

CAPTION SHEET

CASE MANAGEMENT SYSTEM

- 1. REPORT DATE: 00/00/00
- 2. BUREAU: ALJ
- 3. SECTION(S):
- 5. APPROVED BY: DIRECTOR: SUPERVISOR:
- 6. PERSON IN CHARGE:
- 8. DOCKET NO: C-00924451
- 4. PUBLIC MEETING DATE: 00/00/00
- 7. DATE FILED: 09/21/92
- 9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT: PUBLIC SERVICE WATER COMPANY-COMP. AP.

RESPONDENT/APPLICANT: FAIRVIEW WATER CO.

COMP/APP COUNTY:

UTILITY CODE: 210900

ALLEGATION OR SUBJECT

ALLEGING PROVIDING INADEQUATE SERVICE AND REQUESTS THAT AN ORDER BE ISSUED REQUESTING THAT A CAPABLE UTILITY BE PERMITTED TO ACQUIRE THE UTILITY.

DOCKETED  
SEP 22 1992

DOCUMENT  
FOLDER

210

FORMAL COMPLAINT

RECEIVED

SEP 21 1992

SECRETARY'S OFFICE  
Public Utility Commission

BEFORE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

For Commission Use Only:  
 COMPLAINT DOCKET NO. C-0092451 REF. # \_\_\_\_\_ UTILITY CODE 210900  
PSWC VS. FAIRVIEW WATER CO.

PLEASE PRINT:

DOCUMENT FOLDER

1. YOUR NAME, ADDRESS AND TELEPHONE NUMBER.

Name PUBLIC SERVICE WATER COMPANY (PSWC)  
 Street BOX 200 JESSUP POST OFFICE  
 City WINTON State PA Zip 18434-0200  
 County LACKAWANNA Home Telephone-Area Code ( ) \_\_\_\_\_  
 Work Telephone-Area Code (717) 226-9150

2. COMPANY YOU ARE COMPLAINING ABOUT.

Name FAIRVIEW WATER COMPANY (FWC)

3. WHAT IS YOUR COMPLAINT (DESCRIBE PROBLEM).

PSWC REPRESENTS IT IS A CAPABLE PUBLIC UTILITY UNDER THE PROVISIONS OF ACT 27  
OF 1992 SESSION OF THE PENNSYLVANIA LEGISLATURE. AS SUCH A UTILITY, IT STATES THE  
FOLLOWING COMPLAINT: 1. THAT FWC IS NOT NOW PROVIDING WATER TO ITS CUSTOMERS UNDER  
SUCH CONDITIONS AS WOULD BE SUFFICIENT TO PROVIDE FOR THE SAFE, RELIABLE, EFFICIENT,  
AND/OR REASONABLE SUPPLY OF SERVICE. SPECIFICALLY, ITS PRIMARY WATER SUPPLY  
SOURCE IS CONTAMINATED WITH MTBE, CAUSING POTABLE DRINKING WATER TO BE FURNISHED  
BY CONTAINER, CAUSING INCONVENIENCES AND OTHER DISTURBANCES TO ITS CUSTOMERS  
(VENTILATION REQUIRED DURING BATHING AND SIMILAR), 2. FWC CANNOT REASONABLY  
BE EXPECTED TO FURNISH AND MAINTAIN ADEQUATE, EFFICIENT, SAFE, AND REASONABLE  
SERVICE AND FACILITIES IN THE FUTURE, 3 ALTERNATIVES TO ACQUISITION BY A CAPABLE  
PUBLIC UTILITY HAVE BEEN CONSIDERED WITHOUT DEFINITE ACTION; SPECIFICALLY,  
INCLUDING, ACQUISITION BY A WILLING SALE TO THE BOROUGH (More Space On Back)

For Commission Use Only:  
 DATE FILED 9/21/92 MONITOR \_\_\_\_\_ BUREAU ACT

OF MOUNT POCOSO, 4. PSWC IS FINANCIALLY, MANAGERIALLY, AND TECHNICALLY CAPABLE OF ACQUIRING FWC. THE COMPANY HAS SUBSTANTIAL ASSETS, REVENUE, AND NET PROFITS. IT HAS A STAFF ENGINEER, OPERATIONS MANAGER (WHO USED TO OPERATE FWC FOR RICH HESS ASSOCIATES), CAPITAL RESOURCES TO FUND REQUIRED IMPROVEMENTS, MAINTENANCE AND OPERATION PERSONNEL, FINANCIAL AND CUSTOMER SERVICE STAFF, AND SUBSTANTIAL EQUIPMENT AND OTHER ASSETS TO AID IN THE ACQUISITION AND EXECUTION OF A PLAN IN REGARD TO FWC. 5. THE RATES TO CURRENT CUSTOMERS OF PSWC WILL NOT CHANGE. FAIRVIEW CUSTOMER RATES WILL CONTINUE AT THE PRESENT LEVEL UNTIL, IT IS EXPECTED, RATES RELIEF WOULD BE REQUESTED WITHIN THREE TO FIVE YEARS. PSWC HAS SUBMITTED A WRITTEN OFFER TO ACQUIRE FWC FROM COURT APPOINTED RECEIVER, ALLAN YOUNG, ESQ. THE RECEIVER, IT IS BELIEVED, HAS ALSO RECEIVED A WRITTEN OFFER FROM NATIONAL UTILITIES, INC., OF SCRANTON, PA. (If You Need More Space Attach Paper).

CONTINUED-

4. WHAT DO YOU WANT US TO DO?

ORDER A CAPABLE PUBLIC UTILITY TO ACQUIRE FAIRVIEW WATER IN ACCORDANCE WITH THE PROVISIONS OF ACT 27 OF 1992. TO HOLD HEARINGS, TAKE TESTIMONY, AND ISSUE THE REQUIRED NOTICES TO BE HEARD, AS STATED IN ACT 27 OF 1992. ALSO, TO ORDER A PLAN FOR IMPROVEMENTS, AND TO EFFECTUATE THE GRANT OF A CERTIFICATE OF PUBLIC CONVENIENCE AND THE FILING, INCLUDING APPROVAL, OF A TARIFF; ALL AFTER NOTICE AND OPPORTUNITY TO BE HEARD, AS REQUIRED BY SAID ACT 27 OF 1992.

(If You Need More Space Attach Paper)

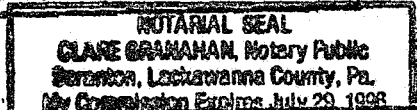
YOU MUST SIGN HERE

5. Aileen S. Freeman Corp. Secy  
Signature of complainant or attorney for corporate complainant WINEO

PUT TODAY'S DATE HERE

6. September 16 1992  
Today's Date

Clare Graham



YOU DO NOT NEED A LAWYER

If you DO have a lawyer PLEASE PRINT the lawyer's name, address and telephone number below.

7. Lawyer's Name ROBERT B. MACLAREN, ESQ.  
 Street PUBLIC SERVICE WATER COMPANY, BOX 200 JESSUP POST OFFICE  
 City WINTON State PA Zip 18434-0200  
 Telephone Number - Area Code (717) 226-9150

3. CONTINUED.

PUBLIC SERVICE BELIEVES, AND THEREFORE AVERS, THAT ACTION UNDER ACT 27 OF 1992 IS REQUIRED AND NECESSARY TO EFFECTUATE A CONCLUSION AS TO THE DESIGNATION OF A CAPABLE UTILITY TO ACQUIRE FAIRVIEW, AND TO EFFECTUATE WATER SERVICE IMPROVEMENTS NOW MANDATED BY THE CONTAMINATION OF THE CURRENT PRIMARY FAIRVIEW WATER SOURCE.



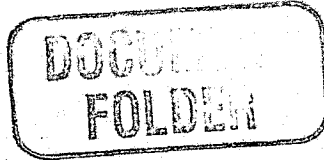
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P. O. BOX 3265, HARRISBURG, Pa. 17120

September 22, 1992

IN REPLY PLEASE  
REFER TO OUR FILE

C-00924451

GEORGE T. WALKER PRESIDENT  
FAIRVIEW WATER CO  
18 FAIRVIEW AVENUE  
MT POCONO PA 18344



A complaint has been filed against you before the Pennsylvania Public Utility Commission by Public Service Water Company (the complaining party)

To defend yourself against the claims stated in the following pages, you must act within twenty (20) days, by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

AN ADMINISTRATIVE LAW JUDGE MAY REVOKE OR SUSPEND ANY CERTIFICATE OR PERMIT HELD BY YOU, OR IMPOSE A FINE, OR ANY OTHER APPROPRIATE PENALTY OR REMEDY AUTHORIZED BY THE PUBLIC UTILITY CODE. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service  
Pennsylvania Bar Association  
P.O. Box 186  
Harrisburg, Pennsylvania 17108  
(800) 692-7375

Very truly yours,

John G. Alford  
Secretary

Attachment

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

September 22, 1992

<u>Public Service Water Company</u>	:	
	:	
v.	:	Complaint Docket
	:	No. <u>C-00924451</u>
<u>Fairview Water Company</u>	:	

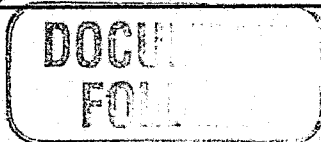
FORMAL COMPLAINT  
NOTICE TO RESPONDENT  
TO ANSWER OR SATISFY

DOCKETED

TO: George T. Walker, President

SEP 24 1992

TAKE NOTICE:



That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. §702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17120, an answer (original and two copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code §5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code §1.56(a).

2. If you fail to either satisfy this complaint or to file an answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with

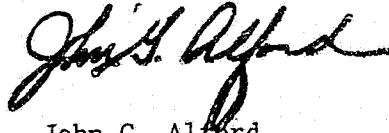
Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code §5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. §101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. §703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. §101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in this complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. §101, et seq.; and, if you are a customer of a utility,

an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.



John G. Alford  
Secretary

(SEAL)

Certified Mail  
Return Receipt Requested

COMMONWEALTH OF PENNSYLVANIA



ORIGINAL  
RECEIVED

OCT 30 1992

OFFICE OF CONSUMER ADVOCATE  
1425 Strawberry Square  
Harrisburg, Pennsylvania 17120

Public Utility Commission  
SECRETARY'S BUREAU  
Information Control Division

IRWIN A. POPOWSKY  
Consumer Advocate

(717) 783-5048

October 30, 1992

John G. Alford, Secretary  
PA Public Utility Commission  
Room G-23, North Office Bldg.  
Harrisburg, PA 17120

Re: Public Service Water Company  
v.  
Fairview Water Company  
Docket No. ~~17~~-00924451

Dear Secretary Alford:

Enclosed please find for filing an original and three copies of the Office of Consumer Advocate's Notice of Intervention and Public Statement in the above-captioned proceeding.

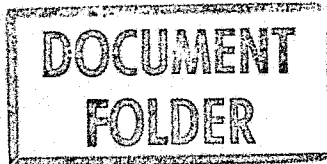
Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

*Christine Maloni Hoover*

Christine Maloni Hoover  
Assistant Consumer Advocate

Enclosures  
cc: All parties of record



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL  
RECEIVED  
OCT 30 1992

PUBLIC SERVICE WATER COMPANY :  
v. :  
FAIRVIEW WATER COMPANY :

Public Utility Commission  
SECRETARIES BUREAU  
Docket No. C-00924451  
Information Control Division

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NOTICE OF INTERVENTION

---

Pursuant to 52 Pa. Code Sections 5.71-74, the Office of Consumer Advocate hereby gives Notice of Intervention in the above-captioned proceeding. A copy of all correspondence and notices, documents, orders or other communications with respect to the above-captioned proceeding should be addressed to the following:

Christine Maloni Hoover  
Assistant Consumer Advocate  
Office of Attorney General  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Respectfully submitted,

*Christine Maloni Hoover*  
Christine Maloni Hoover  
Assistant Consumer Advocate

NOV 12 1992

DATED: October 30, 1992

DOCUMENT  
FOLDER

PUBLIC STATEMENT OF THE CONSUMER ADVOCATE ISSUED IN  
ACCORDANCE WITH SECTION 904-(e) OF ACT OF APRIL 9, 1929  
(P.L. 177, No. 175), KNOWN AS "THE ADMINISTRATIVE CODE OF  
1929", AS AMENDED BY ACT 161 OF 1976 (APPROVED JULY 9, 1976)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (PUC or Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Notice of Intervention and participate in proceedings before the Commission involving Public Service Water Company's formal complaint filed against Fairview Water Company.

In September, 1992, Public Service Water Company ("PSW") filed a formal complaint against Fairview Water Company ("FWC"). In its complaint PSW alleged that it is a "capable public utility" under the provisions of Act 2 of 1992 (Section 529 of the Public Utility Code), and that the Commission, among other things, should order PSW to acquire FWC in accordance with Section 529 of the Public Utility Code, and order a plan for improvement.

PSW's complaint asks the Commission to invoke its authority under Section 529 of the Public Utility Code. To the best of the OCA's knowledge, PSW's complaint is the first such formal complaint to ask the Commission to use its authority under Section 529 of the Public Utility Code. The OCA has determined to intervene in the complaint proceeding and will, in the course of the proceedings, seek to ensure that the customers receive safe, adequate, and reliable water service at just and reasonable rates.

CERTIFICATE OF SERVICE

Re: Public Service Water Company

v.

Fairview Water Company

Docket No. R-00924451

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

Dated this 30th day of October, 1992.

SERVICE IN PERSON:

CHARLES F. HOFFMAN, DIRECTOR  
OFFICE OF TRIAL STAFF  
PA PUBLIC UTILITY COMMISSION  
ROOM 210, NORTH OFFICE BLDG.  
HARRISBURG PA 17120

OFFICE OF SPECIAL ASSISTANTS  
PA PUBLIC UTILITY COMMISSION  
ROOM 116, NORTH OFFICE BLDG.  
HARRISBURG PA 17120

BERNARD RYAN, ESQ.  
OFFICE OF SMALL BUSINESS  
ADVOCATE  
300 N. SECOND ST., SUITE 1102  
COMMERCE BUILDING  
HARRISBURG PA 17101

SERVICE BY FIRST CLASS MAIL:

PUBLIC SERVICE WATER COMPANY  
BOX 200 JESSUP POST OFFICE  
WINTON, PA 18434-0200

*Christine Maloni Hoover*

Christine Maloni Hoover  
Assistant Consumer Advocate

Counsel for Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
(717) 783-5048



**HANNA, YOUNG & UPRIGHT**  
ATTORNEYS AT LAW

TW

ORIGINAL

JERRY F. HANNA  
ALAN PRICE YOUNG  
KIRBY G. UPRIGHT  
MARK P. PAZUHANICH  
JANET K. MARSH  
LOUIS C. KOTZMAN  
NICHOLAS J. MASINGTON III

October 5, 1992

PLEASE REPLY TO:

STROUDSBURG  
800 Main Street  
Stroudsburg, PA 18360  
(717) 424-9400  
FAX (717) 424-9426

AMM

BLAKESLEE  
Post Office Box 56  
Blakeslee, PA 18610  
(717) 646-2486  
(717) 839-8653  
FAX (717) 646-4563

RECEIVED

OCT 6 - 1992

SECRETARY'S OFFICE  
Public Utility Commission

John G. Alford, Secretary  
Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
Harrisburg, PA 17120

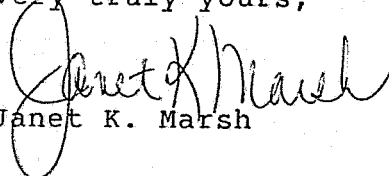
Re: Public Service Water Company v. Fairview Water Company  
Docket No. C-00924451  
Our File No. 2449/12

Dear Mr. Alford:

Enclosed for filing is an original and two copies of Respondent Fairview Water Company's Preliminary Motions to the Complaint of Public Service Water Company. Please time stamp the extra copy and return it to me in the enclosed self addressed stamped envelope.

By copy of this letter, I am serving a copy of the Preliminary Motions upon Robert E. MacLaren, Esquire, Attorney for the Complainant.

Very truly yours,

  
Janet K. Marsh

JKM/dea  
Enclosure

cc: Robert E. MacLaren, Esq.

**DOCUMENT  
FOLDER**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

DOCKET NO. C-00924451

PUBLIC SERVICE WATER COMPANY,

Complainant

vs.

FAIRVIEW WATER COMPANY,

Respondent

PRELIMINARY MOTIONS OF RESPONDENT  
FAIRVIEW WATER COMPANY TO  
COMPLAINANT

HANNA, YOUNG & UPRIGHT  
ATTORNEYS AT LAW  
800 MAIN STREET  
STROUDSBURG, PENNSYLVANIA 18360  
(717) 424-9400

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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OCT 6 - 1992

SECRETARY'S OFFICE  
Public Utility Commission

PUBLIC SERVICE WATER COMPANY, :

Complainant :

vs. :

FAIRVIEW WATER COMPANY, :

Respondent :

Docket No. C-00924451

DOCKETED

OCT 26 1992

PRELIMINARY MOTIONS OF RESPONDENT FAIRVIEW WATER COMPANY  
TO COMPLAINT

Respondent Fairview Water Company ("Fairview") hereby files Preliminary Motions pursuant to 52 Pa. Code Section 5.101 as follows:

1. Complainant is the Public Service Water Company ("PSWC") with an address of Box 200, Jessup Post Office, Winton, Lackawanna County, Pennsylvania 18434-0200.

2. Respondent Fairview Water Company is a Pennsylvania Public Utility with a principal place of business of 18 Fairview Avenue, Mount Pocono, Monroe County, Pennsylvania 18344.



3. On or about September 21, 1992, PSWC filed a Complaint seeking relief under the provisions of Act 27 of 1992, amending 66 Pa. C.S. by adding Section 529 (the "Act").

I. PRELIMINARY MOTION IN THE NATURE OF MOTION FOR A MORE SPECIFIC PLEADING

4. Paragraphs 1 through 3 above are incorporated herein by reference as if fully set forth.

5. PSWC's Formal Complaint fails to allege, and for that matter cannot allege, any act or thing done or admitted to be done or about to be done or omitted to be done by Fairview in violation or claimed violation of a statute which the Commission has jurisdiction to administer or of a regulation or order of the Commission.

WHEREFORE, Respondent Fairview Water Company respectfully requests the Commission to enter an Order requiring Public Service Water Company to file a more specific pleading in the nature of an Application.

II. PRELIMINARY MOTION IN THE NATURE OF A MOTION TO STRIKE

6. Paragraphs 1 through 5 above are incorporated herein by reference as if fully set forth.

7. The Act by its very nature, contemplates a Notice and Application procedure.

8. PSWC has initiated this action by Formal Complaint, which is clearly not contemplated by the Act.

9. As such, the Formal Complaint is insufficient as to form.

WHEREFORE, Respondent Fairview Water Company respectfully requests the Commission to enter an Order striking the Complaint.

III. PRELIMINARY MOTION IN THE NATURE OF A MOTION TO DISMISS

10. Paragraphs 1 through 9 above are incorporated herein by reference as if fully set forth.

11. For the reasons set forth above, the Formal Complaint is improper and insufficient in substance.

WHEREFORE, Respondent Fairview Water Company respectfully requests the Commission to dismiss the Complaint.

HANNA, YOUNG & UPRIGHT

BY: Janet K Marsh  
JANET K. MARSH, ESQ.  
Attorney I.D. No. 49583  
800 Main Street  
Stroudsburg, PA 18360  
(717) 424-9400

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Preliminary Motions of Respondent Fairview Water Company to Complaint was served by first-class mail, postage prepaid on October 5, 1992 as follows:

Robert E. MacLaren, Esquire  
Public Service Water Company  
Box 200 Jessup Post Office  
Winton, PA 18434-0200

DATED: \_\_\_\_\_

10/5/92

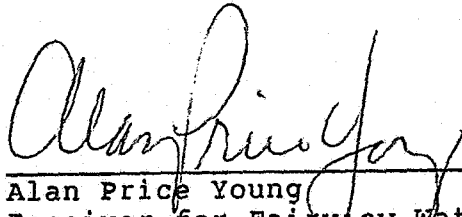
\_\_\_\_\_  
Janet K. Marsh

*Janet K Marsh*

VERIFICATION

I verify that the statements made in this Preliminary Motions of Fairview Water Company to Complaint are true and correct based on my knowledge, information and belief. I understand that false statements herein are made subject to penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Date: October 1, 1992

  
\_\_\_\_\_  
Alan Price Young  
Receiver for Fairview Water  
Company

LAW OFFICE OF  
JEFFREY S. TREAT

823 CHURCH STREET

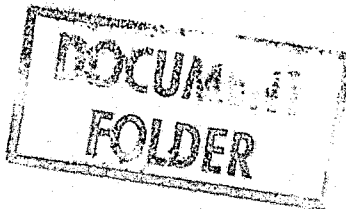
HONESDALE, PENNSYLVANIA 18431

ORIGINAL

PHONE:  
(717) 253-1209

FAX:  
(717) 253-9431

November 3, 1992



RECEIVED

NOV 6 1992

John Alford  
Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17120

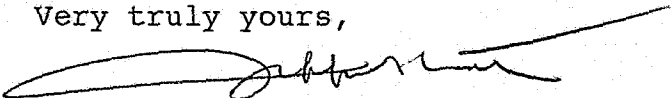
RE: PUBLIC SERVICE WATER COMPANY VS. FAIRVIEW WATER COMPANY  
DOCKET NO. C-00924451

Dear Mr. Alford:

Enclosed for filing please find original and two copies of Answer of Public Service Water Company to the Preliminary Motions of Fairview Water Company in regard to the above matter.

Thank you for your attention in this regard.

Very truly yours,



JEFFREY S. TREAT, ESQUIRE

JST/bms

Enclosure

cc: Janet Marsh, Esq. (w/enc.)

BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

DOCKET NO. C - 00924451

PUBLIC SERVICE WATER COMPANY,

Complainant

VS.

FAIRVIEW WATER COMPANY,

Respondent

ANSWER OF PUBLIC SERVICE  
WATER COMPANY TO THE PRE-  
LIMINARY MOTIONS OF FAIRVIEW  
WATER COMPANY

LAW OFFICE OF  
**JEFFREY S. TREAT**  
823 CHURCH STREET  
HONESDALE, PENNSYLVANIA 18431

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Public Service Water Company, )  
Complainant, )  
vs. )  
Fairview Water Company, )  
Respondent. )

Docket No. C - 00924451

NOV 6 1992

ANSWER OF PUBLIC SERVICE WATER COMPANY  
TO THE PRELIMINARY MOTIONS OF FAIRVIEW WATER COMPANY

SECRETARY GENERAL  
Public Utility Commission

AND NOW COMES Public Service Water Company which hereby answers the preliminary motions of Fairview Water Company as hereinafter follows.

- 1. Admitted.
- 2. Admitted.
- 3. Admitted.
- 4. Admitted.

DOCUMENT  
FOLDER

DOCKETED  
NOV 17 1992

5. Admitted. By way of further answer, the issue before the Commission is whether the Commission requested receiver of Fairview Water Company should sell the company to another public utility; if so, whether the acquiring utility is a qualified utility, in addition to an orderly determination of required system improvements and the implementation of the system improvements.

6. Admitted.

7. Denied. Complainant specifically avers that the proper procedure is not specified by the act; however, the complainant avers that any procedure that sufficiently places the matter before the Commission for hearing and decision is

within the scope and intent of the law. It is denied that a notice and application procedure is intended, primarily due to the requirement that the application be executed by the selling utility (in a Commission ordered transaction, such action would not necessarily be applicable).

8. Denied. Complainant incorporates its Answer to the aforementioned paragraph 7 as if fully set forth at length herein.

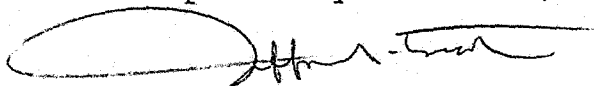
9. Denied. The formal complaint brings before the Commission the issues raised as criteria under the Act as enacted into law. An Administrative Law Judge, the Public Utility Commission, may then establish whether the Formal Complaint is sufficient to allege the applicability of the Act such that the sale of the utility to another utility is ordered.

10. Admitted.

11. Denied. Complainant incorporates herein its response to averments 1 through 10 as if fully set forth at length.

WHEREFORE, Complainant requests that the Preliminary Motions of the Respondent be dismissed.

Respectfully submitted,



Jeffrey S. Treat, Esq.  
Attorney for Complainant

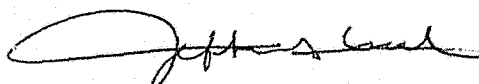
Box 200 Jessup Post Office  
Winton PA 18434-0200  
717-253-1209

October 19, 1992

CERTIFICATE OF SERVICE

I, Jeffrey S. Treat, certify that I have this day served the foregoing Answer upon John Alford, Secretary of the Public Utility Commission (an original and two copies) and on Janet Marsh, Hanna Young and Upright, 800 Main Street, Stroudsburg Penna. 18360, this 30<sup>th</sup> day of ~~October~~ <sup>November, 1992</sup> by First Class United States Mail Postage Prepaid.

By:



Jeffrey S. Treat, Esq.



Based upon the following analysis, I hold that a private complaint cannot be used to commence a forced acquisition hearing under section 529. However, given the first-impression nature of this case, I also conclude that Public Service's private complaint should not be dismissed but, instead, should be treated as a pleading in the nature of a petition for relief under the Commission's regulation at 52 Pa. Code § 5.41. Accordingly, I deny Fairview's motion to dismiss and afford Fairview an opportunity to file an answer to Public Service's "petition." Concomitantly, I deny Fairview's motion to strike Public Service's "petition." Furthermore, I deny Fairview's motion for a more specific pleading.

#### History of the Proceedings

On September 21, 1992, Public Service filed a private complaint against Fairview at Docket No. C-00924451. In its complaint, Public Service made these averments:

PSWC [Public Service] represents it is a capable public utility under the provisions of Act 27 of 1992 session of the Pennsylvania Legislature. As such a utility, it states the following complaint:

1. That FWC [Fairview] is not now providing water to its customers under such conditions as would be sufficient to provide for the safe, reliable, efficient, and/or reasonable supply of service. Specifically, its primary water supply source is contaminated with MTBE, causing potable drinking water to be furnished by container; causing inconvenience and other disturbances to its customers

(ventilation required during bathing and similar).

2. FWC cannot reasonably be expected to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in the future.

3. Alternatives to acquisition by a capable public utility have been considered without definite action; specifically including, acquisition by a willing sale to the Borough of Mount Pocono.

4. PSWC is financially, managerially, and technically capable of acquiring FWC. The company has substantial assets, revenue, and net profits; it has a staff engineer, operations manager (who used to operate FWC for Rick Hess Associates), capital resources to fund required improvements, maintenance and operation personnel, financial and customer service staff, and substantial equipment and other assets to aid in the acquisition and execution of a plan in regard to FWC.

5. The rates to current customers of PSWC will not change. Fairview customer rates will continue at the present level until, it is expected, rate relief would be requested within three to five years. PSWC has submitted a written offer to acquire FWC from court appointed receiver, Allan Young, Esq. The receiver, it is believed, has also received a written offer from National Utilities, Inc., of Scranton, PA. Public Service believes, and therefore avers, that action under Act 27 of 1992 is required and necessary to effectuate a conclusion as to the designation of a capable utility to acquire Fairview, and to effectuate water service improvements now mandated by the contamination of the current primary Fairview water source.

Public Service's Complaint at 1-3.<sup>2</sup>

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.<sup>3</sup> In its motion, Fairview alternatively moved to strike Public Service's complaint as being in procedural noncompliance with Act 27, moved for a more specific pleading in the form of an application,<sup>4</sup> and

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<sup>2</sup>Subsection 529(m) designates certain public utilities as capable public utilities that may, as the result of a forced acquisition hearing, be ordered by the Commission to acquire a troubled small water utility. Specifically, subsection 529(m) defines a capable public utility as a "public utility which regularly provides the same type of service as the small water utility . . . to 4,000 or more customer connections, which is not an affiliated interest of the small water utility . . . and which provides adequate, efficient, safe and reasonable service." Additionally, subsection 529(m) states that a "public utility which would otherwise be a capable public utility except for the fact that it has fewer than 4,000 customer connections may elect to be a capable public utility . . . regardless of whether or not it is proximate to the small . . . water utility to be acquired." Subsection 529(m) defines a small water utility as "[a] public utility which regularly provides water service to 1,200 or fewer customer connections."

<sup>3</sup>The preliminary motion was filed on behalf of Fairview by an attorney at law.

<sup>4</sup>Fairview's reference to an application procedure apparently derives from a misplaced reliance on section 1327 of the Public Utility Code, 66 Pa. C.S. § 1327. Section 1327 concerns solely rate treatment for a water utility acquisition which is premised on the joint consent of the water utility being acquired and the acquiring public utility. In contrast, section 529 concerns the nonconsensual (forced) acquisition of a small water utility and includes, but is not limited to, rate treatment for the forced acquisition. The mutual exclusivity of sections 1327 and 529 is evidenced by the distinct notice and burden of proof provisions

moved to dismiss Public Service's complaint.<sup>5</sup> According to a certificate of service attached to Fairview's motion, a copy of the motion was served on Public Service by first-class mail, postage prepaid, on October 5, 1992. See the Commission's document service regulations at 52 Pa. Code §§ 1.56-.58.

On November 6, 1992, a late answer to Fairview's motion was filed on behalf of Public Service by an attorney at law. See 52 Pa. Code §§ 1.56 and 5.101(d) (an answer to a preliminary motion must be filed within ten days of the motion's service date, and three days are added to the filing period when service of a document has been made by first-class mail). In its answer, Public Service reiterated the averments contained in its complaint and also asserted, without reference to any supportive

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in the two sections. Subsection 1327(b) requires the acquiring utility to provide notice of the proposed water utility acquisition to the customers of the water utility being acquired while subsection 529(h) requires a small water utility that may be the subject of a forced acquisition to notify its own customers of the commencement of a forced acquisition proceeding. Subsection 1327(a)(2) requires the acquiring public utility to prove that the water utility being acquired had 1,200 or fewer customer connections while subsection 529(i) requires the Commission's Law Bureau to prove that the utility subjected to a forced acquisition hearing is a small water utility, i.e., a utility with 1,200 or fewer customer connections. Consequently, the application procedure of section 1327 does not govern a forced acquisition proceeding under section 529.

<sup>5</sup>Fairview's motion to dismiss incorporated by reference Fairview's allegations as to Public Service's procedural noncompliance with Act 27 and failure to plead with sufficient specificity. The motion to dismiss did not identify any particular insufficiency in the substance of Public Service's complaint.

legal precedent, that a forced acquisition hearing could be triggered by the filing of a private complaint. Id., ¶ 7, at 1.

#### Discussion

Section 529 does not explicitly designate the type of pleading that must be used to initiate a forced acquisition hearing. Nevertheless, the wording of section 529 establishes that a forced acquisition hearing cannot be commenced by a private complaint but, rather, must be commenced by a complaint that will be prosecuted by the Commission's Law Bureau.<sup>6</sup> The burden of proof and notice provisions of subsections 529(h) and 529(i) clearly contemplate the prosecution of a complaint by the Commission's Law Bureau. Furthermore, the commencement of a forced acquisition hearing by a private complaint would be inconsistent with the Commission's hearing and pre-hearing duties under subsections 529(a) and 529(b).

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<sup>6</sup>The Commission's regulations at 52 Pa. Code §§ 1.21-.22 require that, in adversarial proceedings such as complaint proceedings, an attorney at law represent a corporation like Public Service. Therefore, Public Service's complaint should have been filed on Public Service's behalf by an attorney at law rather than by Aileen S. Freeman who identified herself as "corporate secretary." However, because I conclude that a private complaint cannot be used to initiate a section 529 forced acquisition hearing and because Public Service became represented in this proceeding by an attorney at law shortly after the filing of the complaint, the submission of Public Service's complaint by someone other than an attorney at law does not adversely affect Fairview's substantive rights and is being disregarded under these unique circumstances to allow the just, speedy and inexpensive resolution of the first-impression issue raised by the parties' pleadings. See the Commission's regulation at 52 Pa. Code § 1.2 (liberal construction of Commission's regulations).

### I. Section 529 Burden of Proof and Notice

The burden of proof and notice provisions for forced acquisition hearings lead to the conclusion that the General Assembly intended to have forced acquisition hearings initiated by a complaint prosecuted by the Commission's Law Bureau and not by a private complainant.

Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a), imposes the burden of proving the allegations in a complaint on the person or entity that filed the complaint.<sup>7</sup> Consequently, if a private complaint could be used to initiate a forced acquisition hearing, the private complainant would have the burden of proving the complaint allegations. Because subsection 529(i) specifies that the burden of proof is initially upon the Law Bureau in a forced acquisition hearing, the General Assembly obviously intended that a forced acquisition hearing be commenced by a complaint subject to prosecution by the Law Bureau instead of a complaint subject to prosecution by a private complainant.

Subsection 529(i) states:

The Law Bureau shall have the burden of establishing a prima facie case that the acquisition of the small water . . . utility would be in the public interest and in compliance with the provisions of this

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<sup>7</sup>But see 66 Pa. C.S. § 315 which enumerates certain burden of proof exceptions not germane to a resolution of the present case.

section. Once the commission determines that a prima facie case has been established:

(1) the small water . . . utility shall have the burden of proving its ability to render adequate, efficient, safe and reasonable service at just and reasonable rates; and

(2) a proximate public utility providing the same type of service as the small water . . . utility shall have the opportunity and burden of proving its financial, managerial or technical inability to acquire and operate the small water . . . utility.

Subsection 529(i)'s initial placement of the burden of proof upon the Law Bureau is consistent with the Law Bureau's duty to prosecute a non-private complaint. See, e.g., subsection 308(b) of the Public Utility Code, 66 Pa. C.S. § 308(b) (explains Law Bureau's prosecutory function); Pennsylvania Public Utility Commission v. Bolus Truck Parts and Towing Service, Inc., 64 Pa. P.U.C. 505 (1987) (Law Bureau's prosecution of a non-private complaint).

Subsection 529(h) directs that notice of a forced acquisition hearing

shall be served upon the small water . . . utility affected, the Office of Consumer Advocate, the Office of Small Business Advocate, the [Commission's] Office of Trial Staff, the Department of Environmental Resources, all proximate public utilities providing the same type of service . . ., all proximate municipalities and municipal authorities providing the same type of service . . . and the municipalities served by the small water . . . utility.

Furthermore, subsection 529(h) requires the affected small water utility to notify its customers of a forced acquisition hearing.

The Law Bureau's absence from subsection 529(h)'s extensive notice list bolsters the conclusion that the General Assembly intended to have forced acquisition hearings commenced by a non-private complaint. When the Law Bureau prosecutes a non-private complaint under subsection 308(b), the Law Bureau necessarily has notice of the complaint proceedings and is an indispensable party to those proceedings.

If a forced acquisition hearing could be commenced by a private complaint, subsections 529(i) and 529(h) would produce an illogical result. Under subsection 529(i), the Law Bureau would have the initial burden of proof in the forced acquisition hearing, but, under subsection 529(h), the Law Bureau would not be required to have notice of the complaint proceeding. Consequently, interpreting section 529 to permit the commencement of a forced acquisition hearing by a private complaint would violate the basic rule of statutory construction that "the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable." Subsection 1922(1) of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1922(1).

Given the burden of proof allocation in subsection 529(i) and the notice requirements in subsection 529(h), I conclude that the General Assembly intended to have a forced

acquisition hearing commenced by a non-private complaint which would be prosecuted by the Law Bureau.

## II. Commission's Section 529 Duties

The Commission's ability to fulfill its obligations under subsections 529(a) and 529(b) would be seriously undermined if a private complaint could initiate a forced acquisition hearing.

Subsection 529(b) imposes on the Commission two duties which must be discharged before the Commission may conduct a forced acquisition hearing. First, the Commission must dialogue with the small water utility about alternatives to the utility's forced acquisition.<sup>8</sup> Second, the Commission must afford the small water utility a reasonable opportunity for pursuing alternatives to its forced acquisition.

Correlatively, subsection 529(a) empowers the Commission to hold a forced acquisition hearing and to order a capable public utility's acquisition of a small water utility only if "alternatives to acquisition have been considered in accordance with subsection [529](b) and have been determined by the commission to be impractical or not economically feasible."

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<sup>8</sup>Alternatives to forced acquisition encompass, but are not limited to, reorganization of the small water utility under new management, the Commission's appointment of a receiver for the small water utility, and a municipality's or municipal authority's takeover of the small water utility. 66 Pa. C.S. §§ 529(b) and 529(g).

The language of subsections 529(a) and 529(b) reveals a legislative determination that it is in the public interest to encourage a small water utility to avail itself of an alternative to forced acquisition in order to avoid the taking of private property, the costs and the resource commitments engendered by a forced acquisition hearing.

Within 90 days after a responsive pleading is filed to a complaint, a hearing on the complaint is to be commenced before an administrative law judge of the Commission pursuant to subsection 332(g) of the Public Utility Code, 66 Pa. C.S. § 332(g).<sup>9</sup> Because nothing in subsection 332(g) or in section 529 suggests that the 90-day hearing provision of subsection 332(g) is inapplicable to a forced acquisition hearing, subsection 332(g) and section 529 must be read together to give effect to both provisions. See subsections 1921(a) and 1922(2) of the Statutory Construction Act of 1972, 1 Pa. C.S. §§ 1921(a) and 1922(2).

Consequently, if a private complaint could trigger the scheduling of a forced acquisition hearing within 90 days after the filing of a corresponding answer, the use of the private complaint would restrict the time available to the Commission for

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<sup>9</sup>Section 332(g) has been construed to be directory and not mandatory. Pennsylvania Public Utility Commission v. Andy Cab Co., Inc., 56 Pa. P.U.C. 139 (1982).

the performance of its subsection 529(b) duties. The resultant time restriction could hinder or prevent the Commission's discharge of its subsection 529(b) duties. For example, the Commission might be unable to provide a reasonable time for a small water utility to encourage a takeover by a municipal authority or to pursue other alternatives to forced acquisition before the commencement of a hearing upon a private complaint. Therefore, the scheduling of a hearing upon a private complaint could conflict with the expressed legislative preference in section 529 for alternatives to the forced acquisition of a small water utility. See also subsection 1922(5) of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1922(5) (the legislature is presumed to intend to favor a public interest over a private interest).

Because the Commission must fulfill its duties under subsection 529(b) before the Commission can determine the advisability of a forced acquisition in accordance with subsection 529(a), any interference with the Commission's discharge of its subsection 529(b) duties would necessarily impair the Commission's ability to conduct a proper forced acquisition hearing and to enter an appropriate order pursuant to subsection 529(a).

Given the Commission's obligations under subsections 529(a) and 529(b), I conclude that the General Assembly intended

to have a forced acquisition hearing commenced by a non-private complaint which would be issued after the Commission had discharged its subsection 529(b) duties.

### III. Petition for Relief

Having held that a private complaint cannot initiate a forced acquisition hearing, I am nevertheless persuaded that aggrieved individuals and entities should be afforded a mechanism for pursuing a remedy in conjunction with section 529.

Subsection 529(h) contains a list of individuals and entities, such as small water utility customers, that must be notified of a forced acquisition proceeding or any other type of proceeding under section 529. This notice mandate reveals a legislative intent that the listed individuals and entities have standing to participate in forced acquisition and related section 529 proceedings.<sup>10</sup> Similarly, a legislative intent to confer standing on entities within the subsection 529(m) definition of a capable public utility is revealed by subsections 529(a)(5)-(6), 529(i)(2), and 529(j)-(m) which concern the qualifications and responsibilities of a potential acquiring capable public utility. Thus, section 529 is consonant with the Commission's traditional standing analysis which recognizes, as parties to litigation before the Commission, those aggrieved individuals or entities

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<sup>10</sup>See also subsections 529(a)(2), 529(c), 529(j)-(l) (activities and duties of the Department of Environmental Resources vis-a-vis forced small water utility acquisitions).

that have a substantial, direct and immediate interest in the subject matter of the litigation. Appalachian Gas Sales, Inc. v. Philadelphia Electric Co., 67 Pa. P.U.C. 246 (1988). Inasmuch as Public Service has requested treatment as a capable public utility in accordance with subsection 529(m), I hold that Public Service has standing as a party in the present section 529 matter.

The Commission's regulations at 52 Pa. Code §§ 5.41-.44 and 5.61 permit the use of a petition for relief and a corresponding answer in circumstances where, as here, the use of an application and protest or a private complaint and answer are inappropriate. See 52 Pa. Code §§ 5.1-.63 (pleadings allowed before the Commission). Consequently, Public Service's private complaint should be treated as a pleading (1) which is in the nature of a petition for relief and (2) which was mislabeled as a complaint rather than properly captioned as a petition.

In its petition, Public Service has averred that alternatives to Fairview's forced acquisition have already been unsuccessfully pursued and that Fairview's situation has become ripe for a forced acquisition hearing. Specifically, Public Service alleges (1) that Fairview has been operated by a court-appointed receiver who has been unable to assure Fairview's customers of adequate, efficient, safe and reasonable water

service<sup>11</sup> and (2) that Fairview has been unable to interest the Borough of Mount Pocono in a takeover of Fairview.<sup>12</sup>

The averments in Public Service's petition must be evaluated in the context of the Commission's subsection 529(b) duties to discuss with Fairview alternatives to forced acquisition and to afford Fairview a reasonable opportunity to investigate alternatives to its forced acquisition. A forced acquisition hearing would be premature if the Commission has not yet discharged its subsection 529(b) duties to Fairview.

For these reasons, I deem Public Service's pleading a petition for relief and permit Fairview to file an answer to the

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<sup>11</sup>The mere fact that a receiver was appointed for Fairview does not automatically establish that a subsection 529(b)(3) alternative to acquisition was pursued in the present case. The Court of Common Pleas of Monroe County appointed Alan Price Young, Esquire, as Fairview's receiver more than two years prior to the promulgation of section 529. Consequently, Mr. Young's appointment was not made in contemplation of Fairview's avoiding a section 529 forced acquisition, and Mr. Young's duties and responsibilities were, contrary to subsection 529(g), specified by the common pleas court rather than by the Commission.

<sup>12</sup>Although Public Service has pled that the Borough of Mount Pocono was solicited for Fairview's takeover, the parties' pleadings do not establish that a subsection 529(b)(5) alternative to acquisition was unsuccessfully explored in this case. The parties' pleadings do not aver when the solicitation occurred and whether either the Borough of Mount Pocono declared that it is not interested in Fairview's takeover or sufficient time has elapsed to infer that the Borough of Mount Pocono will not engage in Fairview's takeover.

petition's substantive allegations within twenty days from the service date of the Commission's order in this matter.

THEREFORE, IT IS ORDERED:

1. That Fairview Water Company's motion at Docket No. C-00924451 for dismissal/striking/more specific pleading is hereby denied.

2. That the complaint filed by Public Service Water Company at Docket No. C-00924451 is hereby deemed a pleading in the nature of a petition for relief pursuant to the Commission's regulation at 52 Pa. Code § 5.41.

3. That Fairview Water Company is hereby permitted to file an answer to Public Service Water Company's petition for relief at Docket No. C-00924451 within twenty (20) days from the service date of the Commission's order in this matter. See 52 Pa. Code § 5.61.

4. That Public Service Water Company's petition for relief be reassigned from the Office of Administrative Law Judge to the Law Bureau.

Debra Paist  
DEBRA PAIST  
Administrative Law Judge

Dated: 12/3/92

C-00924451 - Parties of Record

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ATTORNEYS AT LAW

December 22, 1992

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AMH

John G. Alford, Secretary  
Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
North Office Building, North Street  
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RECEIVED

DEC 22 1992

Re: Public Service Water Co. v. Fairview Water Co.  
Docket No. C-00924451  
Our File No. 2449/12

SECRETARY'S OFFICE  
Public Utility Commission

Dear Mr. Alford:

Enclosed for filing is an original and two copies of Answer of Fairview Water Company to Petition for Relief. Please time stamp the extra copy and return it to me in the enclosed self addressed stamped envelope.

Very truly yours,

*Janet K. Marsh*  
Janet K. Marsh

JKM/dea  
Enclosures

CC: Jeffrey S. Treat, Esquire w/enc.

DOCUMENT  
FOLDER

BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

DOCKET NO. C-00924451

PUBLIC SERVICE WATER COMPANY

VS.

FAIRVIEW WATER COMPANY

ANSWER AND NEW MATTER OF  
FAIRVIEW WATER COMPANY TO  
PETITION FOR RELIEF

HANNA, YOUNG & UPRIGHT  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

DEC 22 1992

SECRETARY'S OFFICE  
Public Utility Commission

PUBLIC SERVICE WATER COMPANY

v.

Docket No. C-00924451

FAIRVIEW WATER COMPANY

ANSWER AND NEW MATTER OF FAIRVIEW WATER COMPANY TO  
PETITION FOR RELIEF

Fairview Water Company ("Fairview") hereby answers the  
Petition for Relief of Public Service Water Company ("Public  
Service"), previously in the nature of a formal complaint, as  
follows:

1. It is admitted that Public Service has an address of  
Box 200 Jessup Post Office, Winton, Lackawanna County,  
Pennsylvania 18434-0200.

2. The allegation that Public Service is a "capable  
public utility" under the provisions of Act 27 of 1992 (the  
"Act") is a conclusion of law to which no response is necessary  
and which is therefore deemed denied.

HANNA, YOUNG  
& UPRIGHT  
ATTORNEYS AT LAW  
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PENNSYLVANIA 18360  
(717) 424-9400

**DOCKETED**  
JAN 6 1993

**DOCUMENT  
FOLDER**

3. It is denied that Fairview is "not now providing water to its customers under such conditions as would be sufficient to provide for the safe, reliable, efficient and/or reasonable supply of services". While it is acknowledged that MTBE is present in a water supply source, the inference that the condition was a result of Fairview's actions or inactions is strictly denied. To the contrary, the condition was caused by actors outside of and unrelated to Fairview. The further implication that this condition renders Fairview incapable of providing a safe, reliable, efficient or reasonable supply of water is likewise denied.

4. It is denied that Fairview "cannot be reasonably expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future". To the contrary, Fairview anticipates rendering, furnishing and maintaining not only adequate service but service which would exceed minimum standards.

5. The allegations that "[a]lternatives to acquisition by a capable public utility have been considered without definite action" are strictly denied. By way of further answer, the alternatives to acquisition required by Section

529(b) of the Act have not been considered by the Commission as required by the Act.

6. The allegations that Public Service is "financially, managerially and technically capable of acquiring Fairview", that Public Service "has substantial assets, revenues and net profit, it has a staff of engineers, operations manager..., capital resources to fund required improvements, maintenance and operations, personnel, financial and customer service staff and substantial equipment and other assets to aid in the acquisition and execution of a plan in regard to" Fairview are strictly denied. By way of further answer, Fairview believes and therefore avers that Public Service is not financially, managerially and technically capable inasmuch as, among other reasons, it has failed to maintain requirements of the PUC and, recently, failed to conduct adequate testing of adequate and required testing of several of its water supplies.

7. As to Public Service's allegations as to the future rates of current Public Service and Fairview customers, Fairview is without knowledge or information sufficient to form a belief as to the truth of the allegations and, hence, denies the same and demands strict proof thereof at hearing, if relevant.

8. The allegations as to offers which the Court appointed receiver for Fairview has received are admitted as stated. Both offers predate the MTBE contamination discovered in June 1992.

9. The allegations as to the procedures required by the Act are denied as conclusions of law to which no response is necessary and which are therefore deemed denied. Additionally and by way of further answer, see New Matter below which is incorporated herein by reference as if fully set forth.

10. All of the allegations appearing at number 4 of the previously lodged "formal complaint" are denied as conclusions of law to which no response is necessary and which are therefore deemed denied. By way of further answer, the Act requires an independent evaluation by the Commission and Law Bureau and subsequent action thereafter only upon a determination by those bodies that further action is required and, if so, that any further action follow the mandates of the Act.

WHEREFORE, Fairview Water Company respectfully requests that the Petition for Relief be denied.

NEW MATTER

11. The Act grants the Commission the authority to order acquisition of a small water company.

12. Acquisition of a small water company shall be ordered by the Commission only where the Commission determines that the requirements of Section 529(a) have been met.

13. The Act requires the Commission to discuss with a small water company alternatives to acquisition, including but not limited to those enumerated in Section 529(b).

14. The Act requires that prior to ordering the acquisition of a small water company, the Commission consider factors enumerated in Section 529(c).

15. The Act contemplates that it is only after the Commission considers certain alternatives and factors and determinations as set forth in Subsection (a) that notice is required as set forth in Subsection (h) of the Act.

16. Section 529(i) vests the Law Bureau with the burden of establishing a prima facie case that the acquisition of a small water company is in the public interest and complies with the requirements of the section.

17. As such, the Act clearly contemplates that all action and prosecution shall lie with the Law Bureau and not with a private complainant such as Public Service in the instant matter.

WHEREFORE Fairview Water Company respectfully requests the Commission to dismiss the complaint.

HANNA, YOUNG & UPRIGHT

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Bernard A. Ryan, Jr., Small Business Advocate  
Office of Small Business Advocate  
Commerce Building - Suite 1102  
300 North Second Street  
Harrisburg, PA 17101

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

Arthur A. Davis, Secretary  
Department of Environmental Resources  
P.O. Box 2063  
Harrisburg, PA 17105-2063

Caren E. Glotfelty, Deputy Secretary for Water Management  
Department of Environmental Resources  
P.O. Box 2063  
Harrisburg, PA 17105-2063



ORIGINAL

JERRY E. HANNA  
ALAN PRICE YOUNG  
KIRBY G. UPRIGHT  
MARK P. PAZUHANICH  
JANET K. MARSH  
NICHOLAS J. MASINGTON III  
THOMAS V. CASALE

**HANNA, YOUNG & UPRIGHT**  
ATTORNEYS AT LAW

December 22, 1992

PLEASE REPLY TO:

■ STROUDSBURG  
800 Main Street  
Stroudsburg, PA 18360  
(717) 424-9400  
FAX (717) 424-9426

□ BLAKESLEE  
Post Office Box 56  
Blakeslee, PA 18610  
(717) 646-2486  
(717) 839-8653  
FAX (717) 646-4563

AMH

John G. Alford, Secretary  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
Harrisburg, PA 17105-3265

Re: Public Service Water Co. v. Fairview Water Co.  
Docket No. C-00924451  
Our File No. 2449/12

RECEIVED

DEC 24 1992

SECRETARY'S OFFICE  
Public Utility Commission

Dear Mr. Alford:

Enclosed is an original and two copies of the Verification that was inadvertently omitted from the Answer of Fairview Water Company to Petition for Relief. Please add this Verification to that pleading.

Thank you.

Very truly yours,

*Janet K. Marsh*  
Janet K. Marsh

JKM/dea  
Enclosures

cc: see attached list

DOCUMENT  
FOLDER

Jeffrey S. Treat, Esquire (Public Service Water Co.)  
823 Church Street  
Honesdale, PA 18431

Alan Price Young, Esquire (Receiver for Fairview Water Co.)  
Hanna, Young & Upright  
800 Main Street  
Stroudsburg, PA 18360

Richard Freeman  
Public Service Water Company  
Box 200 Jessup Post Office  
Winton, PA 18434-0200

Aileen S. Freeman  
Public Service Water Company  
Box 200 Jessup Post Office  
Winton, PA 18434-0200

Irwin A. Popowsky, Consumer Advocate  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

John F. Povilaitis, Chief Counsel  
Law Bureau  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Frank B. Wilmarth, Deputy Chief Counsel  
Law Bureau  
Pennsylvania Public Utility Commission  
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Otto F. Hofmann, Deputy Executive Director  
Office of Executive Director  
Pennsylvania Public Utility Commission  
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Cheryl Walker Davis, Director  
Office of Special Assistants  
Pennsylvania Public Utility Commission  
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John G. Alford, Secretary  
Secretary's Bureau  
Pennsylvania Public Utility Commission  
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Office of Trial Staff  
Pennsylvania Public Utility Commission  
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Harrisburg, PA 17105-3265

Arthur A. Davis, Secretary  
Department of Environmental Resources  
P.O. Box 2063  
Harrisburg, PA 17105-2063

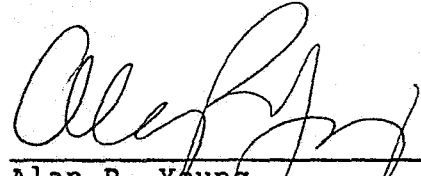
Caren E. Glotfelty, Deputy Secretary for Water Management  
Department of Environmental Resources  
P.O. Box 2063  
Harrisburg, PA 17105-2063

**CONFIDENTIAL**  
**RECEIVED**  
DEC 24 1992  
SECRETARY'S OFFICE  
Public Utility Commission

VERIFICATION

I verify that the statements made in this Answer are true and correct based on my knowledge, information and belief. I understand that false statements herein are made subject to penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Date: 12/22/92

  
\_\_\_\_\_  
Alan P. Young  
Appointed Receiver for  
Fairview Water Company

**SECRETED**  
JAN 11 1993

**DOCUMENT  
FOLDER**

HANNA, YOUNG  
& UPRIGHT  
ATTORNEYS AT LAW  
800 MAIN STREET  
STROUDSBURG,  
PENNSYLVANIA 18360  
(717) 424-9400



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

January 13, 1993

IN REPLY PLEASE  
REFER TO OUR FILE

C-00924451

JEFFREY S TREAT ESQUIRE  
823 CHURCH STREET  
HONESDALE PA 18431

DOCKETED  
JAN 27 1993

BTL

Public Service Water Company  
v.  
Fairview Water Company

Dear Mr. Treat:

We are returning herewith a copy of Public Service Water Company's reply to new matter in the above entitled proceeding with the request that you furnish the Commission with the original and two copies.

As soon as the original and two copies are received, same will receive the Commission's attention.

Very truly yours,

for John G. Alford  
Secretary

cc: Office of Administrative Law Judge  
Office of Trial Staff

JEP

DOCUMENT  
FOLDER

ORIGINAL

RECEIVED

JAN 29 1983

SECRETARY'S OFFICE  
Public Utility Commission

PUBLIC SERVICE WATER COMPANY  
P. O. BOX 149  
HAWLEY, PA 18428  
(717)226-9257

572

---

Mr. John G. Alford, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pa. 17120

Re: Public Service Water Company v. Fairview Water Company,  
Docket No. C-00924451

Dear Mr. Alford:

Please withdraw our pleadings in the above referenced case.

Sincerely,

  
Richard J. Ciamacca  
Staff Attorney

DOCUMENT  
FOLDER

ORIGINAL

RECEIVED

JAN 29 1993

SECRETARY'S OFFICE  
Public Utility Commission

PUBLIC SERVICE WATER COMPANY  
P. O. BOX 149  
HAWLEY, PA 18428  
(717)226-9257

BTL

Mr. John G. Alford, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pa. 17120

Re: Public Service Water Company v. Fairview Water Company,  
Docket No. C-00924451


Dear Mr. Alford:

Please withdraw our pleadings with prejudice in the above  
referenced case.

CKETED

FEB 18 1993

Sincerely,

  
Richard J. Ciamacca  
Staff Attorney

DOCUMENT  
FOLDER