



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

June 30, 1993

IN REPLY PLEASE
REFER TO OUR FILE
C-00924451

RICHARD J CIAMACCA ESQUIRE
PO BOX 149
HAWLEY PA 18428

DOCUMENT
FOLDER

Public Service Water Company
v.
Fairview Water Company

To Whom It May Concern:

This is to advise you that an Order has been adopted by the Commission in Public Meeting on June 24, 1993 in the above entitled proceeding.

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

Very truly yours,

John G. Alford, Secretary

RECORDED
JUL 13 1993

smk
Encls.
Cert.Mail

ENTRY NO. : 0001
NAME: WALKER, GEORGE T., PRESIDENT
ADDRESS1: 18 FAIRVIEW AVENUE
ADDRESS2:
CITY: MT. POCONO STATE: PA ZIP: 18344
REPRESENTING: RESPONDENT TYPE

ENTRY NO. : 0002
NAME: RICHARD J. CIAMACCA, ATTORNEY ✓
ADDRESS1: P.O. BOX 149
ADDRESS2:
CITY: HAWLEY STATE: PA ZIP: 18428
REPRESENTING: PUBLIC SERVICE WATER COMPANY TYPE

ENTRY NO. : 0003
NAME: JANET K. MARSH, ESQ. ✓
ADDRESS1: HANNA, YOUNG & UPRIGHT
ADDRESS2: 800 MAIN STREET
CITY: STROUDSBURG STATE: PA ZIP: 18360
REPRESENTING: RESPONDENT TYPE

CU25 C-00924451 4 PRINT-

ENTRY NO. : 0004
NAME: CHRISTINE MALONI HOOVER, ✓
ADDRESS1: ASSISTANT CONSUMER ADVOCATE
ADDRESS2: 1425 STRAWBERRY SQUARE
CITY: HARRISBURG STATE: PA ZIP: 17120
REPRESENTING: OCA, POR TYPE

ENTRY NO. : 0005
NAME: JEFFREY S TREAT, ESQUIRE ✓
ADDRESS1: 823 CHURCH STREET
ADDRESS2:
CITY: HONESDALE STATE: PA ZIP: 18431
REPRESENTING: COMPLAINANT TYPE

ENTRY NO. :
NAME:
ADDRESS1:
ADDRESS2:
CITY: STATE: ZIP:
REPRESENTING: TYPE

CU25 C-00924451 PRINT-

DOCUMENT
FOLDER

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 24, 1993

Commissioners Present:

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

INDEXED
JUL 13 1993

Public Service Water Company
v.
Fairview Water Company

Docket No.
C-00924451

O R D E R

BY THE COMMISSION:

On September 21, 1992, Public Service Water Company ("PSWC" or "Public Service") filed a private complaint against Fairview Water Company ("FWC" or "Fairview"). In its complaint, Public Service requested the Commission to invoke the provisions of Section 529 of the Public Utility Code, 66 Pa. C.S. §529 (commonly known as the "Mandatory Takeover Act"), against Fairview for its failure to provide safe and reasonable service to customers serviced by Fairview.¹ Specifically, Public Service contends that it is a "financially, managerially and technically capable" public

¹ Section 529 empowers the Commission to compel a capable public utility to acquire a small water or sewer utility that has, inter alia, failed to provide safe, adequate, efficient and reasonable service. Section 529 was added to the Public Utility Code, 66 Pa. C.S. §§101-3315, as amended, by the Act of April 16, 1992 ("Act 27"), P.L. 149, and became effective 60 days from its April 16, 1992 enactment date.

utility capable of acquiring Fairview and, accordingly, the Commission should order Public Service to acquire Fairview (Public Service's Complaint at pp. 1-3).

On October 6, 1992, Fairview responded to Public Service's complaint by filing a preliminary motion pursuant to the Commission's regulation at 52 Pa. Code §5.101.² In its motion, Fairview moved to strike PSWC's complaint as being in procedural noncompliance with Section 529 thus requiring the Commission to summarily dismiss the complaint. As New Matter, Fairview argues that Section 529 clearly contemplates that all action and prosecution shall lie with the Commission's Law Bureau and not with a private complainant such as Public Service which parenthetically is currently attempting to demonstrate its fitness to acquire the stock of three public utilities.³

On November 6, 1992, a late answer to Fairview's motion was filed by Public Service.⁴ In its answer, Public Service reiterated the averments contained in its complaint and also asserted, without reference, that a forced acquisition hearing could be initiated by the filing of a private complaint.

² 52 Pa. Code §5.101 allows a participant to file a preliminary motion to strike a pleading that is insufficient as to form or substance.

³ See the protested applications at A-210025,F.003, A-210025,F.004 and A-210025,F.005.

⁴ An answer to a preliminary motion must be filed within 10 days of the motion's service date. See 52 Pa. Code §5.101(d).

On December 4, 1992, Administrative Law Judge ("ALJ") Debra Paist issued a decision wherein she correctly concluded that a private complaint cannot initiate a forced acquisition hearing. Notwithstanding, ALJ Paist ordered that the complaint filed by Public Service should be deemed a pleading in the nature of a petition for relief pursuant to the Commission's regulation at 52 Pa. Code §5.421. To this end, ALJ Paist ordered that Public Service's petition for relief should be reassigned from the Office of Administrative Law Judge to the Law Bureau for disposition.

On January 29, 1993, Public Service filed with the Commission at Docket No. C-00924451 a one-sentence letter in the nature of a praecipe to withdraw its complaint. Although we shall herein conclude that the unprotested pleading to withdraw is indeed in the public interest, we would be remiss if we did not address the proper procedure for the withdrawal of pleadings in a contested proceeding and the proper procedure for the initiation of a Section 529 Mandatory Takeover proceeding.

The Commission's regulations at 52 Pa. Code §5.94 state, in pertinent part, that a participant desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the pleading. Most importantly, Section 5.94(a) states that the petition shall set forth the reasons for the withdrawal. In the matter before the Commission, Public Service submitted under the signature of its counsel only the one-sentence pleading. Public Service failed to set forth any justification or explanation for the withdrawal and thus did not satisfy our procedural

regulations at Section 5.94. As noted above, however, since withdrawal of the complaint appears in the public interest, we will waive the defect.

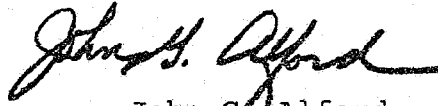
As to the initiation of a Section 529 Mandatory Takeover proceeding, Fairview, in its preliminary motion to dismiss, and the ALJ are correct in their conclusion that a private complainant cannot initiate a forced acquisition. To the contrary, Section 529 specifies that the burden of proof in a forced acquisition hearing is initially upon the Law Bureau Prosecutory Staff which is similarly responsible for the initiation of the complaint. See Pa.P.U.C. v. Sunshine Hills Water Co., R-912023 (1992). Since the Commission staff must discharge certain duties such as discussing with the small water or sewer company alternatives to a mandatory takeover before it can commence a forced acquisition hearing, clearly it would be illogical for a private complainant to initiate a forced acquisition;⁵ THEREFORE,

⁵ It should also be noted that Public Service is a public utility in the Commonwealth but not in any way a customer of Fairview.

IT IS ORDERED:

That the letter petition by Public Service Water Company to withdraw its pleading to initiate pursuant to 66 Pa. C.S. §519 a forced acquisition of Fairview Water Company is hereby granted.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: June 24, 1993

ORDER ENTERED: JUN 30 1993