dongelewicz and Samuel Rizzo

v.

Oneida Water Company

Docket Nos. C-00924012, and C-00924186

Opinion and Order

Dated entered: December 5, 1994

Slip Copy  
(Cite as: 1994 WL 932303 (Pa.P.U.C.))

Page 1

Leon R. Dongelewicz and Samuel Rizzo  
v.  
Oneida Water Company  
Docket Nos. C-00924012, and C-00924186  
Pennsylvania Public Utility Commission  
December 1, 1994; Entered December 5, 1994

\*1 OPINION AND ORDER

Before Rolka, Chairman, Rhodes, Jr., Vice-Chairman, Quain, Crutchfield, and Hanger, Commissioners.

BY THE COMMISSION:

Before us for consideration are the timely-filed Exceptions of the Oneida Water Company to the Initial Decision of Administrative Law Judge ("ALJ") Richard M. Lovenwirth which was issued on June 24, 1994, in the above-captioned proceeding.

BRIEF HISTORY OF THE PROCEEDING

On May 13, 1992, Leon R. Dongelewicz ("Dongelewicz") filed a Formal Complaint against Oneida Water Company ("Oneida" or "Respondent") alleging, inter alia, poor service in the form of low water pressure. The Respondent filed an Answer to the Complaint on May 29, 1992, denying the allegation in the Complaint.

On June 9, 1992, the Commission received a letter from the law firm of Mattioni, Mattioni and Mattioni, Ltd. advising that they had been appointed by the U.S. Bankruptcy Court to represent the Respondent in connection with two cases pending before us, including the instant proceeding of Dongelewicz v. Oneida at Docket No. C-924012. This letter also advised us that on April 7, 1992, the Respondent had filed a Chapter 11 Petition in Bankruptcy in the U.S. Bankruptcy Court for the Middle District of Pennsylvania, docketed at Case No. 92-00619JJT-5.

An Answer to Formal Complaint with New Matter and a Preliminary Motion were filed by Counsel to the Respondent on June 25, 1992. The Answer again denies that the Complainant has received water service at low pressure. In the New Matter portion of its filing, the Respondent alleges that it filed a Petition in Bankruptcy and that an automatic stay of proceedings is in effect pursuant to 11 USC Section 362(a). The said Preliminary Motion requested that the Commission refrain from taking any action in the case unless and until the automatic stay of proceedings imposed by 11 USC Section 362(a) is lifted or modified.

On July 1, 1992, a Formal Complaint was filed against Oneida by Samuel Rizzo alleging frequent interruptions in water service. Thereafter, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention on October 6, 1992, in the subject proceedings. [FN1]

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FN1. The Office of the Consumer Advocate was established through the Act 161 of 1976. The Consumer Advocate is appointed by the Attorney General and exercises discretion in determining consumer concern and initiating legal or administrative action.

The Respondent did not file an Answer to the Rizzo Complaint, but ALJ Lovenwirth points out, in a footnote to his decision, that neither the Complainant nor the OCA requested that he make any adverse findings or a default judgement against Oneida for its failure to file an Answer (I.D., p. 4).

On September 9, 1992, a Prehearing Conference was convened in Scranton at which time oral argument was held on the Respondent's Preliminary Motion. At that time, ALJ Lovenwirth asked the parties to file memoranda of law concerning the question of the effect of the automatic stay on complaints which were filed after the Petition in Bankruptcy was filed and which complained about events which allegedly occurred after the Petition in Bankruptcy was filed. At the Prehearing Conference, the ALJ was advised of the Respondent's efforts, and those of its parent corporation ("CBG Limited"), to obtain financing to support their reorganization efforts and the possible futility of any Commission order against Oneida unless and until additional financing was obtained for the Respondent.

\*2 An additional Prehearing Conference was held on December 3, 1992, for the purpose of receiving an update on the Respondent's attempts at obtaining financing.

Upon request of all parties for a moratorium of further proceedings (OCA requested a 30 day moratorium and Oneida requested a 60 day moratorium), by Interim Order dated December 15, 1992, disposition of the Preliminary Motion was postponed for two months so as to ascertain if Respondent and CBG Limited could reach an agreement with a lender/investor; and also to allow the parties time to explore an amicable settlement. An additional informal extension of time of sixty days was subsequently granted by the ALJ.

On May 21, 1993, ALJ Lovenwirth issued an Interim Order denying Oneida's Preliminary Motion for a stay of the proceedings on the grounds that the Dongelewicz Complaint was filed after the Petition in Bankruptcy was filed, and that the Complaint alleged actions or inactions on the part of the Respondent which occurred after the Petition Bankruptcy was filed.

By Order dated June 14, 1993, ALJ Lovenwirth consolidated the Dongelewicz and Rizzo Complaints with that of Lawrence McCutcheon and Jane McCutcheon ("McCutcheon") docketed at C-934743, [FN2] finding that all these Complaints alleged poor water service on the part of Oneida after the filing of the Petition in Bankruptcy.

FN2. The McCutcheon Complaint was disposed of separately in an Initial Decision dated June 8, 1994.

Evidentiary hearings concerning the consolidated cases were convened on September 13, 1993, November 15, 1993, and December 6, 1993. The transcript of testimony for the three hearings consists of 549 pages.

A Main Brief was filed by the OCA on February 15, 1994. The Respondent filed a

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Reply Brief on March 14, 1994.

On June 24, 1994, as noted earlier herein, ALJ Lovenwirth issued an Initial Decision in this matter. In his decision the ALJ recommended that the Dongelewicz Complaint be dismissed, but that the Rizzo Complaint be sustained. The ALJ also recommended that Oneida be directed to file an engineering report, make certain improvements to its water system, and to take certain remedial measures at Complainant Rizzo's house and at the house of another customer. It was also recommended that the Commission's Law Bureau be directed to intervene in the Respondent's bankruptcy proceeding.

The Respondent filed Exceptions to the Initial Decision on July 18, 1994. The OCA filed Reply Exceptions on July 29, 1994.

#### FINDINGS OF FACT

At pages 25 through 32 in his Initial Decision ALJ Lovenwirth made the following findings of fact which we deem appropriate to reproduce here in their entirety:

1. (A) Complainant Samuel Rizzo is an individual who resides with his wife and two children at Lot #C-28, Lake Valley Drive, Valley of Lakes, Nuremberg, Pennsylvania, where he has resided for seventeen years (N.T. 10, 11).

(B) Complainant Leon R. Dongelewicz is an individual who resides at Lot #D- 70, Cheyney Drive, Valley of Lakes, P.O. Box 204, Nuremberg, Pennsylvania (N.T. 248).

\*3 2. Respondent is The Oneida Water Company, a Pennsylvania public utility which has been issued a certificate of public convenience enabling it to provide water service to the public for compensation within its geographical area of certification, including that area whereat Complainant resides.

3. Complainant Rizzo and his next-door neighbor, Mr. Morris, both of whom testified in this proceeding, are served by Oneida's Huron well system ( a different system from that which serves Complainant Dongelewicz, the latter being served by the Janhanna well system) (N.T. 324, 325).

4. Rizzo's water pressure at his residence is such that only a small stream and small spray of water from the kitchen and bathroom sinks are available (N.T. 12/6/93, pages 14, 16). As a result, it takes Complainant Rizzo fifteen to twenty minutes longer than normal to fill a bathtub in his home (N.T. 12/6/93, page 15).

5. Appliances such as a dishwasher and clothes washer take up to fifteen minutes longer than normal to fill in the Rizzo household (N.T. 12/6/93, page 17).

6. In the Rizzo household, it is virtually impossible to take a shower if any other water appliances are being used (N.T. 12/6/93, pages 14, 15).

7. Rizzo's next-door neighbor, George Morris, finds that it takes an inordinate amount of time to rinse away soap and shampoo in the shower due to poor water pressure (N.T. 116, 117); that he must completely open the valves of the faucets

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in his home to get a small amount of water therefrom; that it takes a long time to fill a coffee pot due to the poor water pressure; and that the household members must alert each other when they want to take a shower so that no other appliance will be competing (N.T. 46, 47, 118, 119). Mr. Morris explained that there is less than one-half inch flow of water from a faucet when a toilet is flushed (N.T. 107); that the water from the shower comes out in a mere trickle when there is another water appliance running; and that his poor water pressure problems are present at all times of the day (N.T. 107, 109, 111).

8. The water tanks for the Huron system are at an elevation of approximately 1,300 feet, and Rizzo's home is at a slightly lower elevation (approximately 1,260 feet) (N.T. 224). Oneida's president acknowledged that Rizzo and Morris are on "relatively high ground for that tank" (N.T. 226).

9. According to Oneida's president, Mr. Jancuska, and we so find, Complainant Rizzo's water pressure depends upon three elements: the elevation of the Huron water tank, the elevation of the Rizzo house, and the friction in the lines (N.T. 225).

10. Oneida's president, Mr. Jancuska, testified that the water pressure would increase in the Rizzo and Morris households if they obtained a hydro pneumatic pressure tank system, including a tank and booster pump (N.T. 225). He estimated the cost of this pump to be \$600 to \$800 for the purchase price, but he have no estimate as to what the cost of purchased power would be to operate the pump, or how long its service life is estimated to be (N.T. 225, 226).

\*4 11. Water pressure tests were taken at the Rizzo and Morris residences (not at the main) by Oneida personnel on May 22, 1992, and they indicate that the pressure readings at both residences were 20 pounds per square inch on that date at 11:30 P.M. (N.T. 390). The water was also tested by Oneida on November 11th and 12th, 1993 at both the Rizzo and Morris residences at about 9:30 A.M. and later at 3:45 P.M., and the pressures at the hose bib outside the Rizzo residence were 35 pounds per square inch (at 9:30 A.M.) and 38 pounds per square inch (at 3:45 P.M.); and at the Morris residence it measured 36 or 37 pounds per square inch at the hose bib both times (N.T. 458, 459).

12. OCA witness Fought conducted pressure tests at both the Rizzo and Morris residences in July, 1992, and on September 10th and 13th, 1993, and his readings ranged from 32 pounds per square inch to 38 pounds per square inch (N.T. 184). On September 13, 1993 pressure at the Rizzo residence was measured at 35 pounds per square inch (N.T. 187).

13. Oneida's principal stated in a written communication to ratepayers that planned facility improvements "will eliminate intermittent shortages and/or low pressure problems" in the Huron section. OCA Exhibit 5, page 2.

14. Because of allergy problems of Rizzo's children requiring the frequent use of water, Rizzo always keeps two gallons of water around the house in case of an interruption of service (N.T. 12/6/93, pages 21, 22).

15. There have been occasions when, because of water outages, Rizzo and his family stayed at a hotel so that the children would be clean in order to go to school the next day, since sometimes water cessations lasted for hours or days

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(N.T. 12/6/93, page 17).

16. At the Morris household, the outage problem is so bad that whenever he gets up in the morning he wonders if there is going to be any water at all (N.T. 12/6/93, page 46).

17. The Rizzos always keep water in their refrigerator for drinking purposes and for coffee-making purposes, and always take a shower before they go to bed in case there will be an interruption upon their arising (N.T. 12/6/93, page 46).

18. During the one-month period starting April 11, 1992, there were twenty separate interruptions of service, usually of three or four hours duration (OCA Exhibit No. 4; N.T. 12/6/93, page 18).

19. After May, 1992, although with less frequency, there were sundry service terminations, the last of which was November 5, 1993 which lasted for close to four hours (N.T. 381, 382).

20. Oneida has admitted to its ratepayers that it intends to update its Huron facilities in order to eliminate intermittent shortages (OCA Exhibit No. 3, page 2).

21. Oneida's president stated under oath that in order to properly provide service to the Huron well system area, Oneida identified certain necessary improvements to the system, including the installation of two new storage tanks of 32,000 gallons each with a combined effective capacity of 60,000 gallons (so as to replace existing the 10,000 gallon storage tank) and the location of the new tanks at a higher elevation. He also stated that a new well as already been drilled and that it "will be placed in service and manifolded with the existing well once the additional storage is completed". He stated that the interconnect with the Janhanna system will service higher level lots. OCA Exhibit No. 2, page 4, being Oneida's response to OCA's interrogatories.

\*5 22. Oneida's president indicated that all the planned improvements mentioned in the next preceding finding of fact have been abandoned temporarily due to financial problems (N.T. 342, 343, 374).

23. Oneida's president stated, and we so find, that the planned improvements set forth in the next to last finding of fact preceding the instant paragraph would have increased the water pressure received by Rizzo and by Mr. Morris, his next-door neighbor (N.T. 343).

24. Oneida considers complainant and his next-door neighbor, Mr. Morris, as warning systems, because their calls of an outage alerts Oneida to its need to manually feed the Huron system so as to avoid a service outage to all the Huron customers; acknowledging that implementing an "automatic feed" system, as proposed by OCA's expert witness, would achieve by automatic pressure differential a continual flow of water into the Huron system which would prevent termination of service to Rizzo, Morris and other "early warning people" (N.T. 325, 500).

25. Oneida's president acknowledges that if it had the money, it would improve its system to remedy "problems" (N.T. 363). He also acknowledges that if the storage tanks were at a higher elevation, the water pressure to the Huron

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residence would increase (N.T. 363, 364), and that if there were an automatic pressure control, there would be fewer water outages (N.T. 480); and that if OCA witnesses' suggestions were implemented, which his president would recommend, it would be prudent (N.T. 345). These opinions are shared by Oneida's operator, who stated also that the frequent outages currently experienced by customers on the Huron system are not normal in that such a high number of terminations of water service are uncommon (N.T. 442, 444, 445).

26. OCA's expert witness, a professional engineer, whose recommendations have been accepted as prudent or reasonable by Oneida, recommended that the following improvement to Oneida's facilities be made: so as to eliminate the manual feeding of Janhanna water into the Huron system, installation of a back pressure sustaining valve with a pressure-reducing variation between the two systems be installed. He explained that this would automatically feed water from one system to the other when the Huron system pressure dropped below a certain level (N.T. 161). He also recommended that engineering studies be filed with the Commission for further review (N.T. 163).

27. There is no evidence to establish that Leon R. Dongelewicz or other customers served by Oneida's Janhanna system are not receiving adequate, efficient, safe, reasonable and continuous service.

28. Complainant Dongelewicz's home receives adequate water pressure, indeed, it has a pressure reducing valve on his water intake line which reduces the pressure coming into his home to approximately 100 pounds per square inch (N.T. 185, 257, 262, 263, 271).

29. The service provided by Oneida to Complainant Rizzo is inadequate in that his water pressure is low and there are many cessations of service, all caused by the inadequacies of Oneida's facilities comprising the Huron distribution system.

#### \*6 CONCLUSIONS OF LAW

ALJ Lovenwirth reached the following conclusions of law at pages 32 through 34 in the Initial Decision:

1. This Commission has jurisdiction over the parties of these proceedings and over the subject matters thereof.

2. When, at a hearing, issues not raised by the pleadings are introduced by express or implied consent of the participants, they shall be treated in all respects as if they had been raised in the pleadings. If evidence upon new issues is not objected to, it shall be deemed that the expansion of the issues is consented to by implication by the participants. 52 Pennsylvania Code §5.92.

3. The regulation of this Commission at 52 Pennsylvania Code §65.6 requires that water utilities maintain normal operating pressures of not less than 25 pounds per square inch nor more than 125 pounds per square inch at the main, except that during periods of peak seasonal loads the pressures at the time of hourly maximum demand may not be less than 20 pounds per square inch nor more than 150 pounds per square inch at the main, unless the variance from these standards would prevent

the utility from furnishing adequate service to any customer or where called for by good engineering policies. The authority of the Commission to require service improvements incorporating standards other than those set forth in the regulation is in place when indicated.

4. The 25 pound per square inch minimum expressed in 52 Pennsylvania Code § 65.6 is not intended to restrict the authority of the Commission to order improvements where service at the household, notwithstanding compliance with the regulation, is inadequate; therefore, the Commission has the power to order needed improvements notwithstanding regulation compliance. *Barone v. Pa. P.U.C.*, 86 Pa. Cmwlth. 393; 485 A.2d 519 (1984).

5. The Pennsylvania Public Utility Code requires that all public utilities provide service that is reasonably continuous, and that public utilities make improvements to their facilities in order to ensure that the service will be reasonably continuous. 66 Pa. C.S.A §1501.

6. This Commission may, in exercise of its police power, order a bankrupt public utility to make improvements in its facilities so as to protect the health, safety and welfare of the public. The automatic stay of proceedings does not apply to claims which arose after the petition for bankruptcy was filed. *In re Penn Terra Ltd. v. DER*, 733 F.2d 267 (1984); *In re Mason*, 18 Bankr. 817 (1982) and cases cited therein; *in re Dervos*, 37 Bankr. 731 (1984) and cases cited therein.

#### DISPOSITION OF THE DONGELEWICZ COMPLAINT

As was noted in the procedural history of this Opinion and Order, ALJ Lovenwirth recommended in his Initial Decision that the Dongelewicz Complaint be dismissed. The basis for the ALJ's recommendation is his agreement with Oneida that the source of Dongelewicz's problem was not with the water company, but rather it was the Complainant's refusal to adjust his pressure reducing valve. The valve is Dongelewicz's responsibility and, once it was properly adjusted, his water pressure problems ceased to exist. (I.D., pp. 7-9)

\*7 We agree with the ALJ's recommended disposition of the Dongelewicz Complaint, and we note that no exceptions have been filed to that recommendation. Accordingly, the Dongelewicz Complaint will be dismissed.

#### DISPOSITION OF THE RIZZO COMPLAINT

With regard to the Rizzo Complaint, ALJ Lovenwirth identified the following two issues:

(1) whether the water pressure provided by Oneida to Rizzo is adequate; and (2) whether Oneida's water service has been inadequate due to its failure to provide reasonably continuous service.

(I.D., p. 11)

Based upon a careful review of the evidence and testimony presented by the Complainant and the Respondent, including admissions by various Oneida witnesses concerning service problems in the Complainant's area and the measures required to address those problems, the ALJ recommended that the Rizzo Complaint be sustained. In so doing, the ALJ determined that Oneida was providing inadequate service, both in terms of low water pressure (Id. 12- 16) and frequency of service interruptions (Id. 16-21), to Rizzo and to George Morris, who is a neighbor of the Complainant and a witness in this proceeding.

Consistent with the foregoing determination, and, as noted previously herein, ALJ Lovenwirth recommended that the Respondent be directed to file an engineering report with the Commission. That report should, according to the ALJ, contain an analysis of the service problems in Oneida's Huron distribution system and recommendations to remedy those problems (Ordering Para. 6). The ALJ also recommended that certain measures be taken in the near term to facilitate the feeding of water from Oneida's Janhanna system into the Huron system (Ordering Para. 5). As for the immediate pressure problems experienced by Rizzo and his neighbor Mr. Morris, ALJ Lovenwirth recommended that the Respondent be directed to install hydropneumatic pressure tank systems on their respective premises (Ordering Para. 4).

Before addressing the Respondent's 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 proceedings. (University of Pennsylvania v. Pennsylvania Public Utility Commission, 86 Pa. 410, 485 A.2d 1217, 1222 (1984).) Any exception or argument which is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

We note that the Respondent has taken exceptions both to various Findings of Fact, (Excep., pp. 1-12), and to various Conclusions of Law and Order, (Excep., pp. 12-20), as recommended by the ALJ.

#### RESPONDENT'S EXCEPTIONS TO ALJ CONCLUSIONS OF LAW AND ORDER

Oneida's Exceptions to the ALJ's Conclusions of Law and Order challenge our jurisdiction in this matter, and we shall accordingly deal with them first. For clarity, we will summarize each of Oneida's Exceptions to the ALJ's Conclusions of Law:

1. The instant Complaint is an action by an individual rather than a governmental agency and, thus, is not covered by the exceptions to the automatic stay provisions of Section 362 of the Bankruptcy Code, (11 USC § 362). (Excep., pp. 12-14)

\*8 2. The instant Complaint seeks to exercise control over the property of the Respondent and, thus, is stayed by 11 USC §362(a)(3). (Excep., pp. 14- 15)

3. The Commission's authority and power to adjudicate a customer's Complaint is automatically stayed by 11 USC §362 if the utility is a debtor under the Bankruptcy Code. (Excep., p. 15)

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4. The Commission's authority and power to order compliance with the Public Utility Code is automatically stayed by 11 USC §362 if the utility is a debtor under the Bankruptcy Code. (Excep., pp. 16-29)

Section 362 of the Bankruptcy Code provides, in pertinent part, that:

§362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition ... operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title;

\* \* \*

(b) The filing of a petition ... does not operate as a stay--

\* \* \*

(4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

\* \* \*

(11 USC §362)

We note that Oneida's Exceptions No. 1 and No. 3 to our jurisdiction are interrelated and, therefore, we shall address them jointly. In our view, Oneida's reliance on *Martin v. Safety Electric Construction Co., Inc.*, 151 B.R. 637 (D. Conn. 1993) is misplaced. *Martin*, at 638, holds that, "for the exception to apply, the action must (1) involve a governmental unit ..." (emphasis added.) Additionally, Oneida's Exception ignores *In re Dervos*, 37 B.R. 731 (ND Ill. 1984), which holds, at 735, that "it is not fatal to a Complaint brought under Section 362(b)(4) that it was not actually filed by a governmental unit."

Further, in the subject Rizzo Complaint, as well as in the related Complaints, the OCA intervened on October 6, 1994. We hasten to point out that the OCA was created by statute and currently functions within the Office of the Attorney General. The OCA has the discretion to determine whether or not to participate on behalf of public utility consumers in any proceeding before this Commission. The OCA, by statute, must consider, inter alia, the "public interest" and the "substantiality of the effect of the proceeding on the interest of consumers." (71 P.S. §309-1 et seq.) The OCA is clearly a governmental unit charged with the

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authority to initiate legal or administrative actions to enforce the statutes and regulations relating to public utilities such as the Respondent. Thus, Oneida's jurisdictional Exceptions No. 1 and 3 are without merit, and, therefore, they are denied.

In addressing Oneida's second and fourth jurisdictional Exceptions, we may again be guided by the court's decision in *Martin*, cited supra. The *Martin* court discussed a "pecuniary interest" test and a "public policy" test. Actions which are "primarily for the purpose of protecting a pecuniary interest" are not exempt from the automatic stay. Likewise, actions which are designed to advance purely private rights are not exempt either. (*Martin* at 639.)

\*9 We note that in the instant proceeding, the OCA is not seeking to protect the pecuniary interest of a governmental unit or a private entity. Neither is the OCA interested in purely private rights as demonstrated by its intervention on behalf of customers of Oneida other than the Rizzo family (OCA Main Brief, p. 1). Thus, Oneida's jurisdictional Exceptions No. 2 and 4 are also without merit and are denied.

To the extent that Oneida further challenges our authority to regulate its operations, we will address those issues, *infra*, in the context of Oneida's Exceptions to the ALJ's Findings of Fact.

#### RESPONDENT'S EXCEPTIONS TO ALJ'S FINDINGS OF FACT

In its first Exception to the ALJ's Findings of Fact, the Respondent contends that the ALJ erred when he stated that Oneida's President, Mr. Jancuska, testified to the facts contained in Findings of Fact Nos. 8, 9 and 10.

Our review of the transcribed testimony indicates that the Respondent is correct on this point. The facts contained in Findings of Fact Nos. 8, 9 and 10 were the result of the testimony of OCA witness *Fought* and not the Respondent's President. This Exception is, therefore, granted.

The remainder of Oneida's Exceptions to the ALJ's Findings of Fact, as regards the Rizzo Complaint, are quite lengthy though few in number, and we believe they may be succinctly expressed as follows:

1. The Findings of Fact related to the issue of alleged low water pressure do not support the ALJ's determination that the water pressure supplied to the Rizzo and Morris houses is inadequate (Resp. Exc., pp. 2-4).

2. The Findings of Fact related to the alleged interruptions of water service to Complainant Rizzo and Mr. Morris do not reflect the current situation and do not support the ALJ's determination that service provided by Oneida is inadequate (*Id.*, pp. 4-7).

3. The Findings of Fact regarding the condition of the Respondent's Huron Well system facilities does not support a determination that service in the Huron area is inadequate and that improvements to Oneida's system are necessary (*Id.*, pp. 7-12).

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With regard to the water pressure problems allegedly experienced by Complainant Rizzo and his neighbor, Mr. Morris, the Respondent argues that there is "unbiased, quantitative evidence" that both Mr. Rizzo and Mr. Morris receive water service, at their homes, at pressures which are within Commission standards as set forth in Section 65.6 of the regulations, 52 Pa. Code §65.6 (Id., p. 3). The Respondent notes that neither Complainant Rizzo nor Mr. Morris has ever hired a plumber to see if there was anything which could be done to increase their water pressure (Id., p. 4). The Respondent concludes that,

The record is clear that from at least July, 1993 through November, 1993, Mr. Morris and Mr. Rizzo received water pressure both at their houses and at the main which is well within the quantitative standards set by this Commission. Just because Mr. Morris and Mr. Rizzo do not like the service they receive does not mean that Oneida is providing inadequate service within the meaning of 66 Pa. C.S. §1501.

\*10 (Id., p. 4)

In its Reply to Oneida's Exceptions the OCA contends that the Respondent has failed to prove that it complies with the Commission's regulations regarding minimum water pressures (OCA R.E., p. 3). As for the Respondent's suggestion that any problems which Mr. Rizzo and Mr. Morris are experiencing may be due to their own plumbing or service lines, the OCA asserts that,

.... more than mere insinuation on the part of the Company that customers' premises are the cause of service problems is necessary to refute the compelling evidence of record that Oneida provides inadequate service. On the contrary, in addition to the credible, convincing testimony of Oneida's customers regarding the poor service they receive, Oneida has acknowledged that Mr. Rizzo and Mr. Morris experience continuously low water pressure and frequent water outages. I.D. at 13; 18-20. In fact, the Company uses the Rizzo and Morris residences as "early warnings" to impending system-wide low pressure and outages. I.D. at 18; Tr. 325, 400.

(Id., p. 9)

Finally, the OCA contends that even if Oneida had demonstrated that it provided its customers with water at the main at minimum required water pressures, this would not be dispositive of adequate service as required by Section 1501 of the Public Utility Code, which provides, in pertinent part that,

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

66 Pa. C.S. §1501

According to the OCA,

... The Commission has addressed the application of Section 1501 in cases where

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the customer alleges inadequate water pressure even though the utility is providing a minimum of 25 pounds of pressure at the main. OCA M.B. at 14-15; see *Barone v. Pa. PUC*, 86 Pa. Cmwlth. 393, 485 A.2d 519 (1984) (PUC can find that a utility is in violation of Section 1501 of the Public Utility Code even though it is in compliance with the Commission's regulatory standards); see also, *Ledbetter v. Factoryville Water Company and National Utilities, Inc.*, 70 Pa. PUC 391 (1989).

(OCA R.E., p. 9)

We are in agreement with the position of the OCA and the reasoning of the ALJ on this issue. Chapter 65 of our regulations provides, in pertinent part, as follows:

§65.6. Pressures.

(a) Variations in pressure. The utility shall maintain normal operating pressures of not less than 25 p.s.i.g. nor more than 125 p.s.i.g. at the main, except that during periods of peak seasonal loads the pressures at the time of hourly maximum demand may be not less than 20 p.s.i.g. nor more than 150 p.s.i.g. and that during periods of hourly minimum demand the pressure may be not more than 150 p.s.i.g. A utility may undertake to furnish a service which does not comply with the foregoing specifications where compliance with such specifications would prevent it from furnishing adequate service to any customer or where called for by good engineering practices. The authority of the Commission to require service improvements incorporating standards other than those set forth in this subsection when, after investigation, it determines that such improvements are necessary is not hereby restricted. (Emphasis added)

\*11 52 Pa. Code §65.6(a)

Our review of the record indicates that the Respondent has offered no evidence that it complies with the foregoing requirement to provide a minimum of 25 pounds of water pressure at the main in Complainant Rizzo's area. Neither has the Respondent succeeded in rebutting the testimony of Mr. Rizzo or Mr. Morris regarding the inadequate water pressure at their respective homes. ALJ Lovenwirth found this testimony to be credible and persuasive, as do we (Findings of Fact Nos. 4-7). The burden was on Oneida to persuade the ALJ and us that the Complainant and his neighbor are not correct, and that it is providing water to their residences at a reasonable pressure. This the Respondent has failed to do.

As noted by the ALJ and the OCA, we have the authority, under 52 Pa. Code § 65.6, to order improvements to water service even in instances of technical compliance with the minimum standards set forth in the regulation. It is clear to us that the Respondent is providing water to Complainant Rizzo and his neighbor Mr. Morris at a pressure which is often inadequate for household uses. Improvements will be ordered. The ALJ's findings and reasoning on this issue are adopted, and the Respondent's Exceptions are, accordingly, denied.

Oneida has also excepted to ALJ Lovenwirth's findings of frequent water service interruptions to Complainant Rizzo and Mr. Morris, and the resultant determination that the Respondent has failed to provide these customers with water service that is reasonably continuous as required by 66 Pa. C.S. §1501. According to Oneida,

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the service outages which Mr. Rizzo and Mr. Morris experienced in April and May of 1992 were the result of a drought plus problems with a pump at the Huron well (Resp. Exc., p. 5). Since that time, the Respondent argues, the situation has improved. In this regard, the Respondent notes, at page 5 and 6 in its Exceptions that,

... Mr. Rizzo admitted that he only complained twice in 1993 of a water outage and that he did not have to take his family to a hotel because of a water outage at any time during 1993. (N.T. 12/6/93 pages 30, 33-4)

\* \* \*

From September, 1992 to November, 1993 (a period spanning 15 months), Mr. Rizzo experienced, at most, five (5) short water outages. Two of these outages were caused by minor problems with the pump or electrical controls, one was caused when a thrust block blew off, another was caused by the leak in the VOL's [Valley of Lakes] pool, and the final one was caused when a private contractor, ... struck and ruptured one of Oneida's water mains. (N.T. 407, 422, 424-25, 428-33).

The Respondent does not dispute that Complainant Rizzo and Mr. Morris have experienced service interruptions, but argues, in effect, that the outages have become less frequent, and that there are reasonable and "uncontradicted explanations" for those outages (Id., p. 7). In addition, the Respondent asserts that it promptly took effective measures to restore service, a fact which it contends was improperly ignored by the ALJ (Id., p. 7). Oneida concludes that the fact that it has experienced some problems does not mean that it is providing inadequate service.

\*12 The OCA, in its Reply Exceptions at pages 7 through 13, provides a persuasive rebuttal to the Respondent's assertions. We agree with the OCA's position, but we will not repeat it here because we frankly feel that Oneida's Exceptions, in themselves, support a finding of inadequate service in this instance.

Even assuming that the Respondent is correct in its statement that Mr. Rizzo only experienced five interruptions of service in a recent 15 month period, and that Oneida responded promptly each time, it is beyond our comprehension as to how the Respondent can equate this experience with the provision of adequate service as required by Section 1501 of the Public Utility Code. While it may be true that some of the service outages were the result of circumstances beyond Oneida's control, we believe that, except in the most extraordinary situations, utility customers have a right to expect continuous service. In other words, if the Respondent's facilities had been adequate, some of the interruptions could have been avoided, and others may have been ameliorated.

In summary, we agree with the ALJ, as supported by the OCA, that the service outages endured by Mr. Rizzo and Mr. Morris justify a determination that the Respondent has failed to provide adequate and reasonably continuous water service. The Respondent's Exceptions on this issue are, therefore, denied.

The Respondent also takes issue with ALJ Lovenwirth's determination that certain improvements, as recommended by the OCA, are necessary to make the service

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provided to the customers on its Huron well system adequate (Resp. Exc., pp. 7-12). The Respondent goes to great lengths in putting its own interpretation on the evidence of record and in characterizing the testimony of its own witness. According to the Respondent, the ALJ erred in finding that Oneida has admitted to deficiencies with its Huron system, and insists that the ALJ has misconstrued the testimony of its witnesses, Mr. Jancuska and Mr. Werner. The Respondent insists that service in the Huron area is currently adequate and that any improvements to that system, as were discussed on the record, are not necessary at this time, but would be upgrades for future needs.

The OCA responds to Oneida's assertions at pages 14 through 19 in its Reply to Exceptions. However, the OCA's position on this issue may be expressed in summary form by the following statement:

Although the Company has refused to admit that there may be a water source problem, it has conceded that eliminating the need for the unusual operating procedure of manually crossfeeding various portions of the system would alleviate sudden and frequent interruptions in service. Company witnesses have specifically endorsed the OCA's primary recommendation to install a back pressure sustaining valve that would automatically feed the Huron system. I.D. at 19. Company witnesses have admitted that placing the already existing but unoperational Huron well into service and installing additional storage on the Huron system at higher elevations would further alleviate system-wide problems. I.D. at 17-19; OCA M.B. at 37-40. As discussed above, all of these proposed improvements were endorsed by Company witnesses. The only caveat presented by Oneida was the fact that the Company is currently bankrupt and cannot afford to make these improvements. The Company witnesses went so far as to testify that the lack of financial resources is the only thing that is keeping the Company from endeavoring to make these improvements. I.D. at 19, 30; OCA M.B. at 42-44.

\*13 (OCA R.E., p. 18)

We agree with the foregoing reasoning of the OCA, and also the determination of the ALJ on this issue. However, we find the controversy over what Oneida's witnesses did or did not testify to, regarding the need for improvements to the Huron system facilities, to be largely irrelevant. The record is clear that service currently being provided in that area is inadequate. We have already determined that the Respondent has failed to provide water service to the Complainant Rizzo and Mr. Morris which is reasonably continuous and at a pressure which is always adequate for normal household purposes. We find, therefore, that corrective action is necessary to remedy this situation, and that the measures proposed by the OCA and recommended by the ALJ should be approved; the Respondent offering no alternative other than its contention that service is currently adequate. The Respondent's Exception on this issue is, therefore, denied.

#### CONCLUSION

We have carefully reviewed the record as developed in this proceeding including the Brief, Reply Brief, Initial Decision and the Exceptions filed thereto. We conclude that ALJ Lovenwirth's Initial Decision is amply supported by substantial evidence in the record. We further conclude that but for the Respondent's first

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Exception to the ALJ's Findings of Fact, Oneida's Exceptions are not meritorious and, therefore, they are denied; THEREFORE,

IT IS ORDERED:

1. That the Exceptions of Oneida Water Company to the Initial Decision of Administrative Law Judge Richard M. Lovenwirth, issued on June 24, 1994, be and hereby are granted, in part, and denied in part, consistent with this Opinion and Order.
2. That the Complaint of Samuel Rizzo, filed on July 1, 1992, be, and hereby is, granted to the extent that it is consistent with this Opinion and Order.
3. That the Complaint of Leon R. Dongelewicz, filed May 13, 1992, be, and hereby is, dismissed.
4. That the Initial Decision of Administrative Law Judge Richard M. Lovenwirth, issued on June 24, 1994, be, and hereby is adopted to the extent that is consistent with this Opinion and Order.
5. That the Commission's Law Bureau is hereby directed to intervene in the bankruptcy proceeding involving Oneida Water Company currently pending before The United States Bankruptcy Court for the Middle District of Pennsylvania, Bankruptcy Case Number 5-92-00619, so as to seek implementation of these ordering paragraphs and any future orders of this Commission appertaining to Oneida Water Company.
6. That within thirty (30) days from the date of entry of this Opinion and Order, Oneida Water Company shall install upon the premises of Samuel Rizzo and upon the premises of George Morris hydropneumatic pressure tank systems, each of which shall include a tank and booster pump, so as to increase the water pressure in the respective houses. Further, that The Oneida Water Company shall reimburse Messrs. Rizzo and Morris, or their successors in ownership or occupancy of their respective properties, the sums of thirty-six dollars per year for the added cost of purchased power to them, starting with the anniversary date of the installation of the said hydropneumatic pressure tank system. Further, any necessary repairs to the hydropneumatic pressure tank system shall be reimbursed by Oneida Water Company. Further, that said hydropneumatic water pressure tank system shall be replaced by Oneida Water Company if the cost for the repairs of same shall exceed the then value of the said hydropneumatic pressure tank system. When Oneida Water Company has improved its Huron facilities with the implementation of the recommendations of the waterworks engineer filed with the Commission pursuant to Ordering Paragraph 8, then the provisions of this ordering paragraph shall no longer be enforceable, provided, however, ownership of the hydropneumatic pressure tank systems shall remain the property of the owners of the present homes of Messrs. Rizzo and Morris or their successors in title. That within ten days of the completion of the installation of the hydropneumatic pressure tank systems, Respondent shall notify the Commission's Bureau of Safety and Compliance of said completion.
- \*14 7. That, within forty-five days of entry of this Opinion and Order, Oneida Water Company shall replace the manual feeding of Janhanna water into the Huron system with a back pressure sustaining valve with a pressure reducing variation between the two systems which would feed water from the Janhanna system to the

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Huron system automatically. Within ten days of the installation of this automatic feeding device, Respondent shall notify the Commission's Bureau of Safety and Compliance of said installation.

8. That within one hundred twenty days from the installation of the ordered automatic feeding device referenced in Ordering Paragraph seven, Oneida Water Company shall file with the Commission an engineering report of a waterworks engineer, outlining the causes for low water pressure and frequent cessations of water service throughout Respondent's Huron distribution system, and containing recommendations for remediation thereof. Said report shall be filed with the Commission's Bureau of Safety and Compliance.

9. That Oneida Water Company, within nine (9) months after the filing of the report of the waterworks engineer pursuant to the next preceding ordering paragraph, unless otherwise advised by the Commission within thirty (30) days after the filing of the report, shall implement the recommendations made in said report, and within ten (10) days after completion of the remediative measures shall notify the Commission's Bureau of Safety and Compliance of said completion.

10. That upon certification to the Commission by the Bureau of Safety and Compliance that the Respondent has failed to comply with any of the terms of this Opinion and Order, then, in such event, the case docketed at C-924186 shall be referred by the Commission's Secretary to the Office of Administrative Law Judge for further proceedings to ascertain the fact of compliance or noncompliance, and to further ascertain appropriate penalties to be assessed against Respondent for noncompliance. For purposes of this ordering paragraph, the Bureau of Safety and Compliance's perception that the recommendations set forth in the written report of the waterworks engineer will be nonavailing shall be cause for the Bureau of Safety and Compliance to report to the Commission Respondent's noncompliance with the terms of this Opinion and Order.

11. That the Commission's Secretary shall transfer the case docketed at C- 924186 to the Commission's Bureau of Safety and Compliance and to the Commission's Law Bureau simultaneously, immediately upon the entry of this Opinion and Order; and the case docketed at C-924012 shall be marked "closed".

END OF DOCUMENT

Cindy Parks, *et al.*

v.

Pennsylvania-American Water Company  
Docket No. C-00015337, *et al.*

Zachary Ronald Matenkoski and  
William J. Ervin and Dorothy Horrox

v.

Kawon, Inc.

Docket Nos. C-00935089, C-00935165  
and C-00935293

Opinion and Order

Dated entered: October 20, 1994

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(Cite as: 1994 WL 932262 (Pa.P.U.C.))

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Zachary Ronald Matenkoski  
\*1 and  
William J. Ervin  
and  
Dorothy Horrox  
v.  
Kawon, Inc.  
Docket Nos. C-00935089, C-00935165, and C-00935293  
Pennsylvania Public Utility Commission  
September 22, 1994; Entered October 20, 1994

## OPINION AND ORDER

Before Rolka, Chairman, Rhodes, Jr., Vice-Chairman, Quain, Crutchfield, and  
Hanger, Commissioners.

BY THE COMMISSION:

Before us for consideration is the Initial Decision ("I.D.") of Administrative  
Law Judge ("ALJ") Richard M. Lovenwirth and the Exceptions filed by Kawon, Inc.  
("Respondent").

## History of the Proceedings

## A. Zachary Ronald Matenkoski v. Kawon, Inc. (C-935089)

On July 23, 1993, Zachary Ronald Matenkoski ("Matenkoski") filed a formal  
complaint against the Respondent, Docket No. C-00935089. The Complaint alleges  
that Matenkoski receives water of poor quality from Respondent at his home at Box  
239, Harleigh, Luzerne County, Pennsylvania, that the water pressure is poor, and  
that at times he gets no water at all. The Complaint alleges that this condition  
has persisted over a five year period.

No Answer was filed by the Respondent to the Matenkoski Complaint.

## B. William J. Ervin v. Kawon, Inc. (C-00935165)

On August 31, 1993, William J. Ervin ("Ervin") filed a formal complaint against  
the Respondent, Docket No. C-00935165. It alleges that Ervin has had no water  
pressure since the spring of 1993, and that he has experienced difficulty in  
contacting the Respondent for purposes of registering a complaint on most  
occasions; and that on the few occasions when he did reach someone from  
Respondent, he was told that he, Ervin, was the only one who complained. Ervin's  
prayer for relief is that he be connected to the Hazleton water lines, just a few  
hundred feet away from his home.

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No Answer was filed to the Ervin Complaint.

C. Dorothy Horrox v. Kawon, Inc. (C-00935293)

On November 3, 1993, a formal complaint was filed by Dorothy Horrox ("Horrox") against the Respondent, Docket No. C-00935293 alleging that Respondent delivers no water to Horrox on certain days, that the Complainant has poor water pressure and rusty water; and that there is no way to reach the Respondent on weekends or after 5:00 p.m. on weekdays.

No Answer was filed by the Respondent to the Horrox Complaint.

D. The Consolidated Proceedings

All three matters were informally consolidated and scheduled for a hearing to be held on February 7, 1994 by the ALJ. On said date, a hearing was convened. Only Complainants Matenkoski and Horrox, participated in the hearing [FN1] Respondent failed to appear. Complainant Ervin also failed to appear and could not be reached by telephone. See N.T. 5, 6.

FN1. Horrox participated, at her request, telephonically.

After several unsuccessful attempts to reach a principal from Respondent on the date of the hearing, the presentation of evidence proceeded in the absence of Respondent. The ALJ attempts to reach a principal from Respondent were reported on the record (pages 5 through 7). A summary of said attempts is as follows: one William Schumacher of the Schumacher Engineering Company (Tel. 717-455-9407) was ascertained to be the principal and manager of Respondent, [FN2] and his secretary, Ms. O'Donnell, explained via telephone that he was absent and would be out of town for several days on business unrelated to that of these proceedings.

FN2. This information is recorded in the Office of Secretary of this Commission; also, Complainant Matenkoski advised the presiding officer that Mr. Schumacher is Respondent's contact person, which said information was reported "on therecord" (N.T. 6).

\*2 The February 7, 1994 hearing produced seventy-one pages of testimony. Two exhibits were moved into the record by complainant Matenkoski. No briefs were filed.

On June 14, 1994, an Initial Decision was issued sustaining the individual complaints and recommending, inter alia, a fine of \$18,000 be levied against the Respondent for failure to provide service.

On July 5, 1994, the Respondent filed its Exceptions stating: (1) Answers were filed to the individual Complaints; (2) Mr. Schumacher is not the manager of Respondent; (3) due to the size of Respondent, it is financially unable to pay the

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penalty.

#### Discussion

The ALJ discussion is recorded at pages 4-12 of the I.D.

As previously noted, there are three separate complaints filed against the same Respondent which collectively allege that Respondent is providing inadequate service for three reasons: (1) the water quality is poor in that it is discolored; (2) the water pressure is poor, and often is so poor that there is a virtual or actual cessation of service; and (3) Respondent does not respond to its ratepayers' complaints, and is often unavailable to receive said complaints. See I.D., p. 4.

The alleged concerns are serious charges (each of which, if true, constitutes a violation of Section 1501 of the Public Utility Code requiring Respondent to furnish and maintain adequate and reasonable service). Respondent has not answered with respect to the allegations set forth in the individual complaints. We note that in Exceptions, Respondent does not take issue with the merits of the Complaint alleging poor water quality and service. Contrary to the assertions of Respondent, the Commission file does not contain an Answer to any of the complaints. Furthermore, Mr. Schumacher accepted the service regarding the Notice of Hearing in this matter so Respondent had knowledge of the proceeding and had a responsibility to be present at the hearing. Without explanation, Respondent failed to be represented at the hearing convened for purposes of receiving evidence. Respondent has thusly shown a disregard for the administrative body which regulates it, and indifference to the complaints of its ratepayers. Moreover, it has left the state of the record in such a way that the factual averments in the complaints must be deemed admitted, and the unrebutted testimony given by the witnesses at the hearing must be assumed to be "fact". [FN3] 52 Pennsylvania Code Section 5.61(c), provides:

FN3. We do note that in its Exceptions, Respondent makes the following statement:

...if these records were produced by the [R]espondent I am sure the commission would have other facts to consider and this should be done.

\* \* \*

Various people who dealt with the complainants should have been called in to testify:...

(Exceptions, p. 1).

The record in this matter contains the testimony adduced at hearing and administrative notice of certain facts, *infra*.

"A respondent failing to file an answer within the applicable period shall be deemed in default, and relevant facts stated in the complaint or petition may be deemed admitted." (emphasis added)

\*3 The ALJ reasoned as follows: The above procedural rule, effective January 1,

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1985, had as its predecessor 1 Pennsylvania Code §35.35, which, using identical language as is used in the above-quoted section of 52 Pennsylvania Code, required that respondents failing to file an answer within the applicable period of time be deemed in default, and provided that all relevant, basic facts stated in the complaint may be deemed admitted. The court in *Bates Taxi, Inc. v. Pa. P.U.C.*, 33 Pa. Cmwlth Ct. 360, 381 A.2d 1328 (1978) held that the regulation at 1 Pennsylvania Code §35.35 is significantly the same as Pa. R.C.P. §1037(b) (authorizing judgment against defendant for failure to file within the required time an answer to the complaint); and that this Commission can only enter a default judgment without hearing in the absence of an answer. In *Pa. P.U.C. v. T & M Trucking, Inc.*, 54 Pa. P.U.C. 274 (1980) the Commission held that its action in entering a default judgment against a respondent who failed to file an answer to a complaint was proper and authorized by applicable procedural rule (1 Pennsylvania Code §35.35). We, therefore, agree with the ALJ analysis and deem Respondent to be in default. On review of the record, we shall sustain the complaints. Furthermore, Respondent has offered no reason for failure to appear.

Even in the absence of a "default judgment", the record before us indicates that proper disposition of this matter is the sustaining of the complaints. Even ignoring the fact that the allegations of the complaints were deemed admitted by 52 Pennsylvania Code §5.61(c), supra, the unrebutted testimony, preponderates in favor of a finding that the complaints be sustained. [FN4] The evidence given by the four witnesses who appeared before us alarms us as to the serious nature of Respondent's failure to provide adequate service, as summarized below:

FN4. The ALJ accepted testimony on the record notwithstanding Respondent's default, so as to leave open the option of reopening the record if Respondent's principal contacted the ALJ in response to the latter's telephone inquiry on the morning of the hearing concerning Respondent's absence. The courtesy of a response to the ALJ's telephone inquiry had not been made as of the date of issuance of the Initial Decision. Therefore, we have no request to reopen the record before us.

As noted, by taking testimony, moreover, the ALJ was assisted in the adjudication and in the framing of our Order. This procedure is utilized in the law courts upon the entry of a default judgment, if deemed appropriate by the court. See Pa. R.C.P. 1511(b).

The Respondent's source of water is a well (N.T. 26) and is managed by Mr. Schumacher (N.T. 27).

In August, 1992 the testimony indicates there were several cessations of service at the Horrox residence for two to five days at a time (N.T. 27, 28). The water pressure there has been and is very low (N.T. 28, 29). Ms. Horrox formerly had to wait until 11:00 p.m. to fill the washer to wash her clothing and bed linens, when it would take 45 minutes or an hour for her washer to fill. Lately, the pressure has improved somewhat and it takes about 15 minutes or more for her washer to fill (N.T. 29, 30), but Ms. Horrox still cannot use the clothes washer until about 7:30 or 8:00 at night because it takes even longer to fill in the morning (almost 45 minutes) (N.T. 30, 31). It takes over 10 minutes to fill a bath tub at the Horrox household (N.T. 32). The water comes out of her bathroom at a trickle, and if the water is turned on in the Horrox household bathroom, there is no water in the kitchen (N.T. 33). When the faucet is on in her kitchen without competition from

other faucets, with the aerator on, the water comes out about the size a little larger than a pencil (N.T. 33, 34). The Horrox home is a one story home, and when one runs the water in the kitchen, the water comes out even more slowly in the bathroom and the toilet will not fill up. Under such circumstances, sometimes Ms. Horrox fills the toilet with a bucket (N.T. 34, 35). In the Horrox household, buckets are always full in the bathroom and on the porch in case there will be a cessation of service (N.T. 35). In the Horrox home, if one flushes a toilet and tries to wash hands in the bathroom sink, the toilet will fill even more slowly than without competition from the bathroom sink (N.T. 35, 36). At times (about once per month) the hot water comes out of the sink in the Horrox home yellow or rusty colored (N.T. 36). The poorer the water pressure, the worse is the discoloration in the water (N.T. 36). When Ms. Horrox tried on past occasions to reach Respondent after 5:00 p.m., there was no answer (N.T. 37). Ms. Horrox explained, for example, that in December, 1993, she had to call after 5:00 p.m. and no one answered (N.T. 38). The same result occurred if she tried to call Respondent on weekends (N.T. 38). The last time Ms. Horrox tried to call Respondent on a weekend and received no answer was November or December, 1993 (N.T. 38). See I.D., pp. 7-8.

\*4 At the Matenkoski household, when a representative of Respondent, Gregory Schumacher, came to test the water pressure, it measured only six pounds per square inch (N.T. 44, 45, 63-65). Ronald Matenkoski (Zachary's father) was present when the water pressure measurement was made at his son Zachary's home, and he observed that the measurement was taken by Mr. Schumacher at the basement, being the lowest point where the water entered the house. When this measurement was taken by Mr. Schumacher, there were no other water appliances running in the house and the faucet where the measurement was taken was open 100 percent. This water pressure measurement was taken about 11:00 in the morning (N.T. 63-65). After Matenkoski replaced his own water service line, his water pressure had not improved; and when the Respondent's water main was exposed by the excavation, it was observed that it consisted of a very old and rotten pipe (N.T. 47; Matenkoski Exhibit No. 1). Ever since Matenkoski purchased his home six years ago, he has had a problem with water pressure or has had no water at all (N.T. 48). This problem has been continuous (N.T. 48, 49). Usually when he calls Respondent to complain, he gets a standard answer: "We'll see what we can do about it" (N.T. 49). In the six years that Matenkoski has lived at his home, Respondent has done nothing to improve his water pressure (N.T. 49). Matenkoski's water pressure is so poor that he cannot take a shower about 75 percent of the time (N.T. 49, 50). If he tries to take a shower, he cannot even get a trickle out of the shower head (about 75 percent of the time) (N.T. 50). The Matenkoski bathroom is on the first floor of his one story (with basement) home (N.T. 51). Water comes out better from a spigot in the basement than it does on the first floor (N.T. 51). It takes Matenkoski over a minute to fill up a gallon jug of water (N.T. 52). Water comes out of a spigot about the size of a pencil (N.T. 52). It takes about 15 seconds to fill up a glass in the Matenkoski household (N.T. 52). On days when Matenkoski has had no water at all, he called Respondent, whose principal advised: "We're working on it." But Matenkoski, who lives near the pump house, could see that no work was being done at that location (N.T. 53). Matenkoski has complete cessations of water service up to five days about twice per year (N.T. 53). The last time it happened was the week between Christmas and New Year's Day, 1993, which was a one day cessation of water (N.T. 53). A three day cessation of water occurred in the summer of 1993 (N.T. 54). Ronald Matenkoski (Zachary's father) had observed that over the past five years there had been numerous occasions when his son would have

to come to his house to wash clothes, to take a shower, and to carry drinking water home (N.T. 62).

John and Dorothy Podlesney, who are also served by Respondent, have low water pressure and it is of such poor quality that it causes yellow spots on clothing which have been washed in it (Matenkoski Exhibit No. 2). When the Podlesneys boil water, a brown line is left in the pot used for that purpose and sediment is found in the bottom of said pot (Matenkoski Exhibit No. 4).

\*5 At the Vincent Katzor household, about four or five doors down from the Horrox household, if one flushes a toilet and turns another spigot on, there is no water which will come out of the spigot (N.T. 56). In the Katzor household, if the washer is filling up in the cellar, there is no water which will come out of the spigot upstairs (N.T. 56, 57). These water pressure problems occur about ninety percent of the time; the other ten percent of the time water pressure is "fair" (N.T. 57). This poor water pressure at the Katzor home has persisted for more than two years (N.T. 58-60). The last time Mr. Katzor called Respondent because of a total cessation of water, he was advised that the pump broke and would be replaced. After the pump was replaced, there was good water pressure which lasted for two weeks, only, after which the water pressure problem reverted to its former state (N.T. 60).

#### Administrative Notice

Pursuant to 66 Pa. C.S. §332(e) and 52 Pa. Code 5.408, Administrative Notice is taken of the following facts. [FN5]

FN5. These facts are taken from the Annual Reports and tariffs submitted by Respondent and on file with the Commission.

1. Respondent began providing service in 1915.
2. Respondent was incorporated in 1972.
3. William H. Schumacher is President and Dominic Yannuzzi is both Secretary and Operation Manager.
4. Respondent's last rate increase was in 1983.
5. Respondent's current authorized rate is \$12.72 per month or \$153.00 annually.
6. In 1971 Respondent's customer base was 31.
7. In 1983 Respondent's customer base was 21.
8. Since 1987 Respondent's customer base has been 11.
9. The following chart outlines the revenue and expenses for Respondent:

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Year	Revenue	Expenses	Net Operating Revenue
-----	-----	-----	-----
1987 [FN6]	\$2,454	\$1,872	\$ 582
1988	2,378	3,147	(769)
1989	2,621	2,308	313
1990	2,460	1,660	800
1991	1,376	1,306	70
1992 [FN7]	1,376	1,250	126

FN6. The Annual Report for the years 1987 through 1991 were filed April 21, 1993.

FN7. The Annual Report for 1992 was filed January 11, 1994.

#### Exceptions

Respondent has filed Exceptions to the Initial Decision that can be categorized into three areas:

- (1) Answers were filed to the individual Complaints.
- (2) William Schumacher is not the manager but a consulting engineer who serves "at no cost".
- (3) Respondent has an annual income of approximately \$1,250.00 and expenses of \$1,850.00.

Respondent requests:

...to consider these exceptions and to advise the process by which the record could be corrected or completed so as to provide the [R]espondent through whatever agent it selects to be a participant in the continuation of the matters before the PUC. (Exceptions, p. 2)

The allegation that an Answer has been filed in the individual complaints is without merit. The record is void of any such document and only a bare assertion by the Respondent exists. This Exception is rejected.

\*6 The allegation that William Schumacher is not the manager is of no consequence. Mr. Schumacher is the President of Respondent and has signed the Certified Mail receipt for the Complaints and Notice of Hearing. If Respondent wishes to designate another representative, it should so notify the Commission.

Turning to the income level of Respondent, we have taken official notice of Respondent's annual income. As indicated above, with the exception of 1988, for the 6 year period 1987-1992, Respondent had a positive net operating income. Further, the Annual Reports indicate substantially higher revenues than alleged by the Respondent in its Exceptions. Those figures contained in the Annual Reports filed by Respondent will be used by this Commission to reach its decision in this

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matter.

Finally, Respondent's request to continue in the process and correct the record, albeit late, is encouraging. The record in this matter has been supplemented by administrative notice of certain documents.

To reiterate, the testimony given in this case gives us cause for alarm about a public utility's horrendous service given to its customers over at least the past three years. Our ordering paragraphs which follow will mirror our concern. Although there is persuasive evidence that Respondent has been providing poor water service in the nature of very low water pressure and cessations of service for a period of at least six years (N.T. 48), we are limited in penalizing Respondent for its inadequate service during the three year period prior to the filing of the Matenkoski complaint (July 23, 1993). See 66 Pa. C.S. §3314. Each and every day that inadequate service was provided during that three year period is a separate violation, the maximum penalty for which is \$1,000 per day. See 66 Pa. C.S. §3301(a) and (b). Pursuant to these sections, we shall penalize Respondent for its inadequate service concerning our sustaining of the Formal Complaints. The ALJ recommended a penalty of \$18,000 due to the severe disregard for Kawon's obligation to provide adequate service.

Upon review of the ALJ recommended penalty, we recognize that the amounts of fines are at the discretion of the Commission. We find that the ALJ recommended fine of \$18,000 should be imposed, due to the extreme seriousness of the violations. However, due to the limited revenues that the customer base of 11 generates, we will waive \$17,000 if Kawon complies with all Commission directives set forth in the Ordering Paragraphs. In the event that Kawon ignores or does not completely and in good faith meet our directives, the \$18,000 fine shall be imposed.

Finally, we are concerned that Respondent appears to be in a death spiral regarding its customer base. Respondent is ordered to file a Plan of Action with the Bureau of Safety and Compliance that outlines actions to be taken to improve the water service. This Plan must consider the possibility of the sale of the system to another water company.

\*7 Kawon is also directed to provide detailed information within sixty (60) days of the date of this Order as to the feasibility of connecting customers to any nearby water purveyor, including, but not limited to, the Hazelton City Authority.

We also direct the Commission's Law Bureau to investigate and report on the appropriateness of initiating the Mandatory Takeover Procedures pursuant to 66 Pa. C.S. §529.

#### Conclusions of Law

1. This Commission has jurisdiction over the subject matter of this proceeding and over the parties thereto.
2. Unrebutted, proven allegations that a public utility: (1) has provided water service which is poor in quality; (2) has provided water pressure which is poor,

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at times so poor that there is a virtual or actual cessation of service; and (3) does not respond to its ratepayers' complaints to it, and is often unavailable to receive said complaints; all constitute a violation of the Public Utility Code requiring public utilities to furnish and maintain adequate and reasonable service. 66 Pa. C.S.A. §1501.

3. A respondent failing to file an answer within the applicable period of time shall be deemed to be in default, and relevant facts stated in the complaint or petition may be deemed to be admitted. 52 Pennsylvania Code §5.61(c).

4. This Commission may enter a default judgment against a Respondent, without hearing, in the absence of a filed Answer from the Respondent within the prescribed time. *Bates Taxi, Inc. v. Pa. P.U.C.*, 33 Pa. Cmwlth 360, 381 A.2d 1328 (1978); *Pa. P.U.C. v. T & M Trucking, Inc.*, 54 Pa. P.U.C. 274 (1980).

5. Every water utility must maintain normal operating pressures of not less than a gauge pressure of 25 pounds per square inch at the main, except that during periods of peak seasonal loads the pressures at the time of hourly maximum demand may not be less than 20 pounds per square inch gauge, unless adherence to these minimum pressures would prevent it from furnishing adequate service to any customer or unless such deviation is called for by good engineering practices. 52 Pennsylvania Code §65.6. The minimum water pressures prescribed in the regulation are not intended to restrict the authority of this Commission to order improvements where service is inadequate; therefore, this Commission has the power to order needed improvements notwithstanding that the water pressure in a utility's main meets the standard of the regulation. *Barone v. Pennsylvania Public Utility Commission*, 86 Pa. Cmwlth 393, 485 A.2d 519 (1984).

6. Where a public utility has provided drinking water which is rusty or yellowish in color, and where there is an absence of testimony that the water is in compliance with the drinking water standards of the Environmental Protection Agency (hereinafter "EPA") or of the Pennsylvania Department of Environmental Resources (hereinafter "DER"), the quality of its water will be deemed to be inadequate, and the public utility will, therefore, be deemed to be in violation of Section 1501 of the Public Utility Code (66 Pa. C.S.A. § 1501). *Pa. P.U.C. and Howell v. Rivercrest Public Service Water Corporation* (Docket Numbers R-881052 and C-871561), Commission Opinion and Order entered July 21, 1989.

\*8 7. We shall impose a fine of a total of \$1,000 for the Complaints that were sustained. Also, we shall direct the Commission's Law Bureau to investigate and report on the appropriateness of initiating the Mandatory Takeover Procedure pursuant to 66 Pa. C.S. §529; THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Zachary Ronald Matenkoski v. Kawon, Inc. on July 23, 1993 at C-00935089 be and is hereby SUSTAINED.

2. That the Complaint filed by William J. Ervin v. Kawon, Inc. on August 31, 1993 at C-00935165 be and is hereby SUSTAINED.

3. That the Complaint filed by Dorothy Horrox v. Kawon, Inc. on November 3, 1993 at C-00935293 be and is hereby SUSTAINED.

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4. That the Exceptions are hereby denied.

5. That concerning the Complaint proceedings of Zachary Ronald Matenkoski v. Kawon, Inc. at C-00935089 and Dorothy Horrox v. Kawon, Inc. at C-00935293, due to Respondent's failure to provide Complainants with adequate water pressure for a period of at least three years prior to July 23, 1993, and for the failure of Respondent, Kawon, Inc., to prevent frequent, prolonged, unannounced cessations of water service, said Respondent, within twenty days after service of the Commission Order, is fined \$18,000. Kawon shall forward a penalty within twenty (20) days of entry of this Order of one thousand dollars (\$1,000.00) by check or money order payable to:

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

as provided for in Sections 3301 and 3315 of the Public Utility Code (66 Pa. C.S. §3301 and 3315).

6. That the remaining amount of the fine of \$17,000 will be waived only if Kawon, Inc. complies with all Commission directives to improve service.

7. That within sixty (60) days from the entry of this Order, Kawon, Inc. shall file with this Commission an engineering report of a water works engineer, outlining causes for low water pressure and discolored water throughout Respondent's distribution system, and containing recommendations for remediation thereof. Said report shall be filed with this Commission's Bureau of Safety and Compliance. The water works engineer or engineering company preparing this report or its underlying study of Respondent's facilities shall neither be affiliated in any way, directly or indirectly, with Kawon, Inc., nor with its principal, William Schumacher, nor with Mr. Schumacher's employer or company, Schumacher Engineering Company.

8. That a laboratory analysis of Respondent's water supply by a DER licensed laboratory shall be made for purposes of ascertaining if the maximum contaminant levels established for all contaminants in public drinking water by the Environmental Protection Agency and by the Pennsylvania Department of Environmental Resources is exceeded. Said laboratory analysis shall, within thirty days of the entry of the Commission Order, be filed with this Commission's Bureau of Safety and Compliance.

9. That Respondent, Kawon, Inc., shall forthwith institute a system whereby ratepayer complaints of emergencies or inadequate service may be registered with the Respondent twenty-four hours per day, each and every day of the week. Such a written plan for ratepayer complaint availability shall be filed with this Commission's Bureau of Safety and Compliance within thirty days of the entry of the Commission Order.

\*9 10. That Respondent, Kawon, Inc., within one hundred twenty days after the filing of the report of the water works engineer with this Commission pursuant to Ordering Paragraph No. 6, unless otherwise advised by this Commission within

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(Cite as: 1994 WL 932262 (Pa.P.U.C.))

Page 11

thirty days of the filing of the report, shall implement the recommendations made in said report, and within ten days after completion of the remediative measures shall notify this Commission's Bureau of Safety and Compliance of said completion.

11. That within thirty days of the entry of this Order, Kawon, Inc. shall file a Plan of Action that outlines actions to be taken to improve water service. Said Plan shall consider the possibility of the sale of the system to another water company. This Plan shall be filed with the Bureau of Safety and Compliance.

12. That within sixty (60) days of the entry of this Order, Kawon, Inc. shall provide detailed information as to the feasibility of connecting customers to any nearby water purveyor, including, but not limited to, the Hazleton City Authority. This information shall be filed with the Commission's Law Bureau, Fixed Utility Division and the Bureau of Safety and Compliance. A copy of the Final Order shall be served on the Hazleton City Authority.

END OF DOCUMENT

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Cindy Parks, *et al.*

v.

Pennsylvania-American Water Company  
Docket No. C-00015337, *et al.*

Joint Application for a Certificate of Public Convenience  
Evidencing Approval Under Section 1102(a)(3) of the  
Public Utility Code, of the Transfer, By Merger, of a  
Controlling Interest In Three Operating Utilities from  
Consumers Water Company to Philadelphia Suburban  
Corporation

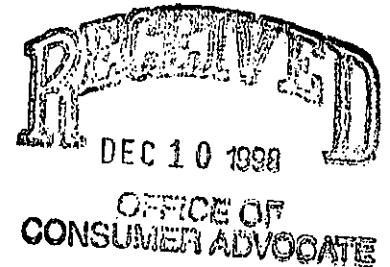
Docket Nos. A-212370F0048, A-212300, A-  
212600F0006 and A-212750F0006

Initial Decision  
Dated December 9, 1998

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application for a Certificate of Public Convenience Evidencing Approval Under Section 1102(a)(3) Of The Public Utility Code, Of The Transfer, By Merger, Of A Controlling Interest In Three Operating Water Utilities From Consumers Water Company to Philadelphia Suburban Corporation

A-212370F0048, A-212300  
A-212600F0006, A-212750F0006



INITIAL DECISION

Before  
Robert A. Christianson  
Chief Administrative Law Judge

HISTORY OF THE PROCEEDING

On August 18, 1998, Philadelphia Suburban Corporation (PSC) and three operating companies from Consumers Water Company (CWC or Consumers) filed an application (Application), at the above docket numbers, for a certificate of public convenience evidencing approval, under Section 1102(a)(3) of the Public Utility Code, of the transfer, by merger, of a controlling interest in three operating water utilities from Consumers Water Company to Philadelphia Suburban Corporation. Those three operating companies are CWC's Roaring Creek Division, Shenango Valley Division and Susquehanna Division (the operating companies).

Notice of the Application was published in the *Pennsylvania Bulletin* on

September 15, 1998 and in newspapers of general circulation in the service territories of Consumers operating companies.

On September 1, 1998, Pennsylvania-American Water Company (PAWC) filed a Petition for Intervention alleging that the application is unclear as to what effect this would have on PAWC's bulk water rates, the impact this might have on PSC's distribution system improvement charges, and the precise delineation of the service territories involved in the application. On September 21, 1998, the Office of Consumer Advocate (OCA) filed a Protest and Notice of Intervention alleging that the application raised questions surrounding the future "impacts" on consumers of both companies and questions relating to the transfer of responsibilities for certain management services to Consumers operating companies.

The parties initiated settlement negotiations involving the Application and on December 8, 1998, the active parties submitted the attached Joint Petition for Settlement (Joint Petition for Settlement or Petition) which is attached to this Decision. By letter dated December 4, 1998, PAWC indicated it did not oppose approval of the Joint Petition for Settlement. Counsel for PSC stated that all parties have agreed to waive the filing of Exceptions upon approval of the Settlement Agreement as submitted and further requested that the Commission act on the Joint Petition for Settlement at its regularly scheduled Public Meeting on December 17, 1998.

#### FINDINGS OF FACT

Since the parties have amicably resolved the issues and have submitted a Joint

Petition for Settlement of the proceeding, no Findings of Fact have been set forth.

### DISCUSSION

It is the Commission's policy to encourage settlements. See Section 5.231 of the Pennsylvania Code, 52 Pa. Code Section 5.231. All settlements must be reviewed to ensure that the public interest is adequately protected. Upon review of the terms of the settlement, I conclude that approval of the settlement, as submitted, is in the public interest.

The Settlement Petition outlines various terms and conditions which are briefly outlined below. Details of the terms and conditions are contained in the Petition.

First, the Petitioners agreed that the management services agreements between the operating companies and CWC will be assumed by the acquisition and, for three years following consummation of the merger, the operating companies will not seek to include in rates an amount for management services in excess of the level of charges incurred by CWC's operating companies during 1997 for comparable services (page 4 of the Petition).

Second, for accounting purposes, merger costs may be recorded as a deferred debit and amortized by the operating companies and PSC over a period no greater than 10 years. The operating companies and PSC may request recovery of the amount of amortized costs during the test year in a rate future rate proceeding, the amount not to exceed one-tenth of the total deferred merger cost (page 5 of the Petition).

Third, the operating companies and PSC shall file for general rate increases on a consolidated basis. The Petition contemplates special consideration upon completion of

the Shenango Valley Treatment plant, (pages 6-7 of the Petition).

Fourth, the operating companies will implement customer assistance programs (page 7 of the Petition).

Fifth, the operating companies will pursue a least-cost approach to contributions which must be made from bona fide applicants for service (pages 7-8 of the Petition).

Sixth, the parties have agreed to condition the Settlement Agreement on the Commission's approval of all terms and conditions contained in the Petition without modification or amendment. Modification or amendment would permit any party to withdraw from the Petition upon three day written notice (page 8 of the Petition).

In addition, the Petition, at pages 8-10, outlines the public interest considerations for approval of the Settlement Agreement, including: (1) merger-generated economies of scale; (2) a stronger financial profile; (3) moderation of future rate requests; (4) elimination of multiple rate filings (rate zones will be employed initially); (5) no adverse impact on jobs (including local staffing, compensation and benefits); (6) expansion of customer outreach efforts; and, ( 7) avoidance of litigation and associated costs.

For these reasons at least, the settlement is in the public interest and should be approved by the Commission in its entirety. I commend the parties for expeditiously resolving this matter without the need of active litigation before the Commission.

#### ORDER

Therefore, It Is Ordered:

1. That the Petition to Intervene filed by Pennsylvania-American Water

Company is hereby granted.

2. That the Joint Petition for Settlement is approved, in its entirety.

3. That a certificate of public convenience shall be issued, effective immediately, authorizing the transfer, by merger, of a controlling interest in Consumers Water Company's Roaring Creek Division, Shenango Valley Division, and the Susquehanna Division from the Consumer Water Company to Philadelphia Suburban Corporation.

4. That the Commission proceedings at Docket Nos. A-212300, A-212600F0006, A-212370F0048 and A-212750F0006 be marked closed.

DATE: December 9, 1998

*Robert A. Christianson*

ROBERT A. CHRISTIANSON  
CHIEF ADMINISTRATIVE LAW JUDGE

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>JOINT APPLICATION FOR A CERTIFICATE</b>	<b>:</b>	<b>DOCKET NOS. A-212300;</b>
<b>OF PUBLIC CONVENIENCE EVIDENCING</b>	<b>:</b>	<b>A-212600.F0006;</b>
<b>APPROVAL, UNDER SECTION 1102(A)(3)</b>	<b>:</b>	<b>A-212370.F0048;</b>
<b>OF THE PUBLIC UTILITY CODE, OF THE</b>	<b>:</b>	<b>A-212750.F0006</b>
<b>TRANSFER, BY MERGER, OF A CONTROLLING</b>	<b>:</b>	
<b>INTEREST IN THREE OPERATING WATER</b>	<b>:</b>	
<b>UTILITIES FROM CONSUMERS WATER</b>	<b>:</b>	
<b>COMPANY TO PHILADELPHIA SUBURBAN</b>	<b>:</b>	
<b>CORPORATION</b>	<b>:</b>	

**JOINT PETITION FOR SETTLEMENT**

Consumers Pennsylvania Water Company - Roaring Creek Division ("Roaring Creek"), Consumers Pennsylvania Water Company - Shenango Valley Division ("Shenango Valley") and Consumers Pennsylvania Water Company - Susquehanna Division ("Susquehanna") (hereinafter the "Consumers Operating Companies"), Philadelphia Suburban Corporation ("PSC") and the Office of Consumer Advocate ("OCA") (hereinafter collectively the "Joint Petitioners") hereby request that the Commission approve the Application pending at the above-captioned dockets subject to the terms and conditions set forth herein. In support of their request, the Joint Petitioners state as follows:

**I. BACKGROUND**

1. On August 18, 1998, the Consumers Operating Companies and PSC filed a Joint Application pursuant to Section 1102(a)(3) of the Public Utility Code (66 Pa. C.S. § 1102(a)(3)), as interpreted in the Statement of Policy on Utility Stock Transfers at 52 Pa. Code § 69.901, requesting that the Commission issue a certificate of public convenience approving the transfer,

by merger, of a controlling interest in the Consumers Operating Companies from Consumers Water Company ("CWC") to PSC (the "Application").

2. As explained in the Application, the proposed transaction will have no immediate effect on the rates charged or service provided by the Consumers Operating Companies. Local management will remain in place and staffing levels will not be disturbed. Moreover, the Consumers Operating Companies intend to operate as they always have and will continue to be fully subject to all applicable laws, rules and policies governing the regulation of Pennsylvania public utilities. Indeed, the principal change, if the Application is approved, is that ultimate ownership control of the Consumers Operating Companies will reside with PSC, rather than CWC.

3. Notice of the Application was published in the *Pennsylvania Bulletin* on September 5, 1998. In addition, notice was published in newspapers of general circulation in the service territories of the Consumers Operating Companies. On September 21, 1998, the OCA filed a Protest and Notice of Intervention and PAWC filed a Petition for Intervention.<sup>1/</sup>

4. In support of the Application, the Consumers Operating Companies and PSC submitted extensive financial and operating data, including statements of original cost by primary account, balance sheets, income statements and annual reports. Supplemental

---

<sup>1/</sup> PAWC's concerns were later resolved by stipulation following an exchange of information and discussions amongst the parties (*see Stipulation of Settlement*, filed November 30, 1998). In addition, by letter dated December 4, 1998, PAWC advised the Commission that it did not oppose approval of the settlement embodied herein.

information regarding merger costs and merger savings was provided in response to written interrogatories and during two informal discovery conferences.

5. In accordance with the Commission's rules of practice, the Joint Petitioners have held numerous settlement discussions, both in person and telephonically. As a result of those discussions, the Joint Petitioners agree to and request approval of the Settlement proposed herein. Subject to the terms and conditions set forth below, the Joint Petitioners agree that the merger of CWC and PSC, and consequent change in control in the Consumers Operating Companies, is in the public interest and should be approved by the Commission.

## II. THE PROPOSED TRANSACTIONS

6. On August 5, 1998, CWC, PSC and Consumers Acquisition Company ("Acquisition") entered into an Amended and Restated Agreement and Plan of Merger (the "Merger Agreement"), a copy of which is attached to the Application as Exhibit "E". Pursuant to the Merger Agreement, CWC will be merged into Acquisition and Acquisition shall continue as the surviving corporation. As such, the Consumers Operating Companies will become first tier subsidiaries of Acquisition and second tier subsidiaries of PSC. A diagram depicting the combined entity's corporate structure is attached to the Application as Exhibit "F".

7. Under the terms of the Merger Agreement, each share of common stock of CWC, issued and outstanding, will be converted into 1.459 shares of PSC common stock, subject to adjustment as described in Exhibit A to the Merger Agreement. In addition, each share of

preferred stock of CWC, issued and outstanding, will be converted into 5.756 shares of PSC common stock, again subject to adjustment as described in Exhibit A to the Merger Agreement.

8. The Merger Agreement provides for PSC to appoint Acquisition's initial Board of Directors, which, in turn, shall appoint Acquisition's officers. It is anticipated, however, that the Consumers Operating Companies will retain their existing corporate identity and will continue to operate under the guidance and direction of local management.

### III. TERMS AND CONDITIONS

The Joint Petitioners, intending to be legally bound and for due consideration given, agree as follows:

#### A. Affiliate Services And Charges

9. The Joint Petitioners agree that the management services agreements between the Consumers Operating Companies and CWC will be assumed by Acquisition. The Joint Petitioners further agree that, for a period of three years following consummation of the proposed merger, the Consumers Operating Companies shall not seek to include in rates an amount for management services in excess of the level of charges incurred by the Consumers Operating Companies during 1997 for comparable services.

## B. Merger Costs And Savings

10. The Joint Petitioners agree that, for accounting purposes, merger costs may be recorded as a deferred debit and amortized by the Consumers Operating Companies and Philadelphia Suburban Water Company ("PSW"), as the case may be, over a period no greater than ten years, commencing upon consummation of the transactions proposed herein. For purposes of this Joint Petition, "merger costs" shall include those costs incurred directly by and/or allocated to the Consumers Operating Companies and PSW, as generally summarized in Appendix A hereto.

11. The Joint Petitioners agree that, in future rate proceedings, the Consumers Operating Companies and PSW may request recovery of the amount of merger costs amortized during the test year in that rate proceeding, but no more than one-tenth of the total merger costs deferred pursuant to Paragraph 10, *supra*. The Consumers Operating Companies and PSW shall not seek to recover the unamortized balance of the merger costs in rate base, nor otherwise seek to recover a return on that balance. The OCA reserves the right to challenge the level of merger costs, the appropriateness of recovery of such costs through rates, and any other aspect of the ratemaking treatment of merger costs proposed by the Consumers Operating Companies and/or PSW, but agrees that it will not assert, in any future rate proceeding involving the Consumers Operating Companies or PSW, that the recovery of merger costs constitutes unlawful retroactive ratemaking.

12. Subject to the terms and conditions of Paragraph 11, *supra*, the Joint Petitioners agree that, in future rate cases, all savings resulting from the merger shall be flowed through to customers.

**C. Rate Consolidation**

13. The Joint Petitioners believe that the filing of consolidated rate cases will result in substantial savings in litigation expenses to the benefit of all customers and that over the long term, the establishment of uniform, system-wide rates would benefit the customers of both the Consumers Operating Companies and PSW. The Joint Petitioners therefore agree that, following consummation of the merger proposed herein, the Consumers Operating Companies and PSW shall file for general rate increases under Section 1308(d) of the Public Utility Code (66 Pa. Code § 1308(d)) on a consolidated basis.

14. The Joint Petitioners acknowledge that completion of the Shenango Valley Treatment Plant, under normal circumstances, would trigger a significant general rate increase request for Shenango Valley if its rates continued to be set on a stand-alone basis. The Joint Petitioners therefore agree that the next general rate increase request by Shenango Valley shall be made in the context of a consolidated rate filing, as authorized by Paragraph 13, *supra*, and that efforts will be made in that filing to moderate the rate impact on Shenango Valley's customers.

15. In recognition of Shenango Valley's commitment to refrain from filing a stand-alone rate case, the Joint Petitioners agree that Shenango Valley, for a period of up to six months following completion and placement in service of the Shenango Valley Treatment Plant, shall be

permitted to (a) continue to accrue an allowance for funds used during construction (AFUDC") and (b) defer recording of depreciation expense on its investment in that facility. The OCA further agrees that it will not oppose the recovery of such post in-service AFUDC accruals and depreciation deferrals in future rate proceedings, to the extent that PSW has not achieved the Commission-authorized rate of return for Distribution System Improvement Charge purposes during the deferral period.

**D. Customer Assistance**

16. The Consumers Operating Companies agree to implement customer assistance programs ("CAPs") modelled after PSW's existing "A Helping Hand" program. The CAPs shall commence upon the conclusion of the next general rate proceeding. A plan for the Consumers Operating Companies' CAPs shall be filed with the next general rate filing.

**E. Extension Of Service**

17. In complying with the Commission's main extension rules and regulations (52 Pa. Code §§ 65.21 *et seq.*), the Consumers Operating Companies agree to pursue a least-cost strategy in quantifying the dollar amount, if any, that a *bona fide* applicant for service must contribute. In calculating the required contribution from *bona fide* applicants for service, the Consumers Operating Companies shall not include plant costs in excess of those reasonably necessary to serve such applicants and shall exclude the costs of plant intended to serve future customers. In addition, in calculating the *bona fide* applicants' required contribution, the Consumers Operating Companies shall take into account the annual operating revenues to be

derived from other customers who have committed to receive service from the proposed main extension.

**F. Complete Agreement; No Modifications**

18. This Joint Petition, resulting from extensive discovery and discussions, and reflecting compromises by all sides, is being proposed by the Joint Petitioners to settle the instant case and is made without any admission against, or prejudice to, any positions which any Joint Petitioner might adopt during any subsequent litigation of this proceeding (should the Joint Petition not be accepted in full), or in any other proceeding. The Joint Petition is conditioned upon and subject to the Commission's expeditious acceptance, approval, and adoption of the terms and conditions contained herein without modification or amendment. If the Commission withholds such approval as to any of the terms and conditions, or alters any of the terms and conditions, any party may withdraw from the Joint Petition upon written notice of its intent to the Commission and the remaining parties within three business days of the date of the Commission's decision and proceed with the litigation of this proceeding within ten days of the entry of the Order making such modifications.

**IV. PUBLIC INTEREST CONSIDERATIONS**

The Joint Petitioners submit that this Settlement is in the public interest and should be approved in full for the following reasons:

19. **Merger-Generated Economies.** The Applicants anticipate that the merger will produce benefits in the form of economies of scale and scope. As the second largest investor-owned water utility system in the country (based on market capitalization), the Applicants expect the combined entity to enjoy increased purchasing power. At the same time, certain duplicative administrative functions will be eliminated.

20. **Stronger Financial Profile.** The Applicants anticipate that the combined entity will have a stronger financial profile (i.e. a market capitalization in excess of \$800 million), a more diverse customer base and, arguably, less exposure to extreme weather conditions. These attributes should enhance the ability of PSC and the Consumers Operating Companies to access the capital markets on reasonable terms.

21. **Moderation Of Future Rate Requests.** The proposed transaction will have no immediate impact on the rates charged customers of the Consumers Operating Companies or, for that matter, PSW's existing customers. The rates, rules, regulations, and terms and conditions of service in effect on the date of closing will not change as a result of the merger. Going forward, however, the Applicants believe that merger-generated economies may help to partially offset the ongoing rise in the cost of providing water service in the future and thereby moderate somewhat the magnitude of future rate increase requests.

22. **Elimination Of Multiple Rate Filings.** The Settlement requires the Consumers Operating Companies and PSW to submit general rate increase requests on a consolidated basis. The ability to do so will not and is not intended to eliminate, at least in the short-term, all rate

differences between Roaring Creek, Shenango Valley, Susquehanna and PSW. However, by filing on a consolidated basis (but initially retaining separate rate zones), the Consumers Operating Companies and PSW will reduce from four to one the number of rate requests reviewed by the Commission, thereby conserving valuable administrative resources. In addition, in appropriate proceedings and over an appropriate period of time, the Joint Petitioners will evaluate the reasonableness and feasibility of moving toward a single statewide tariff.

23. **No Adverse Impact On Jobs.** The proposed transaction will have no immediate impact on jobs in Pennsylvania -- no changes in local staffing, compensation or benefits are anticipated at the present time. Rather, customers of the Consumers Operating Companies will continue to be served by the same employees who serve them today. Moreover, the Applicants anticipate that employees of both organizations (PSC and CWC) should benefit from the expanded growth opportunities offered by the combined entity.

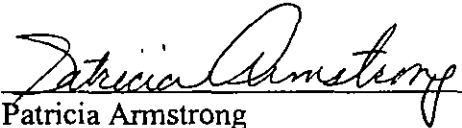
24. **Expansion Of Customer Outreach Efforts.** The implementation of CAPs for customers of the Consumers Operating Companies will provide relief to low-income customers of those companies.

25. **Avoidance Of Litigation And Associated Costs.** Approval of the Settlement proposed herein will avoid the necessity for further administrative proceedings and incurrence of the costs occasioned thereby.

## V. CONCLUSION

WHEREFORE, the Joint Petitioners, intending to be legally bound, respectfully request that the Commission (1) approve this Joint Petition, (2) issue a certificate of public convenience authorizing the transfer, by merger, of a controlling interest in the Consumers Operating Companies from CWC to PSC and (3) terminate and mark closed the proceedings at Docket Nos. A-212300, A-212600.F0006, A-212370.F0048 and A-212750.F0006.

Respectfully submitted,



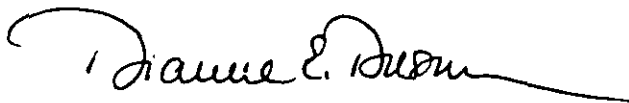
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Dated: December 8, 1998

**APPENDIX "A"**

**PSC / CONSUMERS PA WATER COMPANY  
Reorganization Costs of Merger**

			Costs to- date	Total Anticipated
<b>Transaction Costs</b>				
<b>Investment Bankers</b>				
	Smith Barney	Fees	50,000	\$ 1,300,000
		Expenses	0	75,000
	Barr Devlin	Fees	747,500	2,600,000
		Expenses	4,264	75,000
Legal	Merger Related	Fees	325,405	400,000
Accounting		Fees	56,000	125,000
Hart, Scott, Rodino Filing			45,000	40,000
			<u>\$ 1,228,169</u>	<u>\$ 4,615,000</u>
<b>System Integration Costs</b>				
Legal	State Regulatory Approvals		\$ 136,632	\$ 500,000
Severance	Corporate Officers		0	2,130,000
	Corporate Staff		0	101,000
Retention Bonuses & Consulting Agreements			0	555,000
Travel & Related Costs			49,656	40,000
Close Portland Office			-	1,025,000
Other Miscellaneous Costs			43,616	-
			<u>\$ 229,904</u>	<u>\$ 4,351,000</u>
Tax Benefit			0	(939,800)
			<u>229,904</u>	<u>\$ 3,411,200</u>
<b>Total Reorganization Costs</b>			<u><u>\$ 1,458,073</u></u>	<u><u>\$ 8,026,200</u></u>
Total Customers After Merger		523,000		
Total Consumers Pennsylvania Customers		40,000		
Consumers Pennsylvania Portion of Merger Costs				<u><u>\$ 613,900</u></u>
Total PSW Customers		300,000		
PSW Portion of Merger Costs				<u><u>4,603,900</u></u>

## CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of December, 1998 served a true copy of the foregoing Joint Petition For Settlement upon the participants listed below, in accordance with the requirements of 52 Pa. Code § 1.54 and § 5.41(b):


### BY HAND DELIVERY

Patricia Armstrong, Esquire  
D. Mark Thomas, Esquire  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street  
Harrisburg, PA 17108-9500

John J. Gallagher, Esquire  
Zsuzsanna E. Benedek, Esquire  
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Dianne E. Dusman, Esquire  
Assistant Consumer Advocate  
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555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1921

Date: December 8, 1998



Thomas P. Gadsden

MORGAN, LEWIS & BOCKIUS LLP  
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Philadelphia, PA 19103-2921  
(215-963-5234)

Cindy Parks, *et al.*

v.

Pennsylvania-American Water Company  
Docket No. C-00015337, *et al.*

Joint Application for a Certificate of Public Convenience  
Evidencing Approval Under Section 1102(a)(3) of the  
Public Utility Code, of the Transfer, By Merger, of a  
Controlling Interest In Three Operating Utilities from  
Consumers Water Company to Philadelphia Suburban  
Corporation

Docket Nos. A-212370F0048, A-212300, A-  
212600F0006 and A-212750F0006

Order

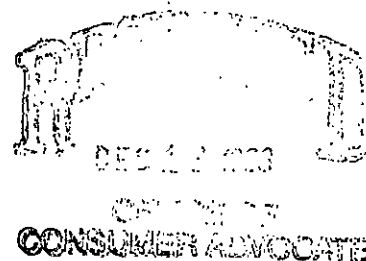
Dated entered: December 18, 1998

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held December 17, 1998

Commissioners Present:

John M. Quain, Chairman  
Robert K. Bloom, Vice Chairman  
David W. Rolka  
Nora Mead Brownell  
Aaron Wilson, Jr.



Joint Application for a Certificate of Public Convenience Evidencing Approval Under Section 1102(a)(3) Of The Public Utility Code, Of The Transfer, By Merger, Of A Controlling Interest In Three Operating Water Utilities From Consumers Water Company to Philadelphia Suburban Corporation      A-212370F0048, A-212300  
A-212600F0006, A-212750F0006

**O R D E R**

BY THE COMMISSION:

We adopt as our action the Initial Decision of Chief Administrative Law Judge Robert A. Christianson dated December 9, 1998; THEREFORE,

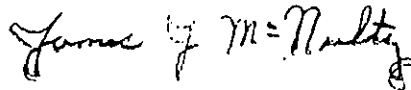
IT IS ORDERED:

1. That the Petition to Intervene filed by Pennsylvania-American Water Company is hereby granted.
2. That the Joint Petition for Settlement is approved, in its entirety.

3. That a certificate of public convenience shall be issued, effective immediately, authorizing the transfer, by merger, of a controlling interest in Consumers Water Company's Roaring Creek Division, Shenango Valley Division, and the Susquehanna Division from the Consumer Water Company to Philadelphia Suburban Corporation.

4. That the Commission proceedings at Docket Nos. A-212300, A-212600F0006, A-212370F0048 and A-212750F0006 be marked closed.

BY THE COMMISSION,



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: December 17, 1998

ORDER ENTERED: **DEC 18 1998**

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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I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Main Brief, 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 10th day of February, 2003.

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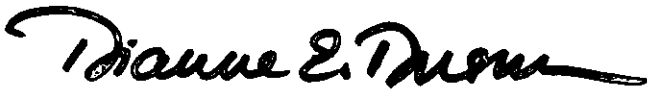
Robert M. Ross, President  
Susan Simms Marsh, Esq.  
Pennsylvania-American Water Company  
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Hershey, PA 17033

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