

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Municipal Authority of the Township of Robinson :
:
v. :
:
Pennsylvania-American Water Company :

C-20030092

SECRETARY'S BUREAU

2003 JUN 16 AM 11:15

RECEIVED

REP

PREHEARING CONFERENCE ORDER

A telephonic prehearing conference in this case is scheduled for Friday, July 18, 2003 at 10:00 a.m. Accordingly, the parties are hereby directed to comply with the following requirements:

1. If you or any proposed witness will be at a telephone number that is different than the number on the notice for the prehearing conference, you must notify me of that telephone number at least one (1) week before the prehearing conference.

2. A request for a change of the scheduled prehearing conference date must be submitted in writing no later than five (5) days prior to the prehearing conference. 52 Pa. Code §1.15(b). Requests for changes of initial hearings must be sent to the undersigned Administrative Law Judge, 1103 Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222. Only the undersigned Administrative Law Judge or OALJ Scheduling Staff may grant a request for a change of an initial hearing. Such changes are granted only in rare situations where sufficient cause exists. Requests for changes of subsequent prehearing conferences or hearings, if any, should also be served directly on me.

In accordance with the foregoing, absent a timely request for a continuance for good cause (i.e., no later than Friday, July 11, 2003), all parties must be prepared to participate in the scheduled prehearing conference.

DOCKETED

JUN 16 2003

DOCUMENT
FOLDER

3 Please review the regulation pertaining to prehearing conferences, 52 Pa. Code §5.222, and in particular, subsection (d) which provides, in part:

(d) Participants and counsel will be expected to attend the conference fully prepared for useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto. The preparation should include, among other things, advance study of all relevant materials, and advance informal communication between the participants, including requests for additional data and information, to the extent it appears feasible and desirable.
(Emphasis added.)

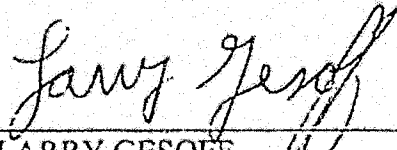
4. Each party must prepare and distribute a prehearing memorandum which sets forth the history of the proceeding, the issues you intend to present, and a listing of your proposed witnesses and the subject of their testimony.

5. Please review the regulations relating to discovery, specifically 52 Pa. Code §5.331(b), which provides, inter alia, that “[p]articipants shall endeavor to initiate discovery as early in the proceedings as reasonably possible,” and 52 Pa. Code §5.322, which encourages participants to exchange information on an informal basis. I urge all parties to cooperate in discovery. Such cooperation is preferable to numerous or protracted discovery disagreements, which require the presiding officer’s participation for resolution. Please be aware that there are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa. Code §§5.361, 5.371-5.372.

6. Pursuant to 52 Pa. Code §§1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney represent you. However, if you are a partnership, corporation, trust, association or governmental agency or subdivision, you must have an attorney represent you in this proceeding. Unless you are an attorney, you may not represent someone else.

7. You must serve me directly with a copy of any document that you file in this proceeding. If you send me any correspondence or document, you must send a copy to all other parties. For your convenience, a copy of the Commission's current service list of the parties to this proceeding is enclosed with this Order.

Date: June 10, 2003



LARRY GESOFF
Administrative Law Judge

SERVICE LIST: C-20030092

Albert J. Zangrilli, Jr., Esquire
Yukevich, Marchetti, Liekar & Zangrilli, P.C.
11 Stanwix Street
Suite 1024
Pittsburgh, PA 15222-1324

Thomas P. Gadsden, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

ORIGINAL

Witherel & Kovacic
Attorneys at Law

966 Perry Highway • Pittsburgh, Pa. 15237
412 / 366-6629 • 412 / 366-6333 • FAX 366-3329

BTL

RECEIVED

JUN 13 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT
FOLDER

June 13, 2003

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

IN RE: Municipal Authority of the Township of Robinson v.
Pennsylvania American Water Company
Docket No. C-20030092

Gentlemen:

Enclosed please find for filing, on behalf of the Pennsylvania
Municipal Authorities Association, a Motion to Intervene and an
Amicus Brief in the above-captioned matter.

Please contact me if you have any questions or concerns
regarding the enclosed.

Sincerely yours,


Michael J. Witherel

MJW/ark

Enclosures

cc: Albert J. Zangrilli, Jr., Esq. (w/encs.)
Thomas P. Gadsden, Esq. (w/encs.)
Bohdan P. Pankiw, Esq. (w/encs.)
Larry Gesoff, Admin. Law Judge (w/encs.)
Doug Bilheimer, PMAA (w/encs.)
Aarel Arndt, PMAA (w/encs.)

with offices at:
21 West Market Street • Blairsville, Pa. 15717 • 724 / 459-0500
U.S. Route 422 • Elderton, Pa. 15736 • 724 / 354-5110

OS

ORIGINAL

RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JUN 13 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

THE MUNICIPAL AUTHORITY OF THE)
TOWNSHIP OF ROBINSON,)

v.)

PENNSYLVANIA-AMERICAN WATER)
COMPANY.)

Docket No. C-20030092

AMICUS BRIEF OF PENNSYLVANIA MUNICIPAL AUTHORITIES ASSOCIATION

AND NOW, comes the Pennsylvania Municipal Authorities Association (PMAA) by its Counsel, Michael J. Witherel, Esquire, and presents the instant amicus brief for the Commission's consideration:

DOCUMENT
FOLDER

DOCKETED

JUN 19 2003

SUMMARY OF THE ARGUMENT

The Filed Rate Doctrine is the keystone of the regulations governing public utilities. Any attempt to circumvent the provisions of that Doctrine is, necessarily, a matter of importance to utility customers throughout the Commonwealth. What we have in this case is a transparent attempt to bypass the applicable tariff rate. Rider DRS is a shield granted to PAWC to fend off attempts by other suppliers seeking to lure away PAWC's existing customers. It was never intended as, and is not written to be, a sword with which PAWC may engage in the predatory practice of undercutting another supplier for the purpose of gaining either a new customer, or new service from an existing customer. Thus, neither the express wording of the exception nor the purpose behind that exception have any application in this case.

Further, permitting such offensive use of the rider would be myopic public utility policy. PAWC is attempting through the side door what it cannot accomplish through the front. All

public utilities, and in particular all municipal authorities, have an interest in the evenhanded application of rules and regulations by the PUC. Hence, whether the proper remedy in this case arises under §1303, 1304 or §528, the contract entered into cannot be permitted at the rate quoted by PAWC. While the short-term results may be that one customer, WACMA, has (at least initially) very favorable rates (please see the escalation clause in Rider ADR), there is an equal short-term disadvantage to MATR and its rate-payers, who have now lost a long-standing customer under an inherently unfair rate practice. In the long term, PAWC will necessarily have to increase its rates to WACMA and/or its rate-payers and, should PAWC continue to undercut other water suppliers, true competition, involving approved and appropriate tariff rates, will disappear entirely. Hence, the genius of the Filed Rate Doctrine, which limits utilities to their filed and approved tariff rates, thereby assuring above-board treatment of all customers and rate payers.

Finally, an entity such as PAWC, which has publicly touted its "rigorous pursuit of growth by consolidation" should not be permitted, at the expense of municipal authorities, to flout the rules in pursuit of market dominance. Competition among water suppliers is governed by rules which are useful and beneficial to Commonwealth and its citizens only if they are followed.

RELEVANT FACTS

This is a proceeding initiated by the Municipal Authority of the Township of Robinson (MATR), seeking a declaratory order on the appropriateness of the Pennsylvania American Water Company's (PAWC) use of an exception to its normal tariff rates (Rider DRS) to compete for business with a customer who presently purchases water from both PAWC and Complainant. Western Allegheny County Municipal Authority (WACMA) is a distribution-only authority which

presently purchases water from both MATR (for one, discrete, portion of its service area) and from PAWC (for another, discrete, portion of its service area). WACMA and MATR were engaged in negotiations for a new contract, as the present agreement expires in October, 2003, but WACMA has entered into a contract with PAWC for provision of water at a rate far below PAWC's tariff rate for resale purchasers.

PAWC maintains that it is permitted to charge a rate of roughly ½ its normal tariff rate under "Rider DRS" which is applicable when an existing customer of PAWC is intending to switch to a competitor, thereby depriving PAWC of an existing customer. The rider reads, in relevant part, as follows:

This rider is available to a customer that:

- (1) purchases water from the Company for resale;
- (2) enters into a Service Agreement for a term of not less than 10 years;
- (3) during the original and any renewal terms of the Service Agreement, agrees to maintain a daily load factor of not less than 0.75; and
- (4) has a viable competitive alternative to service from the Company and intends to select the alternative to the detriment of the Company and its other customers.

There is no dispute that the second and third parts of the rider are met in this case. However, read together, parts (1) and (4) presuppose an existing relationship between PAWC and the customer which is being threatened by a competitor, i.e., that PAWC's ability to maintain the existing relationship is threatened by a competitor. Here, no such relationship exists.

PAWC presents the testimony of Robert L. Robowski in support of Rider DRS, and asserts that his testimony establishes that Rider DRS was intended not only to "maintain its existing customer base" but also to "attract new customers." (Answer, Tab B at 6). This statement, however, must be read in light of the testimony which preceded it. Specifically, Mr. Robowski notes that the rider is intended for high-load customers who have a competitive alternative to service from PAWC, and then he lists three examples: "e.g., the development of their own supply sources, the relocation of facilities, the installation of recycling equipment" (Id. at 5). Tellingly, Mr. Robowski does not indicate in any fashion that the rider is intended for use where another water supplier is competing for business which PAWC does not then have. Instead, he speaks only of situations where the customer engages in self-help by finding a supply of water that does not come from a public utility. If the rider had been meant to include situations where PAWC was seeking to add a new customer, or to expand the service offered to an existing customer, by underbidding another water supplying entity. Mr. Robowski would certainly have so indicated. Instead, his testimony leads to the inescapable conclusion that the rider was intended to: (1) entice high load factor customers who have their own sources of water to instead purchase from PAWC; and (2) prevent high load factor customers from leaving PAWC in favor of providing their own source of water. This testimony is certainly not an indication that PAWC intended the rider to apply where it is bidding on a new customer (or new business from an existing customer) in direct competition with a municipal authority which is bound by its own rate schedule. The "new customers" would be industrial customers who had, in the past, recycled or developed their own source of water, but who are lured by the low rate provided under the rider to abandon their previous means of acquiring water and purchase water from PAWC.

Equally unpersuasive is PAWC's reliance upon its brief in support of the rider during the 1994 proceeding. Indeed, the focus of the rider on industrial customers who would turn to self-generation or recycling is the sole focus of the brief. "First, at this juncture, the Company sees no valid reason to offer to negotiate a below-tariff rate with an **industrial customer** that does not have a viable competitive alternative to PAWC's water service." (Answer, Tab C at 103)(bold emphasis added, underline in original). There is no mention that the rider would be used as a means to undercut the rates of other water suppliers, and for good reason. **The rider was never intended to apply where another water supplier was involved, and more particularly, where PAWC is seeking to replace the other supplier, and not the other way around.** Can PAWC seriously contend that the PUC intended to give it the exclusive right to offer a fraction of the rates charged by other water suppliers? On what basis is PAWC entitled to such a boon, while other entities are bound to their rate schedules? PAWC's position simply does not stand up to scrutiny.

COMMISSION AUTHORITY

PAWC suggests that the Commission lacks the authority to rule in this matter. The Commission's mission and authority are discussed at length in Aileen Reid GTE North, Inc. and the Bell Telephone Company of Pennsylvania, May 25, 1993, 1993 WL 855847, at 4-5 (Pa.P.U.C.). The Commission noted that it is "a creature of statute and possesses only those powers specifically enumerated in the Public Utility Code, 66 Pa. C.S. §§ 101, et seq. *City of Philadelphia v. Philadelphia Electric Company*, 504 Pa. 312, 473 A.2d 997 (1984)." The question was whether the Commission could force a utility to serve in an area other than the one certified by the Commission pursuant to 66 Pa. C.S. §1102. The Commission rejected the contention that it could act only when

invited to do so since "the Legislature contemplated that the Commission does not have to wait for a party to file a complaint or a utility to file an application in order to undertake appropriate action." In this respect, the Commission cited to Section 1505 of the Code, 66 Pa. C.S. § 1505, which provides for the Commission to act on its own initiative:

"Whenever the Commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this part, the Commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or facilities to be observed, furnished, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public."

The Commission continued, "the courts have rejected the argument that public utilities have duties only to existing patrons or employees, because to do so renders the word "public" in these sections needless surplusage. Postal Telegraph-Cable Co. v. Pa. P.U.C., 154 Pa. Superior Ct. 340, 35 A.2d 535 (1944); West Penn. Rys. Co. v. Pa. P.U.C., 142 Pa. Superior Ct. 140, 15 A.2d 539 (1940). Thus, one must conclude the Legislature specifically contemplated that the Commission could order extensions of service, when appropriate to serve the 'accommodation, convenience and safety of the public', 66 Pa. §§1501, 1505, and not a particular customer base."

While it is true that the situation presented in Aileen Reid, the proper service area for an electrical utility, is not the same issue presented here, the principles underlying the discussion that matter are equally applicable here:

The purpose of public utility regulation is to ensure the public receives adequate service at reasonable rates. Metropolitan Edison Co. v. Public Service Commission, 127 Pa. Superior Ct. 11, 191 A. 678 (1937). The overriding concern is the public interest. D. F. Blast, Inc. v. Pa. P.U.C., 185 Pa. Superior Ct. 487, 138 A.2d 270 (1958), reversed on other grounds, 397 Pa. 246, 154 A.2d 505 (1959); Sayre v. Pa. P.U.C., 161 Pa. Superior Ct. 182, 54 A.2d 95 (1947); Colombo v. Pa. P.U.C., 159 Pa. Superior Ct. 483, 48 A.2d 59 (1946). The operation of a public utility is impressed with a public interest and subject to regulation pursuant to the police power. Rogoff v. Buncher Co., 395 Pa. 477, 151 A.2d 83 (1945). The Legislature created the Commission to carry out this necessary regulation and protect the public interest. Metropolitan Edison Co., supra, n.12.

This task requires flexibility, since the public interest is a dynamic concept, which will not be adequately protected unless the Commission has the authority to meet changing needs. The very concept of regulation implies ongoing and continuous supervision by the regulatory agency of those regulated. The Legislature recognized and provided for the need for flexibility in the Code. The Commission must grant certificates of public convenience, when it finds such action to be in the public interest. 66 Pa. C.S. §1103. To

such certificates, the Commission "may impose such condition as it may deem to be just and reasonable." Id.

The Commission should, therefore, reach the underlying issues in this matter, regardless of its decision on whether those questions have been presented in the most appropriate fashion.

And, in any event, this case, properly viewed, is a very simple matter of interpreting the proper filed tariff rate to be applied. This is an issue which is singularly within the Commission's expertise. In National Properties, Inc. v. Citizens Utilities Water Company of Pennsylvania, 1998 WL 34067537 (Pa.PUC February 28, 1998), the Commission was faced with the question of whether a water utility properly classified customers for purposes of applying the appropriate tariff rate. The question presented was whether a "master metered apartment building is more like a commercial customer than a residential customer." The issue before the Commission was whether "Citizens' classification of its two apartment complexes as residential service customers instead of commercial service customers, violates Pennsylvania Public Utility Code provisions barring unreasonable discrimination in rates (66 Pa.C.S. §1304) and service (66 Pa.C.S. §1502)." The Commission found in that case that the classification was reasonable.

Here, the same type of issue is presented: i.e., the propriety of including a specific customer within a tariff category. Thus, the issues here are whether PAWC is engaging in unreasonable discrimination in rates or service. Unlike the case in National Properties, however, it is clear that the tariff rate applied in this case does not include customers like WACMA.¹

¹ PAWC may argue that it is permitted to use Rider ADR against other water suppliers. The PMAA believes that this argument completely ignores the import of the testimony and argument provided in support of the rider, which was addressed to industrial customers who become their own water supplier through one means or another. However, the resolution of this issue, i.e., whether the rider may be used where the "viable alternative source" is another

Accordingly, it is well within the Commission's authority to rule on the propriety of PAWC's use of the rider in this instance.

Indeed, the Commission has its choice in this case of statutory provisions under which PAWC's actions are improper. It may conclude either that the contract violates the Section 1303 prohibition against a utility charging any rate other than that specified in its tariff, or, as noted above, the Section 1304 prohibition against establishing unreasonable differences between classes of service. 66 Pa.C.S. §§ 1303, 1304.² Section 1303 "has been interpreted to mean that public utility tariffs have the force and effect of law, and are binding on the customer as well as the utility. Pennsylvania Electric Co. v. Pennsylvania Public Utility Commission, 663 A.2d 281, 284 (Pa.Cmwlt.1995)." Philadelphia Suburban Water Co. v. Pennsylvania Public Utility Com'n, 808 A.2d 1044, 1050 (Pa.Cmwlt.2002).

In Philadelphia Suburban, PAWC entered into an agreement whereby it would purchase an existing municipal authority and then pay for it by giving the municipality free fire

water utility, need not trouble the Commissioner since there is no indication that PAWC was going to lose an existing customer or any existing load to MATR or, for that matter, any other entity. Again, PAWC is simply attempting to use a shield as a sword in this case.

² Section 1303 provides:

No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part. Any public utility, having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, compute bills under the rate most advantageous to the patron.

(Emphasis added).

hydrant service. The court found that this arrangement clearly violated Section 1303 of the Public Utility Code:

Free public utility service has been examined by our appellate courts and found to be anathema to a system of regulation and publication of a utility's tariffs. In American Aniline Products, Inc. v. City of Lock Haven, 288 Pa. 420, 425, 135 A. 726, 727 (1927), our Supreme Court determined that a city's agreement to provide free water service in order to induce an industry to locate within its boundaries 'is discrimination against other users and void against public policy,' reasoning that '[t]he discriminatory engagements of both [the municipal utility and the customer] are prohibited as matters of public policy for reasons so frequently stated we need not repeat them here.'

Id. The court found that neither the contract between the municipality nor the fact that the free service was actually payment for an asset justified deviation from the applicable tariff rate. Id.

The court also addressed an argument, similar to that made by PAWC here, that the Commission may not interfere with the internal management of a utility. The court held, however, that the issue was not a question of management, but a question of the applicable rates "over which the PUC has ongoing regulatory authority and responsibility." Id., footnote 8. Again, the same analysis applies here. PAWC may not avoid its applicable tariff rate through an artful reading of an inapplicable rider to its tariff rates.

In fact, the language used by the court in rejecting PAWC's actions in the Philadelphia Suburban case is equally applicable and instructive in this case:

We return to the language of Section 1303 of the Public Utility Code, which prohibits a public utility from straying from its approved tariff "directly or indirectly, by any device whatsoever, or in anywise.... " 66 Pa.C.S. § 1303 (emphasis added). Coatesville will pay the public utility for fire hydrant service and then the public utility, Pennsylvania-American, will pay, dollar for dollar, an equal amount into the Coatesville Economic Development Fund. This is free service. Using shareholder funds to make the "contribution," establishing a tracking mechanism and separating these contributions from Pennsylvania-American's rate base do not provide a safe harbor from Section 1303's mandate. They merely do indirectly what the Free Service Covenant does directly: effect a tariff deviation.

* * *

Judicial intolerance for deviation from regulated rates has continued unabated [since 1887].

* * *

Pennsylvania-American and the PUC argue that the PUC has the authority to allow tariff deviation where it is in the public interest. Administrative agencies do not have the authority to order a regulated company to change lawful conduct on the theory that it is in the best interest of their customers. Aetna Casualty and Surety Insurance Co. v. Insurance Department, 536 Pa. 105, 638 A.2d 194 (1994). The corollary is equally true; an agency cannot waive a mandate of statute because it is in the public

interest. In Pennsylvania Electric Co., 663 A.2d at 284-285, we specifically held that the PUC lacks the authority to waive a tariff eligibility requirement for the stated reason that it would advance the "public interest." Indeed, a statutory command defines the public interest, and an administrative agency established to enforce that statutory command simply lacks the authority to issue countermand orders.

Pennsylvania-American contends that if we do not affirm the PUC, we sound the death knell for charitable donations by utilities. It argues from a false premise. Pennsylvania-American's payments to the Coatesville Economic Development Fund are not donations but, rather, contractual obligations. We sound the death knell only for pretextual "donations" that are, in actuality, rebates.

Id., at 1054-57. It is, perhaps, not surprising that PAWC is again attempting to be creative in its means of "rigorously" seeking expansion. However, as in Philadelphia Suburban, PAWC may not avoid a published tariff in any way, including through an overly-broad reading of a rider to the tariff rates.

Of course, if PAWC is interested in only a proper application of the rider, then it could protect the existing business it has from WACMA by offering the below-tariff rate to WACMA, but only to the extent of WACMA's traditional use of PAWC as a supplier. This is appropriate since PAWC cannot trigger the rider unless an existing customer is going to decrease its use of water from PAWC, or leave it entirely as a customer, in favor of another source of supply. MATR was not attempting to obtain PAWC's share of WACMA's business. However, if, under the

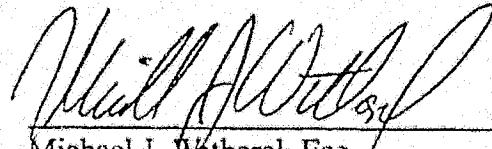
rider, PAWC is convinced that WACMA has shown it was considering obtaining all of its water from MATR, then PAWC may be permitted under the rider to offer WACMA the water load it has traditionally supplied at a rate set pursuant to Rider ADS. In fact, since PAWC has taken the position that the rider is in effect, the Commission should reform the contract to provide that only the load traditionally serviced by PAWC is available under the contract, and that is at the below-tariff rate. "Section 508 does not establish precise guidelines for the exercise of the PUC's contract reformation authority, but it does give the PUC broad and flexible range to find that a contract's terms are 'unjust, unreasonable, inequitable, or otherwise contrary or adverse to public interest ...' 66 Pa.C.S. § 508." Shenango Tp. Bd. of Sup'rs v. Pennsylvania Public Utility Com'n, 686 A.2d 910, 913 14 (Pa.Cmwlth Ct. 1996). It would certainly be within the "broad and flexible range" of the Commission's authority to give WACMA the benefit of the rider provision with respect to only that service which PAWC can legitimately "protect" under the rider, and to void the contract in all other respects, permitting the normal competition between water utilities.

CONCLUSION

Important issues of public utility law and policy are before the Commission. What PAWC seeks to do in this instance is to avoid entirely its applicable tariff rates and to engage in an unauthorized form of competition with other water suppliers. The rider was approved by the PUC upon testimony and argument that made no mention of a predatory use of below-tariff rates to obtain customers or load from other entities.. Rather, the rider was granted after repeated reference to "industrial" customers who were engaging in, or were likely to engage in, self-help through supplying their own water. Having never mentioned before the PUC in 1994 that the rider could be

used offensively against competing suppliers, PAWC (which has a history of creative attempts to avoid its published tariffs) cannot now credibly assert that the rider may properly be used as the basis for the contract in this case. The Commission may level the playing field here by issuing an order preventing use of the rider, which the PMAA strongly urges, as well as any other relief which the Commission may deem appropriate.

Respectfully submitted,



Michael J. Witherel, Esq.
Counsel for the Pennsylvania Municipal
Authorities Association
PA I.D. 27726
Witherel & Kovacik
966 Perry Highway
Pittsburgh, PA 15237

(412)366-6629

CERTIFICATE OF SERVICE

I hereby certify this 13th day of June, 2003, that a true and correct copy of the within Amicus Brief of the Pennsylvania Municipal Authorities Association was served upon the following via first-class United States Mail, postage pre-paid:

RECEIVED

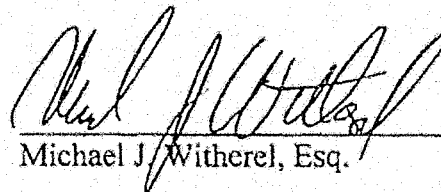
JUN 13 2003

Albert J. Zangrilli, Jr., Esq.
Yukevich, Marchetti, Liekar & Zangrilli, P.C.
11 Stanwix Street
Suite 1024
Pittsburgh, PA 15222

PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

Thomas P. Gadsden, Esq.
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103

Bohdan R. Pankiw, Esq.
Chief Counsel
Pennsylvania Public Utilities Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105


Michael J. Witherel, Esq.

COPY

RECEIVED

JUN 13 2003

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION PUBLIC UTILITY COMMISSION SECRETARY'S OFFICE

THE MUNICIPAL AUTHORITY OF THE)
TOWNSHIP OF ROBINSON,)

v.)

PENNSYLVANIA-AMERICAN WATER)
COMPANY,)

Docket No. C-20030092

DOCUMENT
FOLDER

MOTION OF PENNSYLVANIA MUNICIPAL AUTHORITIES ASSOCIATION
TO INTERVENE FOR THE LIMITED PURPOSE OF FILING AN AMICUS BRIEF

AND NOW, comes the Pennsylvania Municipal Authorities Association (PMAA) by its Counsel, Michael J. Witherel, Esquire, and files the instant motion pursuant to 52 Pa. Adm. Code §5.74, seeking leave to intervene for the limited purpose of filing an amicus brief in this matter:

1. This is a proceeding initiated by the Municipal Authority of the Township of Robinson (MATR), seeking a declaratory order on the appropriateness of the Pennsylvania American Water Company's (PAWC) use of an exception to its normal tariff rates (Rider DRS) to compete for business with a customer who presently purchases water from both PAWC and Complainant.

2. Western Allegheny County Municipal Authority (WACMA) is a distribution-only authority which presently purchases water from both MATR (for one, discrete, portion of its service area) and from PAWC (for another, discrete, portion of its service area).

3. MATR's long-term contract with WACMA expires in October, 2003, and PAWC has entered into an agreement with WACMA whereby PAWC would provide all of the water

DOCKETED

JUN 19 2003

needed by WACMA. The rates charged by PAWC in the contract are much lower than PAWC's tariff rates for resale purchasers such as WACMA.

4. PAWC maintains that it is permitted to charge a rate of roughly $\frac{1}{2}$ its normal tariff rate under "Rider DRS" which is applicable when an existing customer of PAWC is intending to switch to a competitor, thereby depriving PAWC of an existing customer.

5. MATR seeks a declaratory order prohibiting PAWC from "commencing service" under the contract, or from constructing any of the facilities necessary for commencing such service.

6. This is not a situation where an existing PAWC customer was intending to switch to a competitor and, hence, Rider DRS does not apply. While MATR has the most direct interest in preventing the use of Rider DRS as a means by which PAWC may unfairly compete with other water suppliers, the issue is one which transcends this case and calls into question the continued vitality of the Filed Rate Doctrine.

7. The PMAA is the recognized association for municipal authorities in the Commonwealth. Founded in 1941, PMAA currently has an active membership of over 600 authorities. In addition to active members, PMAA has in excess of 500 associate members, such as CPAs, engineers and solicitors, who provide services to municipal authorities.

8. The PMAA wishes to file an amicus brief in this case due to important issues with state-wide ramifications for its members.

9. The Commission does not have a specific rule addressed to the filing of amicus briefs.

10. The Commission does, however, permit intervention by persons or entities with "an interest such that intervention is necessary or appropriate to the administration of the statute " 52 Pa. Adm. Code §5.72(a).

11. "Interests" sufficient to warrant intervention can be any "interest of such nature that participation of the petitioner may be in the public interest." 52 Pa. Adm Code §5.72(a)(3).

12. The Commission has in the past permitted intervention for the limited purpose of filing amicus pleadings. See, Investigation into Demand Side Management by Electric Utilities Uniform Cost Recovery Mechanism, PUC Docket No. I-900005, 1993 WL 855893 (Pa.PUC, December 13, 1993)(allowing intervention by environmentalist groups for purposes of filing pleadings as amicus curiae).

13. MATR is a member of PMAA, and both MATR and PAWC are engaged in the provision of water, an activity regulated by the Commission as to private suppliers such as PAWC.

14. The PMAA's offices are located at 1000 N. Front Street, Suite 401, Wormleysburg, PA 17043.

15. The PMAA offers its members legal counsel, legislative services, educational and training workshops, an annual convention, various insurance programs, information services and a wide collection of publications.

16. The mission of the PMAA is to assist authorities in providing services that protect and enhance the environment, promote economic vitality and the general welfare of the Commonwealth of Pennsylvania and its citizens.

17. In fulfilling this mission, the PMAA offers a variety of programs for its members, including: 1) the PLGIT program, consisting of a Money Market Trust Fund administered by and for Local Government Units, including PMAA ; 2) the PMAA Unemployment Compensation Program, which is a money-saving endeavor for the benefit of PMAA member authorities, and is managed by PMAA Trustees; 3) the PMAPP, which is a comprehensive pension program for its members; and (4) an information service designed to provide answers to a wide variety of questions involving authority inquiries from the membership.

18. The PMAA also offers its members opportunities throughout the year to meet at conferences designed to provide information and support to its members.

19. The PMAA, due to its nature, mission and membership, is in a unique position to offer the Commission credible and unbiased analysis of the possible state-wide impact on all municipal authorities from the rulings which may be made in specific Commission proceedings.

20. The PMAA, unlike the parties here, has a longer view of the issues involved, and no immediate interest in the specific issue of which supplier should ultimately service the customer at issue. Rather, PMAA's interest is to maintain a level playing field for all suppliers of water, including those who fall under the Commission's authority.

21. The use of by PAWC of an exception to its normal tariff rates in this case presents a likelihood that water utilities (and/or other utilities) who have a special tariff rates intended to protect existing customers will likewise use those exceptions as a means for competing for water business unfairly with entities that must follow their existing rates, particularly authorities which are not regulated by the Commission, but must set rates as provided by law.

22. If permitted to take such actions, water suppliers may engage in competition which will become unhealthy for water consumers in the Commonwealth in any number of ways, not the least of which is, ultimately, a lack of true competition. More immediately, however, the use of such special tariff provisions as a means of predation on the customers of other water providing entities will cause undue hardship to the customers of such entities, and will also likely cause harm to the existing customers of the aggressive utility, who will have to make up from its other customers the shortfall necessitated by the unnaturally low price offered to the new customer.

23. These issues, which address the broader purposes of the Act and the Commission, are appropriately commented upon by the PMAA, which can offer the Commission useful and insightful analysis of the policy considerations involved, making the PMAA's participation as an intervenor for limited purpose of filing amicus pleadings "in the public interest" and, hence, appropriate under Pa.Adm.Code §572(a)(3).

CONCLUSION

Wherefore, on the basis of the foregoing, the PMAA respectfully requests that its motion be granted, and that the accompanying brief be accepted by the Commission, and further that the PMAA be permitted to file further amicus pleadings as appropriate throughout these proceedings.

Respectfully submitted,



Michael J. Witherel, Esq.
Counsel for the Pennsylvania Municipal
Authorities Association
PA I.D. 27726
Witherel & Kovacik
966 Perry Highway
Pittsburgh, PA 15237

(412)366-6629

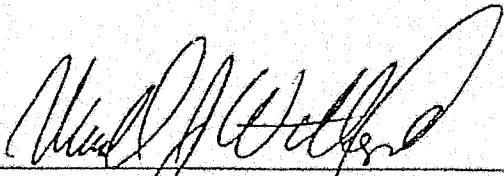
CERTIFICATE OF SERVICE

I hereby certify this 13th day of June, 2003, that a true and correct copy of the within Motion of Pennsylvania Municipal Authorities Association to Intervene for the Limited Purpose of Filing and Amicus Brief was served upon the following via first-class United States Mail, postage pre-paid:

Albert J. Zangrilli, Jr., Esq.
Yukevich, Marchetti, Liekar & Zangrilli, P.C.
11 Stanwix Street
Suite 1024
Pittsburgh, PA 15222

Thomas P. Gadsden, Esq.
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103

Bohdan R. Pankiw, Esq.
Chief Counsel
Pennsylvania Public Utilities Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105



Michael J. Witherel, Esq.

YUKEVICH, MARCHETTI, LIEKAR & ZANGRILLI, P.C.

ATTORNEYS AT LAW

11 STANWIX STREET

SUITE 1024

PITTSBURGH, PENNSYLVANIA 15222-1324

ORIGINAL

Writer's Direct Dial:
(412) 261-6780

TELEPHONE 412/261-6777
FAX 412/261-6789

June 27, 2003

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

RECEIVED
2003 JUN 30 AM 11:31
SECRETARY'S BUREAU

RE: THE MUNICIPAL AUTHORITY OF THE TOWNSHIP OF ROBINSON VS.
PENNSYLVANIA-AMERICAN WATER COMPANY
PUC Docket No. C-20030092

Dear Secretary McNulty:

Our law firm is counsel to The Municipal Authority of the Township of Robinson, Complainant-Petitioner in the above-captioned proceeding.

Pursuant to Section 5.421 of the Rules of Administrative Practice and Procedure, please find attached the original Application for Issuance of Subpoenas. Copies have been served as required by the Rules.

DOCUMENT
FOLDER

Very truly yours,



Albert J. Zangrilli, Jr.

AJZ/ph

Enclosure

RJP

- cc: Thomas P. Gadsden, Esq. (w/encl.)
- Michael J. Witherel, Esq. (w/encl.)
- Bohdan R. Pankiw, Esq. (w/encl.)
- Office of Attorney General, Consumer Advocate's Office (w/encl.)
- Department of Commerce, Office of Small Business Advocate (w/encl.)
- Ronald J. Brown, Esq. (w/encl.)

76

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

THE MUNICIPAL AUTHORITY OF THE)
TOWNSHIP OF ROBINSON,)

Complainant - Petitioner,)

vs.)

PENNSYLVANIA AMERICAN WATER)
COMPANY,)

Respondent.)

No.: C-20030092

SECRETARY'S BUREAU

2003 JUN 30 AM 11:31

RECEIVED

NOTICE TO APPLICATION FOR ISSUANCE OF SUBPOENAS

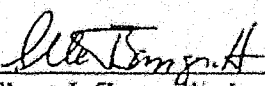
TO: ALL ENTITIES LISTED ON THE ATTACHED CERTIFICATE OF SERVICE

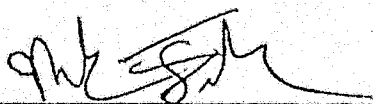
TAKE NOTICE that pursuant to Section 5.421(b) of the Rules of Administrative Practice and Procedure, any answer or objection you may elect to file must be filed with the Public Utility Commission and the Honorable Larry Gesoff, Administrative Law Judge, within ten (10) days of the date of service of the attached Application at the following addresses:

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265
ATTN: Office of Trial Staff

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

YUKEVICH, MARCHETTI, LIEKAR
& ZANGRILLI, P.C.

By: 
Albert J. Zangrilli, Jr.

By: 
Mark Fischer

Attorneys for Complainant-Petitioner

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

THE MUNICIPAL AUTHORITY OF THE
TOWNSHIP OF ROBINSON,

Complainant - Petitioner,

vs.

PENNSYLVANIA AMERICAN WATER
COMPANY.

Respondent.

No.: C-20030092

DOCKETED
JUL 07 2003

DOCUMENT
FOLDER

APPLICATION FOR ISSUANCE OF SUBPOENAS

AND NOW COMES The Municipal Authority of the Township of Robinson ("MATR") and by its undersigned attorneys files this Application for Issuance of Subpoenas pursuant to Section 5.421 of the Rules of Administrative Practice and Procedure, and in support thereof, states as follows:

1. This proceeding challenges the legality of a purported Water Sales Agreement dated March 28, 2003 ("Contract"), by and between Respondent Pennsylvania - American Water Company ("PAWC") and the Western Allegheny County Municipal Authority ("WACMA").

2. Since 1983, MATR has been the principal supplier of potable water to WACMA, a "distribution authority" only, because WACMA has no source of water other than that produced by others.

3. Over the years, MATR has continued to upgrade its facilities in order to be able to supply WACMA's water consumption needs which last year exceeded one million gallons per day (average daily use).

4. In late April, MATR was stunned to learn of the purported Contract referred to in paragraph 1 hereof and in response to the Contract's illegality, commenced this proceeding.

5. In short, MATR's Complaint alleges, inter alia, that PAWC illegally utilized "Rider DRS-Demand Based Retail Service" ("Rider DRS") to entice WACMA to enter into the purported Contract and, if said Contract is not stricken by the PUC, to implement and charge a rate in violation of Pennsylvania law.

6. In order to legally utilize Rider DRS pursuant to its Tariff, PAWC must demonstrate that the customer (in this case, WACMA):

- (a) purchases water from PAWC for resale; and
- (b) enters into a contract for a term of not less than ten (10) years; and
- (c) during the original and any renewal terms of the Contract, agrees to maintain a daily load factor of not less than 0.75; and
- (d) has a viable competitive alternative to service from PAWC and intends to select that alternative to PAWC's detriment and PAWC's other customers.

7. Until the filing of PAWC's Answer in this proceeding, MATR believed that WACMA operated two separate and independent distribution systems, one serving the northern portion of WACMA's service territory ("the Primary System") and the other serving the southern portion of WACMA's service territory ("the Secondary System"). See Complaint pars. 28-32.

8. MATR believed and continues to believe that it provided water to WACMA's Primary System and that PAWC provided water only to WACMA's Secondary System.

9. However, in its Answer, PAWC contends that MATR's understanding of WACMA's distribution system is incorrect:

“... it is PAWC’s understanding that WACMA has operated a single, integrated water distribution system for several years and that the “Primary System/Secondary System” distinctions drawn by the Authority [MATR] in its Complaint are no longer applicable.”

Answer par. 28-30.

10. MATR believes that the amount of water provided by PAWC to WACMA’s Secondary System is miniscule in contrast to the amount of water MATR provides to WACMA’s Primary System.

11. MATR thus requires discovery of WACMA with respect to the following facts and issues:

(a) The operation of WACMA’s water distribution system: is it a “single, integrated system” as alleged by PAWC or is it two systems, a Primary and Secondary System as alleged by MATR.

(b) WACMA’s water purchases and the quantity of water WACMA has purchased from each of its alleged several suppliers from 1983 to the present.

(c) Representations made by and between WACMA and PAWC during the course of negotiations leading up to the execution of the purported Contract.

12. Because the information needed from WACMA is crucial to MATR’s case, the denial of this Application will be extremely prejudicial to MATR while no prejudice will result to WACMA or PAWC by the granting of this Application.

WHEREFORE, The Municipal Authority of the Township of Robinson respectfully requests the Public Utility Commission to issue two subpoenas directed to the Western Allegheny Municipal Authority in the forms attached hereto, as follows:

1. Subpoena for the Production of Documents, directing the production of documents in advance of deposition, said documents being:

(a) The most current map or drawing of the entire WACMA distribution system, showing, but not limited to: (i) all points of connection and interconnection by and between the WACMA system and all other entities that provide or have provided water to WACMA, and (ii) all points of connection by and between WACMA's alleged "Primary System" and "Secondary Systems" (see definition below); and

(b) WACMA's Annual Water Supply Reports from 1983 to the date hereof as filed with the Pennsylvania Department of Environmental Protection; and

(c) Any and all documents, including, but not limited to, meter readings, showing or reflecting the alleged transfer of water from the "Secondary System" to the "Primary System" of WACMA (for purposes of this Subpoena, the term "Primary System" shall be defined to mean that portion of WACMA's system "hatch-marked" on the drawing attached hereto and made a part hereof and the term "Secondary System" shall mean the "un-hatched" portion of WACMA's system regardless of whether the two "Systems" are interconnected or not); and

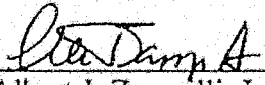
(d) Any and all written contracts (exclusive of the purported Contract) by and between PAWC and WACMA pertaining to the provision of water to WACMA by PAWC from 1983 to the date hereof; and

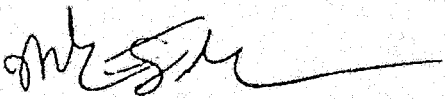
(e) Any and all documentation pertaining to the alleged connection of WACMA's Primary System and Secondary Systems, including the date on which such connection was made; and

(f) Any and all documents pertaining to any and all negotiations by and between PAWC and WACMA with respect to purported Contract.

2. Subpoena Ad Testificandum, directing the attendance of WACMA through one or more of its officers, directors, managing agents or other persons selected to testify on its behalf at one or more depositions.

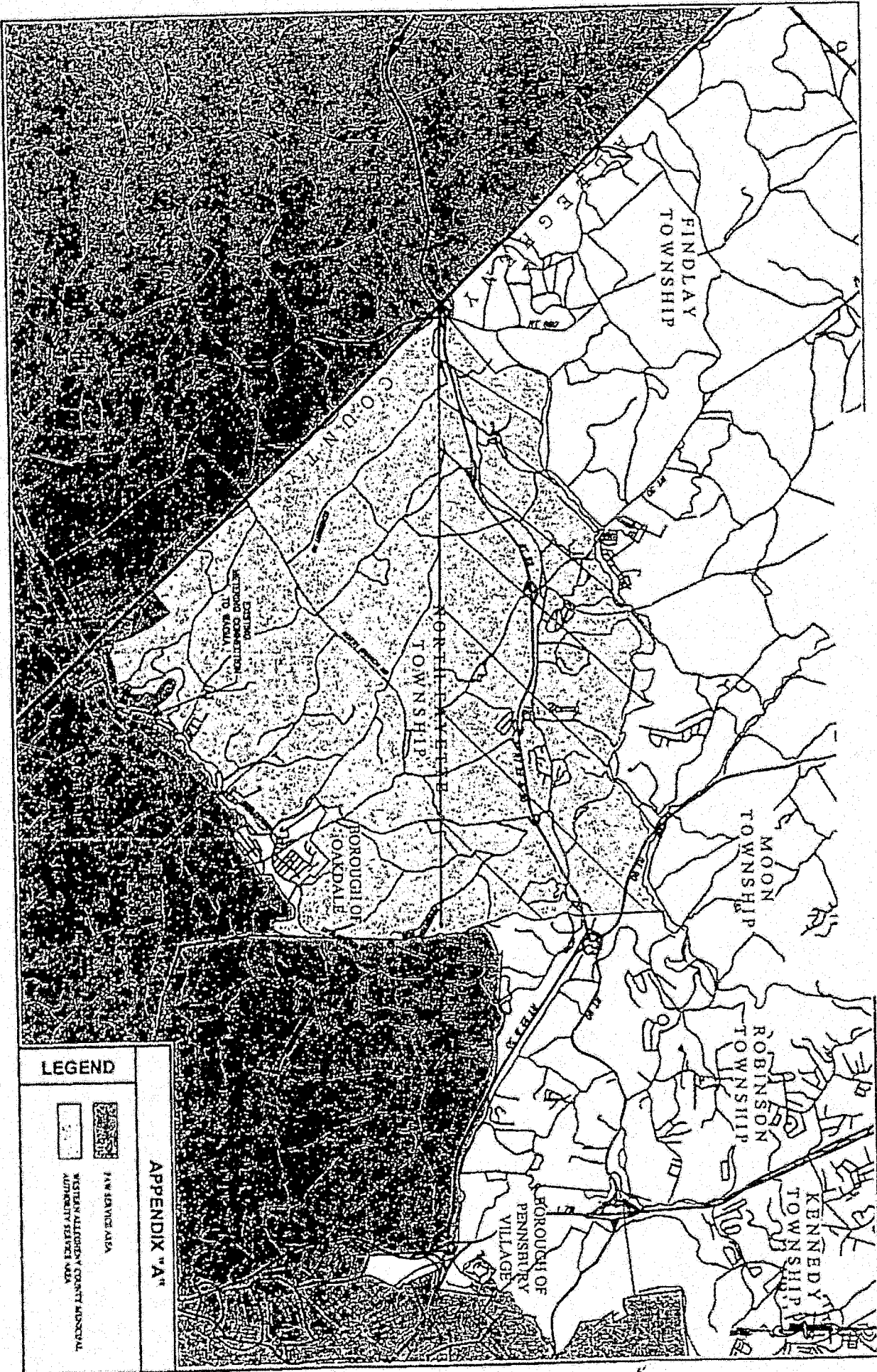
YUKEVICH, MARCHETTI, LIEKAR
& ZANGRILLI, P.C.

By: 
Albert J. Zangrilli, Jr.

By: 
Mark Fischer

Attorneys for The Municipal Authority
of the Township of Robinson

OVERSIZED
DOCUMENT(S)



LEGEND



AIR SERVICE DATA
WESTERN ALLEGANY COUNTY MUNICIPAL
AUTHORITY SERVICE DATA

APPENDIX "A"

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached **NOTICE TO APPLICATION FOR ISSUANCE OF SUBPOENAS and APPLICATION FOR ISSUANCE OF SUBPOENAS** has been served on the following by first class mail, postage prepaid:

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

Thomas P. Gadsden, Esq.
Morgan Lewis
1701 Market Street
Philadelphia, PA 19103-2921

Attorneys for Pennsylvania American Water Company

Ronald J. Brown, Esq
Grogan Graffam
Four Gateway Center, 12th Floor
Pittsburgh, PA 15222

Attorneys for Western Allegheny County Municipal Authority

Michael J. Witherel, Esq.
Witherel & Kovacil
966 Perry Highway
Pittsburgh, PA 15237-2107

Attorneys for Pennsylvania Municipal Authorities Association, Amicus Curiae (pending)

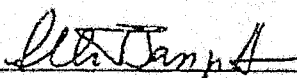
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265
ATTN: Office of Trial Staff

Bohdan R. Pankiw, Esq.
Chief Counsel
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

Office of Attorney General
Consumer Advocate's Office
555 Walnut Street
Harrisburg, PA 17101

Department of Commerce
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

DATE: June 27, 2003



Albert J. Zangrilli, Jr.

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

THE MUNICIPAL AUTHORITY OF THE)
TOWNSHIP OF ROBINSON,)

Complainant - Petitioner,)

vs.)

PENNSYLVANIA AMERICAN WATER)
COMPANY,)

Respondent.)

No.: C-20030092

ORDER GRANTING APPLICATION
FOR ISSUANCE OF SUBPOENAS

AND NOW, this _____ day of _____, 2003, upon consideration of the foregoing Application for Issuance of Subpoenas, it is hereby ORDERED that two (2) subpoenas directed to the Western Allegheny County Municipal Authority ("WACMA") in the forms attached to this Order be and hereby are issued.

The parties and WACMA may, by agreement, amend the dates for compliance set forth in each Subpoena.

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

By: _____

Title: _____

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

THE MUNICIPAL AUTHORITY OF THE)
TOWNSHIP OF ROBINSON,)

Complainant - Petitioner,)

vs.)

PENNSYLVANIA AMERICAN WATER)
COMPANY,)

Respondent.)

No.: C-20030092

SUBPOENA FOR THE PRODUCTION OF DOCUMENTS

TO: WESTERN ALLEGHENY COUNTY MUNICIPAL AUTHORITY ("WACMA")
403 Virginia Drive
Oakdale, Pennsylvania 15071-9105

You are ORDERED by the Pennsylvania Public Utility Commission to deliver to the offices of YUKEVICH, MARCHETTI, LIEKAR & ZANGRILLI, P.C., 11 Stanwix Street, Suite 1024, Pittsburgh, Pennsylvania, the following documents in your possession, custody and/or control:

- (a) The most current map or drawing of the entire WACMA distribution system, showing, but not limited to: (i) all points of connection and interconnection by and between the WACMA system and all other entities that provide or have provided water to WACMA, and (ii) all points of connection by and between WACMA's alleged "Primary System" and "Secondary Systems" (see definition below); and
- (b) WACMA's Annual Water Supply Reports from 1983 to the date hereof as filed with the Pennsylvania Department of Environmental Protection; and

(c) Any and all documents, including, but not limited to, meter readings, showing or reflecting the alleged transfer of water from the "Secondary System" to the "Primary System" of WACMA (for purposes of this Subpoena, the term "Primary System" shall be defined to mean that portion of WACMA's system "hatch-marked" on the drawing attached hereto and made a part hereof and the term "Secondary System" shall mean the "un-hatched" portion of WACMA's system regardless of whether the two "Systems" are interconnected or not); and

(d) Any and all written contracts (exclusive of the purported Contract dated March 28, 2003) by and between Pennsylvania-American Water Company ("PAWC") and WACMA pertaining to the provision of water to WACMA by PAWC from 1983 to the date hereof; and

(e) Any and all documentation pertaining to the alleged connection of WACMA's Primary System and Secondary Systems, including the date on which such connection was made; and

(f) Any and all documents pertaining to any and all negotiations by and between PAWC and WACMA with respect to the purported Contract with PAWC.

The documents shall be delivered as aforesaid within twenty (20) days of the date of this Subpoena.

If you fail to produce the documents pursuant hereto, you may be subject to the sanctions authorized by law.

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

DATE: _____, 2003

By: _____

Title: _____

SEAL

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

THE MUNICIPAL AUTHORITY OF THE)
TOWNSHIP OF ROBINSON,)

Complainant - Petitioner,)

vs.)

PENNSYLVANIA AMERICAN WATER)
COMPANY,)

Respondent.)

No.: C-20030092

SUBPOENA AD TESTIFICANDUM

TO: WESTERN ALLEGHENY COUNTY MUNICIPAL AUTHORITY
403 Virginia Avenue
Oakdale, Pennsylvania 15071-9105

You are ORDERED by the Pennsylvania Public Utility Commission to come to the offices of YUKEVICH, MARCHETTI, LIEKAR & ZANGRILLI, P.C., 11 Stanwix Street, Suite 1024, Pittsburgh, Pennsylvania, on the thirtieth (30th) day following the date hereof at 10 o'clock A.M. to testify on behalf of the Complainant-Petitioner in the above case, and to remain until excused.

You are directed to designate one or more of your officers, directors, managing agents or other persons to testify on your behalf.

If you fail to attend, you may be subject to the sanctions authorized by law.

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

DATE: _____, 2003

By: _____

Title: _____

SEAL

DOCUMENT
FOLDER

COMMONWEALTH OF PENNSYLVANIA

DATE: July 3, 2003

SUBJECT: C-20030092

TO: Office of Administrative Law Judge

FROM: James J. McNulty, Secretary *JJ*

DOCKETED
JUL 07 2003

The Municipal Authority of the Township of Robinson
v.
Pennsylvania American Water Company

Attached is a copy of a Petition for Issuance of Subpoenas, filed by The Municipal Authority of the Township of Robinson, in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: OTS

was

RJP

Law Offices

VUONO & GRAY, LLC

ORIGINAL

John A. Vuono
William A. Gray
Mark T. Vuono
Dennis J. Kusturiss
Christine M. Dolfi
Louise R. Schrage
Susan C. Indrisano+
**Also Admitted in Florida*
+Also Admitted in Maryland

2310 Grant Building

Pittsburgh, PA 15219-2383

July 11, 2003

Richard R. Wilson
of Counsel

Telephone
412-471-1800

Facsimile
412-471-4477

KJR

Re: The Municipal Authority of the Township of Robinson
v. Pennsylvania-American Water Company
Pennsylvania Public Utility Commission
Docket No. C-20030092
Our File 4974

RECEIVED

JUL 12 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

FEDERAL EXPRESS

Dear Mr. McNulty:

We enclose for filing with the Commission the original and three (3) copies of the Petition of Western Allegheny Municipal Authority ("WACMA") to intervene in the above proceeding.

We understand that this matter has been assigned for a prehearing conference before Judge Larry Gesoff on Friday, July 18. For that reason, the Petition is coupled with a request for expedited action so that if the intervention is granted WACMA will be able to participate in the prehearing conference.

A copy of the Petition is being simultaneously sent to all parties of record as shown on the Certificate of Service.

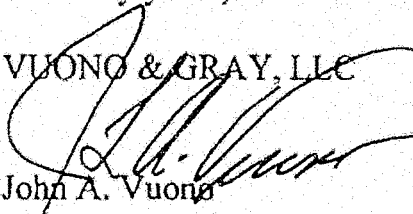
DOCUMENT
FILED

Mr. James J. McNulty
Page Two
July 11, 2003

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the self-addressed, stamped envelope provided.

Sincerely yours,

VUONO & GRAY, LLC



John A. Vuono

CW/26918

Enclosures

cc: Service List

("Complaint") against Pennsylvania American Water Company ("PAWC"). In its Complaint, MATR asks the Commission to (a) void a Water Sales Agreement ("Agreement") entered into by WACMA and PAWC on March 28, 2003 as an unlawful exercise of its Rider DRS-Demand Based Resale Service as set forth in PAWC's tariff; (b) declare that any sales by PAWC to WACMA must be priced at PAWC's "Group A Resale Rate"; and (c) prohibit PAWC from commencing service pursuant to the Agreement and from constructing any facilities with respect to such service.

3. On or about May 16, 2003, PAWC filed an Answer to the MATR Complaint, denying its material averments and requesting that the Complaint be dismissed and the proposed Declaratory Order denied.

4. WACMA is a distribution-only authority that serves 12,871 customers in North Fayette and Findlay Townships, Allegheny County through approximately 3,982 service connections.

5. WACMA presently purchases water from both MATR and PAWC.

6. WACMA's existing contract with MATR expires on October 20, 2003. Despite its good faith negotiations, WACMA has not been able to negotiate an extension of the existing contract with MATR.

7. WACMA has entered into an agreement with PAWC pursuant to which PAWC will provide water for WACMA beginning on October 21, 2003.

8. The granting of the relief sought in the Complaint will result in WACMA being unable to provide water service for the customers in its service area.

9. Accordingly, WACMA seeks to intervene in this proceeding in support of the position of PAWC pursuant to 52 Pa. Code §§5.71 et seq.

10. With respect to the eligibility of a party to intervene in Commission proceedings, 52 Pa. Code §5.72 provides in pertinent part as follows:

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or **an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.** The right or interest may be one of the following:

...

(2) **An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.**

(3) **Another interest of such nature that participation of the petitioner may be in the public interest.**

(Emphasis Added).

11. WACMA submits that good cause exists to grant this Petition to Intervene for the following reasons:

11.1 Intervention is necessary and appropriate for the Commission's administration of the governing statutory provisions.

11.2 WACMA has a substantial interest which may not be adequately represented by existing participants.

11.3 WACMA will be directly affected and bound by the action of the Commission.

11.4 WACMA's participation in the proceeding will be in the public interest.

11.5 MATR has impliedly acknowledged WACMA's substantial interest in this matter by virtue of its recent filing with the Commission of an application seeking the issuance of a subpoena requiring WACMA to produce substantial documents.

11.6 Intervention and participation of WACMA as a party to the proceeding will benefit the Commission to the extent that WACMA will provide evidence that will assist the Commission in its proper disposition of the issues raised by the Complaint.

11.7 Intervention of WAMCA and its participation as a party to the proceeding will not enlarge the issues that have been raised by the parties to the proceeding nor inject additional issues.

11.8 This proceeding is in its initial stages and neither the parties or the Commission will be prejudiced by the granting of this Petition to Intervene.

11.9 WACMA will be adversely affected if the Petition to Intervene is denied.

12. If this Petition is granted, WACMA intends to appear at any hearings and to participate fully as a party to the proceeding.

13. WACMA understands that this matter has been scheduled for a prehearing conference before Administrative Law Judge Larry Gesoff on Friday, July 18. WACMA respectfully requests that this Petition to Intervene be granted promptly and prior to the

date of the prehearing conference so that WACMA may participate fully in the prehearing conference.

WHEREFORE, Western Allegheny County Municipal Authority respectfully requests that the Commission promptly issue an Order granting this Petition to Intervene and authorizing WACMA to participate fully as a party in this proceeding.

Respectfully submitted,

VUONO & GRAY, LLC

By: 

John A. Vuono, Esq.
William A. Gray, Esq.
Vuono & Gray, LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Special Counsel to
Western Allegheny County
Municipal Authority

Ronald J. Brown, Esq.
GROGAN GRAFFAM
Four Gateway Center
12th Floor
Pittsburgh, PA 15222
(412) 553-6343
Of Counsel

VUONO & GRAY, LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
Of Counsel

126937

CERTIFICATE OF SERVICE

I hereby certify that on this 12~~th~~ day of July, 2003, a true and correct copy of the attached Petition of the Western Allegheny County Municipal Authority to Intervene in this proceeding was served on the following by Federal Express.

Mr. James J. McNulty
Secretary
Pennsylvania Public Utility
Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

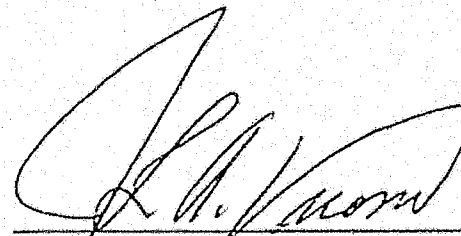
Thomas P. Gadsden, Esq.
Anthony C. DeCusatis, Esq.
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

Bohdan R. Pankiw, Esq.
Chief Counsel
Pennsylvania Public Utility
Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

Michael J. Witherel, Esq.
Witherel & Kovacik
966 Perry Highway
Pittsburgh, PA 15237

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

Albert J. Zangrilli, Jr., Esq.
Yukevich, Marchetti, Liekar & Zangrilli, P.C.
11 Stanwix Street
Suite 1024
Pittsburgh, PA 15222-1324



John A. Vuono, Esq.

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

RECEIVED

2003 JUL 14 AM 9:36

SECRETARY'S BUREAU

Morgan Lewis
COUNSELORS AT LAW

BTL

ORIGINAL

Thomas P. Gadsden
Esquire
215 963 5234
tgadsden@morganlewis.com

July 10, 2003

VIA FIRST CLASS MAIL

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

DOCUMENT
FOLDER

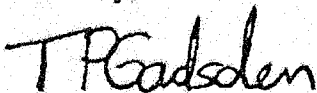
Re: **The Municipal Authority of the Township of
Robinson v. Pennsylvania-American Water Company
Docket No. C-20030092**

Dear Secretary McNulty:

Enclosed for filing are the original and two copies of the Objections of Pennsylvania-American Water Company to the following Requests for Production of Documents and Interrogatories issued by the Municipal Authority of the Township of Robinson in the above captioned matter:

**Document Request Nos. 1, 2 and 10
Interrogatory Nos. 3, 5 and 6-11**

Sincerely,



Thomas P. Gadsden

TPG/qrd
Enclosures

cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

The Municipal Authority of the
Township of Robinson

v.

Pennsylvania-American Water Company :

:
:
: Docket No. C-20030092
:
:

CERTIFICATE OF SERVICE

I hereby certify that I have, this day, served true and correct copies, upon the persons and in the manner indicated below, of the Objections of Pennsylvania-American Water Company to the following Requests for Production of Documents and Interrogatories issued by the Municipal Authority of the Township of Robinson:

Document Request Nos. 1, 2 and 10
Interrogatory Nos. 3, 5 and 6-11

Albert J. Zangrilli, Jr., Esq.
Yukevich, Marchetti, Liekar & Zangrilli, P.C.
11 Stanwix Street
Suite 1024
Pittsburgh, PA 15222-1324

Hon. Larry Gesoff
Administrative Law Judge
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Form of Delivery

- First Class Mail
 Overnight Express Delivery
 Facsimile
 Electronic Mail

Form of Delivery


- First Class Mail
 Overnight Express Delivery
 Facsimile
 Electronic Mail

John A. Vuono, Esq.
Vuono & Gray, LLC
2310 Grant Building
Pittsburgh, PA 15219-2383

Form of Delivery

- First Class Mail
 Overnight Express Delivery
 Facsimile
 Electronic Mail

Dated: July 10, 2003


Thomas P. Gadsden
Counsel for Pennsylvania-American
Water Company

2003 JUL 14 AM 9:36
SECRETARY'S BUREAU

RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

2003 JUL 14 AM 9:36

SECRETARY'S BUREAU

THE MUNICIPAL AUTHORITY OF THE
TOWNSHIP OF ROBINSON

v.

PENNSYLVANIA-AMERICAN WATER
COMPANY

DOCKET NO. C-20030092

DOCUMENT
FOLDER

ORIGINAL

OBJECTIONS OF
PENNSYLVANIA-AMERICAN WATER COMPANY
TO THE REQUEST FOR PRODUCTION OF DOCUMENTS
AND INTERROGATORIES OF
THE MUNICIPAL AUTHORITY OF THE TOWNSHIP OF ROBINSON

Pennsylvania-American Water Company ("PAWC" or the "Company"), pursuant to 66 Pa. C.S. § 333 (d) and 52 Pa. Code §§ 5.321, 5.342, 5.361 and 5.362, hereby objects to the Request For Production of Documents (Set I) and Interrogatories (Set I) issued by the Municipal Authority of the Township of Robinson (the "Authority") and, in support thereof, states as follows:

1. This proceeding was initiated by the Authority, on or about April 16, 2003, with the filing of a *Formal Complaint and Petition for Declaratory Order* (the "Complaint"). In its Complaint, the Authority asks the Commission (i) to void a Water Sales Agreement (the "Agreement") between PAWC and the West Allegheny County Municipal Authority ("WACMA") as an unlawful exercise of Rider DRS-Demand Based Resale Service ("Rider DRS"), as set forth in the Company's tariff; (ii) to declare that any sales by PAWC to WACMA must be priced at PAWC's "Group A Resale Rate"; and (iii) to prohibit PAWC from commencing

POCKETED

JUL 22 2003

service pursuant to the Agreement and from constructing any facilities with respect to such service.

2. On May 16, 2003, PAWC filed an Answer to the Authority's Complaint, denying its material averments and requesting that the Complaint be dismissed and the proposed Declaratory Order denied. In "New Matter", PAWC explained why WACMA satisfied Rider DRS' availability requirements and noted that the rate contained in the Agreement was substantially greater than the "minimum rate" mandated by Rider DRS.

3. On June 27, 2003, the Authority, by first class mail, served its first Request for Production of Documents on the Company, together with its first set of Interrogatories. Copies of the Request for Production of Documents and Interrogatories are attached hereto as Appendices "A" and "B", respectively.

A. Objections To The Authority's Document Requests.

4. PAWC hereby objects to the Authority's Request for Production of Documents Nos. 1, 2 and 10.

(a) No. 1 requests copies of "transcripts of all testimony" before the Commission at which PAWC sought approval of Rider DRS or Rider DIS-Demand Based Industrial Service ("Rider DIS") or any modification thereof. The transcripts in question relate to proceedings at Docket No. R-00943231 and bear the following notation: "Any reproduction of this transcript is prohibited without authorization by the certifying reporter." PAWC is willing to provide copies of

relevant excerpts from such transcripts if the Authority obtains and presents the written authorization of Commonwealth Reporting Company, Inc., 700 Lisburn Road, Camp Hill, Pennsylvania 17011. In addition, PAWC notes that, to the best of its knowledge, a complete copy of the record at Docket No. R-00943231, including transcripts of hearings, is available for review at the Commission's offices in Harrisburg, Pennsylvania.

(b) No. 2 requests copies of "[a]ll Exhibits offered into evidence at any hearing or other proceeding before the PUC at which PAWC sought approval for Rider DRS or Rider DIS or any modification thereof." To the extent that this request can be construed as seeking the production of all Exhibits submitted by PAWC in the proceedings at Docket No. R-00943231 (a general base rate filing), PAWC objects to it on the grounds that it is excessive in scope, breadth and extent; is not properly or reasonably limited to the subject matter of the Authority's Complaint; and would be unreasonably burdensome and/or expensive to answer. Notwithstanding the foregoing, PAWC will provide copies of all Exhibits offered into evidence at Docket No. R-00943231 that relate specifically to PAWC's proposal to implement the DRS Rider and/or DIS Rider.

(c) No. 10 requests copies of "[e]ach and every contract by and between PAWC and any customer with respect to which Rider DRS or Rider DIS is the basis of the rate charged by PAWC to each and every such customer." PAWC objects to the request on the grounds that the requested documents do not contain information relevant to the issues raised by the Authority in its Complaint (i.e., namely the applicability of Rider DRS to PAWC's Water Sales Agreement with WACMA). PAWC further objects to Request No. 10 on the grounds that it would require the

production of documents, data and/or information that, as the Commission previously determined, are commercially sensitive, proprietary and confidential in nature and, as to which, the potential harm or damage to PAWC from disclosure far outweighs any possible relevance or probative value—which PAWC disputes in any event—to the issues and subject matter of this proceeding.

B. Objections To The Authority's Interrogatories

5. PAWC hereby objects to the Authority's Interrogatories Nos. 3, 5 and 6 -11.

(a) No. 3 requests copies of "applicable service agreements by and between PAWC and each and every such customer [who, at any time, has been provided water service pursuant to Rider DRS]." PAWC objects to the request for the reasons explained in Paragraph 4 (c), *supra*.

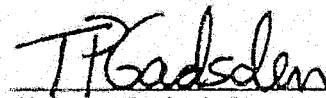
(b) No. 5 requests copies of "applicable service agreements by and between PAWC and each and every such customer [who, at any time, has been provided water service pursuant to Rider DIS]." PAWC objects to this request for the reasons explained in Paragraph 4 (c), *supra*, and further notes that Rider DIS does not apply to the Water Sales Agreement between PAWC and WACMA in any event.

(c) Nos. 6-11 request the identification of all water treatment and/or distribution systems acquired by PAWC between 1993 and the present date and, as to each, seeks information regarding the consideration paid PAWC, the number of customers and geographic territories

served by the acquired entity, and the rate schedules in effect immediately prior to the closing of the acquisition and those now in effect. PAWC objects to Interrogatories Nos. 6-11 on the grounds that they request information that is not relevant to the issues raised by the Authority in its Complaint (i.e., namely the applicability of Rider DRS to PAWC's Water Sales Agreement with WACMA); are excessive in scope, breadth and extent; would require PAWC to make an unreasonable investigation; and would be unreasonably burdensome and/or expensive to answer.

NOW THEREFORE, for the reasons set forth above, PAWC'S Objections to the Authority's Request for Production of Documents Nos. 1, 2 and 10 and Interrogatories Nos. 3, 5 and 6-11 should be sustained and the Administrative Law Judge and the Commission should grant such additional relief as may be necessary and appropriate.

Respectfully submitted,



Thomas P. Gadsden
Anthony C. DeCusatis
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
215.963.5234
tgadsden@morganlewis.com

Counsel for Pennsylvania-American Water
Company

Date: July 10, 2003

APPENDIX "A"

COMMONWEALTH OF PENNSYLVANIA


PUBLIC UTILITY COMMISSION

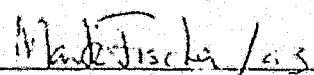
THE MUNICIPAL AUTHORITY OF THE)
TOWNSHIP OF ROBINSON,)
) No. C-20030092
Complainant - Petitioner,)
)
vs.)
)
PENNSYLVANIA AMERICAN WATER)
COMPANY,)
)
Respondent.)

REQUEST FOR PRODUCTION OF DOCUMENTS
PURSUANT TO THE RULES OF ADMINISTRATIVE
PRACTICE AND PROCEDURE ("RULES") §5.349

AND NOW COMES The Municipal Authority of the Township of Robinson ("Authority") by its undersigned attorneys and pursuant to Rule 5.349, and serves this Request on Pennsylvania American Water Company ("PAWC"), requesting it to produce within twenty (20) days of the date hereof, at the offices of YUKEVICH, MARCHETTI, LIEKAR & ZANGRILLI, P.C., 11 Stanwix Street, Suite 1024, Pittsburgh, Pennsylvania 15222-1324, the documents described herein for inspection and copying by the Authority.

YUKEVICH, MARCHETTI, LIEKAR
& ZANGRILLI, P.C.

By: 
Albert J. Zangrilli, Jr.

By: 
Mark Fischer

Attorneys for The Municipal Authority
of the Township of Robinson

DEFINITIONS

For purposes of this Request only, the following terms and phrases shall have the meanings ascribed to them herein.

PAWC: The term includes, but is not limited to, PAWC's employees, contractors, agents, attorneys and representatives or those of any predecessor of PAWC.

MATR: The term includes, but is not limited to, MATR's employees, contractors, agents, attorneys and representatives.

Possession: Includes possession, custody and control.

Writings or Document: Any original and non-identical copy of a document (whether handwritten, typed, printed or otherwise made), drawing, graph, chart, photograph, phonorecord or electronic or mechanical matter (including microfilm of any kind or nature, tape or recordings), or other data compilations from which information can be obtained (translated, if necessary, by PAWC through detection devices into reasonably usable form), and shall include, without limiting the generality of the foregoing, all correspondence, telegrams, teletypes, agreements, purchase orders, studies, reports, quotations, memoranda, minutes, journal entries, notes, books, accounts, ledgers, invoices, transcripts, newspaper clippings and any and all other writings or papers of any kind or nature, including drafts, copies or reproductions of any of the foregoing, and information stored in computers or other data storage or processing equipment, to the extent that the same are in the possession, custody, or control of the PAWC or are known by PAWC to exist.

HANDWRITTEN OR TYPEWRITTEN NOTATIONS OF ANY KIND ON ANY
COPY OF DOCUMENT RENDER IT NON-IDENTICAL

Unless context otherwise requires:

- (a) words in the singular number include the plural, and in the plural include the singular.
- (b) words of the masculine gender include the feminine and the neuter when the sense or context so indicates and words of the neuter gender may refer to any gender when the sense or context so indicates.

INSTRUCTIONS

1. With respect to each of the following requests, you shall identify and/or produce all documents which are known to you or which can be located or discovered by you through diligent effort on the part of you, your employees, representatives, attorneys or accountants, including but not limited to, all documents which are in the business or personal files of your employees, in the possession of your representatives, attorneys or accountants, or accessible to you, your employees, or your representatives, attorneys or accountants.

2. The following requests shall be deemed to be continuing so as to require further and supplemental production of documents by you.

3. If any documents requested herein or fairly comprised within the scope of the following requests have been lost or destroyed, provide in lieu of a true and correct copy thereof a list of each document so lost or destroyed together with the following information: (1) the date of each document's origin, (2) a brief description of such document; (3) the author of such document; (4) the date upon which the document was lost or destroyed; and (5) a brief statement of the manner in which the document was lost or destroyed.

4. In the event you refuse to produce any document requested on grounds of any claimed privilege from discovery, state each ground for such claimed privilege, describe the

document withheld by date, author, recipients (including all persons who were shown or received a copy), and give a general description of the subject matter of the document.

5. For any documents which are stored or maintained in files in the normal course of business, such documents shall be produced in such files, or in such a manner as to preserve and indicate the file from which such documents were taken.

DOCUMENTS TO BE PRODUCED

1. Transcripts of all testimony before the Pennsylvania Public Utility Commission ("PUC") at which PAWC sought approval for Rider DRS-Demand-Base Resale Service ("Rider DRS") or Rider DIS-Demand-Base Industrial Service ("Rider DIS") or any modification thereof.

2. All Exhibits offered into evidence at any hearing or other proceeding before the PUC at which PAWC sought approval for Rider DRS or Rider DIS or any modification thereof.

3. Any and all correspondence and documents by and between PAWC and Western Allegheny County Municipal Authority ("WACMA") pertaining to any and all negotiations by and between WACMA and PAWC in connection with the purported Water Sales Agreement between PAWC and WACMA dated March 28, 2003 ("PAWC Agreement").

4. Documents setting forth the quantities of water purchased by WACMA from PAWC (or any of its predecessors) for each and every year from 2003 to 1983.

5. The plans and specifications for all "additional facilities needed to serve WACMA under the PAWC Agreement" as is referred to in paragraphs 45 - 49 of the Answer of Pennsylvania American Water Company to the Formal Complaint and Petition for Declaratory Order of the Municipal Authority of the Township of Robinson ("Answer").

6. All contracts for the construction of the "additional facilities" referred to in the preceding Request.

7. Any and all documents providing the data from which the minimum rate computation was made as set forth on Exhibit D to the Answer.

8. Any and all written contracts by and between PAWC and WACMA pertaining to the provision of water, by sale or otherwise, from 1983 to the date hereof.

9. PAWC's Annual Reports for each and every fiscal year from 1995 to the present.

10. Each and every contract by and between PAWC and any customer with respect to which Rider DRS or Rider DIS is the basis of the rate charged by PAWC to each and every such customer.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached **REQUEST FOR PRODUCTION OF DOCUMENTS** has been served upon the following by first class mail, postage prepaid:

Thomas P. Gadsden, Esq.
Morgan Lewis
1701 Market Street
Philadelphia, PA 19103-2921

Attorneys for Pennsylvania American Water Company

Michael J. Witherel, Esq.
Witherel & Kovacil
966 Perry Highway
Pittsburgh, PA 15237-2107

Attorneys for Pennsylvania Municipal Authorities Association, Amicus Curiae (pending)

Office of Attorney General
Consumer Advocate's Office
555 Walnut Street
Harrisburg, PA 17101

Department of Commerce
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

DATE: June 27, 2003



Albert J. Zangrilli, Jr.

APPENDIX "B"

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

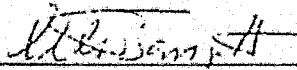
THE MUNICIPAL AUTHORITY OF THE)
TOWNSHIP OF ROBINSON,)
) No. C-20030092
Complainant - Petitioner,)
)
vs)
)
PENNSYLVANIA AMERICAN WATER)
COMPANY,)
)
Respondent.)


INTERROGATORIES AND FURTHER REQUEST FOR DOCUMENTS OF THE MUNICIPAL AUTHORITY OF THE TOWNSHIP OF ROBINSON DIRECTED TO PENNSYLVANIA AMERICAN WATER COMPANY PURSUANT TO THE RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE ("RULES") §5.341

AND NOW COMES The Municipal Authority of the Township of Robinson ("MATR"), by its undersigned attorneys, and serves the attached written Interrogatories on Pennsylvania American Water Company ("PAWC") and demands that the same be answered within twenty (20) days as required by the Rules.

These Interrogatories shall be deemed to be continuing so as to require supplemental answers under oath if PAWC obtains further information not contained in the answers to the following Interrogatories, between the time the answers are served and the time of hearing.

YUKEVICH, MARCHETTI, LIEKAR
& ZANGRILLI, P.C.

By: 
Albert J. Zangrilli, Jr.

By: 
Mark Fischer

Attorneys for Complainant-Petitioner

DEFINITIONS

For purposes of these Interrogatories only, the following terms and phrases shall have the meanings ascribed to them herein:

Addresses: Both the present business and residential addresses. If the present business and/or residential addresses are not known by PAWC, then addresses shall mean the last known business and residential addresses.

Describe or Description: (i) When used in reference to persons or the members of a class, means to identify each individual person or member of a class, and (ii) when used in reference to a Writing or Document means to state the following as to each such writing:

- (a) the nature and contents thereof;
 - (b) the date thereof;
 - (c) the name, address and position of the author or signer thereof;
 - (d) the name, address and position of the addressee, if any;
 - (e) the present location thereof and the name, present address and position of the person having present possession thereof; and
- (f) a full and complete summary of its contents.

NOTE IN LIEU OF DESCRIBING A WRITING, PAWC MAY ATTACH, BY WAY OF ANSWER, A TRUE AND CORRECT COPY OF EACH SUCH WRITING.

PAWC: The term includes, but is not limited to, PAWC's officers, directors, employees, contractors, agents, attorneys and representatives and those of PAWC's predecessors.

Identify or Identification: Means to state the entity's full name, present Address, telephone number and, where an individual is being identified, his present or last known position

and business affiliation. Where the person is an entity, the name, address and telephone number of the principal contract person shall also be provided.

Unless context otherwise requires:

(a) Words in the singular number include the plural, and in the plural include the singular; and

(b) Words of the masculine gender include the feminine and the neuter when the sense so indicates and words of the neuter gender may refer to any gender when the sense so indicates.

1. Explain in detail and with specificity the meaning of the phrase "daily load factor of not than 0.75" as utilized in PAWC's Tariff Rider DRS-Demand-Based Resale Service ("Rider DRS").

ANSWER:

2. Identify* all customers of PAWC who, at any time, have been provided water service pursuant to Rider DRS.

ANSWER:

3 If the answer to the foregoing interrogatory is in the affirmative, please provide, pursuant to Rule §5.341(c), a copy of the applicable service agreements by and between PAWC and each and every such customer.

RESPONSE:

4 Identify* all customers of PAWC who, at any time, have been provided water service pursuant to Tariff Rider DIS-Demand-Based Industrial Service ("Rider DIS").

ANSWER:

5 If the answer to the foregoing interrogatory is in the affirmative, please provide, pursuant to Rule §5.341(c), a copy of the applicable service agreements by and between PAWC and each and every such customer.

RESPONSE:

6. Identify* each and every corporation, partnership or other type of entity (other than municipalities or municipal authorities engaged in the treatment and/or distribution of water operating within the Commonwealth of Pennsylvania whose assets or stock (in excess of 50% thereof) has been acquired by PAWC or any subsidiary or parent of PAWC between 1993 and the date hereof ("Acquired Entities")

ANSWER:

7. If the answer to the foregoing interrogatory is in the affirmative, please provide the following information with respect to each and every such Acquired Entity:

- (a) The consideration paid by PAWC, and
- (b) The number of customers served by the Acquired Entities, and
- (c) The geographic territories served by the Acquired Entities, and
- (d) The Acquired Entities rate schedules in effect immediately prior to the closing of the acquisition and the rate schedule currently in effect

8 Identify* each and every Pennsylvania municipal authority engaged in the treatment and/or distributor of water whose assets or any portion of assets has been acquired by PAWC or any subsidiary or parent thereof between 1993 and the date hereof ("Acquired Municipal Authorities").

ANSWER:

9 If the answer to the foregoing interrogatory is in the affirmative, please provide the following information with respect to each and every such Acquired Municipal Authority:

- (a) The consideration paid by PAWC; and
- (b) The number of customers served by the Acquired Municipal Authorities; and
- (c) The geographic territories served by the Acquired Municipal Authorities;

and

(d) The Acquired Municipal Authorities' rate schedules in effect immediately prior to the closing of the acquisition and the rate schedule currently in effect.

10. Identify* each and every municipally-owned (other than by municipal authorities) water treatment facility and/or water distribution system located within the Commonwealth of Pennsylvania whose assets or any portion of assets has been acquired by PAWC or any subsidiary or parent thereof between 1993 and the date hereof ("Acquired Municipal Systems").

ANSWER:

11. If the answer to the foregoing interrogatory is in the affirmative, please provide the following information with respect to each and every such Acquired Municipal System:

- (a) The consideration paid by PAWC; and
- (b) The number of customers served by the Acquired Municipal Systems; and
- (c) The geographic territories served by the Acquired Municipal Systems; and
- (d) The Acquired Municipal Systems' rate schedules in effect immediately prior to the closing of the acquisition and the rate schedule currently in effect

12. State whether PAWC has been involved in any civil action or administrative proceeding in which Rider DRS and/or Rider DIS was an issue.

ANSWER:

13. If the answer to the foregoing interrogatory is in the affirmative, please provide the caption, docket or case number and name and address of the tribunal in which the civil action or administrative proceeding was adjudicated or is pending.

ANSWER:

14. Does PAWC charge the differential between the rate charged customers pursuant to Rider DRS and/or Rider DIS and the tariff rate that otherwise would have been applicable to such customers absent the availability of Rider DRS and/or Rider DIS as a loss on any PAWC internal or external accounting document?

ANSWER:

15. If the answer to the foregoing Interrogatory is in the affirmative, Describe* each and every such Document. (NOTE: In lieu of describing the documents herein, PAWC may attach, by way of answer, a true and correct copy of each and every such Writing or Document.)

ANSWER:

* See Definitions

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached INTERROGATORIES AND FURTHER REQUEST FOR DOCUMENTS OF THE MUNICIPAL AUTHORITY OF THE TOWNSHIP OF ROBINSON DIRECTED TO PENNSYLVANIA AMERICAN WATER COMPANY PURSUANT TO THE RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE ("RULES") §5.341 has been served on the following by first class mail, postage prepaid:

Thomas P. Gadsden, Esq.
Morgan Lewis
1701 Market Street
Philadelphia, PA 19103-2921

Attorneys for Pennsylvania American Water Company

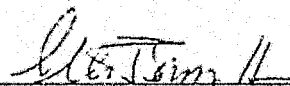
Michael J. Witherel, Esq.
Witherel & Kovacil
966 Perry Highway
Pittsburgh, PA 15237-2107

Attorneys for Pennsylvania Municipal Authorities Association, Amicus Curiae (pending)

Office of Attorney General
Consumer Advocate's Office
555 Walnut Street
Harrisburg, PA 17101

Department of Commerce
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

DATE: June 27, 2003



Albert J. Zangrilli, Jr.

YUKEVICH, MARCHETTI, LIEKAR & ZANGRILLI, P.C.

ATTORNEYS AT LAW

11 STANWIX STREET

SUITE 1024

PITTSBURGH, PENNSYLVANIA 15222-1324

TELEPHONE 412/261-6777

FAX 412/261-6789

July 17, 2003

Writer's Direct Dial:
(412) 261-6780

DOCUMENT
FOLDER

ORIGINAL

RECEIVED

JUL 17 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FEDERAL EXPRESS

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

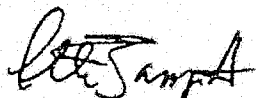
**RE: THE MUNICIPAL AUTHORITY OF THE TOWNSHIP OF ROBINSON VS.
PENNSYLVANIA-AMERICAN WATER COMPANY
PUC Docket No. C-20030092**

Dear Secretary McNulty:

Please find enclosed for filing the original and two copies of the Preliminary Prehearing Memorandum on behalf of The Municipal Authority of the Township of Robinson.

Copies have been served on the entities and individuals as set forth on the Certificate of Service attached to the Memorandum.

Very truly yours,



Albert J. Zangrilli, Jr.

AJZ/ph

Enclosures

cc: The Honorable Larry Gesoff, ALJ (w/encl.)
Thomas P. Gadsden, Esq. (w/encl.)
Michael J. Witherel, Esq. (w/encl.)
John A. Vuono, Esq. (w/encl.)
Bohdan R. Pankiw, Esq. (w/encl.)

59

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

THE MUNICIPAL AUTHORITY OF THE)
TOWNSHIP OF ROBINSON,)
)
Complainant - Petitioner,)
)
vs.)
)
PENNSYLVANIA AMERICAN WATER)
COMPANY,)
)
Respondent.)

Docket No.: C-20030092

RECEIVED
JUL 17 2003
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT
FOLDER

PRELIMINARY PREHEARING MEMORANDUM

AND NOW COMES The Municipal Authority of the Township of Robinson ("MATR") and by its undersigned attorneys files this Preliminary Prehearing Memorandum pursuant to the Prehearing Conference Order dated June 10, 2003, stating as follows:

DOCKETED
JUL 25 2003

History of the Proceeding

This is a challenge by MATR to the illegal use by Pennsylvania-American Water Company ("PAWC") of its special Tariff provision known as Rider DRS—Demand-Based Resale Service ("Rider DRS") in an attempt to steal a long-standing customer of MATR. That customer is the Western Allegheny County Municipal Authority, more commonly known as "WACMA".

MATR is a Pennsylvania municipal authority. It provides water and service to residents and businesses located in Robinson Township, Allegheny County, and in adjacent municipalities. For almost a half century, MATR has been the principal water supplier to WACMA.

WACMA provides water service to residents and businesses located in North Fayette Township, Allegheny County. WACMA is a "distribution authority" only. Because it has no independent source of water, it must purchase water from entities that produce and treat water for consumption. Upon purchase, WACMA then distributes the water purchased from other suppliers to its own customers.

MATR has been the primary water supplier for WACMA for many years.¹ Pursuant to their most recent contract, entered in October 1983, MATR agreed to supply, and WACMA agreed to purchase from MATR, a minimum of 85% of WACMA's total water needs annually. Recognizing that this contract would expire in October 2003, the parties commenced negotiations well in advance of the expiration date. Many negotiation meetings were held and the parties had reduced their differences to two issues that MATR asserts were and are quite capable of resolution. Not at issue was MATR's proposed rate of approximately \$2.05 per thousand gallons of purchased water. However, in late March 2003, and while negotiations between MATR and WACMA were in still on-going, MATR learned, accidentally and not by the disclosure of WACMA and/or PAWC, that WACMA had entered into a new agreement with PAWC captioned "Water Sales Agreement" ("the PAWC Agreement"), pursuant to which PAWC would replace MATR as WACMA's primary water supplier.

In order to seduce WACMA to leave its long time provider, PAWC offered WACMA a rate

¹ MATR believes that PAWC has never provided WACMA with more than 5% of its water requirements, on average. During the past several years, PAWC has annually supplied WACMA with approximately 1 % of its water supply, an amount that is minuscule compared to MATR's supply volume. MATR, in its Complaint, alleged that PAWC only supplied water to a small, Secondary System, unconnected to the Primary System to which MATR provided water. PAWC denied this allegation and claimed that the two systems have recently been connected. MATR will require discovery to address this claim, and to address whether the systems were connected as a pretext for PAWC's use of Rider DRS in an attempt to acquire WACMA's primary system. Regardless of whether the systems have been connected, MATR will demonstrate that the Rider cannot be used by PAWC as a weapon to take customers away from its competitors through predatory pricing. Further, it is unlikely that water was ever transferred from the Secondary System to the Primary System nor can it be until expensive pumping facilities are constructed. However, if water was transferred between the two Systems, it would have been transferred from the Primary to the Secondary System given the hydraulics of WACMA's two Systems.

of \$1.90 per one thousand gallons of water, a rate that is less than half of the \$3.92 rate (hereinafter, the cited rates will always mean per one thousand gallons) that PAWC is required to charge resale customers such as WACMA pursuant to its Tariff. In both the PAWC Agreement and the pleadings filed in this action, PAWC has contended that its \$1.90 rate was permitted under Rider DRS. MATR will demonstrate at the hearing that PAWC's use of Rider DRS violates its Tariff and is fundamentally detrimental to the citizens of the Commonwealth and to PAWC's own customers.

Rider DRS allows PAWC, under certain narrow circumstances, to negotiate a non-tariff rate for its resale customers. The Rider is applicable only with respect to a customer who (a) purchases water from PAWC for resale; (b) enters into a Service Agreement with PAWC for a term of not less than 10 years; (c) agrees to maintain a daily load factor of not less than 0.75; and (d) has a viable competitive alternative to service from PAWC and intends to select the alternative to the detriment of PAWC and its other customers.

Traditionally, the Commission did not allow such non-tariff, negotiated rates in the water industry. PAWC, in its attempt to gain approval of Rider DRS (and Rider DIS, an analogous provision that applies to large industrial users) argued that it is detrimental to its entire customer base to lose a large volume industrial or resale customer. Presumably, PAWC would have made capital expenditures in the past in order to be able to serve such customers. Again presumably, such customers contribute to the PAWC's fixed costs and their departure would increase the burden on PAWC's other customers. Accordingly, when PAWC encountered a "competitive threat" with respect to such customers, it wanted the ability to negotiate a competitive rate in order to retain the customers.

Despite PAWC's arguments, Rider DRS was a controversial provision. The Office of Consumer Advocate vehemently opposed granting such negotiation power to PAWC and

argued that such negotiated rates should be heavily scrutinized on a case by case basis. While tepidly recommending the Rider's approval, the Administrative Law Judge who heard the initial case stated that:

I do endorse the [Riders], as at least an experiment to see if they are useful and viable. . . . I remind the Company that these [Riders] will be scrutinized in subsequent cases and that it has no inherent right to, in the next rate case after a rate reduction has been granted, pass on the lost revenue to other customers. Its actions and decisions will be scrutinized by the Commission.

PUC et al. v. PAWC, 1995 Pa. PUC LEXIS 173 at *93-94 (PUC, 1995).

The Commission, in its Opinion approving the Riders, quoted the ALJ regarding subsequent scrutiny of the Riders and added that the "filing procedure approved herein will provide ample opportunity for regulatory review to assure the OCA and the Commission's enforcement staff that PAWC is not engaging in discriminatory practices under the riders." PUC et al. v. PAWC, 1996 Pa. PUC LEXIS 141, at * 15-16 (PUC, 1996).

In filing this Complaint, MATR is requesting that the Commission engage in such scrutiny. The plain language of the Rider demonstrates that PAWC's attempted use of the Rider is improper. The Rider is only applicable to a "customer" (not "potential" customer) who "purchases water from PAWC for resale" (present tense) and which customer has "a viable competitive alternative to service from PAWC and intends to select the alternative to the detriment of PAWC and its other customers." The very language of the Rider indicates that it was intended to allow PAWC to prevent the loss of existing customers to competitive alternatives. At no time has MATR offered WACMA an alternative to the service it was receiving from PAWC and at no time did MATR attempt to take such service from PAWC. In other words, MATR was not a competitive alternative to PAWC's service. MATR also will present evidence that PAWC's existing service to WACMA (which service allegedly was

threatened by MATR) consisted of supplying WACMA with approximately 1% of its water needs in 2002. The loss of such a customer, which loss was never threatened, could hardly be characterized as detrimental to PAWC's customer base. The Rider's use in the PAWC Agreement is plainly illegal.

MATR will further demonstrate that nowhere in the Commission's opinions regarding approval of the Riders is it suggested that the Riders may be used offensively; that is, to actively steal another water supplier's customer. This lack of discussion strongly indicates that the Commission did not intend such usage. Moreover, such use is problematic on several grounds. First, in order to steal the customer, PAWC must use a grossly reduced rate in this case, which rate will negatively impact its other residential and commercial customers who already bear a substantial burden with respect to PAWC's fixed costs. (It should be noted that in order to perform pursuant to its putative agreement with WACMA, PAWC must invest in excess of two million dollars in interconnect and pumping facilities. This cost will not be paid for by WACMA, at least initially. Therefore, it will be passed on to PAWC's other customers.) Second, MATR's customer base will suffer from the loss of substantial revenue—indeed, its most substantial customer. Lastly, WACMA's customers will ultimately suffer. If WACMA's fifteen (15) year contract with PAWC is not stricken, it is unlikely that MATR will be in a position to provide water to WACMA at the termination of that contract. At that time, WACMA's customers will be subject to PAWC's regular tariff rates, which rates are, and have historically been, much higher than MATR's rates.²

² The Philadelphia Inquirer reports that in the Philadelphia area, water bills range from \$376 to 443 per year, double that of customers served by one of the region's few remaining municipal water suppliers. And those bills are increasing. The two corporate water suppliers, Philadelphia Suburban Corp. and PAWC, "are filing for rate increases every 18 months to two years, pushing water rates up faster than inflation." (Feb. 26, 2002). Given the fact that RWE, AG paid 7.6 billion dollars (including debt assumption) for American Water Works Co., PAWC's parent, those rate increases should come as no surprise. See "American Water Agrees to Buyout by German Firm," Gannett Co., Inc., Courier-Post (Sept. 18, 2001). Debt service isn't cheap.

MATR will demonstrate that massive acquisition and control of water systems statewide is the goal of PAWC and of its parent American Water Works Company, Inc. ("American Water") and its ultimate owner, RWE AG, a German energy conglomerate, "one of the world's largest utility groups and the third largest provider of water...in the world." American Water/RWE Group, 2002 Operational and Financial Report, p.3. PAWC must not be permitted to utilize Rider DRS as a weapon in its blitzkrieg to monopolize the water supply industry, thus defeating competition from municipal authorities.

Finally, MATR contends that even if the Commission declares that Rider DRS applies to the PAWC Agreement, the rate set forth in the PAWC Agreement violates the Minimum Rate requirement set forth in the Rider.

Issues

1. The Water Sales Agreement dated March 28, 2003, by and between WACMA and PAWC is illegal because:
 - (a) Rider DRS cannot be used offensively by PAWC, in order to take a customer away from MATR; and, in the event the Commission determines to the contrary, then
 - (b) the rate per 1,000 gallons (\$1.90) purported to be charged by PAWC pursuant to the PAWC Contract is less than the Minimum Rate required by Rider DRS; and
 - (c) its implementation would further the anti-competitive and monopolistic goal of PAWC in eliminating competition in the water supply industry both in the western suburbs of Allegheny County and the Commonwealth of Pennsylvania.

List of Witnesses

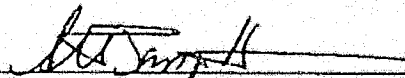
Because of the clandestine nature of the dealings between PAWC and WACMA with respect to MATR, and further, owing to the fact that documents critical to MATR's case are in the possession and custody of PAWC and WACMA, MATR must conduct prehearing discovery (as is its right under the Rules) in order to ascertain the names of witnesses in the employ of or retained by PAWC and/or WACMA so that MATR can provide these names to the Commission in a subsequent or amended Prehearing Statement.

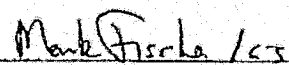
Subject to the foregoing, and at this time, MATR intends to call the following witnesses:

<u>NAME OF WITNESS</u>	<u>SUBJECT OF TESTIMONY</u>
ANTHONY T. LENZE	<ol style="list-style-type: none">1. History and content of negotiations by and between MATR & WACMA re post-October 2003 sale of water by MATR to WACMA.2. Revenue derived by MATR from water sales to PAWC.3. Long-term destructive effect on competition if PAWC Contract is permitted to stand.
REPRESENTATIVES OF PAWC	<ol style="list-style-type: none">1. Terms and conditions of the PAWC Contract.2. Purposes and intent of Rider DRS based on:<ol style="list-style-type: none">(a) history of proceedings before PUC pursuant to which Rider DRS was approved as a Supplement to PAWC's Tariff, and(b) customers currently being served or proposed to be served by PAWC pursuant to Rider DRS; and(c) testimony from and results of other challenges (if any) to PAWC's use of Rider DRS to obtain and/or retain customers.

	<p>3. Terms and conditions and applicability of relevant provisions of PAWC's Tariff. Without limiting the generality of the foregoing, applicable rates permitted to be charged WACMA in the absence of Rider DRS.</p> <p>4. Calculation of the Minimum Rate pursuant to Rider DRS generally and as to be applied pursuant to the PAWC Contract.</p> <p>5. Engineering characteristics of the three proposed new interconnects between the PAWC and WACMA systems.</p> <p>[6. Discriminatory nature and effect of Rider DRS as applied to MATR.]</p>
<p>RAYMOND H. ANTONELLI, P.E. NIRA Consulting Engineers, Inc.</p>	<p>1. MATR's water production capabilities.</p> <p>2. Operational analysis of the WACMA system currently and after the construction of the proposed three (3) new interconnects between the PAWC and WACMA systems.</p> <p>3. Long-term destructive effect on competition if PAWC Contract is permitted to stand.</p>
<p>DAVID G. NICHOLS, P.E. Nichols & Slagle Engineering, Inc.</p> <p>and/or</p> <p>OTHER REPRESENTATIVES OF WACMA</p>	<p>1. Operational characteristics of WACMA system.</p> <p>2. Sources and amounts of water purchased by WACMA from all suppliers.</p>

YUKEVICH, MARCHETTI, LIEKAR
& ZANGRILLI, P.C.

By: 
Albert J. Zangrilli, Jr.
Pa. I.D. No. 15929

By: 
Mark Fischer
Pa. I.D. No. 69425

Attorneys for The Municipal
Authority of the Township of Robinson

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants and proposed Intervenors, listed below, in accordance with the requirements of § 1.54 by both first class United States Mail, postage prepaid, and facsimile (relating to service by a participant):

HONORABLE LARRY GESOFF
Administrative Law Judge
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

THOMAS P. GADSDEN, ESQ.
Morgan Lewis
1701 Market Street
Philadelphia, PA 19103-2921

Attorneys for Pennsylvania American Water Company

MICHAEL J. WITHEREL, ESQ.
Witherel & Kovacil
966 Perry Highway
Pittsburgh, PA 15237-2107

Attorneys for Pennsylvania Municipal Authorities Association, Amicus Curiae (pending)

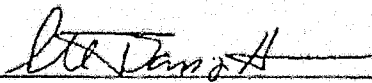
JOHN A. VUONO, ESQ.
Vuono & Gray, LLC
2310 Grant Building
Pittsburgh, PA 15219-2383

JAMES J. McNULTY, SECRETARY
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265
ATTN: Office of Trial Staff

RECEIVED
JUL 17 2003
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BOHDAN R. PANKIW, ESQ.
Chief Counsel
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

DATE July 17, 2003



ALBERT J. ZANGRILLI, JR., ESQ.

YUKEVICH, MARCHETTI, LIEKAR & ZANGRILLI, P.C.

ATTORNEYS AT LAW

11 STANWIX STREET

SUITE 1024

PITTSBURGH, PENNSYLVANIA 15222-3322

TELEPHONE 412/261-6777

FAX 412/261-6789

Writer's Direct Dial:
(412) 261-6780

July 16, 2003

VIA FACSIMILE (717-783-9526) AND FIRST CLASS MAIL

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

DOCUMENT
FOLDER

ORIGINAL
2003 JUL 18 PM 8:38
SECRETARY'S BUREAU

RE: THE MUNICIPAL AUTHORITY OF THE TOWNSHIP OF ROBINSON VS.
PENNSYLVANIA-AMERICAN WATER COMPANY
PUC Docket No. C-20030092

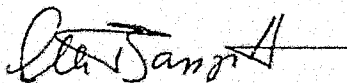
Dear Secretary McNulty:

My law firm is counsel to The Municipal Authority of the Township of Robinson, Complainant-Petitioner in the above-captioned proceeding ("MATR").

On Monday, July 14, 2003, we received a Petition of Western Allegheny County Municipal Authority to Intervene and Request for Expedited Action. The Petition requests that the relief sought be granted prior to Friday, July 18, 2003; thus without the opportunity for MATR to file an Answer to the Petition as is permitted by the Rules and to have the Petition appropriately considered by the Commission after the issues have been fully framed. MATR is opposed to the granting of the Petition generally and certainly without an opportunity to answer the Petition. MATR will set forth its reasons in its Answer that it will file well before the expiration of the twenty (20) days allotted to it by the Rules. 52 Pa.Code §5.61(a).

DOCKETED
JUL 25 2003

Very truly yours,



Albert J. Zangrilli, Jr.

AJZ/ph

65

The Honorable James J. McNulty, Secretary
July 16, 2003
Page 2

cc: The Honorable Larry Gesoff, ALJ
(via fax [412-565-5692] and
first class mail)
Thomas P. Gadsden, Esq.
Michael J. Witherel, Esq.
John A. Vuono, Esq.
Bohdan R. Pankiw, Esq.

Law Offices

VUONO & GRAY, LLC

ORIGINAL

Richard R. Wilson
of Counsel

2310 Grant Building

Pittsburgh, PA 15219-2383

Telephone
412-471-1800

July 16, 2003

Facsimile
412-471-4477

John A. Vuono
William A. Gray
Mark T. Vuono*
Dennis J. Kusturiss
Christine M. Dolfi
Louise R. Schrage
Susan C. Indriano+
*Also Admitted in Florida
+Also Admitted in Maryland

Re: The Municipal Authority of the Township of Robinson
v. Pennsylvania-American Water Company
Pennsylvania Public Utility Commission
Docket No. C-20030092
Our File 4974

KJR
SECRETARY'S BUREAU
2003 JUL 18 PM 8:36
RHS

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

Dear Mr. McNulty:

We enclose for filing with the Commission the original and three (3) copies of the Prehearing Memorandum of Western Allegheny Municipal Authority ("WACMA") in connection with the Prehearing Conference scheduled for Friday, July 18 before Administrative Law Judge Larry Gesoff.

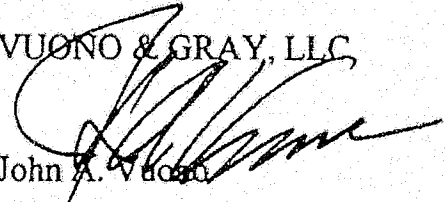
Simultaneously, we are sending a copy to Judge Gesoff and to each of the parties of record as shown on the Certificate of Service attached to the Memorandum.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the self-addressed, stamped envelope provided.

Sincerely yours,

VUONO & GRAY, LLC

John A. Vuono



CW26918

Enclosures

cc: Honorable Larry Gesoff (by facsimile)
Parties of Record

DOCUMENT

46

ORIGINAL ORIGINAL
BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

THE MUNICIPAL AUTHORITY OF)
THE TOWNSHIP OF ROBINSON)

Complainant-Petitioner,)

v.)

PENNSYLVANIA-AMERICAN)
WATER COMPANY)

Respondent.)

Docket No. C-20030092

SECRETARY'S BUREAU

2003 JUL 18 PM 8:37

RECORDED

PREHEARING MEMORANDUM OF

WESTERN ALLEGHENY COUNTY MUNICIPAL AUTHORITY

Western Allegheny County Municipal Authority ("WACMA"), proposed Intervenor, by its undersigned attorneys, files this Prehearing Memorandum pursuant to the Prehearing Conference Order dated June 10, 2003 issued by Administrative Law Judge Larry Gesoff and in accordance with the Commission's regulations at 52 Pa. Code §5.222:

I. STATUS OF WACMA

On July 14, 2003, WACMA filed with the Commission and Judge Gesoff and served on all parties of record its Petition to Intervene in this proceeding in support of the position of Pennsylvania American Water Company ("PAWC").

DOCUMENT
FILED

DOCKETED
JUL 23 2003

Subsequently, Judge Gesoff advised the attorney for WACMA that he would not act on the Petition to Intervene until The Municipal Authority of the Township of Robinson ("Complainant") has an opportunity to respond to the Petition, but that he would permit WACMA to participate fully in the Prehearing Conference.

II. HISTORY OF THE PROCEEDING

In order to avoid unnecessary duplication, WACMA adopts in its entirety the "HISTORY OF THE PROCEEDING" set forth at pages 1 and 2 of the Prehearing Memorandum of PAWC dated July 15, 2003.

III. ISSUES

In order to avoid unnecessary duplication, WACMA adopts in its entirety the "ISSUES" set forth at pages 2 and 3 of the Prehearing Memorandum of PAWC dated July 15, 2003, subject to the caveat that WACMA reserves the right to address any additional issues which may arise as a result of the discovery or hearing stages of the proceeding.

IV. WITNESSES

Subject to the reservation of the right to call additional witnesses after the completion of Complainant's case-in-chief, WACMA may present one or more of the following witnesses:

1. David G. Nichols
Nichols & Slagle Engineering, Inc.
980 Beaver Grade Road
Coraopolis, PA 15108
2. Mr. Phillip W. Morris, Sr.
Chairman
Western Allegheny County Municipal Authority
403 Virginia Drive
Oakdale, PA 15017-9105
3. Ms. Carol A. Wagner
Western Allegheny County Municipal Authority
403 Virginia Drive
Oakdale, PA 15071-9105

V. SCOPE OF TESTIMONY

If any of the above witnesses are presented by WACMA, the following is a summary of the scope of their respective proposed testimony:

1. **Mr. Nichols** is a consulting engineer whose has been engaged in providing services for WACMA for a number of years. He is familiar with certain of the facts and maintains certain of WACMA's records bearing on the issues raised in the Complaint.
2. **Mr. Morris** is not an employee nor a full-time representative of WACMA. In his capacity as Chairman, Mr. Morris is conversant with certain of the issues raised in the Complaint.

3. Ms. Wagner is a full-time employee of WACMA. She maintains certain of the records of WACMA which may be relevant to certain of the issues raised in the Complaint.

Respectfully submitted,

VUONO & GRAY, LLC

By: 

John A. Vuono, Esq.
William A. Gray, Esq.
Vuono & Gray, LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Special Counsel to
Western Allegheny County
Municipal Authority

Ronald J. Brown, Esq.
GROGAN GRAFFAM
Four Gateway Center
12th Floor
Pittsburgh, PA 15222
(412) 553-6343
Of Counsel

VUONO & GRAY, LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
Of Counsel

126973

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July, 2003, a true and correct copy of the attached Prehearing Memorandum of the Western Allegheny County Municipal Authority was served on the following in accordance with the requirements of 52 Pa.

Code §1.54:

Mr. James J. McNulty
Secretary
Pennsylvania Public Utility
Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Thomas P. Gadsden, Esq.
Anthony C. DeCusatis, Esq.
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(also by facsimile)

Bohdan R. Pankiw, Esq.
Chief Counsel
Pennsylvania Public Utility
Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

Michael J. Witherel, Esq.
Witherel & Kovacik
966 Perry Highway
Pittsburgh, PA 15237


SECRETARY'S BUREAU

2003 JUL 18 PM 8:37

RECEIVED

The Honorable Larry Gesoff
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
(also by facsimile)

Albert J. Zangrilli, Jr., Esq.
Yukevich, Marchetti, Liekar & Zangrilli, P.C.
11 Stanwix Street
Suite 1024
Pittsburgh, PA 15222-1324
(also by facsimile)


John A. Vuono, Esq.