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ORIGINAL
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October 7, 2005

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

VIA HAND DELIVERY

**Re: Vincent V. Horvath, et al. v. Utilities, Inc.-Westgate;
Docket Nos. C-20055305, et al.**

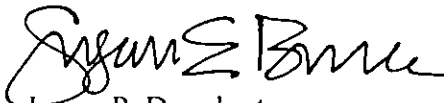
Dear Secretary McNulty:

On behalf of Utilities, Inc.-Westgate, enclosed for filing with the Commission are an original and three (3) copies of the Answer and Motion to Dismiss in the above-captioned proceedings.

Please date stamp the enclosed copy of this letter and kindly return it for our filing purposes. If you have any questions concerning this filing, please contact the undersigned. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
James P. Dougherty
Susan E. Bruce

Counsel to Utilities, Inc.-Westgate

**DOCUMENT
FOLDER**

JPD:mas
Enclosures
c: Certificate of Service

SECRETARY'S BUREAU

2005 OCT - 7 PM 3:46

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ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

VINCENT V. HORVATH;	:	Docket Nos.	C-20055305;
SANDY & VICTOR BERKEY;	:		C-20055316;
RICHARD E. & JULIETTE A. LAURY;	:		C-20055317;
PARVEEN & PRAMILA GUPTA;	:		C-20055318;
ARMANDO VILLANI;	:		C-20055319;
ANTHONY A. STROBEL;	:		C-20055320;
ELAINE D. HOKENSON;	:		C-20055321;
GEORGE J. RAYKOS;	:		C-20055324;
MR. & MRS. JOHN HORVATH;	:		C-20055346;
JEFFREY B. BENNER; and	:		C-20055374;
FLOYD & DOLORES KENNEDY	:		C-20055392

Complainants,

v.

UTILITIES, INC.-WESTGATE,

Respondent,

SECRETARY'S BUREAU

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ANSWER AND MOTION TO DISMISS

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to Sections 5.61, 5.62 and 5.101 of the Commission's Regulations, 52 Pa. Code §§ 5.61, 5.62 and 5.101, Utilities, Inc.-Westgate ("Respondent" or "Company"), by its attorneys, hereby answers the Complaints filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") as captioned above, and raises new matter in moving to dismiss the Complaints. Respondent collectively answers the Complaints captioned above because the Complaints raise similar issues of fact and request similar relief. In support thereof, Respondent avers as follows:

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FOLDER**

I. ANSWER

1. Respondent accepts, but neither admits nor denies, the names, addresses and telephone numbers of Complainants.

2. Admitted. By way of further answer, the full and correct name of Respondent is "Utilities, Inc.-Westgate."

3. Admitted to the extent that Respondent does in fact provide water service to the Westgate Community.

4. Respondent responds to the allegations in Paragraph 4 of the Complaints as follows. To the extent any allegations in the Complaints are not specifically admitted below, those allegations are hereby denied.

A. Complainants collectively raise claims regarding water quality. Respondent notes that not one formal customer complaint regarding water quality, or any other matter, was received during the Company's last base case, which concluded in 2004. Respondent continues to work with the Office of Consumer Advocate ("OCA") regarding certain informal complaints filed with the Bureau of Consumer Services. See attached Exhibit A. In fact, many of the Complainants referenced in the instant Answer filed almost identical Informal Complaints with the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Bureau of Consumer Services ("BCS"). As indicated in Exhibit A, Respondent continues its response and exploration of alternatives to issues raised in these Informal Complaints. Furthermore, Respondent respectfully brings to the Commission's attention Respondent's "Certificate of Recognition" from the Pennsylvania Department of Environmental Protection ("DEP") for "meeting all MCL monitoring,

reporting and treatment technique performance requirements under the Safe Drinking Water Program during 2004." See attached Exhibit B.

B. Respondent neither admits nor denies the specific allegations to the extent that they exist in Paragraph 4, subsection B, of the Complaints and Respondent demands strict proof thereof. Complainants broadly state that "the quality of the water is questionable," and complain specifically of "hard water causing damage to appliances and plumbing." See, e.g., Complaint of Richard E. and Juliette A. Laury; see, e.g., Complaint of Jeffrey B. Benner. Respondent respectfully points out that not one of the ten separate, but remarkably similar, complaints offers any type of evidence or documentation in support of their claims. Complainants offer no tangible proof demonstrating a violation of the Public Utility Code, the Commission's Regulations, the Pennsylvania Safe Drinking Water Act ("SDWA"), or the Federal Safe Drinking Water Act. See 66 Pa. C. S. § 1501; 35 P.S. §§ 721.1-721.17; see also 42 U.S.C. §§ 300(f)-300(j)-10.

5. The allegations in Paragraph 5 of the Complaints constitute a claim for relief to which a responsive pleading is not required. By way of further answer, however, Respondent challenges the economic feasibility of granting the requested relief, and as discussed more fully in the Motion to Dismiss, infra, Respondent avers that the Commission lacks the authority to grant Complainants' relief in these matters. Complainants unanimously request that Respondent interconnect with Bethlehem City for water supply. Complainants incorrectly claim that "this solution would provide better water at lower total cost." See Complaint of Vincent V. Horvath. As a good faith effort to explore options and alternatives, Respondent has been working with the OCA and has recently conducted an economic analysis of a variety of supply alternatives. See attached

Exhibit C. The focal point in this analysis was possible interconnection with Bethlehem City for water supply. The analysis indicates that the Complainants' requested relief would result in a substantial increase in water rates, under both the current, as well as the proposed, City of Bethlehem rates.¹ Respondent is unwilling to pursue this alternative absent further analysis of any operational issues and PUC direction and endorsement of the proposed rate impact. Respondent recognizes, however, that Complainants believe service problems exist. Respondent remains willing to continue working with customers to develop possible alternative, cost-effective solutions to any of their perceived quality or service problems.

II. NEW MATTER: MOTION TO DISMISS

6. Respondent hereby incorporates Paragraphs 1-5 by reference.

7. On September 19, 21, 23, 29, and October 7, 2005, Complainants filed Formal Complaints, as captioned above, with the Commission regarding water quality in the Respondent's service area. These complaints alleged that "the [Respondent's] quality of the water is questionable," and complain specifically of "hard water causing damage to appliances and plumbing." See, e.g., Complaint of Richard E. and Juliette A. Laury; see, e.g., Complaint of Jeffrey B. Benner. As relief, the Complainants requested that the Commission require Respondent to interconnect with Bethlehem City Water.

8. Commission regulations and precedent establish that a Motion to Dismiss may be granted when a pleading is insufficient as to substance and insufficient to establish the Complainant's right to relief. 52 Pa. Code 5.101(a)(3); Yesteryear Corp. v. Philadelphia Electric Company, 1992 Pa. P.U.C. LEXIS 106, Aug. 26, 1992, Docket No. F-9245681. Under Commission precedent, a dismissal is warranted when a complaint regarding water service does not aver sufficient facts to

¹ On June 29, 2005, the City of Bethlehem filed with the Commission a proposed rate increase of approximately 15%. By Order on August 25, 2005, the Commission instituted an investigation that is still ongoing at Docket No. R-00050680.

warrant a violation of the Public Utility Code. See Clinical Trial Services v. Audubon Water Company, Docket No. C-20016403 (Dec. 19, 2002) (dismissing a complaint on the basis that the Complainants failed to raise water quality issues during a recent base case and did not aver sufficient facts regarding water quality to warrant a hearing). As stated in Respondent's Answer, supra, Complainants fail to provide any type of evidentiary support for their claims. The Complaints are insufficient as to substance, and thus insufficient to establish the Complainants' right to relief; therefore, the Complaints must be dismissed.

9. Respondent recognizes that a bright-line of demarcation does not exist between the Commission's jurisdiction relating to the adequacy and reasonableness of water service, and DEP's jurisdiction relating to water quality standards. See, e.g., Clinical Trial Services v. Audubon Water Company, Docket No. C-20016403 (Dec. 19, 2002); see also Rovin v. Pennsylvania Public Utility Commission, 502 A.2d 785, 94 Pa. Commw. 71 (1986). Respondent also recognizes that the Commission has in recent years expanded the scope of its jurisdiction in these areas under Section 1501 of the Public Utility Code. See Redstone Water Company, Docket Nos. C-00992270, et al. (June 23, 2005). Respondent respectfully points out that under 71 P.S. § 510-18, DEP is vested with the responsibility of establishing and regulating the water quality standards of all public utilities regulated by the Commission. As stated in Respondent's Answer, supra, Respondent complies with all DEP regulations and has received a "Certificate of Recognition" for "meeting all MCL monitoring, reporting and treatment technique performance requirements under the Safe Drinking Water Program during 2004." See attached Exhibit B. Complainants even state that they "know the water[] quality on the books is ample." See, e.g., Complaint of Mr. and Mrs. John Horvath. As such, these Complaints must be dismissed.

10. Respondent further avers that, as in Clinical Trial Services, Complainants here too had an opportunity during Respondent's most recent base case to bring their concerns to the attention of the Commission. As noted in Respondent's Answer, supra, not a single formal complaint,

regarding water quality or anything else, was filed with the Commission during that time. Respondents, therefore, respectfully request the Commission dismiss the instant Complaints, consistent with Commission precedent in Clinical Trial Services.

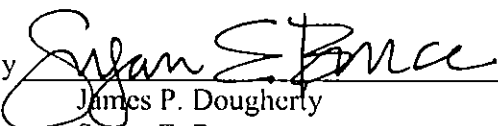
11. Further, Respondent has not yet fully completed the analysis promised in response to Informal Complaints filed by many of the same Complainants. Until and unless that analysis, conducted in conjunction with the OCA, is completed and fully reviewed, no party may state with specificity the viability or reasonableness of any response by the Company. Accordingly, Respondent respectfully requests that the Complaints at the instant docket be dismissed, without prejudice, pending the results of the ongoing analysis.

12. For the above-mentioned reasons, the Complaints are insufficient to establish the Complainants' right to relief and, therefore, must be dismissed.

WHEREFORE, Utilities, Inc.-Westgate respectfully requests that this Honorable Commission dismiss the Complaints of Vincent V. Horvath, et al., at Docket Nos. C-20055305, et al.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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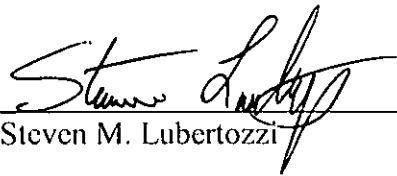
Counsel to Utilities, Inc.-Westgate

Dated: October 7, 2005

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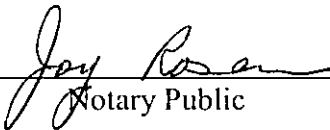
STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

STEVEN M. LUBERTOZZI, being duly sworn according to law, deposes and says that he is Director, Regulatory Accounting of UTILITIES, INC., and, that in this capacity he is authorized to and does make this affidavit for them, and that the facts set forth in the foregoing Answer and Motion to Dismiss are true and correct to the best of his knowledge, information and belief.



Steven M. Lubertozzi

SWORN TO and subscribed
before me this 6TH day
of October, 2005.



Notary Public

(SEAL)





McNees Wallace & Nurick LLC
attorneys at law

Exhibit A

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SECRETARY'S BUREAU

JAMES P. DOUGHERTY
DIRECT DIAL: (717) 237-5249
E-MAIL ADDRESS: JDOUGHERTY@MWN.COM

July 25, 2005

Mr. Peter L. Frederick
Bureau of Consumer Services
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

Re: Case Nos. 1901394, 1903144, 1903252, 1903295

Dear Mr. Frederick:

We are writing on behalf of our client Utilities, Inc.-Westgate ("Westgate"), and we are responding to the above-referenced complaints that speak generally of "hard water" and other water quality issues (e.g., water damage to bathroom fixtures, appliances and "pipes"). Several of these complaints also, either directly or obliquely, reference pressure problems. Please be advised that we are now working on a consolidated strategy that will address these issues and any other similar issues within the Westgate service territory.

Specifically, we have met with representatives of the Office of Consumer Advocate ("OCA"). This July 7 meeting included OCA attorneys Dianne Dusman, Chris Hoover and Erin Gannon. At this meeting, Westgate agreed to provide to the Consumer Advocate a Westgate cost benefit analysis to explore source alternatives. Specifically, the projected study will explore utilization of existing interconnections between the Westgate distribution system and the City of Bethlehem. Additionally, the cost benefit analysis will factor projected costs of water softeners or other system equipment that will ease customer water quality concerns. We have committed to provide this study to the Consumer Advocate's office within 30 days. Shortly thereafter, we plan to discuss with the Consumer Advocate and its technical staff which of the outlined options are viable and would produce a reasonable cost benefit. We will promptly advise the BCS of this meeting's outcome.

Additionally, we discussed with OCA representatives the formation of a Customer Advisory Board ("CAB"). The other two Utilities, Inc., Pennsylvania operating companies, Broad Run and Penn Estates, currently utilize a Customer Advisory Board. Essentially, the CAB is composed of representatives of the utility and concerned citizens and provides a consistent framework through quarterly meetings for customers to raise concerns directly with water company representatives. We feel that better communication between customers and Westgate representatives would have lessened or eliminated some of these

Mr. Peter L. Frederick
July 25, 2005
Page 2

problems. Recall that in the 2003/2004 Westgate base rate case before the PaPUC, not one formal customer complaint was filed regarding water quality.

If you have any questions regarding Westgate's response in general or specifically as it pertains to water quality or the proposed Customer Advisory Board, please contact us. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
James P. Dougherty

JPD:mas

c: Dianne Dusman, Esq., Office of Consumer Advocate
Christine M. Hoover, Esq., Office of Consumer Advocate
Erin L. Gannon, Esq., Office of Consumer Advocate

Certificate of Recognition

The Pennsylvania

Department of Environmental Protection



Under the Safe Drinking Water Program during 2004

PWS ID# 348004

[Signature]

 Director, Chief
 Division of Drinking Water Management
 Bureau of Water Supply and Wastewater Management

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CONFIDENTIAL

Utilities, Inc.-Westgate
Economic Analysis of Supply Alternatives
Cost Study

September 12, 2005

I. Introduction

The cost analysis contained herein was performed pursuant to an agreement between Utilities, Inc.-Westgate ("Westgate") and the Office of Consumer Advocate ("OCA") in which Westgate committed to explore cost-effective actions to eliminate or reduce customers' perceived unhappiness with water quality. By way of background, approximately seven Utilities Inc.-Westgate customers filed informal complaints with the Pennsylvania Public Utility Commission ("PUC") Bureau of Consumer Services ("BCS") in which they reference generally "hard water" as well as the alleged associated impact of the hard water on faucets, showerheads, and other appliances. Pursuant to these informal complaints, the Consumer Advocate investigated these concerns and found that Maximum Contaminant Level ("MCL") for total dissolved solids, a secondary contaminant, exceeded Pennsylvania Department of Environmental Protection ("DEP") and U.S. Environmental Protection Agency ("EPA") guidelines. While the OCA findings are somewhat surprising considering Utilities, Inc.-Westgate's own analysis as well as DEP "recognition" for "meeting all MCL monitoring, reporting and treatment technique performance requirements under the Safe Drinking Water Program during 2004" (see Exhibit A), Utilities, Inc.-Westgate nonetheless committed to explore supply alternatives.¹

At a July 7 meeting at the OCA offices to discuss this matter, Utilities, Inc.-Westgate committed to explore all possible alternatives to resolve this problem. However, in the subsequent weeks and in consultation with the Consumer Advocate representatives, Utilities, Inc. narrowed its focus to an exclusive alternative that involves bulk water purchase from the City of Bethlehem, an adjacent certificated provider that has represented that it has excess capacity (see Exhibit B). Westgate is prepared to furnish cost summaries of other alternatives considered in its original analysis (e.g., filtration, etc.).

Accordingly, the enclosed analysis shows an approximate rate impact under both current and proposed City of Bethlehem rates to furnish water from the City of Bethlehem to Westgate customers.² Further, in previous correspondence, the City of Bethlehem representatives indicated that water would be available for purchase by Utilities, Inc.-Westgate only at the currently tariffed Sale for Resale rates (see Exhibit C).

The enclosed data indicates that Utilities, Inc.-Westgate customers would experience a significant rate increase if the City of Bethlehem supply option is implemented.

¹ Similarly, during the Company's last base case, filed in 2003 and concluded in 2004 through a Joint Settlement Stipulation that ultimately was endorsed by both the Administrative Law Judge and the PUC, not one customer complaint regarding water quality, or any other matter, was received.

² The City of Bethlehem recently filed a base case before the PUC in which it seeks an approximate 15% across-the-board increase in rates.

Utilities, Inc. - Westgate [Current Rates]
 Economic Analysis of Potential Interconnection
 As of 12/31/04

Schedule 1

<u>Rate Base</u>		
(1) UPIS Retirement, Net of CIAC	\$ (140,601)	
(2) A/D Retirement, Net of CIAC Amortization	6,397	
(3) Pro Forma UPIS Required	65,000	
(4) Pro Forma A/D	(1,745)	
(5) Net Change in Rate Base	<u>(70,949)</u>	
(6) Return on Rate Base	8.02%	
(7) Net Income	(5,690)	
(8) Revenue Multiplier	1.6954	
(9) Change in Revenue		(9,647)
<u>Operation & Maintenance Expense</u>		
(10) Purchased Power	(8,357)	
(11) Chemicals	(1,107)	
(12) Transportation	(3,577)	
(13) Oper. Salary	(10,293)	
(14) Taxes & Benefits	(4,764)	
(15) Change in O & M	<u>(28,097)</u>	
(16) Revenue Multiplier	1.0072	
(17) Total change in O & M		(28,298)
<u>Depreciation</u>		
(18) Pro Forma Depreciation	1,745	
(19) Extraordinary Depreciation	18,222	
(20) Retirement Depreciation, Net of CIAC Amortization	(3,774)	
(21) Change in Depreciation	<u>16,193</u>	
(22) Revenue Multiplier	1.0072	
(23) Total change in depreciation		<u>16,309</u>
(24) Total Estimated Revenue Change		(21,636)
(25) City of Bethlehem Consumption Charge		165,664
(26) Total Estimated Additional Revenue Requirement		144,028
(27) Westgate's Annual Revenues as of 12/31/04		213,485
(28) Percent increase to current revenues		67.47%

Utilities, Inc. - Westgate [Current Rates]
Economic Analysis of Potential Interconnection
As of 12/31/04

Schedule 1

Notes

- (1) Schedule 2, Column (h), Row (18)
- (2) Schedule 2, Column (i), Row (18)
- (3) Estimated costs to complete interconnection and install hydropneumatic tanks
- (4) (3) * Schedule 3, Column (h), Row (4) / Schedule 3, Column (h), Row (1)
- (5) (1) + (2) + (3) + (4)
- (6) UI's operating subsidiaries most recent authorized rate of return
- (7) (5) * (6)
- (8) Schedule 4, Row (10)
- (9) (7) * (8)
- (10) Per 12/31/04 trial balance * -75% to account for reduction
- (11) Per 12/31/04 trial balance
- (12) Per 12/31/04 trial balance * -50% to account for reduction
- (13) Per 12/31/04 trial balance * -50% to account for reduction
- (14) Per 12/31/04 trial balance * -50% to account for reduction
- (15) (10) + (11) + (12) + (13) + (14)
- (16) Schedule 4, Row (1)/Schedule 4, Row (5)
- (17) (16) * (17)
- (18) (4)
- (19) Schedule 3, Column (h), Row (11)
- (20) Schedule 3, Column (h), Row (4)
- (21) (18) + (19) + (20)
- (22) Schedule 4, Row (1)/Schedule 4, Row (5)
- (23) (21) * (22)
- (24) (9) + (17) + (24)
- (25) (\$975*12)+(\$3.06/1,000*50,315,002) [Based on prior rate case consumption]
- (26) (24) + (25)
- (27) Per 12/31/04 trial balance
- (28) (26) / (27)

Utilities, Inc. - Westgate
Economic Analysis of Potential Interconnection
As of 12/31/04

Schedule 2

	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
	<u>UPIS</u>	<u>A/D</u>	<u>Net Plant</u>	<u>CIAC</u>	<u>AACIAC</u>	<u>Net CIAC</u>	<u>Percent Retired</u>	<u>Plant Retired</u>	<u>A/D Retired</u>	<u>Net Plant Retired</u>
(1) Organization	\$ 73,466	\$ 3,913	\$ 69,553	\$ -	\$ -	\$ -	0%	\$ -	\$ -	\$ -
(2) Franchises	6,608		6,608	-	-	-	0%	-	-	-
(3) Land & Land Rights	1,000		1,000	396	-	396	0%	-	-	-
(4) Struct - Source of Supply	17,490	1,456	16,034	6,919	824	6,095	50%	5,285	316	4,970
(5) Struct - Pump Plant	14,763	142	14,622	5,840	80	5,760	100%	8,923	62	8,861
(6) Struct - Water Treatment	21,075	1,946	19,129	8,337	1,102	7,236	100%	12,738	844	11,893
(7) Electric Pumping Eqpt.	47,280	6,056	41,224	18,704	3,429	15,276	100%	28,576	2,627	25,948
(8) Wells & Springs	85,025	3,351	81,674	33,636	1,897	31,739	100%	51,389	1,454	49,935
(9) Water Treatment Eqpt.	4,284	260	4,024	1,695	147	1,548	100%	2,589	113	2,477
(10) Distrib. Resv. & Standpipes	51,458	2,263	49,196	20,357	1,281	19,076	100%	31,101	982	30,120
(11) Tran. & Distrib. Mains	460,718	303,516	157,202	182,262	171,834	10,428	0%	-	-	-
(12) Service Lines	55,301	2,275	53,025	21,877	1,288	20,589	0%	-	-	-
(13) Meters	69,485	5,711	63,774	27,489	3,233	24,255	0%	-	-	-
(14) Meter Installations	1,044		1,044	413	-	413	0%	-	-	-
(15) Hydrants	11,196	426	10,770	4,429	241	4,188	0%	-	-	-
(16) Office Furniture & Equipment	11,954	1,993	9,961	-	-	-	0%	-	-	-
(17) Tools Shop & Misc. Eqpt.	16,644	3,657	12,987	-	-	-	0%	-	-	-
(18) Total	\$ 948,792	\$ 336,966	\$ 611,826	\$ 332,355	\$ 185,357	\$ 146,998		\$ 140,601	\$ 6,397	\$ 134,204

Notes

- (a) Source 12/31/04 trial balance
- (b) Source 12/31/04 trial balance
- (c) (a) - (b)
- (d) Source 12/31/04 trial balance - Allocated based on plant balances
- (e) Source 12/31/04 trial balance - Allocated based on Accum. Depre. balances
- (f) (d) - (e)
- (g) Estimate based on assumed interconnection
- (h) [(a) - (d)] * (g)
- (i) [(b) * (e)] * (g)
- (j) (h) - (i)

Utilities, Inc. - Westgate
Economic Analysis of Potential Interconnection
As of 12/31/04

Schedule 3

	(a) Struct - Source of Supply	(b) Struct - Pump Plant	(c) Struct - Water Treatment	(d) Electric Pumping Eqpt.	(e) Wells & Springs	(f) Water Treatment Eqpt.	(g) Distrib. Resv. & Standpipes	(h) Total
(1) Original Cost:	5,285	8,923	12,738	28,576	51,389	2,589	31,101	140,601
(2) Accumulated Depreciation:	316	62	844	2,627	1,454	113	982	6,397
(3) Cost of Removal:	5,000	2,500	7,500	2,500	2,500	7,500	2,500	30,000
(4) Annual Depreciation Expense:	176	178	424	817	1,470	86	622	3,774
(5) Net Loss:	10,601	11,484	21,082	33,703	55,343	10,202	34,583	176,999
(6) Rate of Return on Rate Base:	8.02%	8.02%	8.02%	8.02%	8.02%	8.02%	8.02%	8.02%
(7) Return on Rate Base	850	921	1,691	2,703	4,438	818	2,774	14,195
(8) Annual Depreciation Expense	176	178	424	817	1,470	86	622	3,774
(9)	<u>1,026</u>	<u>1,100</u>	<u>2,115</u>	<u>3,520</u>	<u>5,908</u>	<u>904</u>	<u>3,396</u>	<u>17,969</u>
(10) Ratio [(5):(9)]	<u>10.00</u>	<u>10.00</u>	<u>10.00</u>	<u>10.00</u>	<u>9.00</u>	<u>11.00</u>	<u>10.00</u>	
(11) Annual Amortization Expense	\$ 1,060	\$ 1,148	\$ 2,108	\$ 3,370	\$ 6,149	\$ 927	\$ 3,458	\$ 18,222

Notes:

- (1) Schedule 2, Column (h) - This is net of CIAC
- (2) Schedule 2, Column (i) - This is net of CIAC
- (3) Cost of removal of equipment currently in service
- (4) Per class of asset depreciation rates
- (5) (1) + (2) + (3)
- (6) UI's most recent approved return on rate base
- (7) (5) * (6)
- (8) (4)
- (9) (7) + (8)
- (10) (5)/(9)
- (11) (5)/(10)

Utilities, Inc. - Westgate
Economic Analysis of Potential Interconnection
As of 12/31/04

Schedule 4

Revenue Multiplier

(1)	Revenue		100.00
(2)	GR Tax	0.70%	0.70
(3)	Franchise Tax	0.00%	-
(4)	Uncollectible Exp.	0.01%	<u>0.01</u>
(5)	State Taxable Income		99.29
(6)	State Income Tax	9.99%	<u>9.92</u>
(7)	Federal Taxable Income		89.37
(8)	Federal Income Tax	34.00%	<u>30.39</u>
(9)	Net Income		58.98
(10)	Revenue/Income		1.6953516

Notes

Percentages from Westgate's prior rate case

Utilities, Inc. - Westgate [Proposed Rates]
Economic Analysis of Potential Interconnection
As of 12/31/04

Schedule 1

<u>Rate Base</u>		
(1) UPIS Retirement, Net of CIAC	\$ (140,601)	
(2) A/D Retirement, Net of CIAC Amortization	6,397	
(3) Pro Forma UPIS Required	65,000	
(4) Pro Forma A/D	(1,745)	
(5) Net Change in Rate Base	<u>(70,949)</u>	
(6) Return on Rate Base	8.02%	
(7) Net Income	(5,690)	
(8) Revenue Multiplier	1.6954	
(9) Change in Revenue		(9,647)
<u>Operation & Maintenance Expense</u>		
(10) Purchased Power	(8,357)	
(11) Chemicals	(1,107)	
(12) Transportation	(3,577)	
(13) Oper. Salary	(10,293)	
(14) Taxes & Benefits	(4,764)	
(15) Change in O & M	<u>(28,097)</u>	
(16) Revenue Multiplier	1.0072	
(17) Total change in O & M		(28,298)
<u>Depreciation</u>		
(18) Pro Forma Depreciation	1,745	
(19) Extraordinary Depreciation	18,222	
(20) Retirement Depreciation, Net of CIAC Amortization	(3,774)	
(21) Change in Depreciation	<u>16,193</u>	
(22) Revenue Multiplier	1.0072	
(23) Total change in depreciation		<u>16,309</u>
(24) Total Estimated Revenue Change		(21,636)
(25) City of Bethlehem Consumption Charge		190,519
(26) Total Estimated Additional Revenue Requirement		168,883
(27) Westgate's Annual Revenues as of 12/31/04		213,485
(28) Percent increase to current revenues		79.11%

Utilities, Inc. - Westgate [Proposed Rates]
Economic Analysis of Potential Interconnection
As of 12/31/04

Schedule 1

Notes

- (1) Schedule 2, Column (h), Row (18)
- (2) Schedule 2, Column (i), Row (18)
- (3) Estimated costs to complete interconnection and install hydropneumatic tanks
- (4) (3) * Schedule 3, Column (h), Row (4) / Schedule 3, Column (h), Row (1)
- (5) (1) + (2) + (3) + (4)
- (6) UI's operating subsidiaries most recent authorized rate of return
- (7) (5) * (6)
- (8) Schedule 4, Row (10)
- (9) (7) * (8)
- (10) Per 12/31/04 trial balance * -75% to account for reduction
- (11) Per 12/31/04 trial balance
- (12) Per 12/31/04 trial balance * -50% to account for reduction
- (13) Per 12/31/04 trial balance * -50% to account for reduction
- (14) Per 12/31/04 trial balance * -50% to account for reduction
- (15) (10) + (11) + (12) + (13) + (14)
- (16) Schedule 4, Row (1)/Schedule 4, Row (5)
- (17) (16) * (17)
- (18) (4)
- (19) Schedule 3, Column (h), Row (11)
- (20) Schedule 3, Column (h), Row (4)
- (21) (18) + (19) + (20)
- (22) Schedule 4, Row (1)/Schedule 4, Row (5)
- (23) (21) * (22)
- (24) (9) + (17) + (24)
- (25) $(\$1121,25 * 12) + (\$3.519 / 1,000 * 50,315,002)$ [Based on prior rate case consumption]
- (26) (24) + (25)
- (27) Per 12/31/04 trial balance
- (28) (26) / (27)

Utilities, Inc. - Westgate
Economic Analysis of Potential Interconnection
As of 12/31/04

Schedule 2

	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
	<u>UPIS</u>	<u>A/D</u>	<u>Net Plant</u>	<u>CIAC</u>	<u>AACIAC</u>	<u>Net CIAC</u>	<u>Percent Retired</u>	<u>Plant Retired</u>	<u>A/D Retired</u>	<u>Net Plant Retired</u>
(1) Organization	\$ 73,466	\$ 3,913	\$ 69,553	\$ -	\$ -	\$ -	0%	\$ -	\$ -	\$ -
(2) Franchises	6,608		6,608	-	-	-	0%	-	-	-
(3) Land & Land Rights	1,000		1,000	396	-	396	0%	-	-	-
(4) Struct - Source of Supply	17,490	1,456	16,034	6,919	824	6,095	50%	5,285	316	4,970
(5) Struct - Pump Plant	14,763	142	14,622	5,840	80	5,760	100%	8,923	62	8,861
(6) Struct - Water Treatment	21,075	1,946	19,129	8,337	1,102	7,236	100%	12,738	844	11,893
(7) Electric Pumping Eqpt.	47,280	6,056	41,224	18,704	3,429	15,276	100%	28,576	2,627	25,948
(8) Wells & Springs	85,025	3,351	81,674	33,636	1,897	31,739	100%	51,389	1,454	49,935
(9) Water Treatment Eqpt.	4,284	260	4,024	1,695	147	1,548	100%	2,589	113	2,477
(10) Distrib. Resv. & Standpipes	51,458	2,263	49,196	20,357	1,281	19,076	100%	31,101	982	30,120
(11) Tran. & Distrib. Mains	460,718	303,516	157,202	182,262	171,834	10,428	0%	-	-	-
(12) Service Lines	55,301	2,275	53,025	21,877	1,288	20,589	0%	-	-	-
(13) Meters	69,485	5,711	63,774	27,489	3,233	24,255	0%	-	-	-
(14) Meter Installations	1,044		1,044	413	-	413	0%	-	-	-
(15) Hydrants	11,196	426	10,770	4,429	241	4,188	0%	-	-	-
(16) Office Furniture & Equipment	11,954	1,993	9,961	-	-	-	0%	-	-	-
(17) Tools Shop & Misc. Eqpt.	16,644	3,657	12,987	-	-	-	0%	-	-	-
(18) Total	\$ 948,792	\$ 336,966	\$ 611,826	\$ 332,355	\$ 185,357	\$ 146,998		\$ 140,601	\$ 6,397	\$ 134,204

Notes

- (a) Source 12/31/04 trial balance
- (b) Source 12/31/04 trial balance
- (c) (a) - (b)
- (d) Source 12/31/04 trial balance - Allocated based on plant balances
- (e) Source 12/31/04 trial balance - Allocated based on Accum. Depre. balances
- (f) (d) - (e)
- (g) Estimate based on assumed interconnection
- (h) [(a) - (d)] * (g)
- (i) [(b) - (e)] * (g)
- (j) (h) - (i)

Utilities, Inc. - Westgate
Economic Analysis of Potential Interconnection
As of 12/31/04

Schedule 3

	(a) Struct - Source of Supply	(b) Struct - Pump Plant	(c) Struct - Water Treatment	(d) Electric Pumping Eqpt.	(e) Wells & Springs	(f) Water Treatment Eqpt.	(g) Distrib. Resv. & Standpipes	(h) Total
(1) Original Cost:	5,285	8,923	12,738	28,576	51,389	2,589	31,101	140,601
(2) Accumulated Depreciation:	316	62	844	2,627	1,454	113	982	6,397
(3) Cost of Removal:	5,000	2,500	7,500	2,500	2,500	7,500	2,500	30,000
(4) Annual Depreciation Expense:	176	178	424	817	1,470	86	622	3,774
(5) Net Loss:	10,601	11,484	21,082	33,703	55,343	10,202	34,583	176,999
(6) Rate of Return on Rate Base:	8.02%	8.02%	8.02%	8.02%	8.02%	8.02%	8.02%	8.02%
(7) Return on Rate Base	850	921	1,691	2,703	4,438	818	2,774	14,195
(8) Annual Depreciation Expense	176	178	424	817	1,470	86	622	3,774
(9)	<u>1,026</u>	<u>1,100</u>	<u>2,115</u>	<u>3,520</u>	<u>5,908</u>	<u>904</u>	<u>3,396</u>	<u>17,969</u>
(10) Ratio [(5):(9)]	<u>10.00</u>	<u>10.00</u>	<u>10.00</u>	<u>10.00</u>	<u>9.00</u>	<u>11.00</u>	<u>10.00</u>	
(11) Annual Amortization Expense	\$ 1,060	\$ 1,148	\$ 2,108	\$ 3,370	\$ 6,149	\$ 927	\$ 3,458	\$ 18,222

Notes:

- (1) Schedule 2, Column (h) - This is net of CIAC
- (2) Schedule 2, Column (i) - This is net of CIAC
- (3) Cost of removal of equipment currently in service
- (4) Per class of asset depreciation rates
- (5) (1) + (2) + (3)
- (6) UI's most recent approved return on rate base
- (7) (5) * (6)
- (8) (4)
- (9) (7) + (8)
- (10) (5)/(9)
- (11) (5)/(10)

Utilities, Inc. - Westgate
Economic Analysis of Potential Interconnection
As of 12/31/04

Schedule 4

Revenue Multiplier

(1)	Revenue		100.00
(2)	GR Tax	0.70%	0.70
(3)	Franchise Tax	0.00%	-
(4)	Uncollectible Exp.	0.01%	<u>0.01</u>
(5)	State Taxable Income		99.29
(6)	State Income Tax	9.99%	<u>9.92</u>
(7)	Federal Taxable Income		89.37
(8)	Federal Income Tax	34.00%	<u>30.39</u>
(9)	Net Income		58.98
(10)	Revenue/Income		1.6953516

Notes

Percentages from Westgate's prior rate case

07/14/2005 10:18 FAX 3016276529

UTILITIES

JUL-01-2005 08:20 AM PENNSTATESUTILITIES

5704249872

001/001

P. 01/01

Certificate of Recognition

The Pennsylvania Department of Environmental Protection



For *Monitoring Requirements* and *Treatment Technique Performance Requirements*
 Under the *Safe Drinking Water Program during 2004*

PWS ID# 3486024

[Signature]
 Anthony A. Gordon, Chief
 Division of Drinking Water Management
 Bureau of Water Supply and Wastewater Management

Exhibit A

BETHLEHEM AUTHORITY

Room 802 — City Administration Building
10 E. Church Street
Bethlehem, PA 18018

Telephone 610-865-7080/610-864-7893
Fax 610-865-7042

MEMBERS OF THE AUTHORITY

RONALD J. DONCHEZ
CHAIRMAN
RICHARD L. MASTER
VICE-CHAIRMAN
DAVID T. DIGIACINTO
SECRETARY
DAVID T. DIGIACINTO
TREASURER
JOHN J. TALLARICO, JR.
ASST. SECRETARY

STEPHEN R. SALVESEN
EXECUTIVE DIRECTOR
JAMES L. BROUGHAL, ESQ.
SOLICITOR
THOMAS J. McDONALD
CONTROLLER
SCHOOR DEPALMA
CONSULTING ENGINEER
DANIEL L. MEXELL
POLICE

July 20, 2004

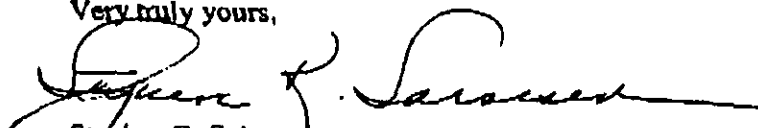
Westgate Utilities, Inc.
1403 Statten Road
Bethlehem, PA 18017

Gentlemen:

The Bethlehem Authority understands that Utilities, Inc. intends to build a 26' storage tank on your property in Hanover Township. The City of Bethlehem still has an excess of high quality water available. At what price, bulk rate, would it become attractive to Utilities, Inc. to buy water rather than pump water from the existing wells? Both the Authority and the City of Bethlehem would like to open discussions on this topic at your convenience.

I thank you in advance for your consideration in this matter.

Very truly yours,


Stephen R. Salvesen
Executive Director

Cc: David Brong
Ron Donchez
Mayor Callahan

JUL 27 2004

TO CALLAHAN

APR-01-2005 08:56 AM PENNSTATESUTILITIES

5704248872

P. 02/02

03/31/05 THU 10:12 FAX 610 865 7831

CITY OF BETHLEHEM

001

**CITY OF BETHLEHEM**

10 East Church Street, Bethlehem, Pennsylvania 18018-6025

**DEPARTMENT OF WATER
& SEWER RESOURCES**

www.bethlehem-pa.gov

March 31, 2005
VIA FACSIMILE

Westgate Utilities
P.O. Box 1164
Upper Marlboro, MD 20773
Attn: Chuck Madison

Re: Water Service Request

Dear Mr. Madison:

In reply to your request of March 31, 2005, we are pleased to send you this informal proposal to provide City water service to the former Westgate Water Company. The City of Bethlehem is willing to sell City water in bulk through the existing metered emergency inter-connection on Blair Road. The charges for bulk service would be our currently approved Pennsylvania Public Utility Commission resale rate of \$3.06 per thousand gallons along with a customer charge of \$975.00 per month based on the 8" water meter size.

A water service agreement would have to be entered into by both parties concerned.

Should you have any questions or require additional information, please feel free to contact me at 610-865-7072.

Very truly yours,

Jeffrey A. Andrews
Superintendent,
Water Supply and Treatment

JAA/CFN/car

cc: D. L. Brong
C. F. Newswanger
File/xc

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA FIRST-CLASS MAIL

Dianne E. Dusman, Esq.
Office of Consumer Advocate
Forum Place, 5th Floor
555 Walnut Street
Harrisburg, PA 17101-1923

Adam N. Bram, Esq.
PA Department Of Environmental
Protection
Office Of Chief Counsel
2 East Main Street
Norristown, PA 19401

Vincent V. Horvath
2738 Whitewood Road
Bethlehem, PA 18017

Sandy & Victor Berkey
2625 Jacksonville Road
Bethlehem, PA 18017

Richard E. & Juliette A. Laury
1250 Wynnewood Drive
Bethlehem, PA 18017

Parveen & Pramila Gupta
122 Wedgewood Road
Bethlehem, PA 18017

Armando Villani
122 Cross Creek Court
Bethlehem, PA 18017

Anthony A. Strobel
1445 Lane Avenue
Bethlehem, PA 18017

Elaine D. Hokenson
355 Wedgewood Road
Bethlehem, PA 18017

George J. Raykos
1240 Wynnewood Drive
Bethlehem, PA 18017

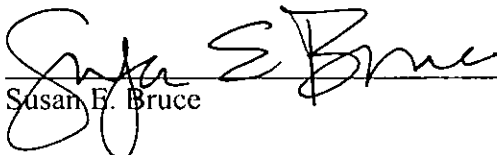
Mr. & Mrs. John Horvath
1140 Yorkshire Road
Bethlehem, PA 18017

Jeffrey B. Benner
570 Wedgewood Road
Bethlehem, PA 18017

Floyd & Dolores Kennedy
3132 Kenwick Circle
Bethlehem, PA 18017

SECRETARY'S BUREAU

2005 OCT -7 PM 3:46



Susan E. Bruce

Dated this 7th day of October, 2005, in Harrisburg, Pennsylvania.



ORIGINAL

OFFICE OF CONSUMER ADVOCATE

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

IRWINA. POPOWSKY
Consumer Advocate

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

October 17, 2005

DOCUMENT
FOLDER

SECRETARY'S BUREAU

2005 OCT 17 PM 3:54

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

Re: Vincent V. Horvath, Docket No. C-20055305; Sandy & Victor Berkey, Docket No. C-20055316; Richard E. & Juliette A. Laury, Docket No. C-20055317; Parveen & Pramila Gupta, Docket No. C-20055318; Armando Villani, Docket No. C-20055319; Anthony A. Strobel, Docket No. C-20055320; Elaine D. Hokenson, Docket No. C-20055321; George J. Raykos, Docket No. C-20055324; Mr. & Mrs. John Horvath, Docket No. C-20055346; Jeffrey B. Benner, Docket No. C-20055374;; and Floyd & Dolores Kennedy, Docket No. C-20055392, *Complainants v. Utilities, Inc.-Westgate, Respondent*

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of the Office of Consumer Advocate's Answer To Motion To Dismiss, Reply To New Matter & Motion To Consolidate Under 52 PA. Code §5.81 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. Veronica A. Smith, CALJ
All parties of record

86191.doc:1/DED/smm

91

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

VINCENT V. HORVATH;	:	Docket Nos.	C-20055305
SANDY & VICTOR BERKEY;	:		C-20055316
RICHARD E. & JULIETTE A. LAURY;	:		C-20055317
PARVEEN & PRAMILA GUPTA;	:		C-20055318
ARMANDO VILLANI;	:		C-20055319
ANTHONY A. STROBEL;	:		C-20055320
ELAINE D. HOKENSON;	:		C-20055321
GEORGE J. RAYKOS;	:		C-20055324
MR. & MRS. JOHN HORVATH;	:		C-20055346
JEFFREY B. BENNER; and	:		C-20055374
FLOYD & DOLORES KENNEDY,	:		C-20055392

Complainants

v.

UTILITIES, INC. - WESTGATE,

Respondent

DOCUMENT
FOLDER

SECRETARY'S BUREAU

2005 OCT 17 PM 3:54

RECEIVED

DOCKETED
JAN 9 2006

ANSWER TO MOTION TO DISMISS, REPLY TO NEW MATTER
& MOTION TO CONSOLIDATE UNDER 52 PA. CODE §5.81

Pursuant to 52 Pa. Code §5.103(c), the Office of Consumer Advocate (OCA), on behalf of those whose Formal Complaints are captioned above, hereby responds to the Motion to Dismiss filed by Utilities, Inc. – Westgate (Westgate). In support thereof, the OCA states further as follows:

1. The eleven Formal Complainants allege, *inter alia*, (1) that the quality of the water provided by Westgate is “questionable” and that the “taste is terrible,” Formal Complaint of Richard E. and Juliette A. Laury at ¶4.B.; (2) that “there is an awful lot of limestone in the water,” that it “destroys our hot water tanks and plumbing,” that it is “extremely hard” and “becomes quite expensive due to softening systems and replacement water heaters, faucets and pipes.” Formal Complaints of Mr. and Mrs. John Horvath, Formal Complaint of Elaine D.

Hokenson, Formal Complaint of George J. Raykos, Formal Complaint of Vincent Horvath, ¶¶4.B.; (3) that “we have to use salt” and that “this is unhealthy for use, since we have heart disease and high blood pressure,” Formal Complaint of Floyd and Dolores Kennedy, Formal Complaint of Vincent Horvath, ¶¶4.B.; (4) that the water leaves “hard deposits, corrosion and stains on fixtures,” Formal Complaint of Sandy & Victor Berkey, ¶4.B., (5) that the water is “unbearable” and “you cannot drink it,” Formal Complaint of Armando Villani, Formal Complaint of Anthony Strobel, ¶¶4.B.

2. Respondent Westgate moves to dismiss, asserting that the Complainants’ allegations are “insufficient as to substance and insufficient to establish the Complainant’s right to relief,” citing 52 Pa. Code § 5.101(a)(3) and Yesteryear Corp. v. Philadelphia Electric Company, 1992 PaPUC LEXIS 106, Aug. 26, 1992, Docket No. F-9245681.

3. The instant Motion to Dismiss is frivolous. The allegations of the eleven Formal Complaints taken together, as summarized in Paragraph 1 above, unequivocally raise the issue of whether Westgate is providing water that is “suitable for all household purposes,” as required by Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501 and pertinent regulations. The Commission has entered orders against many water utilities for violations similar to those alleged by Formal Complainants herein. *See, e.g.,* Re: Redstone Water Co. – PUC Mandated Water System Study, Docket No. C-00992270, Order of June 28, 2005; Pa. P.U.C. v. Pennsylvania Gas & Water Co., 61 PaPUC 409 (1986); Pa. P.U.C. v. National Utilities, Inc., 87 PaPUC 1 (1997); Pa. P.U.C. v. Lake Latonka Water Co., 71 PaPUC 507 (1989); Kessler v. Schickshinny Water Co., 64 PaPUC 290 (1987); Pa. P.U.C. v. Pennsylvania Gas & Water Co., 79 PaPUC 349 (1993); Ashbaugh v. Fitz Henry Water Co., 51 PaPUC 287 (1977); Bell v. Cowanshannock, 49 PaPUC 238 (1975); Investigation Upon Commission Motion for the

Purpose of Ascertaining Whether There is an Inadequacy of Service of Nokomis Water Co., 43 PaPUC 276 (1967).

4. “For testing the legal sufficiency of the challenged pleading, a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts.” Yesteryear Corp. v. Philadelphia Electric Co., Docket No. F-9245681, 1992 PaPUC LEXIS 106 at *9.

5. The well-pleaded, material, relevant facts summarized in Paragraph 1, above, raise a strong inference that the water provided by Westgate, in all likelihood, violates one or more of the secondary Maximum Contaminant Levels (MCL) established pursuant to the federal and state Safe Drinking Water Act, 42 U.S.C.A. § 300f, *et seq.*, 35 P.S. §721.5.

6. The PUC’s regulations governing water utilities specifically incorporate by reference all relevant DEP regulations that apply to water providers in Pennsylvania, including regulated utilities. 52 Pa. Code §§65.17-65. Thus, whenever a regulated utility violates a DEP water quality regulation, that utility is also in violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501 and PUC regulations promulgated pursuant to that section.

7. Furthermore, it is unnecessary and procedurally inappropriate to attach evidence to a Formal Complaint, so Westgate’s argument that the Formal Complaints should be dismissed “because Complainants failed to provide any type of evidentiary support for their claims,” Motion at ¶8, is completely meritless.

The ALJ should note, however, that the OCA has been assisting this group of customers for several months and has already conducted water tests that demonstrate substantial violations of at least one secondary MCL, that established for Total Dissolved Solids (TDS). *See* App. A,

Office of Consumer Advocate's Protest and Public Statement, 2-3, ¶¶7-8.¹ Evidence in support of the alleged violations will be offered into the record at evidentiary hearings on these complaints.

Respondent also cites Clinical Trial Services v. Audobon Water Co., Docket No. C-20016403 (Dec. 19, 2002) to suggest that "a bright-line of demarcation does not exist between the Commission's jurisdiction relating to the adequacy and reasonableness of water service, and DEP's jurisdiction relating to water quality standards." Motion at 5.

8. It is high time that this obfuscatory argument be rejected once and for all. This Commission has addressed the issue of water quality and regulated water utilities on many occasions. No doubt remains that the PUC can order remedies designed to bring water quality up to legal standards where a regulated water utility has not done so on its own. *See* Paragraph 3, *supra*, and cases cited therein.

9. In light of the facts alleged and the applicable law, to dismiss the Formal Complaints without a hearing would constitute appealable error and a violation of the Formal Complainants due process rights, contrary to Section 703 of the Public Utility Code, 66 Pa. C.S. § 703 which states: "If [any party complained against] shall not satisfy the complaint within the time specified, and it shall appear to the commission from a consideration of the complaint and answer, or otherwise, that reasonable ground exists for investigation such complaint, it shall be the duty of the commission to fix a time and place for a hearing."

10. While the Respondent is correct that it has a cost analysis in progress and it has shared some information with the OCA (*see* Motion at 6, ¶11²), the Formal Complaints of the Westgate citizens are far from satisfied at this juncture and dismissal would be very premature.

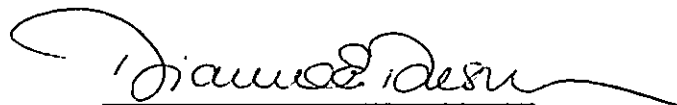
¹ The OCA would also point out that the Formal Complaint of Irwin A. Popowsky v. Utilities, Inc. – Westgate, prepared on September 1, 2005, is attached to the Protest as Exhibit 1. That Formal Complaint bears the signatures of ninety-nine (99) Westgate residents, among them some or all of the eleven Formal Complainants herein.

11. For all of the foregoing reasons, the OCA objects to the dismissal of the above-captioned Formal Complaints without a hearing.

12. In addition, the OCA's Protest in the pending Application and the instant eleven Formal Complaints present common questions of law and fact. Consolidation of the Formal Complaints with the OCA's Protest would avoid the unnecessary costs and delay that could result from the two proceedings going forward separately. The OCA therefore moves, pursuant to 52 Pa. Code § 5.81, that the above-captioned eleven Formal Complaints be consolidated with Docket No. A-20072F0003, A-230063F0003, A-230013F0004 and A-210093F0002 and the OCA's Protest therein, submitted on behalf of all of the Westgate customers.

WHEREFORE, the OCA requests that Respondent's Motion to Dismiss the eleven Formal Complaints be denied and that the Formal Complaints be consolidated with Utilities, Inc.'s pending Application at Docket Nos. A-20072F0003, *et al.*

Respectfully Submitted,



Dianne Dusman
Senior Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
Dated: October 17, 2005

86169.DOC;1/DED/smn

² The Respondent, through counsel, asserts that the analysis is being "conducted in conjunction with the OCA..." Motion at 6, ¶ 11. It would be more accurate to state that the Company is conducting the analysis and sharing the results with the OCA and its experts as the analysis progresses, in hopes of reaching an amicable resolution of the OCA's Protest and the Formal Complaints.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Penn Estates Utilities, Inc., :
Utilities, Inc. Of Pennsylvania : Docket Nos. A-210072F0003;
and Utilities, Inc. - Westgate Division : A-230063F0003
for Approval of a Stock Transfer : A-230013F0004; and
Leading to a Change in Control of : A-210093F002
Their Parent Corporation, Utilities, Inc. :

2005 OCT 17 PM 3: 54
SECRETARY'S BUREAU
2005 OCT -3
SECRETARY'S BUREAU

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) files this Protest in the above-captioned *Application pursuant to the notice in the Pennsylvania Bulletin, the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§5.51-5.53, and Chapter 11 of the Public Utility Code. Through the Application, three utilities (referred to cumulatively as "Applicants") Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania and Utilities, Inc - Westgate, seek Commission approval of a change in control of the parent corporation through a transfer of all of the common stock of the grandparent corporation Nuon Global Solutions USA, Inc. to Hydro Star, LLC.*

The OCA files this Protest in order to ensure that the Application is approved only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to the ratepayers, and (3) it is in accordance with the Public Utility Code.

Specifically, the OCA avers as follows:

1. The Protestant is Irwin A. Popowsky, Consumer Advocate, 555 Walnut Street, 5th Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorney for the purpose of

receiving service of all documents in this proceeding is Dianne E. Dusman, Senior Assistant Consumer Advocate.

2. The OCA is authorized by law to represent the interests of utility ratepayers in all proceedings before the Commission. 71 P.S. §§ 309-1, *et seq.* This Protest is filed by the OCA to ensure that the interests of Applicants' customers are protected.

3. The Application must be examined pursuant to Chapter 11 of the Public Utility Code.

4. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to an entity offering service, abandoning service and to certain property transfers by public utilities or their affiliated interests. 66 Pa.C.S. §1102(a)(1)-(3).

5. The Code further requires that a certificate shall only be granted upon findings that the granting of such certificate is "necessary or proper for the service, accommodation, convenience or safety of the public." 66 Pa.C.S. §1103(a).

6. Additionally, Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa.C.S. §1103(a). Section 1103(a) of the Code provides: "The commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable." In the instant case, the OCA seeks the imposition of such a conditions in order to ensure that the interest of the public is served.

7. Preliminarily, the OCA has identified at least one issue that requires consideration by the Commission in conjunction with this application for approval of a change in control. In the Westgate service territory, customers report that the quality of the water provided them does

not meet the minimum standards of the Safe Drinking Water Act (SDWA), 27 Pa.C.S. §3102. Water quality tests performed by a laboratory certified by the Department of Environmental Protection (DEP) confirm that the maximum contaminant level (MCL) for “Total Dissolved Solids” is exceeded in the water provided to the Westgate customers by the utility. In addition, the laboratory test shows that the Environmental Protection Agency guideline for sodium levels, 20 milligrams per liter, is also exceeded.

8. The secondary MCL violation and excessive sodium levels cause the water to have an unpalatable taste and cause damage to the customers’ plumbing and fixtures because of its corrosive quality. Many of the customers have installed costly filtering and softening systems to try to make the water palatable and usable for all household purposes. *See Exhibit A, Formal Complaint of Irwin A. Popowsky, et al. v. Utilities, Inc. - Westgate.*¹

9. The provision of water that exceeds the SDWA MCL for Total Dissolved Solids constitutes a violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501, because it is not suitable for all household purposes as required by the Code and relevant precedent. The Commission has specifically incorporated DEP standards for water quality into the PUC regulations that apply to regulated water utilities such as Westgate. 52 Pa. Code §§65.17-65.18. As a result, a utility’s failure to comply with state standards for water quality also constitutes a violation of PUC regulations and pertinent provisions of the Public Utility Code.

10. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Company.

¹ The OCA would note that the attached Formal Complaint was prepared on September 1, 2005, however, it was not immediately filed with the PUC as discussions with Utilities, Inc., and its counsel were pending. The OCA is attaching the Formal Complaint to this Protest as an exhibit and, in the interest of administrative economy, does not intend to file it separately, unless the Commission or the Presiding Office requests that this be done.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission investigate and hold full hearings, including public input hearings in the service territory. The OCA further requests that the Commission impose a condition on the approval of the application to require the utility to take the most cost-effective action to eliminate the secondary MCL violations and to provide service consistent with Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dianne E. Dusman", written over a horizontal line.

Dianne E. Dusman
Senior Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

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

Dated: October 3, 2005

00085984.wpd

PUBLIC STATEMENT OF THE CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (“PUC” or “Commission”). In accordance with Act 161, the Consumer Advocate determined to file a Protest in the Joint Petition of Penn Estates Utilities, Inc., *et al*, for Approval of a Stock Transfer together with the foregoing Formal Complaint against Utilities, Inc. – Westgate, a regulated public utility, (Westgate) on behalf of the Westgate customers. Westgate provides water service to approximately 670 customers in Hanover Township, Northampton County, near the City of Bethlehem, PA.

The Consumer Advocate has made this filing primarily because of water quality concerns brought to his attention by a group known as “Concerned Citizens for Westgate.” Preliminary laboratory tests demonstrate that water samples drawn from the residents’ home water systems contain excessive levels of total dissolved solids (TDS) and sodium. Excessive TDS levels cause water to be unpalatable. Contact with the water also causes damage to customers’ plumbing, fixtures and appliances because of its corrosive quality. As such, the water Westgate provides to its customers is not suitable for all household purposes, as required by Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501.

By participating in this proceeding, the Consumer Advocate seeks to ensure that Westgate fulfills its obligation to provide adequate, efficient, safe and reasonable water service to its customers at just and reasonable rates, pursuant to the Public Utility Code and relevant regulations. The Consumer Advocate also seeks to ensure that the Joint Petition is approved only if it is found to be in the public interest and to provide substantial affirmative benefits to the customers and is otherwise in accord with the provisions of the Public Utility Code. 85988.doc

Exhibit A

Pennsylvania Public Utility Commission

Formal Complaint Form

Please Print.

1. Your name, mailing address, telephone number and utility account number:

Name Irwin A. Popowsky, Consumer Advocate

Street/P.O.Box 555 Walnut Street 5th Floor Forum Place Apt # _____

City Harrisburg State Pennsylvania Zip 17101-1923

County Dauphin

Area Code/Home Phone _____ Area Code/Work Phone (717)783-5048

Utility Account Number _____

If the above mailing address differs from the address where the utility service is provided, list this information below.

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

County _____

2. Name of utility company your complaint concerns: Utilities, Inc. - Westgate

3. Type of Utility (circle one):

GAS

WATER

MOTOR CARRIER

STEAM HEAT

ELECTRIC

SEWER

TELEPHONE – (LOCAL OR LONG DISTANCE)

2. What is your complaint? (Use additional paper if you need more space and provide copies of any relevant documentation you believe will support your complaint).

A. The Consumer Advocate has investigated whether Utilities, Inc. – Westgate is providing safe and adequate utility service to its customers pursuant to the Public Utility Code. The investigation was prompted by concerns brought to his attention by a group known as “Concerned Citizens of Westgate.” Utilities, Inc. – Westgate serves approximately 670 residential customers in a service territory near the City of Bethlehem, Hanover Township, Northampton County. The Consumer Advocate’s investigation has revealed violations of the state Safe Drinking Water Act in that the maximum contaminant level (MCL) for Total Dissolved Solids, a secondary contaminant, is consistently exceeded in water samples taken in customers’ homes. The Environmental Protection Agency guideline for sodium levels, 20 milligrams per liter, is also exceeded, according to the test results reviewed by the Office of Consumer Advocate.

The secondary MCL violation of this nature causes water to have an unpalatable taste and causes damage to customers’ plumbing and fixtures because of its corrosive quality. Many of the customers have installed costly filtering and softening systems to try to make the water palatable and usable for all household purposes.

The provision of water to utility customers that exceeds MCL levels set forth in the Safe Drinking Water Act constitutes a violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501, because water of such inferior quality is not suitable for all household purposes as required by the Public Utility Code and Commission precedent. The Public Utility Commission (PUC) has specifically incorporated the DEP standards for water quality into the PUC regulations that apply to regulated water utilities such as Utilities, Inc. - Westgate. 52 Pa. Code §65.17-65.18. As a result, a regulated utility’s failure to comply with state standards for water quality also constitutes a violation of the Public Utility Commission regulations applicable to water utilities and pertinent provisions of the Public Utility Code.

5. What do you want the Public Utility Commission to do about your complaint?

On behalf of the Utilities, Inc. – Westgate customers, the Consumer Advocate seeks an order from the Public Utility Commission which will require Utilities, Inc. - Westgate to take the most cost-effective action to eliminate the secondary MCL violations currently experienced by the customers and thus to require the utility to provide water that is suitable for all household purposes consistent with Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501.

NOTICE OF JOINDER PURSUANT TO 52 Pa. Code § 5.23

We, the undersigned customers of Utilities, Inc. – Westgate, have reviewed the foregoing Formal Complaint of Irwin A. Popowsky, Consumer Advocate of Pennsylvania against Utilities, Inc. – Westgate, averring that quality of the water provided to us by the utility does not meet the secondary maximum contaminant level for Total Dissolved Solids set forth in the state Safe Drinking Water Act and associated Public Utility Commission regulations.

By signing below, we assert our intention to join as co-complainants in the Formal Complaint of Irwin A. Popowsky. Our complaint is against the same utility, Utilities, Inc. – Westgate. The relief we are seeking, that is, to require the utility to provide safe and adequate utility service and water that is suitable for all household purposes, consistent with Section 1501 of the Public Utility Code, pertinent regulations and relevant orders of the Public Utility Commission, is substantially the same as in the Consumer Advocate's Formal Complaint.

<u>Print Name</u>	<u>Address</u>	<u>Signature</u>
Shirley Burke	1050 Westgate Dr.	Shirley Burke
Albert Feld	935 Yorkline Rd	FA BIELEFELD
FA Bielefeld	"	FA Bielefeld
Carol Bielefeld	"	Carol Bielefeld
Shuyu Hsu	3101 Kenwick Cir.	Shuyu Hsu
ADELE ZEINER	950 WEDGEWOOD RD.	Adele Zeiner
EARL ZEINER	" " "	Earl Zeiner
CAROL J. NEOS	1425 STATEN AVE,	Carol J. Neos
NICHOLAS J. NEOS	1425 STATEN AVE.	Nicholas J. Neos
Sue Moser	2707 Whitewood Rd.	Sue Moser
Greg Moser	2707 Whitewood Rd	Greg Moser

NOTICE OF JOINDER PURSUANT TO 52 Pa. Code § 5.23

We, the undersigned customers of Utilities, Inc. – Westgate, have reviewed the foregoing Formal Complaint of Irwin A. Popowsky, Consumer Advocate of Pennsylvania against Utilities, Inc. – Westgate, averring that quality of the water provided to us by the utility does not meet the secondary maximum contaminant level for Total Dissolved Solids set forth in the state Safe Drinking Water Act and associated Public Utility Commission regulations.

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<u>Print Name</u>	<u>Address</u>	<u>Signature</u>
<u>Jill Fenn</u>	<u>1412 Westgate Dr.</u>	<u>Jill Fenn</u>
<u>Kelth McKenna</u>	<u>1245 WYNNWOOD DR.</u>	<u>Kelth McKenna</u>
<u>Gina Barron</u>	<u>808 Blair Road</u>	<u>Gina Barron</u>
<u>BILL BARRON</u>	<u>808 BLAIR RD.</u>	<u>WBarron</u>
<u>Tova I. Goldstein</u>	<u>759 Blair Road, Bethlehem, PA 18017</u>	<u>Tova I. Goldstein</u>
<u>David Goldstein</u>	<u>759 Blair Road, Bethlehem, PA 18017</u>	<u>David Goldstein</u>
<u>Ronald B Madson</u>	<u>949 Wedgewood Road</u>	<u>Ronald B Madson</u>
<u>Gina Rivera</u>	<u>2437 Rosewood Dr.</u>	<u>Gina Rivera</u>
<u>Elizabeth Lychak</u>	<u>790 Wedgewood Rd</u>	<u>Elizabeth Lychak</u>
<u>John Lychak</u>	<u>790 Wedgewood Rd</u>	<u>John Lychak</u>
<u>JOHN M. WYNNE</u>	<u>3142 KENWICK CIRCLE</u>	<u>John M. Wynne</u>
<u>HOPE M. WYNNE</u>	<u>3142 KENWICK CIRCLE</u>	<u>Hope M. Wynne</u>
<u>DAVID LAUGHTERY</u>	<u>970 BLAIR ROAD</u>	<u>David Laughtery</u>
<u>Bob Gonzalez</u>	<u>387 Timothy Drive.</u>	<u>Bob Gonzalez</u>

NOTICE OF JOINDER PURSUANT TO 52 Pa. Code § 5.23

We, the undersigned customers of Utilities, Inc. – Westgate, have reviewed the foregoing Formal Complaint of Irwin A. Popowsky, Consumer Advocate of Pennsylvania against Utilities, Inc. – Westgate, averring that quality of the water provided to us by the utility does not meet the secondary maximum contaminant level for Total Dissolved Solids set forth in the state Safe Drinking Water Act and associated Public Utility Commission regulations.

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<u>Print Name</u>	<u>Address</u>	<u>Signature</u>
FRANCIS H. KWIATEK	1110 WESTGATE DRIVE	Francis H. Kwiatek
CAROLYN J. KWIATEK	1110 WESTGATE DR.	Carolyn J. Kwiatek
Robert F. Gerst	900 Wedgewood Rd.	Robert F. Gerst
Mary Jane Gerst	900 Wedgewood Rd.	Mary Jane Gerst
MARY RAYKOS	1240 WYNNEWOOD DR.	Mary Raykos
GEORG RAYKOS	" "	George Raykos
Jan Merkel	2475 Winston Rd	Jan A. Merkel
Karen Merkel	" " "	Karen Merkel
John Willey	1420 Wymewood DR	John Willey
TONY REISER SR	1442 KANON AVE	Tony Reiser
JOANN M. TROTSKY	1155 YORKSHIRE RD.	Joann M. Trotsky
FLORENCE D. SMULLIN	1447 ROSELAWN DRIVE	Florence D. Smullin
J. ALEXANDER	2620 OAKSIDE CIRCLE	James Alexander

NOTICE OF JOINDER PURSUANT TO 52 Pa. Code § 5.23

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Print Name Address Signature

ZOLTAN DBIRO 738 BLAIR RD. Zoltan D. Biro

Michael John 1135 Berkshire Rd. Michael A. John

BETHLEHEM PA 18017

Edward Hawk 462 Sugar Maple Ct Edward Hawk

~~Edward Hawk 462 Sugar Maple Ct~~ ~~Edward Hawk~~

Michael P. JB570H 463 Sugar Maple Ct, Beth 18017 Michael P. JB570H

Tony Strobel 1445 Lane Ave. Anthony A Strobel

JOE HERKALO 939 BLAIR RD BETHLEHEM, PA 18017 Joseph R. Herkalo

MARK JAMPINETTA 910 BLAIR 18017 Mark Jampinetta

Linda Herkalo 939 Blair Rd Bethlehem, PA Linda Herkalo

Michele Jampinetta 910 Blair Rd Bethlehem Michele Jampinetta

William P. Boelke 2606 OAKSIDE CRT W. P. Boelke

DOUGLAS C MCCANN 655 YORKSHIRE RD Douglas C. McCann

Kathleen M. Horvath 2138 Whitewood Rd. Kathleen M. Horvath
Kathleen M. Horvath

NOTICE OF JOINDER PURSUANT TO 52 Pa. Code § 5.23

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Print Name	Address	Signature
LISA BALASH	1199 Yorkshire Rd Bethlehem Pa 18017	Lisa Balash
RICHARD LAURY	1250 WYNNWOOD DR., BETHLEHEM, PA 18017	Richard Laury
MARY MINGORA	2705 JACKSONVILLE RD BETH. 18017	Mary Mingora
Jim Dewire	2718 WINSTON RD Bethlehem, Pa 18017	Jim Dewire
GEORGE STERZEN	436 TIMOTHY DR BETH 18017	George Sterzen
NANCY STERZEN	436 TIMOTHY DR BETH 18017	Nancy Sterzen
DENNIS PRAEDIN	3151 Kenwick Circle Beth 18017	Dennis Praedin
FRANK MAOURA	437 TIMOTHY DR BETH PA 18017	Frank Maoura
Rosalie Wertman	2460 Rosewood Dr Bethlehem PA 18017	Rosalie M. Wertman
Ed Mathews	2850 Jacksonville P.O. Bethlehem, Pa.	Ed Mathews
ARMANDO VILLANI	122 CROSS CREEK COURT BETH PA	Armando Villani
Beth Villani	122 Cross Creek Ct Beth PA	Beth Villani
Louis Zsido	2710 WHITEWOOD RD. BETH PA.	Louis Zsido
Jeffrey T. Lutz	1456 Wynnwood Dr Bethlehem	Jeffrey T. Lutz
Robert M Sorensen	523 Kevin Dr. Bethlehem	Robert M Sorensen
RONGHUA ZHANG	2722 WHITEWOOD RD, BETHLEHEM, PA	Ronghua Zhang
	407 TIMOTHY DR BETHLEHEM, PA	Joseph Kelly

Roger & Cecile Stern - 685 Wedgewood Rd. - Bethel -

Roger C. Stern

Roger & Cecile Stern - 685 Wedgewood Rd. - Bathing -

Roger A. Stern

Please note that the original of the above signature is on the back of page 4d of this formal complaint. We are including it on this page to be certain that it is included as part of the complaint.

NOTICE OF JOINDER PURSUANT TO 52 Pa. Code § 5.23

We, the undersigned customers of Utilities, Inc. – Westgate, have reviewed the foregoing Formal Complaint of Irwin A. Popowsky, Consumer Advocate of Pennsylvania against Utilities, Inc. – Westgate, averring that quality of the water provided to us by the utility does not meet the secondary maximum contaminant level for Total Dissolved Solids set forth in the state Safe Drinking Water Act and associated Public Utility Commission regulations.

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<u>Print Name</u>	<u>Address</u>	<u>Signature</u>
FRANK FISHER	142 CROSS CREEK CT	Frank L Fisher
JANE FISHER	142 CROSS CREEK CT.	Jane Fisher
DALE WESNER	736 YORKSHIRE ROAD	Dale Wesner
SYLVIA TROIANI	1415 WINSTON CR.	Sylvia Troiani
ARTHUR C. TROIANI	1415 WINSTON CR.	A. C. Troiani
WILLIAM J. WILLIAMS II	2158 STONEWOOD DR	Wm J Williams II
Karen Pummer Walter Pummer	376 Timothy Drive	Karen Pummer Walter Pummer
RAYMOND H. BERGER, JR MARY JANE BERGER	801 YORKSHIRE Rd.	Ray Berger Mary Jane Berger
JOHN KINNEY	546 ANGELO DRIVE	John Kinney
Madonna Zullo	2605 Oakside CR.	Madonna Zullo
ALAN BRAU	483 SUGAR MAPLE CT.	Alan Brau
ELAINE HOKENSON	355 Wedgewood Rd	Elaine Hokenson
William E. Stout	2396 Jacksonville Rd	William E Stout
Cesar Stout	2396 Jacksonville Rd	Cesar Stout

NOTICE OF JOINDER PURSUANT TO 52 Pa. Code § 5.23

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<u>Print Name</u>	<u>Address</u>	<u>Signature</u>
DAVID L. BRONG	264 Wedgewood Rd	[Signature]
CHARLES BARTISCH	835 Wedgewood Rd	[Signature]
James J. Mordun	880 Wedgewood Rd	[Signature]
Dana R. Naisky	880 Wedgewood Rd	[Signature]
Joanne Bartisch	835 Wedgewood Rd.	[Signature]
Erika Jean Still	1464 Briarcliff Rd.	[Signature]
VINCENT V. HORVATH	2738 WHITEWOOD RD	[Signature]
CAROLYN HARTRAMP	2700 Stonewood Drive	[Signature]
Gerald Still	1464 Briarcliff Dr.	[Signature]
Jane Ferenczy	2465 Winston Rd	[Signature]
CHRISTOPHER HOEN	950 BLAIR RD	[Signature]
Bill Dietrich	2446 Wedgewood Road	[Signature]
Joanna V. Tallan	274 Wedgewood Rd Berh. Pa.	[Signature]

CERTIFICATE OF SERVICE

Re: Application of Penn Estates Utilities, Inc., and, Utilities, Inc. of Pennsylvania, and, Utilities, Inc.-Westgate for Approval of Stock Transfer Leading to a Change in Control of their Parent Corporation, Utilities, Inc.
Docket Nos. A-210072F0003, A-230063F0003, A-230013F0004 and A-210093F0002

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

Dated this 3rd day of October, 2005.

SERVICE BY INTER-OFFICE MAIL

Charles F. Hoffman, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Mr. William D. Shrader
Bureau of Fixed Utility Services
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Mr. Charles Shields, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Mr. H. Edwin Rodrock
Bureau of Fixed Utility Services
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

James P. Dougherty, Esq.
Susan E. Bruce, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166

William R. Lloyd, Jr., Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Mr. Steven M. Lubertozzi
Director, Regulatory Accounting
Utilities, Inc.
2335 Sanders Road
Northbrook, IL 60062-6196

Jack Hines, Township Manager
West Bradford Township
1385 Campus Drive
Downingtown, PA 19335

Kenneth R. Myers, Esq.
High, Swartz, Roberts & Seidel LLP
40 East Airy Street
Norristown, PA 19404

Adam N. Bram, Esq.
PA Dept. of Environmental Protection
Office of Chief Counsel
2 East Main Street
Norristown, PA 19401

Donna M.ASURE, Chairman
Monroe County Commissioners
One Quaker Plaza
Stroudsburg, PA 18360

Larry R. Sebring, Chairman/Supervisor
Stroud Township Board of Supervisors
Stroud Township Municipal Center
1211 North 5th Street
Stroudsburg, PA 18360

Wm. Taylor Wenck, Chairperson
Stroud Township Planning Commission
Stroud Township Municipal Center
1211 North 5th Street
Stroudsburg, PA 18360

Patrick Ross, Chairman
Pocono Township Board of Supervisors
P. O. Box 197
Tannersville, PA 18372

Donald A. Mancini, Chairman
Chester County Board of Commissioners
2 North High St., Suite 512
P. O. Box 2748
West Chester, PA 19380-0991

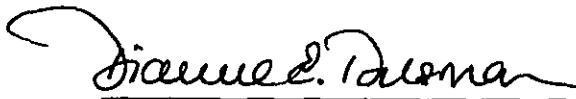
Gregory S. Chanitz, Chair
Concerned Citizens of Westgate
343 Kevin Drive
Bethlehem, PA 18017

William S. Dietrich, Vice Chair
Concerned Citizens of Westgate
244 Wedgewood Road
Bethlehem, PA 18017

Joanne Tallarico, Member
Concerned Citizens of Westgate
274 Wedgewood Road
Bethlehem, PA 18107

Christopher Horn, Member
Concerned Citizens of Westgate
950 Blair Road
Bethlehem, PA 18017

Chris Wills, Member
Concerned Citizens of Westgate
456 Timothy Drive
Bethlehem, PA 18017



Dianne E. Dusman
Senior Assistant Consumer Advocate

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

CERTIFICATE OF SERVICE

Re: Vincent V. Horvath, Docket No. C-20055305; Sandy & Victor Berkey, Docket No. C-20055316; Richard E. & Juliette A. Laury, Docket No. C-20055317; Parveen & Pramila Gupta, Docket No. C-20055318; Armando Villani, Docket No. C-20055319; Anthony A. Strobel, Docket No. C-20055320; Elaine D. Hokenson, Docket No. C-20055321; George J. Raykos, Docket No. C-20055324; Mr. & Mrs. John Horvath, Docket No. C-20055346; Jeffrey B. Benner, Docket No. C-20055374;; and Floyd & Dolores Kennedy, Docket No. C-20055392, *Complainants v. Utilities, Inc.-Westgate, Respondent*

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Answer To Motion To Dismiss, Reply To New Matter & Motion To Consolidate Under 52 PA. Code §5.81, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 17th day of October, 2005.

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

James P. Dougherty, Esq.
Susan E. Bruce, Esq.
100 Pine Street
P. O. Box 1166
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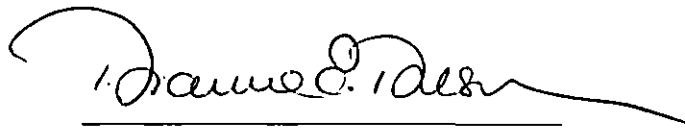
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October 28, 2005

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

VIA HAND DELIVERY

**Re: Vincent V. Horvath, et al. v. Utilities, Inc.-Westgate;
Docket Nos. C-20055305, et al.**

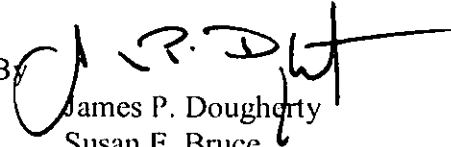
Dear Secretary McNulty:

On behalf of Utilities, Inc.-Westgate, enclosed for filing with the Commission are an original and three (3) copies of the Answer to the Office of Consumer Advocate's Motion to Consolidate in the above-captioned proceedings.

Please date stamp the enclosed copy of this letter and kindly return it for our filing purposes. If you have any questions concerning this filing, please contact the undersigned. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
James P. Dougherty
Susan E. Bruce

Counsel to Utilities, Inc.-Westgate

DOCUMENT
FOLDER

JPD:mas
Enclosures
c: Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

VINCENT V. HORVATH;	:	Docket Nos. C-20055305;
SANDY & VICTOR BERKEY;	:	C-20055316;✓
RICHARD E. & JULIETTE A. LAURY;	:	C-20055317;
PARVEEN & PRAMILA GUPTA;	:	C-20055318;
ARMANDO VILLANI;	:	C-20055319;
ANTHONY A. STROBEL;	:	C-20055320;
ELAINE D. HOKENSON;	:	C-20055321;
GEORGE J. RAYKOS;	:	C-20055324;
MR. & MRS. JOHN HORVATH;	:	C-20055346;
JEFFREY B. BENNER; and	:	C-20055374;
FLOYD & DOLORES KENNEDY	:	C-20055392

Complainants,

v.

UTILITIES, INC.-WESTGATE,

Respondent,

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ANSWER TO THE OFFICE OF CONSUMER ADVOCATE'S
MOTION TO CONSOLIDATE

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code Section 5.101(d), Utilities, Inc.-Westgate ("Respondent" or "Westgate"), by its attorneys, hereby answers the Motion To Consolidate of the Office of Consumer Advocate ("OCA") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") in the above-captioned dockets. OCA seeks to consolidate Docket Nos. C-20055305 *et al.* ("Westgate Customer Complaint Docket") and Docket Nos. A-210072F0003 *et al.* ("Joint Application Docket"). Respondent specifically requests that the Commission deny

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OCA's improper and unsupported attempt to combine these two unrelated dockets and permit only the consolidation of the above-captioned complaints.

1. Respondent is currently a party to two separate and unrelated matters before the Commission. The first is the above-referenced Westgate Customer Complaint Docket. This docket involves the formal complaints of various Westgate customers regarding alleged water quality issues exclusively in the Westgate service territory. The other proceeding is a Joint Application Docket in which Westgate is one of three joint applicants. In that proceeding, Penn Estates Utilities, Inc. ("PEUI"), Utilities, Inc. of Pennsylvania ("UIP"), and Westgate (collectively, "Applicants"), filed a Joint Application for the approval of a stock transfer of their grandparent corporation. The stock transfer proposes to create a more financially sound corporate structure providing benefits to all three of the Applicants' territories while customers continue to experience seamless, uninterrupted service.

2. On October 17, 2005, OCA filed an Answer to Motion to Dismiss, Reply to New Matter and Motion to Consolidate ("Motion") in the Westgate Customer Complaint Docket. Attached to this Motion was a copy of OCA's October 3, 2005, Protest from the Joint Application Docket that included an unauthenticated, unfiled copy of a "Formal Complaint of Irwin A. Popowsky, Consumer Advocate."¹ Respondent believed they were working with OCA to address the issues presented in this complaint docket and are surprised to find the OCA making claims to the contrary. *See* Motion ¶ 10, fn.2. Specifically, Respondent met with

¹ On October 24, 2005, Applicants filed with the Commission, in the Joint Application Docket, a Motion to Strike from the OCA's Protest the unfiled attached "Formal Complaint." For reasons set forth more fully therein, the Applicants moved to strike the exhibit as it is a procedurally deficient and inappropriate vehicle to introduce into the Joint Application docket unsubstantiated allegations that would be more properly addressed, if and only if accompanied by a basis in fact, in the Westgate Customer Complaint Docket. Applicants noted that an appropriate forum already exists for addressing the "Formal Complaint," if and when OCA elects to file it, and view OCA's inclusion of the complaint in the Joint Application Docket as an improper attempt to link two unrelated matters.

representatives of OCA on July 7, 2005, at which time the parties agreed to explore various cost-effective actions to eliminate or reduce certain customers' perceived unhappiness with water quality. *See* Exhibit C from Respondent's Answer and Motion to Dismiss. As a direct result of continued consultation with OCA, Respondent narrowed its focus to alternatives involving bulk water purchase from the City of Bethlehem, as well as filtration alternatives, and produced analyses that were shared with OCA and attached to Respondent's original Answer and Motion to Dismiss. Notwithstanding OCA's curious and peculiar characterization of its continuing consultation with Respondent, Respondent continues its work with OCA in a joint effort to address customer concerns.

3. As part of their October 17, 2005, Motion, OCA moves to consolidate the Westgate Customer Complaint Docket and the Joint Application Docket based purely on the improper inclusion of their Protest and unfiled "Formal Complaint" in both dockets. OCA's Motion to Consolidate incorrectly claims that the Protest from the Joint Application Docket and the Westgate Customer Complaint Docket present common questions of law and fact and offers nothing in support of this assertion. No substantive argument in OCA's motion supports consolidation of the two unrelated dockets. The inclusion of the Protest and the unfiled "Formal Complaint" is little more than an unvarnished effort to establish a link between two separate matters that simply does not exist. OCA clearly seeks to hold hostage the Joint Application to gain concessions in the Westgate Customer Complaint Docket, in which OCA has not even submitted a formal complaint.

4. OCA further states that consolidation is necessary to "avoid the unnecessary costs and delay that could result from the two proceedings going forward separately." *See* Motion ¶ 12. OCA fails to provide any type of substantive reason to support this claim and Respondent

questions the motive of such a request. The Commission has established procedural channels to efficiently handle each of these separate matters to prevent exactly the type of situation that OCA is trying to create under the pretext of consolidation. *See e.g.*, 66 Pa.C.S. § 701, *et seq.*, and § 1101, *et seq.* Consolidation will only cause unnecessary delay in the Joint Application Docket. Such a delay has the possibility of placing in jeopardy a deal that will only serve to strengthen the corporate structure of each of the three utilities by providing increased financial stability. Respondent understands and fully appreciates OCA's concerns regarding the alleged water quality issues and is committed to work to alleviate those concerns, but does not believe that subverting a transaction that would establish a more financially sound corporate entity in any way serves the customers of Westgate or the other affected utilities. OCA's actions in attempting to unnecessarily delay the Joint Application Docket does little more than risk the financial viability of the current utility and weaken the possibility of any potential future resolutions. Thus, the primary purposes of consolidation, judicial economy and equity will clearly not be served in combining these unrelated matters.

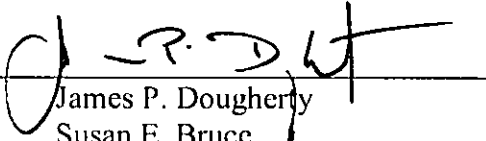
5. OCA's Motion to Consolidate is also improper as the outcomes of the Joint Application Docket and the Westgate Customer Complaint Docket are neither dependent on each other, nor do the separate issues even concern a majority of the parties. The Westgate Customer Complaint Docket involves customers strictly inside of the Westgate service territory, and not a single complaint in the proceeding involves a customer in either PEUI or UIP's service territories. There is simply no common question of law or fact linking the parties in these two separate matters. Respondent fails to see how maintaining two separate proceedings is not the only appropriate course of action.

6. Accordingly, the OCA's Motion to Consolidate the Westgate Customer Complaint Docket and the Joint Application Docket would do nothing more than unnecessarily delay the Joint Application Docket and jeopardize the financial benefits of the transaction. As the OCA offers no substantive argument for why these two unrelated dockets should be consolidated, the Respondent respectfully requests that the Commission deny their Motion to Consolidate and properly maintain separate proceedings.

WHEREFORE, Utilities, Inc.-Westgate respectfully requests that the Commission deny the Office of Consumer Advocate's unsupported Motion to Consolidate the two unrelated matters in the Westgate Customer Complaint Docket, Docket Nos. C-20055305 *et al.* and the Joint Application Docket, Docket Nos. A-210072F0003 *et al.*

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Counsel to Utilities, Inc-Westgate

Dated: October 28, 2005

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA FIRST-CLASS MAIL

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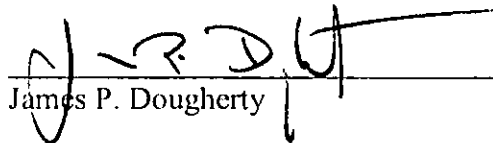
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James P. Dougherty

Dated this 28th day of October, 2005, in Harrisburg, Pennsylvania.

SECRETARY'S OFFICE
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