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__via Overnight Delivery__
Honorable Jacob S. Gertsman, ALJ
Office of Administrative Law
3444 Quakerbridge Road
Quakerbridge Plaza, Bldg. 9
Mercerville, New Jersey 08619

Re: __I/M/O the Joint Petition for Approval of SUEZ Water New Jersey Inc. for Approval of a Pilot Program to Facilitate the Replacement of Lead Service Lines and a Related Cost Recovery Mechanism__
OAL Docket No. PUC 07138-2019S
BPU Docket No. ~~WO19030281~~
WO19030381

Dear Judge Gertsman:

This firm represents Suez Water New Jersey Inc. ("SWNJ" or the "Company") in the above-captioned matter and submits this brief to Your Honor in opposition to the Division of Rate Counsel's ("Rate Counsel") Motion for Summary Decision. As we will demonstrate, Rate Counsel has begun with the wrong set of "facts," applied the wrong law, and reached the wrong conclusion. There is only one remedy for these errors: Rate Counsel's Motion for Summary Decision must be denied.

PRELIMINARY STATEMENT

Beginning in 2018, the Company experienced test results indicating that some residences in the SWNJ system had lead levels in their tap water in excess of the maximum contaminant level of 15 ppb set in New Jersey Department of Environmental Protection ("DEP") and

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Environmental Protection Agency ("EPA") guidelines.[1] In order to determine the source of the excessive lead, the Company examined water quality from its treatment plant to customer taps.

It is undisputed that the water in the Company's mains is free of lead. As can be seen from **Exhibit "A,"** the possible sources of lead include one or more of the following: the Company's side of the lead service lines ("LSLs") or the non-company or "customer" side of the LSLs, and/or plumbing or fixtures in individual residential buildings. The parties have agreed on how to deal with company side LSLs (by including them in the Distribution System Improvement Charge ["DSIC"] and ultimately rate base), **Exhibit "B"** ¶ 24. The parties have also agreed that plumbing in individual residences is beyond the ability of the Company to address. The remaining issue is how to deal with the non-company side, or customer side, LSLs. Id.

The Company's approach to the problem is straightforward. SWNJ proposed a pilot program in which the costs of replacing the non-company side of an LSL would be shared between individual customers/owners, and all other water customers. Specifically, the Company would arrange for the non-company owned LSL to be replaced at a cost of $1,000 to the customer, with the difference in the total cost being treated as a regulatory asset that would be recovered through a surcharge to all customers. The Company proposed that the regulatory asset be treated as a deferred expense that would be amortized over seven (7) years and that the Company's authorized rate of return would be applied to the unamortized balance. The

[1] The Company experienced lead level exceedances in "2H 2018" (the period July 1 – December 31, 2018), and "1H 2019" (the period January 1 – June 30, 2019). For Your Honor's edification, those are the periods for which the various lead testing results have been calculated in conjunction with the DEP.

Company's proposed ratemaking method is wholly within accepted utility practices, and was intended to both encourage and facilitate the removal of LSLs. The Company believes this program will: (1) significantly reduce lead exceedances appearing in tap water tests from customers who have LSLs, (2) work to meet DEP's water quality test requirements, and (3) comport with established public utility law and practice. If during the course of the next few years, the BPU decided to transform this pilot program with its surcharge into some other rate mechanism, SWNJ would work with the parties and the BPU to do just that.

Rate Counsel has misunderstood the Company's proposal and appears to confuse "rates" with "rate base." Rate Counsel asserts that the Company has sought to include the costs of the pilot program in rate base—that is clearly wrong as described above. Rate Counsel then argues that standards and case law applicable to rate base determinations preclude the treatment the Company seeks. As will be discussed in detail below, the arguments Rate Counsel uses to support its Motion are wholly irrelevant because they address a request the Company has not made, and that is not now before this Court or the Board of Public Utilities (the "Board").

Though entirely irrelevant for this Motion and this case, SWNJ affirms the constitutional balance of utility law banning 'takings' if it requires a utility to expend monies but not be appropriately reimbursed for doing so. Those constitutional protections are clear-cut black letter public utility and constitutional law, and have been fully enshrined in utility law for over a century both in New Jersey as well as in federal practice and law.

Sadly, Rate Counsel's Summary Judgement Motion then goes on to create a 'strawman' involving requests the Company has never made, either in its Petition filed on March 22, 2019, in its testimonies, nor in its discovery answers. SWNJ's proposed Pilot Program has been structured to try to address the public health concerns arising from excessive levels of lead in tap water due to non-company owned LSLs. Again, there is no perceptible lead in the water coming from SWNJ mains in the street.

To be clear, the Company has **not** and is **not** seeking rate base treatment for costs incurred in replacing non-company owned LSLs. That concept was created, asserted, and then rejected by Rate Counsel. In its brief, Rate Counsel repeatedly argues that rate base treatment for such expenditures is on its face illegal as a matter of public utility law. While we disagree with those broad conclusory statements, since they are wholly irrelevant to this proceeding, we need not waste this Court's time and engage in that discussion. Since SWNJ is not requesting rate base treatment for these replacement costs, all of Rate Counsel's arguments regarding the supposed illegality of placing non-company LSLs into rate base are inapposite.

As for the substance of the Company's actual request, it is well-settled law that there are multiple valid approaches within the Board's ratemaking authority to accomplish its public policy objectives. The Company is requesting that the Board use a traditional regulatory technique (inclusion of a Regulatory Asset amortized over a limited time) to recover costs which need to be expended to protect and promote the public health. SWNJ is suggesting the use of a surcharge mechanism so that the costs are both visible and transparent. For example, after Superstorm Sandy, in a litigated case, the BPU authorized JCP&L to amortize its deferred expenses as a regulatory asset. Rate Counsel did not object to the concept as it does here; instead, it objected to the *calculation* of the expenditure.[2]

The relief the Company has sought is well within the Board's ratemaking authority. Even the out-of-context quotations relied upon by Rate Counsel reveal that the Courts have provided ample ratemaking flexibility for the Board to accomplish valid public policy objectives. While the Company's requested pilot program does indeed request effective and appropriate reimbursement for monies expended to try to address the public health concerns relating to excessive lead in tap water, it does so without including in rate base assets to which SWNJ does not now, and under its proposal, will never own.

The purpose of the requested pilot program is to afford SWNJ the opportunity, within long standing statutory and ratemaking boundaries, to work with DEP and the Board to address one of the significant likely causes of lead in customers' tap water: non-company owned LSLs. No party to this case disputes or is arguing before Your Honor that the SWNJ water system has responsibility for the plumbing or fixtures inside residential premises. See **Exhibit "A"** (depicting usual physical pipes and ownership of the connecting service lines between a Company's mains in the street and a residential property). However, SWNJ recognizes that lead in the water flowing from our customers' taps has been identified as a public health concern and is attempting to deal with that concern within the bounds of public utility law and practice in

[2] In re Verified Petition of Jersey Central Power & Light Co. for Review and Approval of Increases In and Other Adjustments to its Rates and Charges for Electric Service, 2015 WL 1773986, at *61, (BPU Docket No. ER12111052, March 2015).

order to make responsible efforts to work toward solving the problem.[3] For its part, Rate Counsel has consistently refused to provide any remedy within the bounds of public utility law and practice to help solve this public health issue. Instead, their response is 'No.' 'No' to any proposed Company program to deal with the non-company owned LSLs. 'No' to recovery of any dollars spent on non-company owned property, and 'No' to any suggestion as to how this public health concern should be addressed or alleviated. This Motion is yet another data point continuing Rate Counsel's adamant refusal to address this public health concern.

Lead in drinking water is a complex problem that requires Rate Counsel, SUEZ and the Board to work together to resolve. There is an urgent need to incentivize the public and customers to replace their lead service lines. This need challenges Rate Counsel, SUEZ and the Board to be courageous and innovative in doing what is necessary to effectuate positive change that gets us beyond "No". SUEZ's experience in 2019 demonstrates that the public and customers are reluctant to replace their lead service lines because of the cost involved. Granting Rate Counsel's Motion effectively places the public back at *status quo* on a public health issue that all can agree is unacceptable.

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[3] The current requirements of New Jersey Department of Environmental Protection in enforcing the Lead & Copper Rule, see, e.g., 40 C.F.R. § 141.84(a), requires the Company to test all its service line connections (both 'Company' and 'Customer side) for lead. If lead is discovered, the Company side is recommended for replacement and the parties have agreed that those replacements should be rate base eligible through the DSIC mechanism **Exhibit "B"** ¶ 24. The dispute between the parties is how to deal with replacing 'customer-side,' or 'non-company- side' LSLs. SWNJ filed for a pilot program in this case which first asks for a $1,000 payment for that replacement cost, expenses the net remaining cost of replacing those lines (initial results indicate about $3,000+ per single family residence, **Exhibit "B"** ¶ 23 – leaving a net of about $2,000 per residence), treats those unamortized costs as a regulatory asset, amortizing those net costs over 7 years, without ever owning or controlling (or putting into rate base) the replacement LSL. To date, Rate Counsel simply refuses to have other customers bear any cost needed to eliminate a significant portion of lead from leaching into customer taps, but relies on each individual customer/homeowner to deal with it themselves, if they wish, thus practically leaving the LSLs in place.

As will be discussed later in this brief, there are many issues still to be addressed by the BPU before acting on this request. We urge Your Honor to promptly deny Rate Counsel's Motion, so that the public and our customers will know that the Board and SWNJ are working actively to address their lead concerns, and the parties can move forward with the remaining issues to be resolved—either through agreements or litigation resulting in a Decision and Order from Your Honor and the Board. The merits of the Pilot Program should be evaluated and tested by the Board. Given, New Jersey's historic leadership on water quality issues, if the Pilot Program is allowed to proceed it will certainly be a model that will be studied nationally.

PROCEDURAL HISTORY

SWNJ filed its Petition with the New Jersey Board of Public Utilities ("BPU" or "Board") in this matter on March 22, 2019. Thereafter, the Company filed a clarifying letter on April 8, 2019. Rate Counsel filed a letter on April 12, 2019 objecting to the Company's request for deferred accounting. SWNJ responded to Rate Counsel's objection the same day. The Company subsequently filed a letter with the BPU Secretary providing additional clarification as to its position and requesting action at the next BPU agenda meeting. The Board transmitted the matter as a contested case to the Office of Administrative Law on May 21, 2019. Thereafter, SWNJ filed the Direct Testimonies of James C. Cagle and Mark McKoy in support of the Petition. Rate Counsel filed the Direct Testimony of Howard Woods on October 18, 2019, and the Company filed the Rebuttal Testimony of James C. Cagle on December 10, 2019.

In order to attempt to address the exceedance of the Lead and Copper Rule's ("LCR") maximum contaminant level ("MCL") of 15 parts per billion ("ppb") of lead in various residence tests for lead in the first draws of tap water, SWNJ has initiated this proceeding to mitigate the public health issues associated with the well-documented dangers of lead exposure. The action level exceedance ("ALE") that SWNJ has been addressing relates to testing results of 2H 2018 and 1H 2019 required certain actions to be taken including actions related to the treatment process, as well as actions relating to what the testimony of all parties believe is a *significant* source of lead – Lead Service Lines. As described below, the issue now before Your Honor relates only to the non-company side of the Lead Service Line. See **Exhibit "A."**

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

SWNJ respectfully refers Your Honor to the Statement of Material Facts Not In Dispute, which is attached as **Exhibit "B."**

LEGAL ARGUMENT

I. THE LEGAL STANDARD GOVERNING A MOTION FOR SUMMARY DISPOSITION.

A motion for summary decision is governed by N.J.A.C. 1:1-12.5. The motion may be granted where "the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). The party resisting the motion for summary decision "must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Id.

In short, "[t]he standard governing agency determinations under N.J.A.C. 1:1-12.5 is substantially the same as that governing a motion under *Rule* 4:46-2 for summary judgment in civil litigation." L.A. v. Bd. of Educ. of City of Trenton, Mercer County, 221 N.J. 192, 203-204

(2015) (internal citation and quotations omitted). Thus, the factfinder is obligated to view the evidentiary materials in the light most favorable to the non-moving party, and draw all reasonable inferences from the evidence in favor thereof. L.A. v. Bd., supra, 221 N.J. at 204 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995)).

At bottom, there are *numerous* issues that remain in need of resolution in this matter. One need only consider that the parties do not agree on the relief the company has requested to confirm that issues of law and fact exist. Rate Counsel seeks to convince Your Honor that this proceeding can be disposed of on purely legal grounds. However, as set forth below, Rate Counsel has constructed a strawman in an attempt to obstruct the clear and obvious remaining factual issues still underlying SWNJ's Proposal.[4] As such, denial of Rate Counsel's Motion is the only proper outcome.

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[4] In any event, there are numerous material issues remaining to be either agreed upon between parties and/or determined by the Board before any suggested pilot program could be implemented. Among these are a determined set of priorities for identifying the schedule of non-company owned replacements, whether those priorities are geographic, operational, or using some other method. A determination would still be required as to how to handle the customer/owner commitment to cover the first $1,000 if the customer and owner of the residential property containing an LSL are different. Another issue may well be what to do with customers/owners who have actually replaced their non-company owned service lines after some specified date, but before this program is implemented. See Public Hearing Comments on Jan. 21, 2020 (transcript not yet available); see also Certification of James C. Cagle, dated January 31, 2020.

II. Genuine Issues of Material Fact Remain in Dispute. This requires the Denial of Rate Counsel's Motion for Summary Disposition.

A. SWNJ can be Permitted to Amortize the Costs of Performing Non-Company Owned Lead Service Line Replacements Through a Pilot Program that Addresses a Public Health Concern.

The Company's decision to seek approval for the proposed pilot program was not made in a vacuum. As such, context is required to more fully appreciate the facts and circumstances and background of the proposed pilot program. By characterizing the costs associated with non-company side LSL replacement as "'unreasonable exactions' solely in order to pay dividends to shareholders[,]" Rate Counsel misses the forest for the trees. RCm pg. 9. The issue of lead in water is a significant concern as evidenced by numerous studies. SWNJ's proposal is intended to address that problem in a manner that is wholly transparent to customers and facilitates customers taking actions that alleviate those community public health concerns. It is uncontested that one of the most significant methods to reduce lead levels in any community's drinking water is to replace non-company side LSLs.

The Environmental Protection Agency and the Centers for Disease Control and Prevention "agree that there is **no** known safe level of lead in a child's blood."[5] (Emphasis supplied). This fact must be viewed in light of the "paramount policy" set by the New Jersey Safe Drinking Water Act ("NJSDWA") "to protect the purity of the water we drink[.]" N.J.S.A. 58:12A-2. The NJSDWA affirms the Board's "essential" obligation to ensure "the maintenance

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[5] United States Environmental Protection Agency, *Basic Information about Lead in Drinking Water*, https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water (last accessed January 14, 2020)

of high-quality potable water . . . in order to safeguard the health and welfare of the people of the State.[.]"

Thus, the Company's Proposal is designed to *benefit* our customers and our communities as a whole by addressing a legitimate tap water problem: removing lead from drinking water. Without a viable program to replace non-company side LSLs, lead will remain in the service lines. Indeed, partial service line replacements can increase the potential for harm from lead exposure in the short-term.

This occurs because partial LSL replacement is likely to disrupt the coating that has accumulated on the inside of the service line which disruption, in turn, can increase the amount of lead leaching into the water, and through the potential for increased chemical reaction where the new line meets the old.[6] In fact, one study indicates an "unexpected rise in measured lead levels" that lasts for up to 4 to 18 months after a partial replacement is completed.[7] The safest solution is full line – both company and non-company owned – replacement at the same time. This is underscored by recent developments. In its recent proposal for revisions to the Lead and Copper Rule, the EPA noted that partial LSL replacement "may pose a risk to the population due to short-term elevations in drinking water lead concentrations ... which last for an unknown period."[8] Consequently, the EPA "considers full replacement of the LSL as beneficial."[9]

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[6] *EPA Science Advisory Board*, Evaluation of the Effectiveness of Partial Lead Service Line Replacements 2 (2011) ("The weight of evidence indicates that [partial LSL replacement) often causes tap water lead levels to increase significantly for a period of days to weeks, or even several months.").

[7] *Economics of Lead Pipe Replacement*, V.K. Chambers and M.D. Hitchmough, Report prepared for the United Kingdom Department of the Environment (May 1992), at pg. 75.

[8] *EPA LCR Proposal, supra*, at pg. 209.

[9] Id.

The concern is not only national, but local. Municipalities within New Jersey have recognized the dangers posed by obsolete LSLs. To this point, the City of Newark recently enacted an ordinance recognizing "the hazard that lead in drinking water poses to the health and safety of residents." See **Exhibit "C."** Moreover, New Jersey is the State with the fifth highest number of remaining LSLs.[10] These considerations were all important in the Company's decision to move forward with the Proposal for a pilot program.

III. RATE COUNSEL DEFLECTS FROM MATERIAL ISSUES IN DISPUTE TO SEEK AN ADVISORY OPINION NOT AT ISSUE IN SWNJ'S PETITION.

Rate Counsel's argument clearly hinges on the incorrect presumption that SWNJ is seeking rate base treatment for the costs of replacing non-company side LSLs. See RCm pgs. 7-8, 10-14. Rate Counsel argues that New Jersey law prohibits non-utility owned property from being included in rate base and this is what SWNJ's proposal is seeking to do with non-company side LSLs. However, SWNJ's proposal does **not** seek rate base treatment for any non-company owned property. Instead, SWNJ's proposal seeks to defer the costs associated with the replacement of non-company owned LSLs through the term of the pilot program and amortize those costs over a seven (7) year period. Despite Rate Counsel's arguments to the contrary, there is no precedent that prohibits such a proposal. It is a policy implicated factual question that is appropriate for resolution by the Board If during the course of the next few years, the BPU decided to transform this pilot program with its surcharge into some other rate mechanism, SWNJ would work with the parties and the BPU to do just that.

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[10] Cornwell, David A., et al. *National Survey of Lead Service Line Occurrence*, American Water Works Association Journal 108:4, April 1, 2016.

A. Rate Counsel's Reliance on the Used and Useful Principle for an Asset's Eligibility in Rate Base is Inapplicable to this Proceeding as SWNJ is NOT Seeking Rate Base Treatment for the Costs Associated with Non-Company Side Lead Service Line Replacements.

As set forth herein, there is no legal prohibition against the relief SWNJ's proposal seeks. In fact, the Board has used these techniques before. As the BPU has done with respect to Hope Creek, and the Atlantic Generating Station from the 1970s/1980s, there are many alternatives to providing recovery of costs expended in the public interest, whether they be for public health concerns as in this matter, or to meet public interest demands in other cases. They do not require inclusion in rate base. Other alternatives are available. In re Atl. City Elec. Co., 1983 WL 913534 (BPU Docket No. 822-116 Jan. 13, 1983); In re Pub. Serv. Elec. and Gas Co. Electric and Gas Base Rate Proceedings, BPU Docket No. 7711-1107 (May, 1978), attached as **Exhibit "D."**[11]

The Atlantic Generating Station ("AGS") was a planned floating nuclear power plant off the Atlantic City coast that was abandoned by PSE&G. **Exhibit "D"** The utility sought to recover costs associated with planning and designing its investment in the AGS. The parties agreed that all legitimate costs were to be amortized over a 20-year period. **Exhibit "D."** Thus, AGS represents a situation where a utility was permitted to recover expenses that were *never* in rate base and *never* used and useful for rate base purposes.

The Board more recently did this in a fully litigated JCP&L rate case including the impact of Superstorm Sandy. See In re Verified Petition of Jersey Central Power & Light Co. for Review and Approval of Increases In and Other Adjustments to its Rates and Charges for

[11] Attached as **Exhibit "D"** is the relevant Board Order concerning the Atlantic Generating Station ("AGS").

Electric Service, 2015 WL 1773986, at *61, (BPU Docket No. ER12111052, March 2015). Expenses were amortized over a number of years with a return on those expended dollars.[12]

While SWNJ disagrees with Rate Counsel's position, regarding a bright line prohibition of non-company owned assets in rate base, there is no need to engage here in any lengthy legal discourse. This is because the resolution of the issue now before Your Honor does not require disposition of this question since it has not been proposed. In other words, to afford Rate Counsel the decision it seeks, an advisory opinion would be necessary since it would be dismissing a petition and rejecting *a request that was never made*. However, courts and this Board generally decline to issue advisory opinions. See, e.g., Crescent Park Tenants Ass'n v. Realty Equities Corp. of New York, 58 N.J. 98, 107 (1971) ("[W]e will not render advisory opinions or function in the abstract.[.]") (internal citation omitted); Burlington Tp. V. Middle Dept. Inspection Agency, Inc., 175 N.J. Super. 624, 627-628 (Law Div. 1980) (court will not decide matter "upon a state of facts which are future, contingent and uncertain." (internal citation and quotation omitted). Thus, Your Honor and the Board should decline Rate Counsel's implicit offer to issue just such an advisory opinion in this matter.

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> Therefore, the Board **ACCEPTS** ALJ McGill's finding that O&M expenses associated with the 2011 storm costs should be amortized over six years with carrying costs on the unamortized balance but **MODIFIES** the Initial Decision to authorize a carrying cost rate of 2.52 percent. The 2.52 percent is equal to the 1.92 percent rate on 7-year constant maturity Treasury securities on January 2, 2015 (which is the date that this rate was set on or closest to January 1 of this year) plus 60 basis points.

[In re Verified Petition of Jersey Central Power & Light Co. for Review and Approval of Increases In and Other Adjustments to its Rates and Charges for Electric Service, 2015 WL 1773986, at *61, (BPU Docket No. ER12111052, March 2015) (emphasis in original)].

B. The Company's Proposal does Not seek Rate Base Treatment.

"The rate base/rate of return methodology requires examination of the utility's property valuation (which constitutes its 'rate base'), expenses (including income taxes and an allowance for depreciation), and the rate of return developed by relating its income to its rate base." Penpac, Inc. v. Passaic Cnty. Util. Auth., 367 N.J. Super. 487, 505-506 (2004) (citing Jersey Cent. Power & Light Co., supra, 85 N.J. at 529)). Rate base is defined as "'the fair value of the property of the public utility that is used and useful in the public service.'" In re Petition of Jersey Cent. Power & Light Co., 85 N.J. 520, 529 (1981) (quoting In re Petition of Pub. Serv. Coordinated Transp., 5 N.J. 196, 217 (1950)).

There is no requirement that an expenditure to be recovered by a utility must be incurred on property owned by the utility. To this point, examples are so numerous that it would be a Sisyphean task to engage in an in-depth analysis of them all. Nonetheless, a few are worth note, such as when a utility must spend dollars to pave streets (not owned by the utility) or pay for repair work to a customer's yard or landscaping inside the public right of way that were disturbed by a utility work crew. These scenarios are but some examples that controvert Rate Counsel's attempt to stretch general legal principles further than they were intended or currently exist.

C. Contrary to Rate Counsel's Arguments, the Board is NOT Bound by a Rigid and Inflexible Formula in Setting Rates.

The case law Rate Counsel cites for the general proposition that "investment that is recoverable in utility rates is limited to 'the fair value of the property used and useful in the public service'" is taken out of context and inapplicable. See RCm pg. 7 (quoting Atl. City Sewerage Co. v. Bd. of Public Util. Comm'rs., 128 N.J.L. 359, 365 (1942)); see also In re Public

Serv. Coordinated Transp., 5 N.J. 196, 217 (1950) ("[t]he **rate base** is the fair value of the property of the public utility that is used and useful in the public service.") (emphasis supplied); N.J. Power & Light Co., supra, 9 N.J. at 509 ("It is established that the **rate base** in a proceeding of this nature is the fair value of the property of the public utility that is used and useful in the public service at the time of its employment therein . . . . ") (emphasis supplied). It need not be pointed out to Your Honor or the Board that **rate base** is only one aspect of the ratemaking formula. Expenses, Revenues and Rate of Return, for example, also need to be considered. Rate Counsel focuses on only one aspect of the ratemaking formula and its citations would have everyone ignore those other aspects. But again, rate base is not at issue here.

Unfortunately, as is the case throughout its brief, Rate Counsel makes sweeping, general statements that are inapplicable to the facts of this matter. Rate Counsel then misstates these quotes from oft-cited cases. The foregoing citations represent nothing more than restatements of what may or may not belong in **rate base**. Rate Counsel apparently wishes Your Honor to read those selected quotations out of context as support for the proposition that non-company LSL replacement costs cannot be recovered in rates. However, the citations that Rate Counsel offers do not support this reading. And that is a consistent flaw throughout Rate Counsel's motion.

Thus, while Rate Counsel relies on select language from Atl. City Sewerage Co., 128 N.J.L. at 365 in an attempt to demonstrate the purportedly inflexible standard the Board must apply, additional language from the Court in Atl. City Sewerage Co. disproves Rate Counsel's argument. SWNJ urges Your Honor not to rely on the selected quotations but to 'read on,' and in so doing, recall that SWNJ is requesting rate treatment of a deferred **expense** amortized over seven years – *not* requesting inclusion of non-company owned assets in rate base.

For example, in Atlantic City Sewerage, the Court explained that "[t]here is no formula making for certainty in the exercise of [the Board's] authority. The estimation of the fair value base is not controlled by arbitrary rules. It is not 'a matter of formulas,' but rather of 'a reasonable judgment' grounded 'in a proper consideration of all relevant facts." 128 N.J.L. at 365 (citing Simpson v. Shepherd, 230 U.S. 352 (1913). The Court also noted that "[e]ach case is governed ... by its own circumstances. The Board is empowered to determine what in the particular situation is a just and reasonable return; and it must have broad discretion in the exercise of that authority, controlled by the statutory standard. Since rate making is a legislative process, its exercise involves a range of legislative discretion." Id.

Rate Counsel also relies upon In re Public Serv. Coordinated Transp., 5 N.J. 196, 217 (1950), where the Court cited Atlantic City Sewerage and explained that "[t]here are a number of formulae useful in the determination of fair value; depreciated original cost, depreciated prudent investment, reproduction cost of the property less depreciation, cost of reproducing the service as distinct from the property, **and there are undoubtedly others**. But the Board is not bound to and, indeed, should not use any single formula or combination of formulae in arriving at a proper rate base for the determination of fair value is not controlled by arbitrary rules of formulae, but should reflect the reasonable judgment of the Board based upon all the relevant facts." (Emphasis supplied).

Thus, the cases cited by Rate Counsel demonstrate that it is beyond dispute that the "Legislature has delegated its rate-making power" to the Board, and the Board "is vested with broad discretion in the exercise of that authority." Pub. Serv. Coordinated Transp., supra, 5 N.J. at 214. The BPU has the flexibility to assess each particular case in light of the unique facts and circumstances it presents. A.A. Mastrangelo, Inc. v. Envtl. Prot. Dep't., 90 N.J. 666, 685 (1982) ("BPU was intended by the legislature to have the widest range of regulatory power over public utilities."). Here, Rate Counsel seeks to have Your Honor make a ruling that would effectively limit that flexibility *and* serve as the foundation for a precedent that would tie the Board's hands moving forward.

To address a serious public health concern, SWNJ's proposed pilot program would defer the costs associated with non-company side LSL replacement and recover those costs over a seven (7) year period by creating and amortizing a regulatory asset earning a return. As set forth in greater detail above and in Section IV, *infra,* the authorities proffered by Rate Counsel do *not* demonstrate a prohibition against such a solution, nor do they prevent the Board from exercising its "broad discretion" in furtherance of reaching "an innovative and a mutually fair interim solution to a critical problem[.]" Jersey Cent. Power & Light Co., supra, 85 N.J. at 532.

To be absolutely clear, it is fundamental in ratemaking that there are differences in customer impact between a rate base approach and the SWNJ proposed regulatory asset approach. As an example, if the replacement of non-company side LSLs were included as utility plant in rate base , customers could be paying costs and a return on those assets for multiple decades. Using a simple example only, if one assumed a 10 year program to replace those LSLs where such costs are recorded in rate base, and a 60 year life for those LSLs (for ease of computation), customers could be paying for recovery of, and a return on, those non-company side LSLs for 70 years (10 years to replace and install, then depreciated the last installed LSLs over 60 years).

In contrast, should SWNJ's proposed pilot surcharge program remain unchanged, and assuming that same 10 year program to replace and install the replacement non-company side LSLs, the maximum number of years rates could be impacted would be about 17 years (10 years to replace and install with the last LSLs replaced being amortized over seven (7) years). The earlier replacements should be amortized away before the replacement program would even be completed.

Since the replaced non-company side LSLs would never be owned by the Company nor put into rate base, their useful lives would be irrelevant to the Company or any of its ratemaking calculations, since the Company would net the customer/owner's $1,000 against the total cost of the replacement and only that net amount would be added to the accumulating and amortizing account, and it would be amortized away over 7 years. By recovering that amortized regulatory asset over seven (7) years as a surcharge, the costs would be fully transparent to the Board and its customers and the pilot program and its surcharge would have a limited life.

In any event, as shown below, and described above, the Company's Proposal does *not* violate applicable laws and there is no *legal* justification for Your Honor to grant Rate Counsel's motion. Because the Company's Proposal does *not* violate the law, it continues to present factual and policy questions that must be resolved by the Board.

D. Persuasive Authority Demonstrates that SWNJ's Proposal is Constitutional.

1. Other Regulatory Bodies have Permitted Water Utilities to Replace Non-Company Side Lead Service Lines and Fully Recover those Expenditures Including Carrying Costs.

Rate Counsel argues that the Company's Proposal is "unconstitutional" and cites general passages from archaic decisions as supposed evidence of its claims. *See* RCm pg. 8. This argument, however, is meritless. Indeed, regulatory authorities in other states have already accepted proposals similar or identical to the one at issue in this case. For example, in 2017 the Pennsylvania Public Utility Commission ("PAPUC") approved a settlement by York Water Company to replace non-company owned LSLs when it replaced company-owned service lines, as well as when customer-side LSLs were discovered in the normal course of business. *See* Joint Petition for Settlement and Request for Certification, Pa. Pub. Util. Comm'n., Docket No. P-2016-2577404 (Jan. 23, 2017), attached as **Exhibit "E"** and Order of the Pa. Pub. Util. Comm'n, Docket No. P-2016-2577404 (Mar. 2, 2017), attached as **Exhibit "F."**

Under the water company's plan and the terms of the settlement approved by the PAPUC, the company was permitted to replace – but not own – non-company side LSLs *and record the replacement costs as a regulatory asset to be amortized in its next base rate case. See* **Exhibit "E"** at ¶¶ 27 – 29; **Exhibit "F."** In permitting the company to replace non-company side LSLs and record the costs as a regulatory asset, the PAPUC noted that the company's prior test results had exceeded the action level set in the Lead Copper Rule ("LCR"). **Exhibit "F."** The PAPUC further recognized that "[r]eplacing the Company-owned lead lines addresses only part of the problem. Customer-owned lead lines also need to be replaced." **Exhibit "F."** In that case the PAPUC concluded by noting that LSL replacement was a "pressing health and safety issue[.]" Id. The PAPUC's approval of this proposal occurred well before October, 2018, when Pennsylvania enacted legislation permitting the PAPUC to allow water utilities to replace non-company side LSLs and fully recover those expenditures. See 66 Pa. C.S.A. § 1311(b)(2)(ii).

Thus, the 2017 York Water case and subsequent Pennsylvania Legislation cut against Rate Counsel's argument that the Company's Proposal is somehow "unconstitutional" based on the United States Constitution and "Federal jurisprudence[.]" See RCm pgs. 8-9. Given that the PAPUC approved a joint-settlement in 2017 (to which the Pennsylvania public advocate was a party) that permitted essentially the same relief the Company is seeking here, and that same relief was subsequently ratified by the Pennsylvania Legislature, arguments that such relief is somehow "unconstitutional" under federal case law and the Constitution are simply wrong. This fact is supported by the numerous other state regulatory bodies and legislatures that have permitted a privately-owned utility to recover costs associated with customer-side LSL replacement.[13]

2. Other Examples Demonstrate that Utilities can Recover Costs related to Non-Utility Owned Property.

Other examples undermine Rate Counsel's argument that there is a categorical prohibition against utility recovery for expenditures on property it does not own. In addition to the Superstorm Sandy situation with respect to JCP&L's costs noted above, consider issues related to such items as cloud-based computing.

Historically, utilities have employed their own information-technology ("IT") systems and servers. Utilities have hired their own IT staff and purchased the software necessary to run their operations. All of these costs were capital expenses subject to rate base treatment. In recent years, however, the rise of cloud-based computing has altered the way multiple companies – and

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[13] If numerous other States have addressed this problem through legislation, regulation, and/or individual cases, is Rate Counsel the first entity to view it as unconstitutional? See Michigan, Mich. Admin. Code § 325.11604; Missouri, In re Missouri-Am. Water Company's Request for Authority to Implement General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas, 2018 WL. 2388974, at *10-11 (Missouri Pub. Serv. Comm'n, Docket No. WR-2017-0285, May 2, 2018), attached hereto as **Exhibit "G"**; Indiana, In re Petition of Indiana-American Water Company, Inc. for Approval of its Lead Service Line Plan, Indiana Utility Regulatory Commission, Order, Docket No. 45043 (Jul. 25, 2018), attached hereto as **Exhibit "H"**; Wisconsin, Wis. Stat. Ann. § 196.372 (West 2020).

possibly even some utilities – approach investing in IT. Cloud-computing removes the obligation that a utility own and operate an IT system. Instead, with cloud-computing, IT services, software, and support are provided by a third-party. This allows companies to rely upon the expertise of the cloud-provider and realize cost-savings through utilizing shared IT infrastructure. Nonetheless, Rate Counsel's stringent interpretation of the used and useful principle could prohibit utilities from including cloud-based computing services in rate base because such services are not utility property.

However, regulatory authorities in other states have adopted proposals that allow utilities to treat contracts for cloud-computing services in the same manner as if they were utility property. This enables the utilities to place the upfront costs associated with the contracts into rate base. Then, the cost is amortized over the life of the contract.[14] Thus, even though the utilities do not own the cloud systems and software and do not employ the IT staff who work for the third-party cloud company, the utilities are permitted to obtain full recovery on the costs associated with using cloud-computing systems and services. This is not to say that SWNJ is requesting such treatment here. The Company is suggesting that the Board use its flexible authority to ensure that the public's health and safety are protected by deferring a necessary and prudent expense and amortizing it away over a reasonable number of years.

IV. THERE IS NO PROHIBITION WHATSOEVER AGAINST EXPENSING COSTS ASSOCIATED WITH NON-COMPANY OWNED PROPERTY AND AMORTIZING THESE COSTS OVER TIME WITH AN APPROPRIATE RETURN.

[14] See *Utility Earnings in a Service Oriented World: Optimizing Incentives for Capital- and Service-Based Solutions*, Advanced Energy Economy Institute, January 30, 2018, available at: https://info.aee.net/hubfs/AEE%20Institute_Utility%20Earnings%20FINAL_Rpt_1.30.18.pdf

As with the generally applicable principles cited with respect to rate base treatment in Section III, *supra*, Rate Counsel's extensive reliance on In re Petition of Rockland Elec. Co. for Approval of an Advanced Metering Program, 2017 WL 3849232 (BPU Docket No. ER16060524, Aug. 23, 2017) is misplaced. See Attachment to RCm pgs. 2-3. In that matter, Rockland Electric sought a change in base rates and other relief related to its proposal to deploy Advanced Metering Infrastructure ("AMI"), or "smart meters" throughout its territory. Id. One aspect of the proposal sought approval to perform incidental repairs to non-company owned property, such as meter pans, faulty electric cables, etc., as necessary during the deployment of AMI. Such work was *not* related to the roll-out of AMI itself. Under the proposal, Rockland would then capitalize the costs of the repairs and add them **to its rate base**. Id. at pg. 12. Rate Counsel opposed the proposal to capitalize the costs related to the incidental repair work for the same reasons Rate Counsel offers in this case. Id.

In Rockland, the Board found that the non-company side work was "necessary for the safe installation of the AMI meter to avoid unnecessary delays in the AMI Program's implementation[.]" Id. at pg. 22. However, the Board found that "the proposal, **as requested**, violates settled New Jersey case law." Id. (emphasis supplied). Thus, the Board denied Rockland's request to capitalize the costs related to the incidental repairs **to rate base** and stated that such costs "shall not be recovered from the Company's ratepayers." Id. Despite this specific language, the Board then found that the AMI meters could not be "used and useful" without the customer-side work. See Attachment to RCm pg. 22. Therefore, the Board only prohibited Rockland from recovering costs for "the work **not** related to the AMI Program roll out" which would "continue to be the responsibility of the customer." Id. (Emphasis supplied).

Thus, a fair reading of the Rockland decision reveals that the utility was able to recover the costs of any customer-side work related to the AMI rollout. The plain language of the Board's decision reveals this:

> Recognizing that AMI meters could not be operated as 'used' and 'useful' without this work, the Board **HEREBY WAIVES** General Information Section No. 22 of RECO's current tariff only with respect to work done related to the AMI Program roll out and done specifically for installation of an AMI meter at the customer's location. Any work not related to the AMI Program roll out will continue to be the responsibility of the customer. With respect to the cost of *such* work, the Board **HEREBY FINDS** that RECO's proposal is contrary to settled New Jersey case law. Accordingly, the Board **HEREBY DENIES** RECO's request to capitalize *such* costs. Costs related to *this* work shall not be recovered from the Company's ratepayers.
>
> [Attachment to RCm pg. 18. (Bold and underlining in original, italics supplied].

The italicized language in the above passages demonstrates that the Board is referring exclusively to the incidental work the utility wished to perform that was not related to the AMI Program roll out. However, the Board in fact *permitted* the utility to recover costs associated with the AMI Program roll out even though on non-company property. Id.

Despite this, Rate Counsel has presented the Rockland decision without context and attempts to stretch its holding far beyond the bounds which it could rationally extend. To this end, Rate Counsel claims that it is "noteworthy that the Board did not deny cost recovery of the customer-owned property to Rockland solely on the basis that Rockland proposed to 'rate base' the investment." RCm pg. 13. Then, in a leap of logic that is unsupported by the plain language of the Rockland decision, Rate Counsel argues that the Board "denied cost recovery in any form" when it held that "[c]osts related to this work shall not be recovered from the Company's ratepayers." RCm pg. 13 (quoting Rockland, at pg. 22). As explained immediately above, however, any fair reading of Rockland forecloses Rate Counsel's interpretation.

Nonetheless, Rate Counsel seeks to wield the Board's decision as a sword to prohibit cost recovery for work on non-company owned property in any way, shape, or form. The Rockland decision is not so broad and the Board's authority is not so inflexible. Under SWNJ's proposed pilot program, no part of a replaced non-company side LSL would be placed into rate base. Instead, it would be expensed and amortized over seven (7) years. Thus, the Rockland decision is not directly relevant to this Petition – unless Rate Counsel is attempting to broaden the implications of this Petition and tie the Board's hands moving forward. Replacing non-company side LSLs is a measure used to ameliorate a public health concern. SWNJ's request to expense the costs of non-company side LSL replacement and amortize those costs over seven (7) years is **not** barred as a matter of law by the Board's language in the Rockland case.

CONCLUSION

Rate Counsel has not met its burden under N.J.A.C. N.J.A.C. 1:1-12.5. First, Rate Counsel's Motion is based on issues not presented by SWNJ's Petition. As such, Rate Counsel seeks an advisory opinion. Beyond this, Rate Counsel offers up a slew of inapplicable or inapposite legal arguments. As demonstrated above, Rate Counsel is not entitled to Summary Disposition as to those unrelated issues.

Plainly put, the Petition at issue in this proceeding poses the following issue: can SWNJ fully recover prudent expenditures made to replace non-company side LSLs for the benefit of the public health as a regulatory asset amortized over seven (7) years? Despite Rate Counsel's motion that issue (and numerous others) must still be resolved. As such, there can be no dispute that SWNJ has met its burden and demonstrated the existence of genuine issues of material fact. Rate Counsel's Motion must be denied.

Respectfully submitted,

STEPHEN B. GENZER

By: ______________________
Stephen B. Genzer
Saul Ewing, Arnstein & Lehr LLP

Enclosure
cc: Attached Service Lists (w/encl., via email only)

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OAL DOCKET NO. PUC 07138-2019 S

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SERVICE LIST
In the Matter of the Petition of
SUEZ Water New Jersey Inc. for Approval of a Pilot Program to Facilitate the
Replacement of Lead Service Lines and a Related Cost Recovery Mechanism
OAL Docket No. PUC07138-2019S
BPU Docket No. WO19030381

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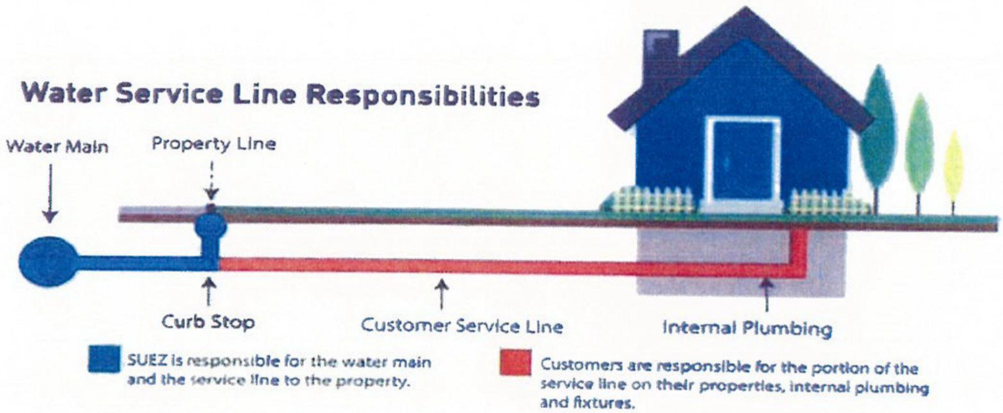
In the Matter of the Joint Petition for Approval of Suez Water New Jersey Inc. for Approval of a Pilot Program to Facilitate the Replacement of Lead Service Lines and a Related Cost Recovery Mechanism	OAL Docket No.: PUC 07138-2019S BPU Docket No.: WO19030381 Hon. Jacob S. Gertsman, ALJ **ORDER DENYING MOTION FOR SUMMARY DISPOSITION**

IT IS HEREBY **ORDERED** on this _____ day of _____________, 2020, that Rate Counsel's Motion for Summary Disposition in this matter is **DENIED**.

____
Hon. Jacob S. Gertsman, ALJ

Exhibit A



Water Service Line Responsibilities
Water Main
Property Line
Curb Stop
Customer Service Line
Internal Plumbing
SUEZ is responsible for the water main and the service line to the property.
Customers are responsible for the portion of the service line on their properties, internal plumbing and fixtures.

Statement of Material Facts Not in Dispute

1. Petitioner Suez Water New Jersey ("SWNJ") is a public utility providing water service to approximately 258,000 customers throughout the State of New Jersey, including a large portion of Bergen and Hudson Counties.

2. Among numerous other statutes and regulations, SWNJ is required to comply with the Federal Lead and Copper Rule, 40 C.F.R. Chapter 1, Subchapter D, part 141, Subpart I.

3. New Jersey has adopted the Federal Lead and Copper Rule ("L & C") by reference at N.J.A.C. 7:10-5.1.

4. SWNJ is also subject to the Water Quality Accountability Act, N.J.S.A. 58:31-1 et seq.

5. In accordance with the Lead and Copper Rule sampling requirements, SWNJ has been sampling 100 or more customer taps every six months.

6. Using approved DEP/EPA testing protocols, during the July to December 2018 sampling period, 15 samples out of 108 exceeded the 15 parts per billion (ppb) Lead Action Level, resulting in a 90th percentile of 18.4 ppb; and during the January to June 2019 sampling period, 14 samples out of 106 exceeded the 15 ppb Lead Action Level, resulting in a 90th percentile of 15.6 ppb.

7. The original 15 samples were located in residential properties in eleven towns in Bergen and Hudson Counties.

8. Per the currently in place L & C, the Lead Action Level is exceeded if the 90th percentile exceeds 15 ppb utilizing the NJDEP approved interpolation method. 40 C.F.R. 141.80(c)(1). As a regulation, the L & C can change over time. All references in this Statement of Material Facts Not in Dispute refers to the L & C in place as of 3/22/19.

9. Due to the current Lead Action Level exceedances for the July 2018-December 2018 and January 2019-June 2019 periods, the L & C requires SWNJ to replace seven percent of the Lead Service Lines ("LSLs") in its distribution system on an annual basis. 40 C.F.R. 141.84(b)(1).

10. Sometimes a residential building is customer-owned and sometimes it is owned by someone else. SWNJ considers its 'customer' to be the person or entity on record with SWNJ as being responsible for paying its regular water or wastewater utility bills to SWNJ.

11. For purposes of this statement, 'service lines' are defined as those pipes or connecting segments of pipe or 'lines' connecting the water mains in the street to customer premises. Usually, but not always, that service line is made up of two segments: a company-owned segment connecting the main in the street to a connecting 'curb box' or 'meter barrel' (usually located at or near the residential building's property line at the curb--a part of which is sometimes called a 'gooseneck'), and a non-company owned segment connecting the 'curb box' to the meter in or next to the residential building. Sometimes this non-company owned portion

of the service line is referred to as the 'customer' side. The 'service line' is referred to as a 'Lead Service Line' ("LSL") if the material or any part of any portion of that entire service line is, in whole or in part, is made up of the mineral 'lead'.

12. During these particular exceedance periods of July-December 2018 and January-June 2019, the L & C requires SWNJ to replace "that portion of the lead service line that it owns." 40 C.F.R. 141.84(d).

13. The current L & C requires SWNJ to notify the customer or owner of the property, that SWNJ is planning to replace the company owned portion of the LSL and/or gooseneck and must at the same time offer to replace the non-company owned portion of the line at the owner's or customer's cost. 40 C.F.R. 141.84(d). SWNJ reports that it has been complying with this provision by coordinating and facilitating the non-company side replacement with the contractor and customer/owner.

14. If SWNJ is going to replace the company owned portion of an LSL, SWNJ must offer to replace the non-company owned or customer-side portion of an LSL, under the L & C, but SWNJ "is not required to bear the cost of replacing the privately-owned portion of the line, nor is it required to replace the privately-owned portion where the owner chooses not to pay the cost of replacing the privately-owned portion of the line...." 40 C.F.R. 141.84(d).

15. Following its initial Lead Action Level Exceedance for the July-December 2018 period, SWNJ filed the Petition in the current matter on March 22, 2019.

16. SWNJ's Petition proposes a "pilot program" involving replacement of non-company owned, or customer-side, Lead Service Lines.

17. Under the proposed pilot program, when SWNJ is performing replacement work on company-owned LSLs or goosenecks, SWNJ will investigate whether the customer-owned portion of the line also contains lead, by testing in an easily available and reasonable manner either the end of the non-company owned LSL near the curb box or the other end of the non-company owned portion of the service line, near the meter, if accessible, to determine whether the service line contains lead at that location.

18. Within this proposed pilot program, when a non-company side LSL is identified, SWNJ proposes to offer to replace the non-company side portion of the LSL when SWNJ is performing work on adjacent company-owned Lead Service Lines or goosenecks.

19. In replacing the non-company side portion of the LSL, SWNJ proposes to charge the individual customer (or owner of the residential building) $1,000 of the total replacement cost. The proposed pilot program would allow the customer to pay this surcharge as a monthly charge of approximately $83.33 per month for 12 months.

20. SWNJ proposes that the total difference between the full cost of LSL replacement and that $1,000 from each affected customer/owner be recovered from all SWNJ's water customers

by accumulating those dollars into a separately tracked account, and that account would be recovered from all SWNJ's water customers.

21. SWNJ proposes these costs (plus administrative and carrying costs on the unamortized balance-carrying costs) would be amortized and recovered from ratepayers over a period of seven years. SWNJ proposes to identify and recover the dollars within that account as an identified surcharge on customers' bills.

22. SWNJ proposes to recover carrying costs at its authorized overall rate of return on the unamortized balance of the separately tracked account. The regulatory mechanism SWNJ proposes in order to obtain rate recovery on this account is that SWNJ would establish a regulatory asset for the unamortized costs to be recovered over time from all SWNJ water customers.

23. As of August 16, 2019, the average cost to replace customer-owned service lines has been approximately $3,000 per service.

24. In addition to recovering the costs of replacing non-company owned LSLs through the pilot program surcharge, SWNJ proposed to include the recovery of the company owned portion of Lead Service Lines through the surcharge. The Company agreed in discovery from Rate Counsel to include the company-owned portion of Lead Service Line replacement through the DSIC surcharge, so is no longer requesting that regulatory treatment through this proposed pilot program mechanism. The issues in dispute in this matter are limited to whether a pilot program should be adopted by the BPU ordering other SWNJ water customers to pay for replacement of non-company side LSLs through a surcharge mechanism.

25. SWNJ and Rate Counsel acknowledge that SWNJ does not own nor is it in control of the non-company owned portion of the service line. This will not change under the proposed Pilot Program.

26. The Board of Public Utilities transferred this matter to the Office of Administrative Law on May 21, 2019, with the Honorable Jacob Gertsman being assigned to preside.

27. SWNJ has replaced certain non-company owned LSLs, at shareholder expense, in certain instances where sampling has indicated a Lead Action Level exceedance.

28. The American Water Works Association and the American National Standards Institute have adopted ANSI/AWWA C810-17, titled Replacement and Flushing of Lead Service Lines.

29. Among other things, ANSI/AWWA C810-17 includes a sampling and flushing procedure which a customer should follow if a customer declines to replace the non-company owned side of an LSL (Sections 4.2 through 4.4 and Section 5.2) and partial replacement is done. SWNJ is currently advising customers of this procedure.

30. The total actual number of non-company side lead service lines is currently unknown, but is in the process of being ascertained.

No. 6 F.F. 1st Reading SEP 05 2019
No. .... Public Hearing SEP 18 2019
No. 6PS F-M 2nd Rdg. and Final Passage
No. .... Reconsidered

Ordinance of the City of Newark, N.J.

Date to Mayor .... SEP. 19. 2019
Date Returned ... SEP. 20. 2019
Date Resubmitted to Council ....
Date Advertised 1st Reading .... SEP. 10. 2019
Final Reading ....

Approved as to Form and Legality on Basis of Facts Set Forth
Corporation Counsel

Factual contents certified to by
Kareem Adeem
Title Acting Director

Council member Council of the whole .... presents the following Ordinance:

AN ORDINANCE TO AMEND TITLE XVI, ENTITLED "HEALTH, SANITATION AND AIR POLLUTION," OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, BY ADDING A NEW CHAPTER 23, ENTITLED "MANDATORY REPLACEMENT OF LEAD SERVICE LINE".

WHEREAS, the City of Newark operates the Pequannock water system and the Wanaque water system, the City's water distribution system, to service its residents and other neighboring municipalities; and

WHEREAS, the Pequannock water system and the Wanaque water system are, and continue to be, clean sources of water; and

WHEREAS, there exists approximately 18,000 privately owned properties serviced by obsolete lead service lines within the City of Newark, 15,000 within the Pequannock water system; and

WHEREAS, the lead service lines connect to the City's water distribution system, but are owned by the property owner; and

WHEREAS, in 1953 the City of Newark prohibited the use of lead service lines and plumbing in new construction; in 1986 Federal law banned the use of lead solder on pipes in the construction of new homes; and

WHEREAS, the United States Environmental Protection Agency (the "USEPA") adopted regulations to control lead and copper in drinking water and the NJDEP directed the City to replace lead service lines in accordance with the USEPA's lead and copper rule; and

WHEREAS, the City believed and believes that the provision of clean, lead free drinking water to its residents is a public purpose beneficial to the City as a whole and any benefit to any private land owner in accomplishing this purpose is incidental and subordinate to this primary public and governmental purpose; and

WHEREAS, in October 2018, the City of Newark created a comprehensive plan to protect families that may be exposed to lead in the water due to obsolete lead service lines on their property; and

WHEREAS, as part of its comprehensive plan to protect residents from exposure to lead, the City of Newark introduced a corrosion control system expected to reduce the lead levels in the water by reducing the corrosion of the lead service lines on private property; and

WHEREAS, in a good faith effort to continue to protect its residents from exposure to potential lead in the water, the City of Newark distributed 38,000 water filters and over 31,000 replacement cartridges free of charge, provided free blood testing for children under 6 years old and provided free water testing; and

WHEREAS, in addition, the City of Newark created a $75,000,000.00 program to replace outdated and obsolete lead service lines on private property ("Lead Service Line Replacement Program"), and to protect its residents from the potential dangers of lead in the water where residents could contribute up to $1,000.00 towards the cost of replacing their lead service lines; and

WHEREAS, it has come to the City's attention that property owners with lead service lines are not signing up for the Lead Service Line Replacement Program as fast as is necessary to immediately and effectively address the lead service line issue, and the safety of its residents; and

WHEREAS, residents have discontinued using water on properties with lead service lines -- this may render the corrosion control system ineffective because of the significantly decreased water flow through the pipes; and

WHEREAS, the Mayor and the Qualified Purchasing Agent declare that an emergency exists due to the non-use of water coupled with the slow response of affected property owners to sign up for the current Lead Service Line Replacement Program which results in slower reduction of the lead levels in the drinking water; and

WHEREAS, the City of Newark, in response to this emergency has created a $120,000,000.00 Lead Service Line Replacement Program which will be free of charge to property owners with existing lead service lines on their private property; and

WHEREAS, N.J.S.A. 40:48-2 authorizes a municipality to make, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this State or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

WHEREAS, N.J.S.A. 40:48-2.12(a) authorizes the Governing Body of any municipality to make, amend, repeal and enforce ordinances to regulate buildings and structures and their use and occupation to prevent and abate conditions therein harmful to the health and safety of the occupants of said buildings and structures and the general public in the municipality; and

WHEREAS, for the health, safety and welfare of its residents and the Municipal Council desires to require all property owners serviced by a lead service line, to replace that service line through the program established by the City at no cost to the property owner or replace the line at their own expense and due to the hazard that lead in the drinking water poses to the health and safety of residents, that permission from the owner of the property to replace the lead service line is not required.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

Note: Additions are shown in <u>bold and underlined</u>.

SECTION 1. Title XVI entitled Health, Sanitation and Air Pollution of the Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, by adding a new Chapter 23, entitled Mandatory Replacement of Lead Service Line as follows:

<u>16:23-1. Definitions.</u>

For the purposes of this Chapter:

City shall mean the City of Newark.

Contractor shall mean a licensed vendor that contracts with the City of Newark to replace lead service lines.

Dwelling shall mean a building or structure or part thereof containing one (1) or more dwelling units. This chapter shall also apply to buildings and structures that are not used for residential purposes.

Dwelling unit shall mean any room or groups of rooms or any part thereof located within a building and forming a single habitable unit with facilities which are used or designed to be used for living, sleeping, cooking, eating or bathing.

Department shall mean the Department of Water and Sewer Utilities of the City of Newark, New Jersey.

Lead safe shall mean any condition that does not allow access or exposure to lead, in any form, to the extent that adverse human health effects are possible.

Lead Service Line shall mean the water line on private property that leads to the structure or building that is connected to the main City of Newark water line.

Occupant shall mean a person or persons in actual possession of and living in the building or dwelling unit.

Owner shall mean any person who has legal title to any dwelling, with or without accompanying actual possession thereof; or, who has equitable title and is either in actual possession or collects rents therefrom; or, who is executor, executrix, trustee, guardian, or receiver of the estate of the owner, or as mortgagee or as vendee in possession either by virtue of a Court order or by agreement or voluntary surrender of the premises by the person holding the legal title, or as collector of rents has charge, care or control of any dwelling or rooming house.

16:23-2. It is hereby established that the existence of lead service lines is prohibited in the City of Newark.

16:23-3 A property owner may be excluded from the Mandatory Replacement of its lead service line by providing the Department of Water and Sewer Utilities, within ninety (90) days of the Effective Date of this Ordinance, with written proof from a licensed and certified plumber that it does not have a lead service line on its property and/or that the lead service line was previously removed and replaced.

16:23-4. Mandatory Replacement of Lead Service Line

1. The owner of any dwelling, building or structure serviced by a lead service line is required to replace the lead service line on their property. The replacement of the lead service line must be completed within ninety (90) days of the Effective Date of this Ordinance. An extension of time may be granted where the owner can demonstrate, to the Department of Water and Sewer Utilities designee, that a good faith effort has been made to comply with the ordinance.

2. The owner of the any dwelling, building or structure shall replace their lead service line by any of the following methods:

a. Signing up for the Lead Service Line Replacement Program offered by the City of Newark and allowing contractors to access on their property to conduct the replacement. The Contractor will provide the owner with a Right of Entry form for completion. The Right of Entry form will provide the Contractor with access to the property to verify the existence of a lead service line; or

b. Replacing the lead service line on their own and at their own expense. If an owner selects this option, then replacement must be completed within ninety (90) days of effective date of this Ordinance. An extension of time may be granted where the owner can demonstrate, to the Department of Water and Sewer Utilities designee, that a good faith effort has been made to comply with the ordinance. An owner is required to provide the Department of Water and Sewer Utilities with proof that the lead service line has been replaced. Proof must include at a minimum: a permit issued by the Department of Water and Sewer Utilities, to a licensed plumber authorized to do the work; an invoice from the contractor who completed the work; a copy of the estimate along with any report of the work completed, and an inspection report verifying the removal.

16:23-5. Authorization to Access Property

1. Notwithstanding Section 16:23-4, if an owner of the dwelling, building or structure does not sign up for the Lead Service Line Replacement Program or does not replace its lead service line within ninety (90) days of the Effective Date of this Ordinance (or within the time frame provided in an extension) or is inaccessible or otherwise denies access to the property to enable the replacement of the line, then the following procedure shall be followed:

a. The City shall secure entrance to the property from the owner or current occupant of the dwelling, building or structure, and the City shall incur no liability from the owner. The contractor will provide the owner with a Right of Entry form for completion. The Right of Entry form will provide the Contractor with access to the property to verify the existence of a lead service line. The City shall restore the property to its original condition, or as close as possible to its original condition; and

b. If access is granted by the occupant of the dwelling, building, or structure, then the occupant shall be held harmless and no liability shall incur to the City or occupant due to the replacement of the lead service line by the City of Newark; and

c. If access is denied by the current occupant or owner, then the City shall commence procedures, including filing a Court action, to conduct the replacement of the lead service line.

16:23-6. Proof of Lead Service Line Replacement Required for Certificate of Occupancy, Certificate of Code Compliance, and Smoke & Carbon Monoxide Detector Certificates.

1. **Upon the sale or transfer of ownership of any dwelling, building or structure, the owner must provide proof that the lead service line has been replaced in order to secure a Certificate of Occupancy, Certificate of Code Compliance, and Smoke & Carbon Monoxide Detector Certificates.**

2. **Upon the sale of any City-owned property, within ninety (90) days of the closing, the buyer is responsible for replacing the lead service line, by either enrolling in the Lead Service Line Replacement Program or in accordance with 16:23-4 2(b) above.**

16:23-7. Penalty.

Violations of this Ordinance by any person or corporation shall be punishable by a fine of at least Two Hundred Fifty Dollars and Zero Cents ($250.00) but not exceeding One Thousand Dollars and Zero Cents ($1,000.00) or by imprisonment for a term not exceeding ninety (90) days or by a period of community service not to exceed ninety (90) days.

SECTION 2: If any provision of this Ordinance or application thereof to any person(s) or circumstance is judged invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Ordinance that can be given effect without the invalidated provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 3: This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

This Ordinance amends and supplements Title XVI, entitled "Health, Sanitation and Air Pollution", of the Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, by adding a new Chapter 23, entitled "Mandatory Replacement of Lead Service Line."

CERTIFIED TO BY ME THIS

SEP 2 0 2019

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE ON FINAL PASSAGE

Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB
Amador	✓				Osborne	✓			
Gonzalez	✓				Quintana Vice President	✓			
James	✓				Ramos, Jr.	✓			
McCallum, Jr.	✓				Crump President				✓
McIver	✓								

RECORD OF COUNCIL VOTE FOR RECONSIDERATION

Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB
Amador					Osborne				
Gonzalez					Quintana Vice President				
James					Ramos, Jr.				
McCallum, Jr.					Crump President				
McIver									

✓ - Indicates Vote AB - Absent NV - Not Voting

Adopted on first reading at a meeting of the Council of the City of Newark, N.J., on SEP 0 5 2019

Adopted on second and final reading after hearing on SEP 1 8 2019

Approved/Rejected By .... Mayor

.... Council President .... City Clerk 19-1405

This Ordinance when adopted must remain in the custody of the City Clerk. Certified copies are available.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
185 WASHINGTON ST.
NEWARK, NEW JERSEY 07102
(201) 648-6186

HOWARD H. KESTIN
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

TO: Gerald A. Calabrese, Secretary
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102

RE: Public Service Electric and Gas Co.

OAL DKT. NO. P.U.C. 887-79
BPU DKT. NO. 794-310

Pursuant to N.J.S.A. 52:14B-10(c), we hereby file with the Agency Head the Initial Decision in this matter. Kindly note that the above statute requires that the parties receive a copy of the Initial Decision receipted as to delivery by the Agency Head. Would you, therefore, sign the Initial Decision as to receipt, keeping a copy for yourself, and give the original back to our messenger so that we may serve the parties with an Initial Decision receipted by the Agency Head.

As per said statute, the forty-five (45) day period for Agency Head runs from date of receipt by the Agency Head.

DATE: Feb. 6, 1980

Elizabeth J. Lazzaro, Esq.
for RONALD I. PARKER, ESQUIRE
Director, Judicial Management

RIP:ywg
(OAL - a/21 - 11/13/79)

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
185 WASHINGTON ST.
NEWARK, NEW JERSEY 07102
(201) 648-6186

HOWARD H. KESTIN
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

Call 648-6069

February 5, 1980

TO THE PARTIES:

RE: Public Service Electric and Gas Company -
Rate Case
OAL Docket No. 887-79
BPU Docket No. 794-310

Gentlemen:

Enclosed you will find the Initial Decision in this matter deciding issues pertaining to revenue requirements which include the Altantic abandnment loss. A subsequent Initial Decision on the rate design issues will be forthcoming shortly.

Pursuant to a stipulation agreed to by Rate Counsel, Staff and the Company, the period for exceptions in this matter is five working days, not including the day of receipt of the Initial Decision, for any Initial Decision rendered in this case.

Sincerely,

David J. McGee

DAVID McGEE
Administrative Law Judge

DM/ad
Enclosure

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF AN INCREASE IN ELECTRIC AND GAS RATE AND FOR CHANGES IN THE TARIFFS FOR ELECTRIC AND GAS SERVICES, P.U.C. N.J. NO. 7 ELECTRIC, AND P.U.C. N.J. NO. 6 GAS, PURSUANT TO R.S. 48:2-21	)	INITIAL DECISION REVENUE REQUIREMENTS **O.A.L. DKT. NO. PUC 877-79** BPU DKT. NO. 794-310

(APPEARANCES ATTACHED)

BEFORE THE HONORABLE **DAVID J. McGEE**, A.L.J.:

On April 20, 1979 Public Service Electric and Gas Company (hereinafter referred to as petitioner, company or Public Service) filed a petition for authority to increase its electric and gas rates and change its tariffs for electric and gas service pursuant to N.J.S.A. 48:2-21. The proposed overall increase was designed to produce $374,511,000 in additional annual operating revenues. $289,602,000 of this increase is attributable to electric service, (a 17.84% increase) and $84,909,000 of this increase is attributable to gas service (an 11.36% increase).

It was not necessary for the Board to suspend Petitioner's requested rate increase as the stipulation in Petioner's last rate case (Docket No. 711-1107) provided that petitioner would not increase its rates until March 1, 1980. In April 1979 the Board found this matter to be a contested case and transmitted this matter to the Office of Administrative Law for determination. An initial hearing was held in Newark, New Jersey on May 15, 1979 after proper notice. Further hearings were held in the field to solicit public comment in Trenton, Camden, New Brunswick and Hackensack, New Jersey after proper notice.

Three interim decisions were rendered during the course of these proceedings. The Company made a motion in May 1979 for a change in the Levelized Energy Adjustment Clause (electric) in the magnitude of approximately 9% overall. After five days of hearings, this proposed increase, which was contested by the parties, was allowed in the full amount by the Board on July 2, 1979. On July 27, 1979 the Company made a motion for change in the Levelized Raw Materials Adjustment Clause (gas) in the amount of approximately 14% overall. The company's motion was stipulated by the parties at a reduced level of approximately 11% overall. That stipulation was approved by the Board on September 27, 1979. In December 1979, Petitioner, Staff, Rate Counsel and the Industrial Intervenors stipulated to a change in tariffs that would charge boiler fuel gas customers a higher rate pursuant to the Natural Gas Policy Act of 1978 and flow the excess revenues back to all other customers via the mechanism of the Raw Materials Adjustment Clause. This stipulation was approved by the Board on December 19, 1979.

The record in this matter was officially closed on December 14, 1979, however, the record was left open to further consider the treatment of the company's proposal to amortize the electric fuel underrecovery which by the end of June 1980 is projected to be $220 million. In addition to the active participation of the Public Advocate throughout these proceedings, the Port Authority, the Industrial Intervenors, the Federal Government Agencies, Linden Chlorine Products, and Allen Goldberg, pro se, have participated at various phases of the proceeding.

Briefs were filed by Petitioner, Rate Counsel, the Port Authority, the Industrial Intervenors, the Federal Government Agencies, Linden Chlorine Products and Allen Goldberg, pro se. The positions of the parties are Rate Counsel recommending $122,627,000* in additional annual revenues Staff recommending $198,754,000* and, the Federal government agencies recommending zero rate relief. After a review of the record and after consideration of the positions of the parties in this matter, I have decided herein that petitioner is entitled to $211,154,000 in additional annual revenues.

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* After second stipulation with 12 months actual data excluding fuel undercovery

Intervention

Motions for intervention were made by numerous municipalities, counties, and consumer groups. The interventions raising an issue were the interventions by Daniel Rita, a citizen and Public Service ratepayer, Allen Goldberg, also a citizen and Public Service ratepayer, and Abraham Isserman, representing a group of senior citizens. My ruling on the intervention of these parties was to allow them to intervene, reserving my right to consolidate their appearance or limit their participation. I also noted that their intervention would be in the form of an experiment to see if in fact their intervention would become burdensome.

During the course of the proceedings neither Mr. Rita or Mr. Isserman appeared. Mr. Goldberg did participate through cross examination, direct testimony, requests for discovery, and briefs. Mr. Goldberg had a limited understanding of legal procedure. In addition, Mr. Goldberg drew most of his arguments from facts that were already in evidence. The few additional requests he made for information were very burdensome to the Company. Having been granted the right to obtain the information, Mr. Goldberg made no use of it.

The proposed Uniform Administrative Procedure Rules (UAPR) creates a new catagory of intervenor called participant. A participant has the right to file a brief and argue orally at the close of the case. Most of the effective participation by Mr. Goldberg could have been achieved through participant status. Almost all evidence used by Mr. Goldberg would have been available in the record had Mr. Goldberg not had the right to discover information. I recommend for future cases that pro se intervenors be accorded participant status where 16 USCA 2631 (A) does not apply.

Mr. Goldberg in his reply brief mistakenly relies on 16 USCA 2631 (a) as giving him an obsolute right to intervene. If Mr. Goldberg had been fair enough to quote the beginning sentence of 16 USCA 2631(a) it would be apparent that his right to intervene is in a proceeding where there is "consideration of one or more of the standards established by subchapter II of this Chapter or other concepts which contribute to the achievement of the purposes of this chapter." There being limited consideration of the purposes described in 16 USCA 2611 in a normal rate case, Mr. Goldberg's right to intervene is not absolute. The issue of intervention in a future proceeding should consider 16 USCA 2131(a) and 2611.

Compensation of Pro Se Intervenor

Allen Goldberg, a pro se intervenor, has requested compensation for his time and expenses in participation in this matter. 16 USCA 2632(a) and (b) provide for compensation to intervenors who's interest would not otherwise be adequately represented in a proceeding. The present rate case proceeding is arguably a proceeding where intervention by consumers is permitted because consideration is being given to "other concepts which contribute to the achievement of the purposes of this chapter" 16 USCA 2631(a). For purposes of discussion only, will I assume this to be he case. The issue is whether Mr. Goldberg's interest is not otherwise adequately represented.

Mr. Goldberg is a residential consumer and the Division of Rate Counsel represents the public interest. Does Rate Counsel represent the residential consumer? The residential consumer group is the lagest group of ratepayers. An analysis of the rate design testimony in this case shows Rate Counsel taking a position detrimental to the industrial customers and favorable to the residential customer. An analysis of the points Mr. Goldberg makes in his brief show that on every point he makes Rate Counsel or the Federal Government has made a similar proposal. The only difference is in degree not in concept. I conclude that Mr. Goldberg is represented adequately by Rate Counsel and not entitled to compensation.

First Stipulation

During the briefing period, Rate Counsel, the company and Staff entered into a stipulation without prejudice to their right to litigate the stipulated issues in subsequent proceedings (stipulation attached). I have reviewed the stipulation and find that if I were to decide the issues stipulated to, my decision would be in conformance with the stipulation. Therefore, notwithstanding the position of the other parties in this proceeding, I adopt the stipulation as my decision in this matter.

The stipulation produces the following adjustments:

Proforma Opeating Income

Annualization of wages and Group Life Insurance	(11,651)
Payroll Tax Increase	(631)
Pension Expense Increase	(211)
Pennsylvania Public Utility	
Realty Tax Amortization	2,530
Rate Case Expenses	108
Productivity Savings	448
Gain on Disposition of Property	171
Gain on Reacquisition of Debt	430

Second Stipulation

When the twelve month actual figures became available, Rate Counsel, Staff and the Company agreed to a stipulation of various issues including the treatment of the projected $220 million underrecovery under the electric fuel adjustment clause. It was agreed that $140 million of the $220 million was uncontested and would be recovered over a 28 month period via the levelized Energy Adjustment Clause effective on the date of the Board's order in this proceeding. The unamortized balance of the $140 million will not be included in rate base and will not accrue interest. This basic agreement between the parties I concur in and adopt as my decision in this case.

The other issues stipulated to which I also concur in and adopt as my decision in this case are summarized as follows:

Rate Base (000 omitted)

	Adjustments (9 mos. actual data) Electric	Gas	Stipulated Total (12 mos. actual data) Total
Depreciation Reserve	(1,733)	(868)	1,576,075
Working Funds	(2,693)	-	6,684
Pennsylvania Gr Tax	(23,851)	-	(2,629)

Operating Income

	Adjustments (9 mos. actual) Electric	Gas	Stipulated Total (12 mos. actual) Total
Annualization Adjustments (customer growth & depreciation)	1,300		-
Accel. of Fuel Amort.	(2,629)	-	(2,629)

The stipulation also provided that Rate Counsel would withdraw its proposal to not transfer the present $250 million of CWIP in rate base to Hope Creek. Finally, the stipulation provided for a roll-in of 20.941 mills of electric energy costs into base rates, a procedure I concur in and adopt as my decision in this case.

TEST YEAR

The Company proposed a test year ending December 31, 1979. At the filing of the petition, three months actual and nine months estimated data were available. Updated figures were made available by the Company throughout the course of the proceedings. At the time of this writing, twelve months of actual data have become available. All parties concurred in the use of the 1979 test year. I also find the test year ending December 31, 1979 to be reasonable.

RATE BASE

The Company proposed a rate base amounting to $5,249,433,000. A schedule of the Company's proposed rate base is contained in this decision as Appendix I. The discussion that follows deals with the issues that have been raised with regard to rate base.

CWIP Inclusion In Rate Base

Other adjustments in this case can be viewed as either consistent or inconsistent with previous Board decisions. Consistency with what has been done in the past assumes a static condition with regard to the Company, the industry and the financial markets. Conditions are not static but in a constant state of flux. The CWIP issue addresses the dynamic character of the company and the industry. The parties have taken totally opposite positions. Rate Counsel maintains that the $250 million of CWIP presently in rate base should be in effect taken out of rate base after Salem No. 2 comes on line. The Company proposes an additional $250 million be included in rate base for a total of $500 million. (While Rate Counsel has withdrawn its proposal to eliminate $250 million CWIP, I have retained the analysis of this issue as it is germane to the proper level of rates.)
The dynamics of the situation are a growing cost of debt in relation to the embedded cost. The Company will experience the maturity of some 2.75% debt next year while the present cost of mortgage bonds is 12%. After the crisis year of 1974 the Company moved to increase its percentage of equity thus providing greater coverage for its bonds. Bond coverages during 1977 and 1978 were 3.55 in each of those years. The large construction expenditures of the past have or will in the future be included in rate base. This results in these higher priced items, due to inflation, becoming a rich source of accelerated depreciation and cash flow. Depreciation has increased from $109 millionn in the 1974 to $167 million in 1979. The deferred tax reserve has grown from $31.3 million in 1974 to $138.7 million in 1978. Every year since 1969 the Company has experienced a fall off in the rate of growth in peak demand. This has resulted in construction expenditures being delayed or cancelled altogether.

The question is, considering the dynamics of the situation, whether the Company is in a weak position with regard to its future construction budget, an adequate position, or whether they are in too strong of a position. All of the dynamic factors previously cited are taken into account in the Company's cash flow analysis.

The issue of whether to eliminate the inclusion of the present $250 million of CWIP in rate base focused almost exclusively on the company's cash flow projections because the cash flow analysis is the prime determinate of coverages and AFDC. The Company's original projection was as follows:

$20 Million in Rate Relief

Year	Construction & Maturities	Internal Cash	Internal Cash %
1979	633.2	271	42.8%
1980	617.5	234.4	38%
1981	738.3	207.6	28.1
1982	613.2	201.1	32.8
1983	625.4	151.6	24.3

Rate Counsel did not use the companies construction figures but took cash flow figures from the Company's October 10, 1979 bond prospectus. Rate Counsel then eliminated certain expenditures. These expenditures were as follows:

PS- Con Ed interconnection	$41 million
ETSC & EDC Expenditures	32
Hope Creek, Anticipated sale of portion of facility	50
Total deduction	123

ETSC and EDC expenditures (Staten Island LNG Facility and gas exploration expenditures) were eliminated because they were non-jurisdictional. This is the same argument presented for the exclusion of these expenditures from rate base, a position on which I have stated my disagreement. I will therefore include these expenditures. The elimination of a portion of Hope Creek was sufficiently rebutted by the Company. The Company stated any sale of a portion of the Hope Creek Facility would be on an exchange basis. In other words, the Company would exchange 10% of Hope Creek for 10% of a similar facility. An exchange would not reduce the level of expenditures.

Rate Counsel presented a persuasive argument with regard to the PS - Con Ed interconnection. Because Con Ed will be paying a rate of return on the interconnection construction, no added pressure on earnings will result from these expenditures and therefore, $41 million should be eliminated.

Rate Counsel also did not include any provision for maturities in its calculation. Considerable evidence was presented by both Rate Counsel and the Company showing that various financial analysts did or did not include maturities in their calculation of cash flow expenditures. The result is the conclusion that reasonable men can differ. However, from a conceptual point of view a given level of earnings will support a certain level of debt. If 6% bonds mature and the Company retires those bonds by selling a like amount of 6% bonds, the level of earnings and the level of debt continues unchanged. However, if the Company has to replace 2 3/4% debt with 12% debt, as is currently the case, there will be greater pressure on earnings in an amount equal to the amount of the maturing bonds. I will, therefore, include maturities in calculating cash flow.

Rate Counsel calculated internally generated cash as follows:

	1980 & 1981 ($ Millions)
Retained on business	(40)
Depreciation	361
Deferred Taxes	232
Amortizations	205
Total Cash	758

The Company demonstrated through accounting evidence that Rate Counsel's use of the negative $40 million figure for cash retained in the business was erroneous. I will, therefore, use the Company figures. The depreciation figure was uncontested. The Deferred Taxes figure was also demonstrated by the Company to be erroneous. Rate Counsel did not rebut this fact. The real issue was over the proper treatment of fuel amortizations. Rate Counsel added to cash flow $101.6 million for the amortization of the current $220 million underrecovery under the electric fuel adjustment clause.

The Company argued against Rate Counsel's treatment of fuel amortizations on the grounds that if fuel amortizations are added to cash, they should also be added to expenditures. The Company is correct in their view because the $220 million for the present underrecovery had to come from some source of cash. The retained in business figures show that cash could not have come from available internal sources, so that money would have come from short-term borrowings. As cash is generated from the fuel amortization, those short-term borrowings would be paid off in effect creating an additional expenditure. I will, therefore, not consider fuel amortizations as a part of internal cash because this source of cash is washed out by a like amount of expenditure.

In the last weeks of the hearings, Rate Counsel proposed a final adjustment which was designed to show that the Company's forecasted construction expenditures have always exceeded the amounts actually expended on construction.

Rate Counsel estimated this overestimate to be $50 million per year. Although there were remaining hearing days left, the Company did not contest Rate Counsel's estimate. I will, therefore, deduct an appropriate amount due to the historical overestimate.

My position on cash flow is summarized as follows:

1980-1981
Construction Expenditures ($millions)

October prospectus	$ 1,258
Less: PS-Con Ed Construction	(41)
Plus: Maturities	72.5
Less:Historical Overestimate	(100)
Total	$1,189.5

1980 - 1981
Internal Cash - $20 million in Rate Relief
($ millions)

Retained in Business	(168.2)
Depreciation	361
Deferred Taxes	150.7
Amortizations (less current fuel)	103.4
Total Cash Flow	446.9

$$\frac{\text{Total Cash Flow}}{\text{Construction Expenditures}} = \frac{446.9}{1{,}189.5} = 37.5\%$$

Rate Counsel set out to demonstrate that the Company would meet its construction expenditures at a level of 50% internally generated cash even with $20 million in rate relief. As the above figures show, that figure is a much lower 37.5%. Rate Counsel never conceded that the 50% standard was the correct standard. Rate Counsel suggested that the percentage could be as low as 35%. The question arises then as to what is the standard.

A review of exhibit RC-99, Rate Counsel's source document for determining internally generated cash, shows that the percentage of cash from internal sources ranged from 42.3% to 69.2% for the years 1976 through 1978. During those years, the company retained very modest amounts of money in the business. During this period coverages were adequate ranging from 3.24 to 3.55 and AFDC as a percent of earnings ranged from 22.7 to 29.3. I find that the 50% standard proposed by the Company is the proper standard. I, therefore, concur with Rate Counsel's decision to withdraw this issue from this case.

The other side of this issue is whether an additional $250 million in CWIP should be included in rate base. An updating of Exhibit P-44R for the level of rate relief recommended herein is shown as follows:

	50% Rate Relief (177 Million + 10 Million via $50 Million CWIP in rate base)
Capital Requirements 1980-1981	1464.1
Less:historic overestimate	100
Less: Con-Ed interconnection	40
Adjusted Capital Requirements	1324
Cash from Operation	641.2
Add:Additional Income from ALJ recommendation	25.5
Adjusted Cash	666.7
% Cash from operations	666.7 / 1324 = 50.3%
Mortgage Indenture Coverage	3.05-3.4
AFDC as % of earnings	33.8 - 29.3%

It is the position of this judge that cash flow, coverages, AFDC as a percentage of earnings are adequate as shown above. If Rate Counsel's October bond prospectus figures were used for construction expenditures, the effect would be to increase coverages and decrease AFDC as a percentage of earnings. The actual figures for AFDC and coverages, then, is probably at the bottom and top end of the ranges described above. Perhaps the Company will not be in perfect financial health, but in this difficult inflationary period it is unfair for the rate payers to assume the added burdens of including an additional $250 million of CWIP in rate base. I, therefore, reject the Company's proposal to include an additional $250 million of CWIP in rate base.

Working Capital

Rate Counsel proposed the use of a new approach to working capital, which approach is now under consideration by the Federal Energy Regulatory Commission (FERC). It is presently in the draft stages and input from industry

and public advocate groups is being solicited. Rate Counsel's adjustment would result in a reduction to rate base in the amount of $195 million. The Company has used the 1/8th method, the method consistently approved by the Board.

Testimony indicated that Rate Counsel's witness admitted there were some problems with FERC approach. The Company has further pointed out that the formula is defective with regard to unbilled revenues, the forty (40) day revenue lag, purchased power, nuclear fuel and payroll taxes.

The FERC approach may be inaccurate but the 1/8th formula is also inaccurate. Testimony indicated that a highly regarded investment research firm reported that the Company has a negative working capital requirement in excess of $13 million. In a FERC case involving electric wholesale utility rates a form of lead-lag study was performed and the results lead FERC to reconsider the use of the 1/8th formula. Carolina Power and Light, Docket No. ER76-495. Rate Counsel demonstrated that if working capital was determined in accordance with that opinion, petitioner would have a negative working capital. When a lead-lag study has been performed in cases involving New Jersey water companies, the 1/8th method proved to be inaccurate and overly generous. Elizabethtown Water Company, Hearing Examiners Report and Recommendation, Docket No. 781-6. It is difficult, however, to make a comparison between water companies and gas and electric companies.

The question presented is which of the inaccurate methods, FERC or the 1/8th, is most accurate. The Company has demonstrated that the FERC method is inaccurate in some respects but has not shown, when confronted with Rate Counsel's evidence, that the 1/8th formula is a good approximation of the appropriate level of working capital. All Rate Counsel's evidence, plus the results of the lead-lag study performed in the Elizabethtown Water Company case, indicate the actual level of working capital is much lower than that claimed by the Company. I will, therefore, reduce working capital by the $195 million amount recommended by Rate Counsel, however, the Company is directed to perform a lead-lag study in its next rate case.

The Company stated on the record that if its position on the 1/8th formula was accepted, that it would agree to Rate Counsel's adjustments with regard to materials and supplies. The 1/8 Formula has not been accepted and the Company has not argued against the materials and supplies adjustment in their brief. I will, therefore, accept Rate Counsel's adjustments.

<u>Staten Island LNG facility</u> (ETSC & EPC)

In the early 1970's the Company embarked on a plan to import LNG from Algeria. To implement this plan the Company first financed then bought a company called Distrigas which at the time had obtained all necessary approvals from agencies having jusridiction over the proposed facilities. In addition, the Federal Power Commission (FPC) had stated in a decision that it would not assert jurisdiction over the proposed facilities (47 F.P.C. 752 (1972) and 47 F.P.C. 1465 (1972)). It was only after the FPC declined to assert jurisdiction that Public Service provided financing to Distrigas.

On May 25, 1973 the FPC reversed itself and asserted jurisdiction over the facililties. The issue of the certification of the facilities is still before the FPC (now FERC).

In the meantime Public Service has made an alternative proposal to FERC which is to use the Staten Island Facility as a peak-shaving facility. In other words, gas would be liquified and stored at the facilities during the summer and then pumped out during the coldest, peak winter days. For an additional $64 million this conversion to a peak-shaving facility could be accomplished.

The Company can and does store gas at other facilities. In determining the economics of converting the Staten Island Facility a study was done comparing the costs of conversion to the cost of using other existing storage facilities. The study showed it was cheaper to convert the Staten Island facility, however the sunk costs of the Staten Island facility were ignored and the comparison was made on the basis of conversion costs only.

A potential problem exists when this facility comes on line. Will New Jersey ratepayers pay the the sunk costs or will their contribution be limited to conversion costs or the costs of other competitive forms of storage? In recognition of this potential problem the Company is seeking to limit its investment in the facility by requesting that the current expenses of the project be paid currently rather than capitalized. I find the recovery of current expenses to be inappropriate. The facility will have to stand on its own when it comes on line, with all legitimate costs of construction included in determining the rate that will be determined by FERC. Also, to award rate relief for current expenses would provide better treatment to this facility than any of the company's other construction projects. I will, therefore, disallow the recovery of current expenses.

Staff in its brief argues that the Staten Island facility should be taken out of rate base. Staff cites difficulty in obtaining regulatory approvals, protests from nearby residents and the three to four year lag in the facility coming on line, as reasons for taking the project out of rate base. Staff, however, does not discuss the benefits of the project.

Ignoring sunk costs, the project is cheaper than other forms of storage. The Company has also shown a need for additional storage. Testimony indicated that future incremental supplies of gas coming from Canada and Mexico will be on a high load factor basis. In other words, to take this gas the Company must receive almost equal amounts of gas all year round. They can not take more in the winter and less in the summer. Storage facilities are needed to augment these high load factor supplies.

Testimony also indicated that FERC was under the pressure of a court ruling remanding the case concerning FERC's jurisdiction back to FERC. The court specially commented on the unfairness of FERC reversing itself on the question of jursidiction. Distrigas Corporation v. Federal Power Commission, 495 F.2d 1057 (19745), cert. den. 419 U.S. 834 (1974). Testimony by the Company also indicated that the greatest drawback to the original LNG facility was the passage of ships through a narrow waterway near Staten Island. There being no plan now to import LNG, the greatest difficulty to the Company's plan has been removed.

The Company further testified that costly existing oil gas facilities could be retired with the addition of the peak-shaving facility. The Company would to a lesser degree be subject to supply curtailment. The supply of gas would be interchangeable with existing supplies, and plant that is already constructed would be utilized.

Considering the foregoing, I disagree with staff. The need, economics, and practical advantages of the facility outweigh the objections cited by staff. I will, therefore, allow the $81,933 cost of the facility in rate base.

Rate Counsel goes further in its objection to the Staten Island Facility. Rate Counsel would not only take the facility out of rate base but in addition would investigate abandoning the projecct. To justify this approach evidence was produced to show that other sources of supply such as liquified propane gas (LPG) would be a more economical source of supply. However, there was considerable difficulty with the testimony of the witnesses and the approach they followed.

Neither of rate Counsel's two witnesses on this subject had the necessary expertise in the design of a gas distribution system. They were not disqualified as witnesses, however, but allowed to testify with the understanding that their testimony could not support a decision by the Company to change its present use of gas supplies. As testimony progressed it became evident that the Company had considered many more aspects of the use of LPG than Rate Counsel's witnesses. However, after the Company had taken advantage of every available opportunity to discredit Rate Counsel's expert witnesses, the fact remained that Rate Counsel's proposal was still $19 million cheaper than the Company's.

There were, however, questions left unanswered, such as the long run availability of LPG as opposed to the long run availability of pipeline gas. Questions of the safety of LPG, which has a different specific gravity than natural gas, were posed but left for the most part unanswered. To further explore this I suggest an investigation be initiated by the Board to consider these questions as well as others before any action is taken by the Board concerning the Staten Island facility. Pending an investigation by the Board, I will allow the Staten Island facility in rate base.

OPERATING INCOME

The Company demonstrated a test year utility operating income of $328,017,000. After adjustments, the Company proposed a pro forma utility operating income of $346,568,000. A schedule of the Company's test year income and pro forma income is contained in this decision as Appendix II. The discussion that follows deals with the issues that have been raised with regard to pro forma utility operating income.

Annualization Adjustments

This issue comprises two individual adjustments. The income effect of these adjustments is set forth below:

	(000 omitted)
AFDC	$11,924
Interest Expense (Staff)	14,148
Income effect	26,072

Both, Staff and Rate Counsel would depart from past Board policy and deduct these adjustments from operating income. It is my position that these adjustments should be considered in the context of setting forward looking rates.

Testimony in the record, but brought to the forefront through the Company's brief, indicated that minor expense items are estimated to increase by $16 million during 1979. Projecting that same level of increase through year-end 1980, an $8.6 million decrease in income due to minor expenses will occur ($16 million x 54%). Testimony also indicated that a conservative estimate of the additions to rate base through year-end 1981 is $650 million without Salem No. 2. Taking one-half of this amount, and deducting $175 million in accumulated depreciation, there would be an approximate need for an additional rate of return and added depreciation expense in the amount of 18.1 million. (150 x .08 = 12 and 325 x 3.5% x 54% = 6.1). Salem No. 2, when it comes on line, will increase operation and maintenance expense by $2.8 million, depreciation by $7 million and rate of return by $17.1 million (213.5 x 8% = 17.1). In addition, the Company will experience growth in the total number of customers resulting in added income of $4 million. The income effect of these increases is set forth below:

	Year End 1980
Minor expenses	8.6
Additions to Rate Base rate of return	12
depreciation	6.1
Growth in Customers	(4)
Salem No. 2	
O&M	2.8
depreciation	7
rate of return	17.1
Increase in expenses	49.6
Annualization Offset	14.1

I will allow the annualization adjustment with regard to AFDC but not with regard to the Interest expense deduction, so as to provide on offset to the increase in expenses occurring approximately by year-end 1980. As can be seen from the above calculation the $14.1 million offset to increases in expense, by not allowing annualization of the interest expense deduction, is reasonable.

Energy Development Corporation (Gas Exploration)

The current structure of the payment of costs with regard to the Company's gas exploration activities is that the investor supplies the capital and the ratepayer guarantees his return. The return the rate payer pays, however, is reduced by the profit on all sales of gas. The gas must be directed to Public Service under the terms of the gas exploration agreements. If the sales of gas are adequate to pay the investor his return the rate payer pays no return, except the return paid during the period of time the gas exploration facilities are under construction.

So far the company's gas exploration activities have been more than successful, exceeding the industry average for successful wells. The ratepayer so far is responsible only to pay a return for facilities under construction, typically a three year period. The project has proved to be succesful and the cost structure has been a fair one. Rate Counsel, however, proposes to change the cost responsibilities by imputing added income from the project. This will have the effect of changing the cost responsibilities. Rate Counsel proposes this change, yet there is no impetus for doing so. The project is succesful thus assuring supplies of gas and further reducing the rate payers responsibility by providing greater profits. The company should be rewarded for its good business judgment and allowed to explore for gas uneffected by a change in rate case treatment. I, therefore, reject Rate Counsel's adjustment with the caveat that if the project proves unsuccessful there will be time enough to make appropriate adjustments. For the same reasons stated above. I also reject Rate Counsel's proposal to reflect only 80% of the investment in EDC in rate base and for the Company to pay the salary of an independent geologist to aid the Board.

Donations

The Board has consistently held that donations which are reasonable in amount and non-discriminatory in purpose shall be allowed as legitimate operating expenses. Public Service Electric and Gas Company, Docket No. 761-8 and Public Service Electric and Gas Company, Docket No. 709-494. Where a policy of the Board has been announced with consistency, I am bound to follow Board policy. I will, therefore, allow the $258,000 for donations as a legitimate operating expense.

Interest Income Related To Kerr McGee

In order to purchase uranium from Kerr-McGee, the Company makes advances to Kerr-McGee which accrue interest. When Kerr-McGee sells the uranium to the Company it credits the sale for the advances and accrued interest. Rate Counsel would make an adjustment for the accrued interest because the accrued interest is at a rate of 8% while the overall rate of return recommended herein, the cost of capital, is much greater. It is 9.61%. The Company argues against this adjustment on the general grounds that it is another source of attrition. I have dealt with the problem of attrition in the annualization adjustments discussion and found an appropriate amount as an offset. I find Rate Counsel's proposed treatment of this item to be appropriate and will reflect an adjustment of $571,000 in operating income.

Con Ed Interconnection Interest

Similar to the Kerr-McGee adjustment, Rate Counsel recommends an adjustment to Con-Ed interconnection interest. As with Kerr-McGee, I will reflect an adjustment to operating income in the amount of $53,000.

Nuclear Advertising

Currently, the Company is purchasing advertising space and running articles on the subject of nuclear energy. The articles contain quotes from scientists belonging to an organization called Scientists and Engineers for Secure Energy (SESE). The Company pays for the advertisement and also makes a contribution to SESE. The advertising payment is treated as a legitimate expense while the contribution is treated as a below the line, discriminatory donation. Rate Counsel opposes the treatment of these advertising expenses as legitimate and would move the expense below the line.

The evidence indicated that the contents of the advertisement was an attack on "a small but highly vocal minority who have been spreading fear and alarm despite the irrefutable record of atomic energy's safety." The advertisement is not a discussion of the merits of nuclear energy but an attack on a group that opposes nuclear energy. The article seeks to identify and draw political battle lines between the two groups. The article is very definitely political in nature. There can also be no doubt that nuclear energy is a political issue, when presidents do not care to speak on the issue, thousands of demonstrators gather publicly and congressional committees hold hearings on the issue. In conclusion I find that both the article and the subject of nuclear energy are political in nature.

The question then is whether Board policy treats political advertising as below the line. Rate Counsel neglected to point out in their brief that the Board has already dealt with this entire issue. The Board held generic hearings on the subject of advertising which resulted in a decision by the Board broadly treating many forms of advertising as below the line. It is not clear but the Board apparently granted reconsideration of the issue to consider a narrower scope to the decision. No action was ever taken on reconsideration. By operation of BPU regulations if no action on reconsideration is taken within sixty (60) days the reconsideration is denied. It was generally understood, however, that the Board would not take any action on advertising until the entire issue was resolved. Technically, however, there is a valid, outstanding Board order treating advertising as below the line.

The issue as to political advertising is not unresolved however. At no time in the board's consideration of the issue did it question whether political advertising was not to be treated as below the line. Political advertising always fell within the narrowest scope of the proposed treatment of advertising. I, therefore, conclude that at least as to political advertising it is Board policy to treat such advertising expenses as a below the line expense.

ATLANTIC GENERATING STATION ABANDONMENT LOSS

In December 1978 the Company officially abandoned the Atlantic Generating Station project, which was a project aimed at siting floating nuclear power plants off the coast of New Jersey. Rate Counsel stipulated with the Company in the last rate case that the proper treatment of this loss was to amortize the loss over 20 years with no rate of return being earned on the unamortized portion.

The treatment of the loss was stipulated to, but the appropriate amount of the loss was the subject of extensive litigation in this case. Rate Counsel undertook a thorough review of the entire history of the project. As a result of their review, Rate Counsel recommended the following adjustments:

Atlantic Generating Station

(000 omitted)	
Joint Ownership	($45,380)
Renegotiationn of AGS Contract	(11,567)
AFDC	(10,139)
Termination Costs:	
Salvage	($10,000)
Unabsorbed Overheads	(29,800)
Valves	(900)
Sales Assessment	(1,400)
Corporate Managed Costs	(600)
Marketing Expenses	(2,800)
Wind down expenses	(1,200)
	113,786

Joint Ownership

Rate Counsel would make an adjustment due to the joint ownership provisions of the Atlantic Generating Station (AGS) contract. The Company gave a 20% share of the AGS Facilities to Atlantic City Electric Company (ACE) and Jersey Central Power and Light Company (JCP & L) in return ACE's and JCP & L's responsibility in the event of termination was limited to $6 million. The 20% share of the facilities and the cost responsibility were disproportionate. In other words ACE's and JCP + L's share of the cost upon termination should have been greater if based on their 20% share of the generating capacity.

Reasonableness and prudence, the standards used in this proceeding, contemplate varying levels of risk in decision making. If one is in a high risk situation, it may be prudent to elect a high risk alternative. The AGS project has not been viewed by the Company as high risk. They have sought to minimize the risks. Rate Counsel has commented on the difficulties of the project, but they seek to compare AGS to the normal situation of a land-based nuclear facility.

Rate Counsel therefore perceives the risks of AGS as no different than a land-based facility. I will, therefore, assume AGS has attached to it a normal level of risk in terms of ultimately bringing the facility on line.

Rate Counsel's argument is that the disproportionate joint cost arrangements of AGS was imprudent because it is contrary to the industry standard which is a proportionate sharing of costs. In order to demonstrate this standard, Rate Counsel looks to other Public Service facilities which the Company has undertaken jointly with other utilities. Rate Counsel shows that with these other facilities there is a proportionate sharing of costs and thus creates a standard. The Company shows that each joint facility has its own peculiarities and there can be no standard generalized from an analysis of these facilities. Further, the peculiarity making disproportionate cost arrangments necessary for AGS was the need for extensive transmission facilities in ACE's and JCP & L's service territories. Evidence has not been produced from other jurisdictions presumably because of the limited expertise of Rate Counsel's witness.

The Company grants that the other jointly owned facilities, Salem and Hope Creek, are located out of the Company's service territory, are served by extra territorial transmission lines, and the costs were shared proportionately. The Company shows, however, that the reason for this proportionate sharing was because both of these facilities were originally planned to be located within the Company's service territory at Burlington and Newbold Island. The agreements for the cost sharing were originally executed without the parties contemplating the need for extra territorial transmision lines.

I find the Company's position to be persuasive and conclude that Rate Counsel has not established a standard by which the Company can be judged. I will, therefore, not allow this adjustment.

Renegotiation of the OPS Contract

In 1974 the Company renegotiated the OPS contract. The contract originally entered into was in the nature of a joint venture. Both the Company and Offshore Power Systems (OPS) stood to gain from the success of the project. OPS sought to mass pruduce floating nuclear generating stations. Obviously the more units they could sell the greater their profit would be. The Public Service Company had a fixed price contract, but the price would be reduced as OPS was able to sell additional units. In accepting a fixed price contract Public Service gave up control over the management of the projects costs.

By 1974 OPS had sold no units to anyone other than Publiic Service. The load forecasts of Public Service showed decreasing growth in projected load ever since 1969. One must assume Public Service's experience was typical of the industry along the Eastern Seaboard. OPS therefore probably knew of these trends and negotiated the contract in 1974 with an eye to the down side, or what their protection was in case of termination. The Company on the other hand while they had experienced a decrease in load growth, had also experienced the abandonment of other projects due to environmental problems. The net result was that the Company had an increased need for generating capacity and was viewing the upside of the contract or what would be their costs for completing the project. Not surprisingly, the Company was able to negotiate very reasonable terms for the extension of the service dates of the offshore nuclear units because the Company was looking to the upside and OPS to the downside. Each party got what they wanted. The terms of the renegotiated contract retained the fixed price nature of the contract giving Public Service little control over the management of the project's costs.

Rate Counsel argues that the lack of control of the project's costs resulted in $11,567,000 in costs that need not have been incurred. Rate Counsel maintains the Company had the incentive to ignore the long range downside costs of termination because they wanted the short run benefits of improved cash flow. Rate Counsel demonstrates that the Company was in the throes of a serious financial crisis in 1974 which gave rise to a need for improved cash flow. Rate Counsel further argues that not only did the Company have the incentive, but it in fact acted imprudently because there were many indications in 1974 that the offshore nuclear facilities would never be needed.

From the testimony I conclude, that on the basis of the information available to the Company, that a reasonable projection of the future showed a need for the offshore facilities. However, all projections carry with them uncertainty. The Company was aware of this uncertainty as was demonstrated by the fact that some consideration was given to a 2.5% growth rate which would have rendered all the offshore facilities unnecesary.

When confronted with uncertainty a prudent man hedges his decision. This is what the Company failed to do. The Company placed a ll of its eggs in the upside basket of the renegotiated contract.

The remaining question is whether the lack of control the Company had over the management of the project's costs resulted in unnecessary expense. Rate Counsel maintains that the work on the construction of the OPS manufacturing plant could have been delayed four to five years. The Company argues in rebuttal that there were wind-down and start up costs associated with a delay in the construction of the manufacturing plant unaccounted for by Rate Counsel's $11,567,000 cost. The Company also wishes the costs viewed in context. The Company was able to realize a reduction in progress payments of over $425 million during the same period as result of the renegotiation.

I find that Company's arguments with regard to the wind-down and start up costs noteworthy, but these costs are unquantified. I also find that there are benefits from the renegotiation of the contract, although unquantified, which would offset the $11,567,000 cost proposed by Rate Counsel. I must resolve the doubts concerning these unquantified adjustments against the Company, however, because it has the burden of proof in this regard. I will, therefore, deduct the entire amount or $11, 567,000.

AFDC

Rate Counsel argues that the Company should have stopped accruing AFDC on the offshore nuclear project at the point in time when it first began to enter exploratory discussions contemplating termination, which was October 1977.

The Company maintains the appropriate date for calculating AFDC is December 1978, the date of legal termination under the terms of the contract.

In October 1977 the Company first entered into discussion with OPS looking toward termination. It was agreed that February 22, 1978 would be the deadline for reaching agreement on termination costs and those termination costs would be calculated according to the level of just and reasonable expenditures made before December 29, 1977. The project, however, continued until its official termination date of December 1978.

The question is at what point should AFDC no longer be accrued: When a project is almost dead but has a feint pulse or when the project is officially pronounced dead? Rate Counsel argues that even if the project has a feint pulse, the appropriate date is December 29, 1977 because that is the date on which the Company's liability was fixed retroactively by the contract and that should also be the date on which the ratepayers' liability is fixed. Rate Counsel's logic is convincing and I concur with Rate Counsel's position.

Termination - Unabsorbed Overheads

When termination costs under the contract between Public Service and OPS were finally negotiated in February 1977 unabsorbed overheads were a major item in the negotiations. Unabsorbed overheads are explained by the Company as follows:

> "The concept of unabsorbed overheads is widley recognized and accepted as a legitimate termination cost. The basic idea of unabsorbed overheads is that when an order for a major piece of equipment is placed, facilties and personnel are reserved for that order and preliminary engineering work is done. If that order is later cancelled, and if those facilities and personnel and preliminary engineering work cannot be otherwise utilized, a cost of termination is recognized as an unabsorbed overhead."

The Company also cited Apex Metal Stamping Co. v. Alexander and Sawyer Inc., 48 N.J. Super 476 (App. Div. 1958) as proof that unabsorbed overheads are considered by the courts as a legitimate termination cost. I conclude from the Company's explanation of these costs that they are legitimate, real costs of termination. The remaining question is how much of these costs are legitimate.

The Company sought to prove $29.7 million was the appropriate level of this expense by showing that the negotiation process was fair and favorable to the Company. The Company argues that OPS' original claim for unabsorbed overheads was for $142.4 million and as result of the negotiations that figure was reduced to $30.1 million and possibly as low as $21.9 million if the redction in OPS' overall claim is attributed to unabsorbed overheads. The difficulty with this argument is that the Company had no idea what level was appropriate because they were not allowed to see Westinghouse's books. Westinghouse is the parent corporation of OPS and the entity that incurred the unabsorbed overhead costs. I must, therefore reject the Company's justification of this expense as the costs have no basis in concrete fact. This does not mean that a utility is precluded from ever entering into a settlement negotiation. It means that a utility must be mindful of its regulatory responsibilities and be able to produce some basis to support its settlements.

Having rejected the Company's estimate of the level of costs, the result is a legitimate cost exists without quantification. Rate Counsel maintains that this cost be quantified as zero. If it is a legitimate cost, it cannot be quantified as zero. To resolve this issue I will allow one-half of the $29.7 million estimated by the Company or $14.85 million.

As an addendum, I note that the Company attempted to resusitate its position in its reply brief by showing that actual payments pursuant to a contract were made by OPS to Westinghouse for unobsorbed overheads in the amount of $25 million. These payments were later audited by Price Waterhouse. All this evidence proves is OPS made payments to Westinghouse. These payments could have been fair and reasonable because an attempt was made to accurately reflect the costs of the subsidiary to judge its performance or these payments may have been a vehicle to plow profits into the parent company. I can draw no conclusion from the fact that payments were made.

Salvage

The Company settled the contract with OPS on the basis that $18 million was the cost of salvage which would offset Public Service's total responsibility. Rate Counsel maintains a higher salvage value is appropriate. Their salvage estimate is $28 million.

Rate Counsel attacks the Company's figure on the basis that they had limited opportunity to inspect the property, that they should have hired an appraiser, and that the figure is suspect because it agrees with OPS' estimate.

I find that the Company had an adequate basis on which to estimate the salvage value. The Company had a least a dozen engineers at the construction site throughout the life of the project. These engineers periodically made estimates of termination costs. The Company's General Manager of Real Estate, who is the current president of the Chapter of the American Institute of Real Estate Appraisers, inspected the property at the construction site and had available to him the same information on which Rate Counsel based its estimate. The company has also demonstrated substantial weaknesses in Rate Counsel's estimate. Considering the foregoing, I will allow $18 million as the value of salvage.

Marketing Costs

Rate Counsel would reduce marketing costs by $2.8 million from $4.2 million, arguing that OPS should have shared in these costs because it stood to benefit from its marketing effort through the sale of additional units. The Company relies on the contract, arguing they were obligated to pay these expenses and further arguing that the marketing effort would have benefited Public Service.

As I have already held that the Company renegotiated the contract on the upside when they should have hedged their decision, I find that Company's reliance on the contract unjustified. I therefore, will allow Rate Counsel's adjustment, as OPS stood to benefit substantially from the marketing effort. However, I will only allow-one half of the adjustment as the Company has demonstrated that Rate Counsel has incorrectly calculated this adjustment.

Valve

The Company has adequately demonstrated on the record that the value of the valves was included in the $18 million salvage value. I will, therefore, make no deduction for this item. Rate Counsel argued this item was not included in the $18 million salvage value.

Maintenance and Security

The Company claims the appropriate level of maintenance and security costs to protect the construction facility for two to three years while it was being salvaged is $2.1 million. The only proof in this regard is Mr. Mallard's statement that " such a facility clearly could not be salvaged all at once, and hence this is a legitimate cost." I find the Compnay has not met its burden of proof and will, therefore, allow Rate Counsel's adjustment of $1.2 million which is based on a one year salvage period.

Field Sales Assessments and Managed Corporate Costs

The Company originally conceded that these two items, field Sales Assessments, $1.4 milliion, and Managed Corporate Costs, $0.6 million, were inappropriate. In its reply brief the Company does not concede these items, arguing that these items were in effect bargaining chips. The Company argues that some recognition should be given to their ability to negotiate a settlement figure lower than their original estimate of their liability.

The Company's position is a sensible one since Rate Counsel used the Company's estimate of its liability as a starting place for its adjustments. I will therefore, deduct $2 million for Field Sales Assesments and Managed Corporate costs, but will offfset that amount by the $8 million the Company was able to save through its negotiation efforts.

Summary of Adjustments – Atlantic

Company Proposed Amount		$319.9 million
Less Termination Adjustments		
Sales Assesment	1.4	
Unabsorbed overheads	14.85	
Group Costs	0.6	
Marketing Expenses	1.4	
Maintenance & Security	1.2	
Negotiations Gains	(8)	
	11.45	
Deduct termination adjustment		(11.45)
Less Renegotiation Adjustment		(11.6)
Less AFDC Adjustment		(7.37)
Plus $6 million paid by other utilities		6
		295.48

Tax computation:		
Before Tax Loss	295.48	
Non-Taxable (13.9%)	41.07	
Taxable Base	254.41	
Tax at 48%	122.12	
After Tax Loss	132.29	
Total Net Loss	173.36	
ALJ Net Abondonment Los		173,360
Divide by 20 years		
Adjustment to Income		8,668

RATE OF RETURN

The Company's witness Dr. Phillips recommended a 14.5% rate of return on equity using a comparable earnings approach. Dr. Phillips' method was to demonstrate that utilities were either riskier or had risks comparable to the Standard & Poor's 400 Industrials. He then used the average rate of return on equity of the 400 industrials, 14.5%, as the rate of return for the petitioner.

The Company employed a second rate of return witness Mr. Meyer, who's method was characterized as not being a classic rate of return method. Mr. Meyer testified that the equity investor would require a dividend yield on book value at least equal to the bond rate of the same company which in the then current market was 9.75%. To produce the 9.75% dividend yield on book value, the Company would have to earn a 15% rate of return on book common equity assuming a 65% payout ratio. As a proof that his position is correct, Mr. Meyer calculated the actual return to the investor in terms of yield and growth and found that the actual return fell within a range of 12.75% - 14.75%, a range considered reasonable by Mr. Meyer.

Both Dr. Phillips and Mr. Meyer put forward positions on rate of return as witnesses for the Company. Dr. Phillips recommendd 14.5% and Mr. Meyer 15%. A rate of return on equity of 14.25%, however, represents the Company's position.

Rate Counsel presented the testimony of Dr. Marcus who principly used a Discounted Cash Flow approach (DCF) but also a comparable earnings and a spread method approach. Dr. Marcus's recommended position was a 13.1% rate of return on equity.

The Federal Government Agencies, an intervenor in the case, presented the testimony of Dr. Belmont who also used the DCF method. Dr. Belmont determined a range of reasonableness for the equity rate of return. A return between 12.03% and 12.75% was recommended as reasonable by Dr. Belmont with a single most probable value of 12.53%.

Beginning with the Federal Government Agencies position of 12.53% rate of return on equity, I note that a past Board decisions have allowed a 13% rate of return, a return higher than recommended by the Federal Government, and the Company's stock has never sold at or near book value at that 13% rate of return. I also note that since the 13% rate of return was first awarded by the Board, market conditions have changed considerably, necessitating a higher return. I, therefore, reject the position of the Federal Government.

In the concluding weeks of the testimony in this case, the Company produced evidenced updating Rate Counsel's position as proposed by Dr. Marcus. The update was necessitated by the change in market conditions occurring in the fall of 1979. That evidence is summarized as follows:

	RATE COUNSEL'S POSITION	COMPANY UPDATE	
Divident Yield	9.6%	10.05%	10.05
Expected Growth	3.0%	3.0	3.25
Cost of Equity	12.60%	13.05	13.30

Dividend Yield Adjusted for Selling Costs and Pressure	(1) 10.1%	10.58	10.58
	(2)	10.86	10.86
Fair and Reasonable Return	(1) 13.10%	13.58	13.83
	(2)	13.86	14.11

(1) 5.0% pressure and selling cost adjustment

(2) 7.5% pressure and selling cost adjustment

Dr. Marcus in petitioner's last rate proceeding used a 3.25% growth facctor and a 7.5% pressure and selling cost factor. Dr. Marcus' testimony as to why he down graded these factors in this case was unpersuasive. I will, therefore, use the higher factors, in assessing Rate Counsel's position.

The company recalculated Dr. Marcus' dividend yield figure using both an eighteen month average, which dilutes the high dividend yield months in 1979, and a twelve month average through October 1979, which is reflected in the above schedule. The Company pointed out that even using the more conservative eighteen month figure, which is 9.93%, with a 3.25% growth factor and a 7.5% pressure and selling cost factor, the result is a 13.99% rate of return on equity. Using a twelve month average, as can be seen from the above table, the rate of return is 14.11%.

Another approach is to look back in time to when the Company stock last sold near book value. In 1977 the Company's stock sold at 93% of book value after a rate decision by the Board in 1976 which allowed the Company a 13% rate of return. Assuming the Board made the correct decision as evidenced by the market place assessment (93% of book), it is possible to update the 1976 decision by applying Marcus' spread method.

Dr. Marcus' spread method divides the rate of return on equity into two components; the utility bond rate and an increment of return representing the higher risk of equities above the bond rate. The equity risk component remains constant, therefore, it is possible to measure the change in market conditions by observing the change in the bond rate. Subtracting the 1977 bond rate from the 1979 bond rate, an increment of 1.66% is determined. Today's rate of return on equity would, therefore, be 1.66% higher than the 13% allowed by the Board in 1976 or 14.66%. The 1979 bond rate was determined in mid 1979. Market conditions have changed considerably since then. If that bond rate was determined today it would be in the neighborhood of 100 basic points higher or 15.66%.

The company demonstrated that the testimony of its witness, Mr. Meyer should also be updated. Mr. Meyer's recommendation would no longer be 15%, but rather in the 15-17% range.

Using the 13.99% rate of return of Dr. Marcus as recalculated by the Company and giving minimum effect to the 14.5% rate recommended by Dr. Phillips, the updated 15-17% rate of Mr. Meyer, and the 14.66 to 15.66% rate as developed by applying Dr. Marcus' spread method, the 14.25% rate of return on equity requested by the Company is reasonable.

Capitalization

The Company's proposed capitalization at December 31, 1979 according to schedules submitted with the second stipulation is summarized as follows:

(Thousands of Dollars)

	Amount	Percent	Cost	Weighted Cost
Long-Term Debt	$2,256,919	44.15	7.48	3.30
Preferred Stock	589,994	11.54	7.67	.89
Dividend Preference	29,568	.58	6.28	.04
Short-Term Debt	119,074	2.33	13.00	.30

Customer's Deposit	14,500	.28	9.00	.03
Deferred Taxes	247,512	4.84	0.00	0.00
Common Equity	1,854,906	36.28	14.25	5.17
Total	$5,112,473	100.00		9.73

There are three issues with regard to the capitalization and they are:

1. Rate Counsel imputes an additional amount of revenue to the Company on account of unbilled revenues. The additional revenue produces additional taxes which in turn results in greater deferred taxes. Rate Counsel has therefore, increased the amount of deferred taxes in the capitalization which are carried in the capitalization as cost-free capital.

2. Rate Counsel noted that $18.5 million of the $119 million of short-term debt was made up of long-term debt due within one year and carrying a cost of 2.75%. Rate Counsel then averaged the 2.75% cost with the 13% cost proposed by the Company and arrived at an average cost of 11.6.%.

3. Rate Counsel would reduce the equity balance for the write-off of the Atlantic Generating Station abandonment loss.

The first issue as to unbilled revenues is perplexing because if there is a uniform rate in effect throughout the year and similar weather conditions prevail from year to year, revenues calculated on an accrual basis (includes unbilled revenues) and revenues accounted for on a cash basis should be equal. There was, however, a change in the rate due to the electric and gas fuel adjustment clause increases part way through the year. The accrual method would pick up more of the revenues at the higher rate and therefore reflect greater revenues. The question is which method is more appropriate?

For the most part the Company's books are based on the accrual method but for tax purposes the cash method is used with regard to revenues. Use of the accrual method for tax purposes, which would include unbilled revenues, would bring the tax calculation into line with the income statement and would eliminate the mismatch in methods. I, therefore, concur with Rate Counsel's adjustment for unbilled revenues of $52,383,000.

Rate Counsel's adjustment for 2.75%, maturing, long-term debt involves considerations of how forward looking the rate case should be. If one is to adhere strictly to the test year, Rate Counsel's adjustment is appropriate. If one is to take a forward look, one would agree with the Company that the 2.75% bonds would be replaced in 1980 at a much greater cost, a cost similar to the 13% proposed by the Company. Since the Company has adhered fairly closely in this case to the strict test year approach, except for the adjustments for wages, I will allow the 13% rate for short-term debt.

The third adjustment for reducing the equity balance due to the Atlantic abandonment, I find entirely without merit. The appropriate adjustment is to rate base not the capital structure. The fact that the Atlantic abandonment loss has been written off by the Company does not reduce the cost of capital. The question is should it? Any appropriate adjustment would have to be done across the board, adjusting all items of capital because the capital used for Atlantic did not come just from equity sources. If such a pro rata, across the board, adjustment was done there would be no effect on the cost of capital as the "amount" columnn would change but the percentages and costs would remain the same. I will, therefore, not reduce the capital structure for the Atlantic abandonment write-off.

The resulting capital structure is as follows:

	Amount	Percent	Cost	Weighted Cost
Long-Term Debt	$2,256.919	43.70	7.48	3.25
Preferred Stock	589,994	11.42	7.67	.88
Dividend Preference	29,568	.57	6.28	.04
Short Term Debt	119,074	2.31	13.00	.30
Customers' Deposits	14,500	.28	9.00	.03
Deferred Taxes	299,895	5.81	0.00	0.00
Common Equity	1,854,906	35.91	14.25	5.11
Total	$5,164,856	100.00		9.61%

Rate Case Summary

From the calculations contained in Appendix I (Rate Base) and Appendix II (Operating Income) and from the Capitalization schedule set out in the rate of return section of this decision, the following summary of the revenue requirements, as decided herein, is generated.

(000 Omitted)

	Electric	Gas	Total
Rate Base (Appendix I)	4,213,475	798,043	5,011,518
Rate of Return (see discussion)	9.61%	9.61%	9.61%
Income Requirement	404,915	76,692	481,607
Pro Forma Operating Income (Appendix II)	331,914	50,092	382,006
Income Deficiency	73,001	26,600	99,601
Tax Factor	2.12	2.12	2.12
Revenue Requirement	154,762	56,392	211,154

Conclusion

Based on the foregoing and after consideration of the entire record in this proceeding, I FIND that:

1. The reasonable amount of the individual adjustments to rate base and pro forma operating income are as contained in Appendix I and Appendix II,

2. The proper adjustments to the Company's capital structure are as contained in the discussion of that subject herein.

3. The fair and reasonable rate of return on equity is 14.25% and the fair and reasonable overall rate of return is 9.61%.

Based on the above findings, I FIND and CONCLUDE that:

1. The reasonable level of rate base is $5,011,518,000.

2. The fair and reasaonable rate of return applicable to the rate base found reasonable herein is 9.61%

3. A level of reasonable operating expenses, as evidenced by the adjustments to pro forma operating income, produces pro forma utility operating income of $382,006,000.

4. Pro forma utility operating income of $382,006,000 would produce a rate of return of 7.4% which is less than the rate of return found reasonable herein and, therefore, petitioner's present rates are unreasonable.

5. Additional annual utility operating income of $99,601,000 would afford petitioner the opportunity to earn a rate of return of 9.61% which has been found reasonable herein.

6. Tariffs designed to produce $211,154,000 in additional annual revenues would produce $99,601,000 in additional annual utility operating income.

Based on the foregoing, it is HEREBY ORDERED that:

1. No increase in rates be permitted pending the decision of the rate design section of this decision.

2. Upon the effective date of this decision, Petitioner should include 20.941 mills of electric energycosts in base rates. In addition, $140 million of unrecovered electric energy costs is permitted to be recovered over 28 months through the Levelized Energy Adjustment Clause. The inclusion of 20.941 mills of electric energy costs in base rates and the recovery of the above $140 million will result in a Levelized Energy Adjustment charge for the period March 1, 1980 through June 30, 1980 of .2284 per KWH for Rate Schedule HTS customers and .2443 per KWH for all other customers.

3. Petitioner submit in its next rate case a lead-lag study to determine the proper level of cash working capital.

It is <u>RECOMMENDED</u> that:

1. The Board consider the initiation of an investigation which would further consider the alternative use of Liquified Propane Gas (LPG) to meet petitioner's peak day gas requirements.

EXHIBIT LIST

A copy of a list of the exhibits may be obtained from the court reporter.

This recommended decision may be affirmed, modified or rejected by the **Board of Public Utilities**, which by law is empowered to make a final decision in this matter. However, if the Board of Public Utilities does not act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT NO. PUC 877-79

I **HEREBY FILE** with the **Secretary of the Board of Public Utilities, Gerald A. Calabrese,** my Initial Decision in this matter and the record in these proceedings.

Feb. 6, 1980
DATE

DAVID MCGEE, A.L.J.

Receipt Acknowledged:

Feb. 6, 1980
DATE

AGENCY HEAD

Mailed to Parties:

Feb. 6, 1980
DATE

FOR OFFICE OF ADMINISTRATIVE LAW

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Appendix I

Rate Base (000 omitted)

	Company Electric	Company Gas	Company Total	ALJ Adjustments Electric	ALJ Adjustments Gas	ALJ Adjustments Total
Plant in Service	3,979,088	942,333	4,921,421	3,979,088	942,333	4,921,421
Held for future use	19,083	1,579	20,662	-	-	20,662
CWIP	1,214,887	8,457	1,223,344	12,470	9	1,235,823
Nuclear Fuel						
In Reactor	22,300	-	22,300	-	-	22,300
In Process	105,185	-	105,185	-	-	105,185
Spent Fuel	2,624	-	2,624	-	-	2,624
Materials & Assem.	1,264	-	1,264	-	-	1,264
Total Plant	5,344,431	952,369	6,296,800	12,470	9	6,309,279
Depreciation Reserve	(1,197,720)	(375,946)	(1,573,666)	-	-	(1,573,666)
Accum. Amort. of Nucl. Fuel Assemb.	(18,008)	-	(18,008)	-	-	(18,008)
Cust. Advances	(17)	(49)	(66)	-	-	(66)
Net Plant	4,128,686	576,374	4,705,060	12,470	9	4,717,539
Working Capital						
1/8 of O&M Exp.	134,468	61,163	195,631	(134,468)	(61,163)	-
Prepayments	3,160	733	3,893	-	-	3,893
Working Funds	6,554	130	6,684	-	-	6,684
Total Cash	144,182	62,026	206,208	(134,468)	(61,163)	10,577
Materials & Supplies	97,925	100,603	198,528	(15,729)	(39,034)	143,765
Total Working Capital	242,107	162,629	404,736	(150,197)	(100,199)	154,342
Net Plant & Working Capital	4,370,793	739,003	5,109,796	(137,727)	(100,188)	4,871,881
Current LEAC under rec. - Withdrawn						
Unamort-Unrecovered Fuel	20,367	3,160	23,527	-	-	23,527
Investments & Advances						
EDC	-	89,068	89,068	-	-	89,068
ETSC	-	80,499	80,499	-	-	30,499
EPC	-	1,434	1,434	-	-	1,434
Gross Receipts Tax Amort since 7/1/75	(31,155)	(14,933)	(46,088)	-	-	(46,088)
P.A. Gross Rec. Tax - Withdrawn						
Non-Juris. Cust.	(8,803)	-	(8,803)	-	-	(8,803)
Adjustments				(137,727)	(100,188)	
Rate Base	4,351,202	898,231	5,249,433	4,213,475	798,043	5,011,518

Appendix II

Operating Income (000 omitted)

	Company			ALJ Adjustments		
	Electric	Gas	Total	Electric	Gas	Total
Test Year Oper. Inc.	273,404	54,613	328,017	273,404	54,613	328,017
Adjustments:						
1. Annual of Wages & Group Life Ins.	(8,230)	(3,873)	(12,103)	-	-	(12,103)
2. Payroll Tax Incr.	(446)	(182)	(628)	-	-	(628)
3. Elim of Term Bldg. Serv. Employees	1,145	539	1,684	-	-	1,684
4. Pension Exp. Incr.	(273)	(172)	(445)	-	-	(445)
5. Donations	(230)	(99)	(329)	-	-	(329)
6. BPU Asses. Incr.	(113)	(79)	(192)	-	-	(192)
7. EDC	-	3,231	3,231	-	-	3,231
8. Elim of Resale Cust.	(487)	-	(487)	-	-	(487)
9. Inclusion of AFDC	56,976	536	57,512	-	-	57,512
10. Exclusion of AFDC on Add. $250 M CWIP	(20,000)	-	(20,000)	20,000	-	-
11. Accel. of Amort. of Fuel	(2,629)	-	(2,629)	-	-	(2,629)
12. ETSC & EPC (AFDC & Exp)	-	4,503	4,503	-	2,052	6,555
13. Amort of Atlantic Aband.	(9,385)		(9,385)	717		(8,668)
14. Annual of Salem No. 2 - Withdrawn						
15. Kerr-McGee Interest	491		491	545		1,036
16. Elim of ISG/OPG Rev.		(11,058)	(11,058)	-	-	(11,058)
17. Gas Research Inst. Incr.	-	(123)	(123)	-	-	(123)
18. PA Gross Rec. Tax Removed	4,520	-	4,520	-	-	4,520
19. Con Ed Interest	163	-	163	109	-	272
20. PA Ut. Realty Tax Amort.	2,530	-	2,530	-		2,530
20a. Amort. of LEAC under rec. - Withdrawn						
21. Annual of AFDC	-	-	-	11,925	9	11,934
22. Withdrawn						
23. Withdrawn						
24. Adj. to Rate Case Exp.	76	32	108	-	-	108
25. Productivity Savings	427	21	448	-	-	448
26. Gain on Disposition of Property	138	33	171	-	-	171
27. Gain on Reacquisition	460	109	569	-	-	569
28. Pro Forma Interest Annual. resulting in tax saving	-	-	-	-	-	-
29. Nuclear Advertising	-	-	-	81	-	81
Adjustments (ALJ)				33,397	2,061	
Adjustments	25,133	(6,582)	18,551	58,510	(4,521)	53,989
	298,537	48,031	346,568	331,914	50,092	382,006

JOINT POSITION OF PARTIES ON CERTAIN ISSUES

The undersigned Counsel agree without prejudice that the following agreement represents their position on selected issues in this proceeding, Docket No. 794-310. This agreement will be set forth in each brief of the undersigned Counsel as an indication that no controversy exists between the undersigned Parties as to the following items:

A. Rate Base

1. Plant Held for Future Use

The Company's rate base should include plant held for future use in the amount of $20,463,000, which represents the year end 1979 plant held for future use balance. While this amount includes an amount of gas plant held for future use, such inclusion is related to this issue exclusively and is not an indication of the appropriateness of any other issue or adjustment in this proceeding.

2. Construction Work in Progress

The Company's construction work in progress balance as of December 31, 1979 should be included in rate base. The construction work in progress balance should be reduced for retentions in the amount of $8,573,000, other CWIP accrued, $17,732,000, and suspended work in the amount of $193,000, for a total reduction of $27,498,000. The CWIP balance remains at issue since it could be affected if the Public Advocate's operating income adjustments for AFDC and Kerr-McGee are approved.

B. Operating Income Adjustments

1. Annualization of Wages and Group Life Insurance

The Company's pro forma adjustment for annualization of wages and group life insurance should be reduced by $76,000 to reflect the tax savings associated with capitalized wages and overheads. The pro forma adjustment for annualization of wages and group life insurance reducing operating income should be $11,651,000.

2. Payroll Tax Increase

The Company's pro forma adjustment reducing operating income to reflect payroll tax increase should be reduced by $213,000 to reflect the tax savings associated with capitalized wages and overheads. The appropriate adjustment reducing operating income for payroll tax increases is $631,000.

3. Pension Expense Increase

The Company's pro forma adjustment for pension expense increase which reduces operating income should be reduced by $132,000 to reflect the tax savings associated with capitalized wages and overheads. The pro forma adjustment for pension expense increases which reduces operating income should be $211,000. No Rate Base increase shall be made for adjustments 1,2 and

4. Pennsylvania Public Utility Realty Tax Amortization

Test year operating income should be increased by $2,530,000 to reflect an exclusion of the Pennsylvania public utility realty tax surcharge which occurred during the test period.

5. Rate Case Expenses

Test year operating income should be increased by $108,000 to reflect the Public Advocate's adjustment to amortize test year rate case expenses over 18 months.

6. Productivity Savings

Test year operating income should be increased by $448,000 to reflect productivity savings associated with efficiencies anticipated to occur in 1980.

7. Gain on Disposition of Property

Test year operating income should be increased by $171,000 to reflect in test year income, gains on the disposition of property sold by Public Service Electric and Gas Company.

8. Gain on Reacquisition of Debt

Test year operating income should be increased by $430,000 to reflect the gain which occurs when reacquiring debt securities.

9. Kilowatthours Generated and Gas Sent Out

The electric and gas line loss factors which affect kilowatthours generated and gas sent out are not in controversy, and no adjustment should be made to operating income for these items.

10. Revenue Factor

The composite electric and gas revenue factor which should be used as part of this proceeding is 2.12.

The numbers included in this Agreement are based upon 9 months actual, 3 months estimated data. When 12-month data is available, it should be used in place of the particular figures included in this Agreement.

The above Agreement on these issues reflects the position of the Parties for the exclusive purpose of this proceeding and is not to be used in any way in any subsequent proceedings as an indication of appropriate adjustments or as the positions of the Parties in those proceedings. Furthermore, the stipulated positions contained herein are a reflection of the Parties' positions on those particular issues and are not to be used in any way as an indication of any Party's position on any other issue in this proceeding which remains in controversy.

Lawrence R. Codey
Attorney for Public Service
Electric and Gas Company

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Attorney General, on Behalf
of the Staff of the New Jer
Board of Public Utilities

Roger L. Camacho, Deputy
Public Advocate, on Behalf
of the Department of the
Public Advocate, Division of
Rate Counsel

STATE OF NEW JERSEY
DEPARTMENT OF ENERGY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF AN INCREASE IN ELECTRIC AND GAS RATES AND FOR CHANGES IN THE TARIFFS FOR ELECTRIC AND GAS SERVICE, P.U.C.N.J. NO. 7, ELECTRIC, AND P.U.C.N.J. NO. 6, GAS, PURSUANT TO R.S. 48:2-21.	)	JOINT POSITION OF PARTIES DOCKET NO. 794-310 OAL DOCKET NO. PUC-877-79

After a review by the undersigned Counsel and their respective consultants of the actual operating results of Public Service Electric and Gas Company for the 12 months ended December 31, 1979, test period, the actual growth in customers and customer usage and the level of expenses incurred in the last quarter of the test period, the undersigned Counsel agree that the following Joint Position with attached schedules represents their final positions for this proceeding on the issues identified.

The undersigned Counsel agree that the following Joint Position is being submitted to the Administrative Law Judge and the Board for their consideration. If this Joint Position is not accepted by the Administrative Law Judge and the Board, it is of no force and effect.

1. Test Year Operating Income, Annualization of Sales and Depreciation Expenses

After a review of actual test year operating results and the growth in sales experienced during the test period, the undersigned Counsel agree that test year operating income of $328.0 million is reasonable and representative of a normal level of income. As a result, there exists no controversy between the undersigned Parties related to sales and depreciation expense.

2. Rate Base Items

As the undersigned Counsel have agreed that no adjustment should be made to the test period level of depreciation expense, the actual balance of the depreciation reserve at December 31, 1979 of $1,573,666,000 should be reflected in rate base.

The undersigned Counsel agree that $6.684 million for working funds should be included in rate base rather than the $7.759 million proposed by the Company.

Due to the uncertainty of the status of the Pennsylvania gross receipts tax collected prior to the repeal of the tax by Pennsylvania, no reduction should be made to rate base. The undersigned Counsel agree that if a final determination of this tax results in no liability to the Company, amounts collected from the customers through rates effective June 1, 1978 shall be used as an immediate reduction of fuel costs.

3. Unrecovered Electric Energy Costs

After a review of actual results for the period ending December 31, 1979 and the magnitude of the Company's unrecovered fuel costs, the undersigned Counsel agree that unrecovered electric energy costs of $140 million should be recovered over a 28-month period through the Levelized Energy Adjustment Clause to be effective on the date of the Board's Order in this proceeding. The undersigned Counsel agree that the unamortized balance of this 28-month amortization will not be included in rate base and will not accrue interest.

The Company's projected underrecovered electric energy costs balance without amortization would be approximately $220 million by June 30, 1980. While certain issues remain in controversy concerning this unrecovered fuel cost balance including the outages at Salem I and Hudson II, the undersigned Counsel agree that those issues will be pursued as expeditiously as possible after the Board's Order on revenue requirements in this proceeding and that $140 million represents a reasonable estimate of unrecovered costs included in the estimated $220 million which is not in controversy. Counsel also agree that the amortization of about $5 million per month commencing on or after March 1, 1980 will leave the major portion of the $140 million of uncontested costs still unrecovered when the issues in controversy have been fully litigated and determined by the Board. Therefore, if the amount in controversy exceeds $80 million, the uncollected balance of the $140 million of costs would be available to cover such an eventuality.

The undersigned Counsel agree that recovery of $140 million through a 28-month amortization through the adjustment clause without rate base treatment or interest on the unamortized balance does not preclude the Company from requesting a recognition and recovery of the carrying costs on unrecovered costs incurred between January 1, 1980 and June 30, 1980, when the level of the charge for July 1, 1980 is determined. Other parties reserve their right to take a position on that issue at the appropriate time.

4. Acceleration of Amortization for Electric Unrecovered Fuel Costs

The undersigned Counsel agree that pro forma operating income should be reduced by $2.629 million to reflect the Company's proposed adjustment increasing the amortization of electric unrecovered fuel costs incurred prior to July 1, 1977.

The undersigned Counsel also agree that rate base should be reduced by $2.629 million to reflect one year's impact of the increased amortization on the unamortized balance.

5. Salem Unit No. 2 Annualization

The undersigned Counsel agree that the Company's proposed adjustment to reflect the impact of Salem Unit No. 2 being placed in commercial operation should not be determined as part of the Board's Order on revenue requirements in this proceeding. As a result, the position of the Public Advocate on the transfer of $250 million of CWIP earning a current return to Hope Creek is moot and should not be determined at this time.

6. Roll-in of Electric Energy Costs to Base Rates

The undersigned Counsel agree that 20.941 mills of electric energy costs should be included in base rates. This action has no impact on the customer's total bill. As a result of the roll-in and the recovery of $140 million of unrecovered electric energy costs over 28 months, the Levelized Energy Adjustment charge for the period March 1, 1980 through June 30, 1980 should be .2284¢ per kWh for Rate Schedule HTS customers and .2443¢ per kWh for all other customers.

7. Time Period for Exceptions

The undersigned Counsel agree that the appropriate time period for the filing of Exceptions to any Initial Decisions of the Administrative Law Judge should be 5 working days, not including the day of receipt of the Order, for Initial Exceptions and 5 working days, not including the day of the filing of the Initial Exceptions, for Replies to Initial Exceptions.

The Parties agree that this Joint Position has been made exclusively for the purpose of this rate proceeding, Docket No. 794-310. The Parties agree that this Joint Position, in total or by specific items, is in no way binding on the Parties in other proceedings before the Board, or in other forums or jurisdictions; nor are the contents of this Joint Position, in total or by specific item, by inference of inclusion or deletion, in any way to be considered or used by another party as an indication of the position of a party on any related issue being litigated in this or other proceedings.

DATED: January 24, 1980

Lawrence R Codey

Lawrence R. Codey
Attorney for Public Service
Electric and Gas Company

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Carla V. Bello, Deputy
Attorney General, on Behalf
of the Staff of the New Jersey
Board of Public Utilities

Roger L. Camacho

Roger L. Camacho, Deputy Public
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Department of the Public
Advocate, Division of Rate
Counsel

SERVICE LIST

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR AN INCREASE IN RATES. DOCKET NO. 794-310. (OAL DOCKET NO. PUC-877-79)

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SERVICE LIST

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR AN INCREASE IN RATES. DOCKET NO. 794-310. (OAL DOCKET NO. PUC-877-79)

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HOWARD H. KESTIN
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

TO: Gerald A. Calabrese, Secretary
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102

RE: Public Service Electric and Gas Co.

OAL DKT. NO. P.U.C. 887-79
BPU DKT. NO. 794-310

Pursuant to N.J.S.A. 52:14B-10(c), we hereby file with the Agency Head the Initial Decision in this matter. Kindly note that the above statute requires that the parties receive a copy of the Initial Decision receipted as to delivery by the Agency Head. Would you, therefore, sign the Initial Decision as to receipt, keeping a copy for yourself, and give the original back to our messenger so that we may serve the parties with an Initial Decision receipted by the Agency Head.

As per said statute, the forty-five (45) day period for Agency Head runs from data of receipt by the Agency Head.

DATE: Feb. 6, 1980

Elizabeth J. Lazzaro, Esq
~~RONALD I. PARKER, ESQUIRE~~
for Director, Judicial Management

ywg
a/21 - 11/13/79)

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HOWARD H. KESTIN
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

Call 648-6069

February 5, 1980

TO THE PARTIES:

RE: Public Service Electric and Gas Company - Rate Case
OAL Docket No. 887-79
BPU Docket No. 794-310

Gentlemen:

Enclosed you will find the Initial Decision in this matter deciding issues pertaining to revenue requirements which include the Altantic abandnment loss. A subsequent Initial Decision on the rate design issues will be forthcoming shortly.

Pursuant to a stipulation agreed to by Rate Counsel, Staff and the Company, the period for exceptions in this matter is five working days, not including the day of receipt of the Initial Decision, for any Initial Decision rendered in this case.

Sincerely,

David J. McGee

DAVID McGEE
Administrative Law Judge

DM/ad
Enclosure

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF AN INCREASE IN ELECTRIC AND GAS RATE AND FOR CHANGES IN THE TARIFFS FOR ELECTRIC AND GAS SERVICES, P.U.C. N.J. NO. 7- ELECTRIC, AND P.U.C. N.J. NO. 6 GAS, PURSUANT TO R.S. 48:2-21	)	INITIAL DECISION REVENUE REQUIREMENTS **O.A.L. DKT. NO. PUC 877-79** BPU DKT. NO. 794-310

(APPEARANCES ATTACHED)

BEFORE THE HONORABLE DAVID J. McGEE, A.L.J.:

On April 20, 1979 Public Service Electric and Gas Company (hereinafter referred to as petitioner, company or Public Service) filed a petition for authority to increase its electric and gas rates and change its tariffs for electric and gas service pursuant to N.J.S.A. 48:2-21. The proposed overall increase was designed to produce $374,511,000 in additional annual operating revenues. $289,602,000 of this increase is attributable to electric service, (a 17.84% increase) and $84,909,000 of this increase is attributable to gas service (an 11.36% increase).

It was not necessary for the Board to suspend Petitioner's requested rate increase as the stipulation in Petioner's last rate case (Docket No. 711-1107) provided that petitioner would not increase its rates until March 1, 1980. In April 1979 the Board found this matter to be a contested case and transmitted this matter to the Office of Administrative Law for determination. An initial hearing was held in Newark, New Jersey on May 15, 1979 after proper notice. Further hearings were held in the field to solicit public comment in Trenton, Camden, New Brunswick and Hackensack, New Jersey after proper notice.

Three interim decisions were rendered during the course of these proceedings. The Company made a motion in May 1979 for a change in the Levelized Energy Adjustment Clause (electric) in the magnitude of approximately 9% overall. After five days of hearings, this proposed increase, which was contested by the parties, was allowed in the full amount by the Board on July 2, 1979. On July 27, 1979 the Company made a motion for change in the Levelized Raw Materials Adjustment Clause (gas) in the amount of approximately 14% overall. The company's motion was stipulated by the parties at a reduced level of approximately 11% overall. That stipulation was approved by the Board on September 27, 1979. In December 1979, Petitioner, Staff, Rate Counsel and the Industrial Intervenors stipulated to a change in tariffs that would charge boiler fuel gas customers a higher rate pursuant to the Natural Gas Policy Act of 1978 and flow the excess revenues back to all other customers via the mechanism of the Raw Materials Adjustment Clause. This stipulation was approved by the Board on December 19, 1979.

The record in this matter was officially closed on December 14, 1979, however, the record was left open to further consider the treatment of the company's proposal to amortize the electric fuel underrecovery which by the end of June 1980 is projected to be $220 million. In addition to the active participation of the Public Advocate throughout these proceedings, the Port Authority, the Industrial Intervenors, the Federal Government Agencies, Linden Chlorine Products, and Allen Goldberg, pro se, have participated at various phases of the proceeding.

Briefs were filed by Petitioner, Rate Counsel, the Port Authority, the Industrial Intervenors, the Federal Government Agencies, Linden Chlorine Products and Allen Goldberg, pro se. The positions of the parties are Rate Counsel recommending $122,627,000* in additional annual revenues Staff recommending $198,754,000* and, the Federal government agencies recommending zero rate relief. After a review of the record and after consideration of the positions of the parties in this matter, I have decided herein that petitioner is entitled to $211,154,000 in additional annual revenues.

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* After second stipulation with 12 months actual data excluding fuel undercovery

Intervention

Motions for intervention were made by numerous municipalities, counties, and consumer groups. The interventions raising an issue were the interventions by Daniel Rita, a citizen and Public Service ratepayer, Allen Goldberg, also a citizen and Public Service ratepayer, and Abraham Isserman, representing a group of senior citizens. My ruling on the intervention of these parties was to allow them to intervene, reserving my right to consolidate their appearance or limit their participation. I also noted that their intervention would be in the form of an experiment to see if in fact their intervention would become burdensome.

During the course of the proceedings neither Mr. Rita or Mr. Isserman appeared. Mr. Goldberg did participate through cross examination, direct testimony, requests for discovery, and briefs. Mr. Goldberg had a limited understanding of legal procedure. In addition, Mr. Goldberg drew most of his arguments from facts that were already in evidence. The few additional requests he made for information were very burdensome to the Company. Having been granted the right to obtain the information, Mr. Goldberg made no use of it.

The proposed Uniform Administrative Procedure Rules (UAPR) creates a new catagory of intervenor called participant. A participant has the right to file a brief and argue orally at the close of the case. Most of the effective participation by Mr. Goldberg could have been achieved through participant status. Almost all evidence used by Mr. Goldberg would have been available in the record had Mr. Goldberg not had the right to discover information. I recommend for future cases that pro se intervenors be accorded participant status where 16 USCA 2631 (A) does not apply.

Mr. Goldberg in his reply brief mistakenly relies on 16 USCA 2631 (a) as giving him an obsolute right to intervene. If Mr. Goldberg had been fair enough to quote the beginning sentence of 16 USCA 2631(a) it would be apparent that his right to intervene is in a proceeding where there is "consideration of one or more of the standards established by subchapter II of this Chapter or other concepts which contribute to the achievement of the purposes of this chapter." There being limited consideration of the purposes described in 16 USCA 2611 in a normal rate case, Mr. Goldberg's right to intervene is not absolute. The issue of intervention in a future proceeding should consider 16 USCA 2131(a) and 2611.

Compensation of Pro Se Intervenor

Allen Goldberg, a pro se intervenor, has requested compensation for his time and expenses in participation in this matter. 16 USCA 2632(a) and (b) provide for compensation to intervenors who's interest would not otherwise be adequately represented in a proceeding. The present rate case proceeding is arguably a proceeding where intervention by consumers is permitted because consideration is being given to "other concepts which contribute to the achievement of the purposes of this chapter" 16 USCA 2631(a). For purposes of discussion only, will I assume this to be he case. The issue is whether Mr. Goldberg's interest is not otherwise adequately represented.

Mr. Goldberg is a residential consumer and the Division of Rate Counsel represents the public interest. Does Rate Counsel represent the residential consumer? The residential consumer group is the lagest group of ratepayers. An analysis of the rate design testimony in this case shows Rate Counsel taking a position detrimental to the industrial customers and favorable to the residential customer. An analysis of the points Mr. Goldberg makes in his brief show that on every point he makes Rate Counsel or the Federal Government has made a similar proposal. The only difference is in degree not in concept. I conclude that Mr. Goldberg is represented adequately by Rate Counsel and not entitled to compensation.

First Stipulation

During the briefing period, Rate Counsel, the company and Staff entered into a stipulation without prejudice to their right to litigate the stipulated issues in subsequent proceedings (stipulation attached). I have reviewed the stipulation and find that if I were to decide the issues stipulated to, my decision would be in conformance with the stipulation. Therefore, notwithstanding the position of the other parties in this proceeding, I adopt the stipulation as my decision in this matter.

The stipulation produces the following adjustments:

Proforma Opeating Income

Annualization of wages and Group Life Insurance	(11,651)
Payroll Tax Increase	(631)
Pension Expense Increase	(211)
Pennsylvania Public Utility Realty Tax Amortization	2,530
Rate Case Expenses	108
Productivity Savings	448
Gain on Disposition of Property	171
Gain on Reacquisition of Debt	430

Second Stipulation

When the twelve month actual figures became available, Rate Counsel, Staff and the Company agreed to a stipulation of various issues including the treatment of the projected $220 million underrecovery under the electric fuel adjustment clause. It was agreed that $140 million of the $220 million was uncontested and would be recovered over a 28 month period via the levelized Energy Adjustment Clause effective on the date of the Board's order in this proceeding. The unamortized balance of the $140 million will not be included in rate base and will not accrue interest. This basic agreement between the parties I concur in and adopt as my decision in this case.

The other issues stipulated to which I also concur in and adopt as my decision in this case are summarized as follows:

In the last weeks of the hearings, Rate Counsel proposed a final adjustment which was designed to show that the Company's forecasted construction expenditures have always exceeded the amounts actually expended on construction.

Rate Counsel estimated this overestimate to be $50 million per year. Although there were remaining hearing days left, the Company did not contest Rate Counsel's estimate. I will, therefore, deduct an appropriate amount due to the historical overestimate.

My position on cash flow is summarized as follows:

1980-1981
Construction Expenditures ($millions)

October prospectus	$ 1,258
Less: PS-Con Ed Construction	(41)
Plus: Maturities	72.5
Less: Historical Overestimate	(100)
Total	$1,189.5

1980 - 1981
Internal Cash - $20 million in Rate Relief
($ millions)

Retained in Business	(168.2)
Depreciation	361
Deferred Taxes	150.7
Amortizations (less current fuel)	103.4
Total Cash Flow	446.9

$$\frac{\text{Total Cash Flow}}{\text{Construction Expenditures}} = \frac{446.9}{1,189.5} = 37.5\%$$

Rate Counsel set out to demonstrate that the Company would meet its construction expenditures at a level of 50% internally generated cash even with $20 million in rate relief. As the above figures show, that figure is a much lower 37.5%. Rate Counsel never conceded that the 50% standard was the correct standard. Rate Counsel suggested that the percentage could be as low as 35%. The question arises then as to what is the standard.

A review of exhibit RC-99, Rate Counsel's source document for determining internally generated cash, shows that the percentage of cash from internal sources ranged from 42.3% to 69.2% for the years 1976 through 1978. During those years, the company retained very modest amounts of money in the business. During this period coverages were

Rate Base (000 omitted)

	Adjustments (9 mos. actual data) Electric	Gas	Stipulated Total (12 mos. actual data) Total
Depreciation Reserve	(1,733)	(868)	1,576,075
Working Funds	(2,693)	-	6,684
Pennsylvania Gr Tax	(23,851)	-	(2,629)

Operating Income

	Adjustments (9 mos. actual) Electric	Gas	Stipulated Total (12 mos. actual) Total
Annualization Adjustments (customer growth & depreciation)	1,300		-
Accel. of Fuel Amort.	(2,629)	-	(2,629)

The stipulation also provided that Rate Counsel would withdraw its proposal to not transfer the present $250 million of CWIP in rate base to Hope Creek. Finally, the stipulation provided for a roll-in of 20.941 mills of electric energy costs into base rates, a procedure I concur in and adopt as my decision in this case.

TEST YEAR

The Company proposed a test year ending December 31, 1979. At the filing of the petition, three months actual and nine months estimated data were available. Updated figures were made available by the Company throughout the course of the proceedings. At the time of this writing, twelve months of actual data have become available. All parties concurred in the use of the 1979 test year. I also find the test year ending December 31, 1979 to be reasonable.

RATE BASE

The Company proposed a rate base amounting to $5,249,433,000. A schedule of the Company's proposed rate base is contained in this decision as Appendix I. The discussion that follows deals with the issues that have been raised with regard to rate base.

CWIP Inclusion In Rate Base

Other adjustments in this case can be viewed as either consistent or inconsistent with previous Board decisions. Consistency with what has been done in the past assumes a static condition with regard to the Company, the industry and the financial markets. Conditions are not static but in a constant state of flux. The CWIP issue addresses the dynamic character of the company and the industry. The parties have taken totally opposite positions. Rate Counsel maintains that the $250 million of CWIP presently in rate base should be in effect taken out of rate base after Salem No. 2 comes on line. The Company proposes an additional $250 million be included in rate base for a total of $500 million. (While Rate Counsel has withdrawn its proposal to eliminate $250 million CWIP, I have retained the analysis of this issue as it is germane to the proper level of rates.)

The dynamics of the situation are a growing cost of debt in relation to the embedded cost. The Company will experience the maturity of some 2.75% debt next year while the present cost of mortgage bonds is 12%. After the crisis year of 1974 the Company moved to increase its percentage of equity thus providing greater coverage for its bonds. Bond coverages during 1977 and 1978 were 3.55 in each of those years. The large construction expenditures of the past have or will in the future be included in rate base. This results in these higher priced items, due to inflation, becoming a rich source of accelerated depreciation and cash flow. Depreciation has increased from $109 millionn in the 1974 to $167 million in 1979. The deferred tax reserve has grown from $31.3 million in 1974 to $138.7 million in 1978. Every year since 1969 the Company has experienced a fall off in the rate of growth in peak demand. This has resulted in construction expenditures being delayed or cancelled altogether.

The question is, considering the dynamics of the situation, whether the Company is in a weak position with regard to its future construction budget, an adequate position, or whether they are in too strong of a position. All of the dynamic factors previously cited are taken into account in the Company's cash flow analysis.

The issue of whether to eliminate the inclusion of the present $250 million of CWIP in rate base focused almost exclusively on the company's cash flow projections because the cash flow analysis is the prime determinate of coverages and AFDC. The Company's original projection was as follows:

$20 Million in Rate Relief

Year	Construction & Maturities	Internal Cash	Internal Cash %
1979	633.2	271	42.8%
1980	617.5	234.4	38%
1981	738.3	207.6	28.1
1982	613.2	201.1	32.8
1983	625.4	151.6	24.3

Rate Counsel did not use the companies construction figures but took cash flow figures from the Company's October 10, 1979 bond prospectus. Rate Counsel then eliminated certain expenditures. These expenditures were as follows:

PS– Con Ed interconnection	$41 million
ETSC & EDC Expenditures	32
Hope Creek, Anticipated sale of portion of facility	50
Total deduction	123

ETSC and EDC expenditures (Staten Island LNG Facility and gas exploration expenditures) were eliminated because they were non-jurisdictional. This is the same argument presented for the exclusion of these expenditures from rate base, a position on which I have stated my disagreement. I will therefore include these expenditures. The elimination of a portion of Hope Creek was sufficiently rebutted by the Company. The Company stated any sale of a portion of the Hope Creek Facility would be on an exchange basis. In other words, the Company would exchange 10% of Hope Creek for 10% of a similar facility. An exchange would not reduce the level of expenditures.

Rate Counsel presented a persuasive argument with regard to the PS - Con Ed interconnection. Because Con Ed will be paying a rate of return on the interconnection construction, no added pressure on earnings will result from these expenditures and therefore, $41 million should be eliminated.

Rate Counsel also did not include any provision for maturities in its calculation. Considerable evidence was presented by both Rate Counsel and the Company showing that various financial analysts did or did not include maturities in their calculation of cash flow expenditures. The result is the conclusion that reasonable men can differ. However, from a conceptual point of view a given level of earnings will support a certain level of debt. If 6% bonds mature and the Company retires those bonds by selling a like amount of 6% bonds, the level of earnings and the level of debt continues unchanged. However, if the Company has to replace 2 3/4% debt with 12% debt, as is currently the case, there will be greater pressure on earnings in an amount equal to the amount of the maturing bonds. I will, therefore, include maturities in calculating cash flow.

Rate Counsel calculated internally generated cash as follows:

	1980 & 1981 ($ Millions)
Retained on business	(40)
Depreciation	361
Deferred Taxes	232
Amortizations	205
Total Cash	758

The Company demonstrated through accounting evidence that Rate Counsel's use of the negative $40 million figure for cash retained in the business was erroneous. I will, therefore, use the Company figures. The depreciation figure was uncontested. The Deferred Taxes figure was also demonstrated by the Company to be erroneous. Rate Counsel did not rebut this fact. The real issue was over the proper treatment of fuel amortizations. Rate Counsel added to cash flow $101.6 million for the amortization of the current $220 million underrecovery under the electric fuel adjustment clause.

The Company argued against Rate Counsel's treatment of fuel amortizations on the grounds that if fuel amortizations are added to cash, they should also be added to expenditures. The Company is correct in their view because the $220 million for the present underrecovery had to come from some source of cash. The retained in business figures show that cash could not have come from available internal sources, so that money would have come from short-term borrowings. As cash is generated from the fuel amortization, those short-term borrowings would be paid off in effect creating an additional expenditure. I will, therefore, not consider fuel amortizations as a part of internal cash because this source of cash is washed out by a like amount of expenditure.

adequate ranging from 3.24 to 3.55 and AFDC as a percent of earnings ranged from 22.7 to 29.3. I find that the 50% standard proposed by the Company is the proper standard. I, therefore, concur with Rate Counsel's decision to withdraw this issue from this case.

The other side of this issue is whether an additional $250 million in CWIP should be included in rate base. An updating of Exhibit P-44R for the level of rate relief recommended herein is shown as follows:

	50% Rate Relief (177 Million + 10 Million via $50 Million CWIP in rate base)
Capital Requirements 1980-1981	1464.1
Less: historic overestimate	100
Less: Con-Ed interconnection	40
Adjusted Capital Requirements	1324
Cash from Operation	641.2
Add: Additional Income from ALJ recommendation	25.5
Adjusted Cash	666.7
% Cash from operations	666.7 / 1324 = 50.3%
Mortgage Indenture Coverage	3.05-3.4
AFDC as % of earnings	33.8 - 29.3%

It is the position of this judge that cash flow, coverages, AFDC as a percentage of earnings are adequate as shown above. If Rate Counsel's October bond prospectus figures were used for construction expenditures, the effect would be to increase coverages and decrease AFDC as a percentage of earnings. The actual figures for AFDC and coverages, then, is probably at the bottom and top end of the ranges described above. Perhaps the Company will not be in perfect financial health, but in this difficult inflationary period it is unfair for the rate payers to assume the added burdens of including an additional $250 million of CWIP in rate base. I, therefore, reject the Company's proposal to include an additional $250 million of CWIP in rate base.

Working Capital

Rate Counsel proposed the use of a new approach to working capital, which approach is now under consideration by the Federal Energy Regulatory Commission (FERC). It is presently in the draft stages and input from industry

and public advocate groups is being solicited. Rate Counsel's adjustment would result in a reduction to rate base in the amount of $195 million. The Company has used the 1/8th method, the method consistently approved by the Board.

Testimony indicated that Rate Counsel's witness admitted there were some problems with FERC approach. The Company has further pointed out that the formula is defective with regard to unbilled revenues, the forty (40) day revenue lag, purchased power, nuclear fuel and payroll taxes.

The FERC approach may be inaccurate but the 1/8th formula is also inaccurate. Testimony indicated that a highly regarded investment research firm reported that the Company has a negative working capital requirement in excess of $13 million. In a FERC case involving electric wholesale utility rates a form of lead-lag study was performed and the results lead FERC to reconsider the use of the 1/8th formula. Carolina Power and Light, Docket No. ER76-495. Rate Counsel demonstrated that if working capital was determined in accordance with that opinion, petitioner would have a negative working capital. When a lead-lag study has been performed in cases involving New Jersey water companies, the 1/8th method proved to be inaccurate and overly generous. Elizabethtown Water Company, Hearing Examiners Report and Recommendation, Docket No. 781-6. It is difficult, however, to make a comparison between water companies and gas and electric companies.

The question presented is which of the inaccurate methods, FERC or the 1/8th, is most accurate. The Company has demonstrated that the FERC method is inaccurate in some respects but has not shown, when confronted with Rate Counsel's evidence, that the 1/8th formula is a good approximation of the appropriate level of working capital. All Rate Counsel's evidence, plus the results of the lead-lag study performed in the Elizabethtown Water Company case, indicate the actual level of working capital is much lower than that claimed by the Company. I will, therefore, reduce working capital by the $195 million amount recommended by Rate Counsel, however, the Company is directed to perform a lead-lag study in its next rate case.

The Company stated on the record that if its position on the 1/8th formula was accepted, that it would agree to Rate Counsel's adjustments with regard to materials and supplies. The 1/8 Formula has not been accepted and the Company has not argued against the materials and supplies adjustment in their brief. I will, therefore, accept Rate Counsel's adjustments.

Staten Island LNG facility (ETSC & EPC)

In the early 1970's the Company embarked on a plan to import LNG from Algeria. To implement this plan the Company first financed then bought a company called Distrigas which at the time had obtained all necessary approvals from agencies having jusridiction over the proposed facilities. In addition, the Federal Power Commission (FPC) had stated in a decision that it would not assert jurisdiction over the proposed facilities (47 F.P.C. 752 (1972) and 47 F.P.C. 1465 (1972)). It was only after the FPC declined to assert jurisdiction that Public Service provided financing to Distrigas.

On May 25, 1973 the FPC reversed itself and asserted jurisdiction over the facililties. The issue of the certification of the facilities is still before the FPC (now FERC).

In the meantime Public Service has made an alternative proposal to FERC which is to use the Staten Island Facility as a peak-shaving facility. In other words, gas would be liquified and stored at the facilities during the summer and then pumped out during the coldest, peak winter days. For an additional $64 million this conversion to a peak-shaving facility could be accomplished.

The Company can and does store gas at other facilities. In determining the economics of converting the Staten Island Facility a study was done comparing the costs of conversion to the cost of using other existing storage facilities. The study showed it was cheaper to convert the Staten Island facility, however the sunk costs of the Staten Island facility were ignored and the comparison was made on the basis of conversion costs only.

A potential problem exists when this facility comes on line. Will New Jersey ratepayers pay the the sunk costs or will their contribution be limited to conversion costs or the costs of other competitive forms of storage? In recognition of this potential problem the Company is seeking to limit its investment in the facility by requesting that the current expenses of the project be paid currently rather than capitalized. I find the recovery of current expenses to be inappropriate. The facility will have to stand on its own when it comes on line, with all legitimate costs of construction included in determining the rate that will be determined by FERC. Also, to award rate relief for current expenses would provide better treatment to this facility than any of the company's other construction projects. I will, therefore, disallow the recovery of current expenses.

Staff in its brief argues that the Staten Island facility should be taken out of rate base. Staff cites difficulty in obtaining regulatory approvals, protests from nearby residents and the three to four year lag in the facility coming on line, as reasons for taking the project out of rate base. Staff, however, does not discuss the benefits of the project.

Ignoring sunk costs, the project is cheaper than other forms of storage. The Company has also shown a need for additional storage. Testimony indicated that future incremental supplies of gas coming from Canada and Mexico will be on a high load factor basis. In other words, to take this gas the Company must receive almost equal amounts of gas all year round. They can not take more in the winter and less in the summer. Storage facilities are needed to augment these high load factor supplies.

Testimony also indicated that FERC was under the pressure of a court ruling remanding the case concerning FERC's jurisdiction back to FERC. The court specially commented on the unfairness of FERC reversing itself on the question of jursidiction. Distrigas Corporation v. Federal Power Commission, 495 F.2d 1057 (19745), cert. den. 419 U.S. 834 (1974). Testimony by the Company also indicated that the greatest drawback to the original LNG facility was the passage of ships through a narrow waterway near Staten Island. There being no plan now to import LNG, the greatest difficulty to the Company's plan has been removed.

The Company further testified that costly existing oil gas facilities could be retired with the addition of the peak-shaving facility. The Company would to a lesser degree be subject to supply curtailment. The supply of gas would be interchangeable with existing supplies, and plant that is already constructed would be utilized.

Considering the foregoing, I disagree with staff. The need, economics, and practical advantages of the facility outweigh the objections cited by staff. I will, therefore, allow the $81,933 cost of the facility in rate base.

Rate Counsel goes further in its objection to the Staten Island Facility. Rate Counsel would not only take the facility out of rate base but in addition would investigate abandoning the projecct. To justify this approach evidence was produced to show that other sources of supply such as liquified propane gas (LPG) would be a more economical source of supply. However, there was considerable difficulty with the testimony of the witnesses and the approach they followed.

Neither of rate Counsel's two witnesses on this subject had the necessary expertise in the design of a gas distribution system. They were not disqualified as witnesses, however, but allowed to testify with the understanding that their testimony could not support a decision by the Company to change its present use of gas supplies. As testimony progressed it became evident that the Company had considered many more aspects of the use of LPG than Rate Counsel's witnesses. However, after the Company had taken advantage of every available opportunity to discredit Rate Counsel's expert witnesses, the fact remained that Rate Counsel's proposal was still $19 million cheaper than the Company's.

There were, however, questions left unanswered, such as the long run availability of LPG as opposed to the long run availability of pipeline gas. Questions of the safety of LPG, which has a different specific gravity than natural gas, were posed but left for the most part unanswered. To further explore this I suggest an investigation be initiated by the Board to consider these questions as well as others before any action is taken by the Board concerning the Staten Island facility. Pending an investigation by the Board, I will allow the Staten Island facility in rate base.

OPERATING INCOME

The Company demonstrated a test year utility operating income of $328,017,000. After adjustments, the Company proposed a pro forma utility operating income of $346,568,000. A schedule of the Company's test year income and pro forma income is contained in this decision as Appendix II. The discussion that follows deals with the issues that have been raised with regard to pro forma utility operating income.

Annualization Adjustments

This issue comprises two individual adjustments. The income effect of these adjustments is set forth below:

	(000 omitted)
AFDC	$11,924
Interest Expense (Staff)	14,148
Income effect	26,072

Both, Staff and Rate Counsel would depart from past Board policy and deduct these adjustments from operating income. It is my position that these adjustments should be considered in the context of setting forward looking rates.

Testimony in the record, but brought to the forefront through the Company's brief, indicated that minor expense items are estimated to increase by $16 million during 1979. Projecting that same level of increase through year-end 1980, an $8.6 million decrease in income due to minor expenses will occur ($16 million x 54%). Testimony also indicated that a conservative estimate of the additions to rate base through year-end 1981 is $650 million without Salem No. 2. Taking one-half of this amount, and deducting $175 million in accumulated depreciation, there would be an approximate need for an additional rate of return and added depreciation expense in the amount of 18.1 million. (150 x .08 = 12 and 325 x 3.5% x 54% = 6.1). Salem No. 2, when it comes on line, will increase operation and maintenance expense by $2.8 million, depreciation by $7 million and rate of return by $17.1 million (213.5 x 8% = 17.1). In addition, the Company will experience growth in the total number of customers resulting in added income of $4 million. The income effect of these increases is set forth below:

	Year End 1980
Minor expenses	8.6
Additions to Rate Base rate of return	12
depreciation	6.1
Growth in Customers	(4)
Salem No. 2	
O&M	2.8
depreciation	7
rate of return	17.1
Increase in expenses	49.6
Annualization Offset	14.1

I will allow the annualization adjustment with regard to AFDC but not with regard to the Interest expense deduction, so as to provide on offset to the increase in expenses occurring approximately by year-end 1980. As can be seen from the above calculation the $14.1 million offset to increases in expense, by not allowing annualization of the interest expense deduction, is reasonable.

Energy Development Corporation (Gas Exploration)

The current structure of the payment of costs with regard to the Company's gas exploration activities is that the investor supplies the capital and the ratepayer guarantees his return. The return the rate payer pays, however, is reduced by the profit on all sales of gas. The gas must be directed to Public Service under the terms of the gas exploration agreements. If the sales of gas are adequate to pay the investor his return the rate payer pays no return, except the return paid during the period of time the gas exploration facilities are under construction.

So far the company's gas exploration activities have been more than successful, exceeding the industry average for successful wells. The ratepayer so far is responsible only to pay a return for facilities under construction, typically a three year period. The project has proved to be succesful and the cost structure has been a fair one. Rate Counsel, however, proposes to change the cost responsibilities by imputing added income from the project. This will have the effect of changing the cost responsibilities. Rate Counsel proposes this change, yet there is no impetus for doing so. The project is succesful thus assuring supplies of gas and further reducing the rate payers responsibility by providing greater profits. The company should be rewarded for its good business judgment and allowed to explore for gas uneffected by a change in rate case treatment. I, therefore, reject Rate Counsel's adjustment with the caveat that if the project proves unsuccessful there will be time enough to make appropriate adjustments. For the same reasons stated above. I also reject Rate Counsel's proposal to reflect only 80% of the investment in EDC in rate base and for the Company to pay the salary of an independent geologist to aid the Board.

Donations

The Board has consistently held that donations which are reasonable in amount and non-discriminatory in purpose shall be allowed as legitimate operating expenses. Public Service Electric and Gas Company, Docket No. 761-8 and Public Service Electric and Gas Company, Docket No. 709-494. Where a policy of the Board has been announced with consistency, I am bound to follow Board policy. I will, therefore, allow the $258,000 for donations as a legitimate operating expense.

Interest Income Related To Kerr McGee

In order to purchase uranium from Kerr-McGee, the Company makes advances to Kerr-McGee which accrue interest. When Kerr-McGee sells the uranium to the Company it credits the sale for the advances and accrued interest. Rate Counsel would make an adjustment for the accrued interest because the accrued interest is at a rate of 8% while the overall rate of return recommended herein, the cost of capital, is much greater. It is 9.61%. The Company argues against this adjustment on the general grounds that it is another source of attrition. I have dealt with the problem of attrition in the annualization adjustments discussion and found an appropriate amount as an offset. I find Rate Counsel's proposed treatment of this item to be appropriate and will reflect an adjustment of $571,000 in operating income.

Con Ed Interconnection Interest

Similar to the Kerr-McGee adjustment, Rate Counsel recommends an adjustment to Con-Ed interconnection interest. As with Kerr-McGee, I will reflect an adjustment to operating income in the amount of $53,000.

Nuclear Advertising

Currently, the Company is purchasing advertising space and running articles on the subject of nuclear energy. The articles contain quotes from scientists belonging to an organization called Scientists and Engineers for Secure Energy (SESE). The Company pays for the advertisement and also makes a contribution to SESE. The advertising payment is treated as a legitimate expense while the contribution is treated as a below the line, discriminatory donation. Rate Counsel opposes the treatment of these advertising expenses as legitimate and would move the expense below the line.

The evidence indicated that the contents of the advertisement was an attack on "a small but highly vocal minority who have been spreading fear and alarm despite the irrefutable record of atomic energy's safety." The advertisement is not a discussion of the merits of nuclear energy but an attack on a group that opposes nuclear energy. The article seeks to identify and draw political battle lines between the two groups. The article is very definitely political in nature. There can also be no doubt that nuclear energy is a political issue, when presidents do not care to speak on the issue, thousands of demonstrators gather publicly and congressional committees hold hearings on the issue. In conclusion I find that both the article and the subject of nuclear energy are political in nature.

The question then is whether Board policy treats political advertising as below the line. Rate Counsel neglected to point out in their brief that the Board has already dealt with this entire issue. The Board held generic hearings on the subject of advertising which resulted in a decision by the Board broadly treating many forms of advertising as below the line. It is not clear but the Board apparently granted reconsideration of the issue to consider a narrower scope to the decision. No action was ever taken on reconsideration. By operation of BPU regulations if no action on reconsideration is taken within sixty (60) days the reconsideration is denied. It was generally understood, however, that the Board would not take any action on advertising until the entire issue was resolved. Technically, however, there is a valid, outstanding Board order treating advertising as below the line.

The issue as to political advertising is not unresolved however. At no time in the board's consideration of the issue did it question whether political advertising was not to be treated as below the line. Political advertising always fell within the narrowest scope of the proposed treatment of advertising. I, therefore, conclude that at least as to political advertising it is Board policy to treat such advertising expenses as a below the line expense.

ATLANTIC GENERATING STATION ABANDONMENT LOSS

In December 1978 the Company officially abandoned the Atlantic Generating Station project, which was a project aimed at siting floating nuclear power plants off the coast of New Jersey. Rate Counsel stipulated with the Company in the last rate case that the proper treatment of this loss was to amortize the loss over 20 years with no rate of return being earned on the unamortized portion.

The treatment of the loss was stipulated to, but the appropriate amount of the loss was the subject of extensive litigation in this case. Rate Counsel undertook a thorough review of the entire history of the project. As a result of their review, Rate Counsel recommended the following adjustments:

Atlantic Generating Station

(000 omitted)

Joint Ownership	($45,380)
Renegotiationn of AGS Contract	(11,567)
AFDC	(10,139)
Termination Costs:	
Salvage	($10,000)
Unabsorbed Overheads	(29,800)
Valves	(900)
Sales Assessment	(1,400)
Corporate Managed Costs	(600)
Marketing Expenses	(2,800)
Wind down expenses	(1,200)
	113,786

Joint Ownership

Rate Counsel would make an adjustment due to the joint ownership provisions of the Atlantic Generating Station (AGS) contract. The Company gave a 20% share of the AGS Facilities to Atlantic City Electric Company (ACE) and Jersey Central Power and Light Company (JCP & L) in return ACE's and JCP & L's responsibility in the event of termination was limited to $6 million. The 20% share of the facilities and the cost responsibility were disproportionate. In other words ACE's and JCP + L's share of the cost upon termination should have been greater if based on their 20% share of the generating capacity.

Reasonableness and prudence, the standards used in this proceeding, contemplate varying levels of risk in decision making. If one is in a high risk situation, it may be prudent to elect a high risk alternative. The AGS project has not been viewed by the Company as high risk. They have sought to minimize the risks. Rate Counsel has commented on the difficulties of the project, but they seek to compare AGS to the normal situation of a land-based nuclear facility.

Rate Counsel therefore perceives the risks of AGS as no different than a land-based facility. I will, therefore, assume AGS has attached to it a normal level of risk in terms of ultimately bringing the facility on line.

Rate Counsel's argument is that the disproportionate joint cost arrangements of AGS was imprudent because it is contrary to the industry standard which is a proportionate sharing of costs. In order to demonstrate this standard, Rate Counsel looks to other Public Service facilities which the Company has undertaken jointly with other utilities. Rate Counsel shows that with these other facilities there is a proportionate sharing of costs and thus creates a standard. The Company shows that each joint facility has its own peculiarities and there can be no standard generalized from an analysis of these facilities. Further, the peculiarity making disproportionate cost arrangments necessary for AGS was the need for extensive transmission facilities in ACE's and JCP & L's service territories. Evidence has not been produced from other jurisdictions presumably because of the limited expertise of Rate Counsel's witness.

The Company grants that the other jointly owned facilities, Salem and Hope Creek, are located out of the Company's service territory, are served by extra territorial transmission lines, and the costs were shared proportionately. The Company shows, however, that the reason for this proportionate sharing was because both of these facilities were originally planned to be located within the Company's service territory at Burlington and Newbold Island. The agreements for the cost sharing were originally executed without the parties contemplating the need for extra territorial transmision lines.

I find the Company's position to be persuasive and conclude that Rate Counsel has not established a standard by which the Company can be judged. I will, therefore, not allow this adjustment.

Renegotiation of the OPS Contract

In 1974 the Company renegotiated the OPS contract. The contract originally entered into was in the nature of a joint venture. Both the Company and Offshore Power Systems (OPS) stood to gain from the success of the project. OPS sought to mass pruduce floating nuclear generating stations. Obviously the more units they could sell the greater their profit would be. The Public Service Company had a fixed price contract, but the price would be reduced as OPS was able to sell additional units. In accepting a fixed price contract Public Service gave up control over the management of the projects costs.

By 1974 OPS had sold no units to anyone other than Publiic Service. The load forecasts of Public Service showed decreasing growth in projected load ever since 1969. One must assume Public Service's experience was typical of the industry along the Eastern Seaboard. OPS therefore probably knew of these trends and negotiated the contract in 1974 with an eye to the down side, or what their protection was in case of termination. The Company on the other hand while they had experienced a decrease in load growth, had also experienced the abandonment of other projects due to environmental problems. The net result was that the Company had an increased need for generating capacity and was viewing the upside of the contract or what would be their costs for completing the project. Not surprisingly, the Company was able to negotiate very reasonable terms for the extension of the service dates of the offshore nuclear units because the Company was looking to the upside and OPS to the downside. Each party got what they wanted. The terms of the renegotiated contract retained the fixed price nature of the contract giving Public Service little control over the management of the project's costs.

Rate Counsel argues that the lack of control of the project's costs resulted in $11,567,000 in costs that need not have been incurred. Rate Counsel maintains the Company had the incentive to ignore the long range downside costs of termination because they wanted the short run benefits of improved cash flow. Rate Counsel demonstrates that the Company was in the throes of a serious financial crisis in 1974 which gave rise to a need for improved cash flow. Rate Counsel further argues that not only did the Company have the incentive, but it in fact acted imprudently because there were many indications in 1974 that the offshore nuclear facilities would never be needed.

From the testimony I conclude, that on the basis of the information available to the Company, that a reasonable projection of the future showed a need for the offshore facilities. However, all projections carry with them uncertainty. The Company was aware of this uncertainty as was demonstrated by the fact that some consideration was given to a 2.5% growth rate which would have rendered all the offshore facilities unnecesary.

When confronted with uncertainty a prudent man hedges his decision. This is what the Company failed to do. The Company placed a ll of its eggs in the upside basket of the renegotiated contract.

The remaining question is whether the lack of control the Company had over the management of the project's costs resulted in unnecessary expense. Rate Counsel maintains that the work on the construction of the OPS manufacturing plant could have been delayed four to five years. The Company argues in rebuttal that there were wind-down and start up costs associated with a delay in the construction of the manufacturing plant unaccounted for by Rate Counsel's $11,567,000 cost. The Company also wishes the costs viewed in context. The Company was able to realize a reduction in progress payments of over $425 million during the same period as result of the renegotiation.

I find that Company's arguments with regard to the wind-down and start up costs noteworthy, but these costs are unquantified. I also find that there are benefits from the renegotiation of the contract, although unquantified, which would offset the $11,567,000 cost proposed by Rate Counsel. I must resolve the doubts concerning these unquantified adjustments against the Company, however, because it has the burden of proof in this regard. I will, therefore, deduct the entire amount or $11, 567,000.

AFDC

Rate Counsel argues that the Company should have stopped accruing AFDC on the offshore nuclear project at the point in time when it first began to enter exploratory discussions contemplating termination, which was October 1977.

The Company maintains the appropriate date for calculating AFDC is December 1978, the date of legal termination under the terms of the contract.

In October 1977 the Company first entered into discussion with OPS looking toward termination. It was agreed that February 22, 1978 would be the deadline for reaching agreement on termination costs and those termination costs would be calculated according to the level of just and reasonable expenditures made before December 29, 1977. The project, however, continued until its official termination date of December 1978.

The question is at what point should AFDC no longer be accrued: When a project is almost dead but has a feint pulse or when the project is officially pronounced dead? Rate Counsel argues that even if the project has a feint pulse, the appropriate date is December 29, 1977 because that is the date on which the Company's liability was fixed retroactively by the contract and that should also be the date on which the ratepayers' liability is fixed. Rate Counsel's logic is convincing and I concur with Rate Counsel's position.

Termination - Unabsorbed Overheads

When termination costs under the contract between Public Service and OPS were finally negotiated in February 1977 unabsorbed overheads were a major item in the negotiations. Unabsorbed overheads are explained by the Company as follows:

> "The concept of unabsorbed overheads is widley recognized and accepted as a legitimate termination cost. The basic idea of unabsorbed overheads is that when an order for a major piece of equipment is placed, facilties and personnel are reserved for that order and preliminary engineering work is done. If that order is later cancelled, and if those facilities and personnel and preliminary engineering work cannot be otherwise utilized, a cost of termination is recognized as an unabsorbed overhead."

The Company also cited Apex Metal Stamping Co. v. Alexander and Sawyer Inc., 48 N.J. Super 476 (App. Div. 1958) as proof that unabsorbed overheads are considered by the courts as a legitimate termination cost. I conclude from the Company's explanation of these costs that they are legitimate, real costs of termination. The remaining question is how much of these costs are legitimate.

The Company sought to prove $29.7 million was the appropriate level of this expense by showing that the negotiation process was fair and favorable to the Company. The Company argues that OPS' original claim for unabsorbed overheads was for $142.4 million and as result of the negotiations that figure was reduced to $30.1 million and possibly as low as $21.9 million if the redction in OPS' overall claim is attributed to unabsorbed overheads. The difficulty with this argument is that the Company had no idea what level was appropriate because they were not allowed to see Westinghouse's books. Westinghouse is the parent corporation of OPS and the entity that incurred the unabsorbed overhead costs. I must, therefore reject the Company's justification of this expense as the costs have no basis in concrete fact. This does not mean that a utility is precluded from ever entering into a settlement negotiation. It means that a utility must be mindful of its regulatory responsibilities and be able to produce some basis to support its settlements.

Having rejected the Company's estimate of the level of costs, the result is a legitimate cost exists without quantification. Rate Counsel maintains that this cost be quantified as zero. If it is a legitimate cost, it cannot be quantified as zero. To resolve this issue I will allow one-half of the $29.7 million estimated by the Company or $14.85 million.

As an addendum, I note that the Company attempted to resusitate its position in its reply brief by showing that actual payments pursuant to a contract were made by OPS to Westinghouse for unobsorbed overheads in the amount of $25 million. These payments were later audited by Price Waterhouse. All this evidence proves is OPS made payments to Westinghouse. These payments could have been fair and reasonable because an attempt was made to accurately reflect the costs of the subsidiary to judge its performance or these payments may have been a vehicle to plow profits into the parent company. I can draw no conclusion from the fact that payments were made.

Salvage

The Company settled the contract with OPS on the basis that $18 million was the cost of salvage which would offset Public Service's total responsibility. Rate Counsel maintains a higher salvage value is appropriate. Their salvage estimate is $28 million.

Rate Counsel attacks the Company's figure on the basis that they had limited opportunity to inspect the property, that they should have hired an appraiser, and that the figure is suspect because it agrees with OPS' estimate.

I find that the Company had an adequate basis on which to estimate the salvage value. The Company had a least a dozen engineers at the construction site throughout the life of the project. These engineers periodically made estimates of termination costs. The Company's General Manager of Real Estate, who is the current president of the Chapter of the American Institute of Real Estate Appraisers, inspected the property at the construction site and had available to him the same information on which Rate Counsel based its estimate. The company has also demonstrated substantial weaknesses in Rate Counsel's estimate. Considering the foregoing, I will allow $18 million as the value of salvage.

Marketing Costs

Rate Counsel would reduce marketing costs by $2.8 million from $4.2 million, arguing that OPS should have shared in these costs because it stood to benefit from its marketing effort through the sale of additional units. The Company relies on the contract, arguing they were obligated to pay these expenses and further arguing that the marketing effort would have benefited Public Service.

As I have already held that the Company renegotiated the contract on the upside when they should have hedged their decision, I find that Company's reliance on the contract unjustified. I therefore, will allow Rate Counsel's adjustment, as OPS stood to benefit substantially from the marketing effort. However, I will only allow-one half of the adjustment as the Company has demonstrated that Rate Counsel has incorrectly calculated this adjustment.

Valve

The Company has adequately demonstrated on the record that the value of the valves was included in the $18 million salvage value. I will, therefore, make no deduction for this item. Rate Counsel argued this item was not included in the $18 million salvage value.

Maintenance and Security

The Company claims the appropriate level of maintenance and security costs to protect the construction facility for two to three years while it was being salvaged is $2.1 million. The only proof in this regard is Mr. Mallard's statement that " such a facility clearly could not be salvaged all at once, and hence this is a legitimate cost." I find the Compnay has not met its burden of proof and will, therefore, allow Rate Counsel's adjustment of $1.2 million which is based on a one year salvage period.

Field Sales Assessments and Managed Corporate Costs

The Company originally conceded that these two items, field Sales Assessments, $1.4 milliion, and Managed Corporate Costs, $0.6 million, were inappropriate. In its reply brief the Company does not concede these items, arguing that these items were in effect bargaining chips. The Company argues that some recognition should be given to their ability to negotiate a settlement figure lower than their original estimate of their liability.

The Company's position is a sensible one since Rate Counsel used the Company's estimate of its liability as a starting place for its adjustments. I will therefore, deduct $2 million for Field Sales Assesments and Managed Corporate costs, but will offfset that amount by the $8 million the Company was able to save through its negotiation efforts.

Summary of Adjustments - Atlantic

Company Proposed Amount		$319.9 million
Less Termination Adjustments		
Sales Assesment	1.4	
Unabsorbed overheads	14.85	
Group Costs	0.6	
Marketing Expenses	1.4	
Maintenance & Security	1.2	
Negotiations Gains	(8)	
	11.45	
Deduct termination adjustment		(11.45)
Less Renegotiation Adjustment		(11.6)
Less AFDC Adjustment		(7.37)
Plus $6 million paid by other utilities		6
		295.48

Tax computation:		
Before Tax Loss	295.48	
Non-Taxable (13.9%)	41.07	
Taxable Base	254.41	
Tax at 48%.	122.12	
After Tax Loss	132.29	
Total Net Loss	173.36	
ALJ Net Abondonment Los		173,360
Divide by 20 years		
Adjustment to Income		8,668

RATE OF RETURN

The Company's witness Dr. Phillips recommended a 14.5% rate of return on equity using a comparable earnings approach. Dr. Phillips' method was to demonstrate that utilities were either riskier or had risks comparable to the Standard & Poor's 400 Industrials. He then used the average rate of return on equity of the 400 industrials, 14.5%, as the rate of return for the petitioner.

The Company employed a second rate of return witness Mr. Meyer, who's method was characterized as not being a classic rate of return method. Mr. Meyer testified that the equity investor would require a dividend yield on book value at least equal to the bond rate of the same company which in the then current market was 9.75%. To produce the 9.75% dividend yield on book value, the Company would have to earn a 15% rate of return on book common equity assuming a 65% payout ratio. As a proof that his position is correct, Mr. Meyer calculated the actual return to the investor in terms of yield and growth and found that the actual return fell within a range of 12.75% - 14.75%, a range considered reasonable by Mr. Meyer.

Both Dr. Phillips and Mr. Meyer put forward positions on rate of return as witnesses for the Company. Dr. Phillips recommendd 14.5% and Mr. Meyer 15%. A rate of return on equity of 14.25%, however, represents the Company's position.

Rate Counsel presented the testimony of Dr. Marcus who principly used a Discounted Cash Flow approach (DCF) but also a comparable earnings and a spread method approach. Dr. Marcus's recommended position was a 13.1% rate of return on equity.

The Federal Government Agencies, an intervenor in the case, presented the testimony of Dr. Belmont who also used the DCF method. Dr. Belmont determined a range of reasonableness for the equity rate of return. A return between 12.03% and 12.75% was recommended as reasonable by Dr. Belmont with a single most probable value of 12.53%.

Beginning with the Federal Government Agencies position of 12.53% rate of return on equity, I note that a past Board decisions have allowed a 13% rate of return, a return higher than recommended by the Federal Government, and the Company's stock has never sold at or near book value at that 13% rate of return. I also note that since the 13% rate of return was first awarded by the Board, market conditions have changed considerably, necessitating a higher return. I, therefore, reject the position of the Federal Government.

In the concluding weeks of the testimony in this case, the Company produced evidenced updating Rate Counsel's position as proposed by Dr. Marcus. The update was necessitated by the change in market conditions occurring in the fall of 1979. That evidence is summarized as follows:

	RATE COUNSEL'S POSITION	COMPANY UPDATE	
Divident Yield	9.6%	10.05%	10.05
Expected Growth	3.0%	3.0	3.25
Cost of Equity	12.60%	13.05	13.30

Dividend Yield Adjusted for Selling Costs and Pressure	(1) 10.1%	10.58	10.58
	(2)	10.86	10.86
Fair and Reasonable Return	(1) 13.10%	13.58	13.83
	(2)	13.86	14.11

(1) 5.0% pressure and selling cost adjustment

(2) 7.5% pressure and selling cost adjustment

Dr. Marcus in petitioner's last rate proceeding used a 3.25% growth facctor and a 7.5% pressure and selling cost factor. Dr. Marcus' testimony as to why he down graded these factors in this case was unpersuasive. I will, therefore, use the higher factors, in assessing Rate Counsel's position.

The company recalculated Dr. Marcus' dividend yield figure using both an eighteen month average, which dilutes the high dividend yield months in 1979, and a twelve month average through October 1979, which is reflected in the above schedule. The Company pointed out that even using the more conservative eighteen month figure, which is 9.93%, with a 3.25% growth factor and a 7.5% pressure and selling cost factor, the result is a 13.99% rate of return on equity. Using a twelve month average, as can be seen from the above table, the rate of return is 14.11%.

Another approach is to look back in time to when the Company stock last sold near book value. In 1977 the Company's stock sold at 93% of book value after a rate decision by the Board in 1976 which allowed the Company a 13% rate of return. Assuming the Board made the correct decision as evidenced by the market place assessment (93% of book), it is possible to update the 1976 decision by applying Marcus' spread method.

Dr. Marcus' spread method divides the rate of return on equity into two components; the utility bond rate and an increment of return representing the higher risk of equities above the bond rate. The equity risk component remains constant, therefore, it is possible to measure the change in market conditions by observing the change in the bond rate. Subtracting the 1977 bond rate from the 1979 bond rate, an increment of 1.66% is determined. Today's rate of return on equity would, therefore, be 1.66% higher than the 13% allowed by the Board in 1976 or 14.66%. The 1979 bond rate was determined in mid 1979. Market conditions have changed considerably since then. If that bond rate was determined today it would be in the neighborhood of 100 basic points higher or 15.66%.

The company demonstrated that the testimony of its witness, Mr. Meyer should also be updated. Mr. Meyer's recommendation would no longer be 15%, but rather in the 15-17% range.

Using the 13.99% rate of return of Dr. Marcus as recalculated by the Company and giving minimum effect to the 14.5% rate recommended by Dr. Phillips, the updated 15-17% rate of Mr. Meyer, and the 14.66 to 15.66% rate as developed by applying Dr. Marcus' spread method, the 14.25% rate of return on equity requested by the Company is reasonable.

Capitalization

The Company's proposed capitalization at December 31, 1979 according to schedules submitted with the second stipulation is summarized as follows:

(Thousands of Dollars)

	Amount	Percent	Cost	Weighted Cost
Long-Term Debt	$2,256,919	44.15	7.48	3.30
Preferred Stock	589,994	11.54	7.67	.89
Dividend Preference	29,568	.58	6.28	.04
Short-Term Debt	119,074	2.33	13.00	.30

Customer's Deposit	14,500	.28	9.00	.03
Deferred Taxes	247,512	4.84	0.00	0.00
Common Equity	1,854,906	36.28	14.25	5.17
Total	$5,112,473	100.00		9.73

There are three issues with regard to the capitalization and they are:

1. Rate Counsel imputes an additional amount of revenue to the Company on account of unbilled revenues. The additional revenue produces additional taxes which in turn results in greater deferred taxes. Rate Counsel has therefore, increased the amount of deferred taxes in the capitalization which are carried in the capitalization as cost-free capital.

2. Rate Counsel noted that $18.5 million of the $119 million of short-term debt was made up of long-term debt due within one year and carrying a cost of 2.75%. Rate Counsel then averaged the 2.75% cost with the 13% cost proposed by the Company and arrived at an average cost of 11.6.%.

3. Rate Counsel would reduce the equity balance for the write-off of the Atlantic Generating Station abandonment loss.

The first issue as to unbilled revenues is perplexing because if there is a uniform rate in effect throughout the year and similar weather conditions prevail from year to year, revenues calculated on an accrual basis (includes unbilled revenues) and revenues accounted for on a cash basis should be equal. There was, however, a change in the rate due to the electric and gas fuel adjustment clause increases part way through the year. The accrual method would pick up more of the revenues at the higher rate and therefore reflect greater revenues. The question is which method is more appropriate?

For the most part the Company's books are based on the accrual method but for tax purposes the cash method is used with regard to revenues. Use of the accrual method for tax purposes, which would include unbilled revenues, would bring the tax calculation into line with the income statement and would eliminate the mismatch in methods. I, therefore, concur with Rate Counsel's adjustment for unbilled revenues of $52,383,000.

Rate Counsel's adjustment for 2.75%, maturing, long-term debt involves considerations of how forward looking the rate case should be. If one is to adhere strictly to the test year, Rate Counsel's adjustment is appropriate. If one is to take a forward look, one would agree with the Company that the 2.75% bonds would be replaced in 1980 at a much greater cost, a cost similar to the 13% proposed by the Company. Since the Company has adhered fairly closely in this case to the strict test year approach, except for the adjustments for wages, I will allow the 13% rate for short-term debt.

The third adjustment for reducing the equity balance due to the Atlantic abandonment, I find entirely without merit. The appropriate adjustment is to rate base not the capital structure. The fact that the Atlantic abandonment loss has been written off by the Company does not reduce the cost of capital. The question is should it? Any appropriate adjustment would have to be done across the board, adjusting all items of capital because the capital used for Atlantic did not come just from equity sources. If such a pro rata, across the board, adjustment was done there would be no effect on the cost of capital as the "amount" columnn would change but the percentages and costs would remain the same. I will, therefore, not reduce the capital structure for the Atlantic abandonment write-off.

The resulting capital structure is as follows:

	Amount	Percent	Cost	Weighted Cost
Long-Term Debt	$2,256,919	43.70	7.48	3.25
Preferred Stock	589,994	11.42	7.67	.88
Dividend Preference	29,568	.57	6.28	.04
Short Term Debt	119,074	2.31	13.00	.30
Customers' Deposits	14,500	.28	9.00	.03
Deferred Taxes	299,895	5.81	0.00	0.00
Common Equity	1,854,906	35.91	14.25	5.11
Total	$5,164,856	100.00		9.61%

Rate Case Summary

From the calculations contained in Appendix I (Rate Base) and Appendix II (Operating Income) and from the Capitalization schedule set out in the rate of return section of this decision, the following summary of the revenue requirements, as decided herein, is generated.

(000 Omitted)

	Electric	Gas	Total
Rate Base (Appendix I)	4,213,475	798,043	5,011,518
Rate of Return (see discussion)	9.61%	9.61%	9.61%
Income Requirement	404,915	76,692	481,607
Pro Forma Operating Income (Appendix II)	331,914	50,092	382,006
Income Deficiency	73,001	26,600	99,601
Tax Factor	2.12	2.12	2.12
Revenue Requirement	154,762	56,392	211,154

Conclusion

Based on the foregoing and after consideration of the entire record in this proceeding, I FIND that:

1. The reasonable amount of the individual adjustments to rate base and pro forma operating income are as contained in Appendix I and Appendix II,

2. The proper adjustments to the Company's capital structure are as contained in the discussion of that subject herein.

3. The fair and reasonable rate of return on equity is 14.25% and the fair and reasonable overall rate of return is 9.61%.

Based on the above findings, I FIND and CONCLUDE that:

1. The reasonable level of rate base is $5,011,518,000.

2. The fair and reasaonable rate of return applicable to the rate base found reasonable herein is 9.61%

3. A level of reasonable operating expenses, as evidenced by the adjustments to pro forma operating income, produces pro forma utility operating income of $382,006,000.

4. Pro forma utility operating income of $382,006,000 would produce a rate of return of 7.4% which is less than the rate of return found reasonable herein and, therefore, petitioner's present rates are unreasonable.

5. Additional annual utility operating income of $99,601,000 would afford petitioner the opportunity to earn a rate of return of 9.61% which has been found reasonable herein.

6. Tariffs designed to produce $211,154,000 in additional annual revenues would produce $99,601,000 in additional annual utility operating income.

Based on the foregoing, it is HEREBY ORDERED that:

1. No increase in rates be permitted pending the decision of the rate design section of this decision.

2. Upon the effective date of this decision, Petitioner should include 20.941 mills of electric energycosts in base rates. In addition, $140 million of unrecovered electric energy costs is permitted to be recovered over 28 months through the Levelized Energy Adjustment Clause. The inclusion of 20.941 mills of electric energy costs in base rates and the recovery of the above $140 million will result in a Levelized Energy Adjustment charge for the period March 1, 1980 through June 30, 1980 of .2284 per KWH for Rate Schedule HTS customers and .2443 per KWH for all other customers.

3. Petitioner submit in its next rate case a lead-lag study to determine the proper level of cash working capital.

It is RECOMMENDED that:

1. The Board consider the initiation of an investigation which would further consider the alternative use of Liquified Propane Gas (LPG) to meet petitioner's peak day gas requirements.

EXHIBIT LIST

A copy of a list of the exhibits may be obtained from the court reporter.

This recommended decision may be affirmed, modified or rejected by the Board of Public Utilities, which by law is empowered to make a final decision in this matter. However, if the Board of Public Utilities does not act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT NO. PUC 877-79

I **HEREBY FILE** with the **Secretary of the Board of Public Utilities, Gerald A. Calabrese,** my Initial Decision in this matter and the record in these proceedings.

Feb. 6, 1980
DATE

DAVID MCGEE, A.L.J.

Receipt Acknowledged:

Feb. 6, 1980
DATE

AGENCY HEAD

Mailed to Parties:

Feb. 6, 1980
DATE

FOR OFFICE OF ADMINISTRATIVE LAW

gyd
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Appendix I

Rate Base (000 omitted)

	Company			ALJ Adjustments		
	Electric	Gas	Total	Electric	Gas	Total
Plant in Service	3,979,088	942,333	4,921,421	3,979,088	942,333	4,921,421
Held for future use	19,083	1,579	20,662	-	-	20,662
CWIP	1,214,887	8,457	1,223,344	12,470	9	1,235,823
Nuclear Fuel						
In Reactor	22,300	-	22,300	-	-	22,300
In Process	105,185	-	105,185	-	-	105,185
Spent Fuel	2,624	-	2,624	-	-	2,624
Materials & Assem.	1,264	-	1,264	-	-	1,264
Total Plant	5,344,431	952,369	6,296,800	12,470	9	6,309,279
Depreciation Reserve	(1,197,720)	(375,946)	(1,573,666)	-	-	(1,573,666)
Accum. Amort. of						
Nucl. Fuel Assemb.	(18,008)	-	(18,008)	-	-	(18,008)
Cust. Advances	(17)	(49)	(66)	-	-	(66)
Net Plant	4,128,686	576,374	4,705,060	12,470	9	4,717,539
Working Capital						
1/8 of O&M Exp.	134,468	61,163	195,631	(134,468)	(61,163)	- 178871
Prepayments	3,160	733	3,893	-	-	3,893
Working Funds	6,554	130	6,684	-	-	6,684
Total Cash	144,182	62,026	206,208	(134,468)	(61,163)	10,577
Materials & Supplies	97,925	100,603	198,528	(15,729)	(39,034)	143,765
Total Working Capital	242,107	162,629	404,736	(150,197)	(100,199)	154,342
Net Plant & Working Capital	4,370,793	739,003	5,109,796	(137,727)	(100,188)	4,871,881
Current LEAC under rec. - Withdrawn						
Unamort-Unrecovered Fuel	20,367	3,160	23,527	-	-	23,527
Investments & Advances						
EDC	-	89,068	89,068	-	-	89,068
ETSC	-	80,499	80,499	-	-	30,499
EPC	-	1,434	1,434	-	-	~~1,434~~
Gross Receipts Tax						
Amort since 7/1/75	(31,155)	(14,933)	(46,088)	-	-	(46,088)
P.A. Gross Rec. Tax - Withdrawn						
Non-Juris. Cust.	(8,803)	-	(8,803)	-	-	(8,803)
Adjustments				(137,727)	(100,188)	
Rate Base	4,351,202	898,231	5,249,433	4,213,475	798,043	5,011,518
						5108476

Appendix II

Operating Income (000 omitted)

	Company Electric	Company Gas	Company Total	ALJ Adjustments Electric	ALJ Adjustments Gas	ALJ Adjustments Total
Test Year Oper. Inc.	273,404	54,613	328,017	273,404	54,613	328,017
Adjustments:						
1. Annual of Wages & Group Life Ins.	(8,230)	(3,873)	(12,103)	-	-	(12,103)
2. Payroll Tax Incr.	(446)	(182)	(628)	-	-	(628)
3. Elim of Term Bldg. Serv. Employees	1,145	539	1,684	-	-	1,684
4. Pension Exp. Incr.	(273)	(172)	(445)	-	-	(445)
5. Donations	(230)	(99)	(329)	-	-	(329)
6. BPU Asses. Incr.	(113)	(79)	(192)	-	-	(192)
7. EDC	-	3,231	3,231	-	-	3,231
8. Elim of Resale Cust.	(487)	-	(487)	-	-	(487)
9. Inclusion of AFDC	56,976	536	57,512	-	-	57,512
10. Exclusion of AFDC on Add. $250 M CWIP	(20,000)	-	(20,000)	20,000	-	-
11. Accel. of Amort. of Fuel	(2,629)	-	(2,629)	-	-	(2,629)
12. ETSC & EPC (AFDC & Exp)	-	4,503	4,503	-	2,052	6,553
13. Amort of Atlantic Aband.	(9,385)		(9,385)	717		(8,668)
14. Annual of Salem No. 2 - Withdrawn						
15. Kerr-McGee Interest	491		491	545		1,036
16. Elim of ISG/OPG Rev.		(11,058)	(11,058)	-	-	(11,058)
17. Gas Research Inst. Incr.	-	(123)	(123)	-	-	(123)
18. PA Gross Rec. Tax Removed	4,520	-	4,520	-	-	4,520
19. Con Ed Interest	163	-	163	109	-	272
20. PA Ut. Realty Tax Amort.	2,530	-	2,530	-		2,530
20a. Amort. of LEAC under rec. - Withdrawn						
21. Annual of AFDC	-	-	-	11,925	9	11,934
22. Withdrawn						
23. Withdrawn						
24. Adj. to Rate Case Exp.	76	32	108	-	-	108
25. Productivity Savings	427	21	448	-	-	448
26. Gain on Disposition of Property	138	33	171	-	-	171
27. Gain on Reacquisition	460	109	569	-	-	569
28. Pro Forma Interest Annual. resulting in tax saving	-	-	-	-	-	-
29. Nuclear Advertising	-	-	-	81	-	81
Adjustments (ALJ)				33,397	2,061	
Adjustments	25,133	(6,382)	18,551	58,510	(4,521)	53,989
	298,537	48,031	346,568	331,914	50,092	382,006
						[illegible]

JOINT POSITION OF PARTIES ON CERTAIN ISSUES

The undersigned Counsel agree without prejudice that the following agreement represents their position on selected issues in this proceeding, Docket No. 794-310. This agreement will be set forth in each brief of the undersigned Counsel as an indication that no controversy exists between the undersigned Parties as to the following items:

A. Rate Base

1. Plant Held for Future Use

The Company's rate base should include plant held for future use in the amount of $20,463,000, which represents the year end 1979 plant held for future use balance. While this amount includes an amount of gas plant held for future use, such inclusion is related to this issue exclusively and is not an indication of the appropriateness of any other issue or adjustment in this proceeding.

2. Construction Work in Progress

The Company's construction work in progress balance as of December 31, 1979 should be included in rate base. The construction work in progress balance should be reduced for retentions in the amount of $8,573,000, other CWIP accrued, $17,732,000, and suspended work in the amount of $193,000, for a total reduction of $27,498,000. The CWIP balance remains at issue since it could be affected if the Public Advocate's operating income adjustments for AFDC and Kerr-McGee are approved.

B. Operating Income Adjustments

1. Annualization of Wages and Group Life Insurance

The Company's pro forma adjustment for annualization of wages and group life insurance should be reduced by $76,000 to reflect the tax savings associated with capitalized wages and overheads. The pro forma adjustment for annualization of wages and group life insurance reducing operating income should be $11,651,000.

2. Payroll Tax Increase

The Company's pro forma adjustment reducing operating income to reflect payroll tax increase should be reduced by $213,000 to reflect the tax savings associated with capitalized wages and overheads. The appropriate adjustment reducing operating income for payroll tax increases is $631,000.

3. Pension Expense Increase

The Company's pro forma adjustment for pension expense increase which reduces operating income should be reduced by $132,000 to reflect the tax savings associated with capitalized wages and overheads. The pro forma adjustment for pension expense increases which reduces operating income should be $211,000. No Rate Base increase shall be made for adjustments 1,2 and

4. Pennsylvania Public Utility Realty Tax Amortization

Test year operating income should be increased by $2,530,000 to reflect an exclusion of the Pennsylvania public utility realty tax surcharge which occurred during the test period.

5. <u>Rate Case Expenses</u>

Test year operating income should be increased by $108,000 to reflect the Public Advocate's adjustment to amortize test year rate case expenses over 18 months.

6. <u>Productivity Savings</u>

Test year operating income should be increased by $448,000 to reflect productivity savings associated with efficiencies anticipated to occur in 1980.

7. <u>Gain on Disposition of Property</u>

Test year operating income should be increased by $171,000 to reflect in test year income, gains on the disposition of property sold by Public Service Electric and Gas Company.

8. <u>Gain on Reacquisition of Debt</u>

Test year operating income should be increased by $430,000 to reflect the gain which occurs when reacquiring debt securities.

9. <u>Kilowatthours Generated and Gas Sent Out</u>

The electric and gas line loss factors which affect kilowatthours generated and gas sent out are not in controversy, and no adjustment should be made to operating income for these items.

10. <u>Revenue Factor</u>

The composite electric and gas revenue factor which should be used as part of this proceeding is 2.12.

The numbers included in this Agreement are based upon 9 months actual, 3 months estimated data. When 12-month data is available, it should be used in place of the particular figures included in this Agreement.

The above Agreement on these issues reflects the position of the Parties for the exclusive purpose of this proceeding and is not to be used in any way in any subsequent proceedings as an indication of appropriate adjustments or as the positions of the Parties in those proceedings. Furthermore, the stipulated positions contained herein are a reflection of the Parties' positions on those particular issues and are not to be used in any way as an indication of any Party's position on any other issue in this proceeding which remains in controversy.

Lawrence R. Codey
Attorney for Public Service
Electric and Gas Company

Carla V. Bello, Deputy
Attorney General, on Behalf
of the Staff of the New Jer
Board of Public Utilities

Roger L. Camacho, Deputy
Public Advocate, on Behalf
of the Department of the
Public Advocate, Division of
Rate Counsel

ANNUAL AMORTIZATION ADJUSTMENT

Actual sendout July - December 1979	16,467,516
Estimated sendout July - December 1979	16,831,931
Ratio	97.8

$60,000 \div .978 = \$61,350$

State of New Jersey

DEPARTMENT OF PUBLIC UTILITIES
BOARD OF PUBLIC UTILITY COMMISSIONERS
101 COMMERCE STREET
NEWARK, NEW JERSEY 07102

5/19/78
LEGAL

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF AN INCREASE IN ELECTRIC AND GAS RATES AND FOR CHANGES IN THE TARIFFS FOR ELECTRIC AND GAS SERVICE, P.U.C.N.J. NO. 6, ELECTRIC, AND P.U.C.N.J. NO. 5, GAS, PURSUANT TO R.S. 48:2-21.	DECISION AND ORDER DOCKET NO. 7711-1107

Appearances (See attached Service List)

BY THE BOARD:

(Before Walter M. Braswell, Esq., and Edward D. Beslow, Esq., Hearing Examiners)

On November 21, 1977, Public Service Electric and Gas Company (hereafter referred to as Petitioner or Public Service) filed a Petition for authority to increase its electric and gas rates and change its tariffs for electric and gas service pursuant to R.S. 48:2-21. The proposed increased charges were designed to produce approximately $394,995,000 in additional operating revenues. The proposed increase for electric service to become effective December 22, 1977 was designed to produce approximately $304,351,000 in additional operating revenue on an annual basis. The proposed increase for gas service to become effective December 22, 1977 was designed to produce approximately $90,644,000 in additional operating revenue on an annual basis.

The Board, by Order dated December 6, 1977, suspended the proposed increases to April 22, 1978 and, at the same time, fixed January 4, 1978 as the initial hearing on the question of the justness and reasonableness of the proposed increases, changes and alterations in the tariffs of the Company. By Order dated April 27, 1978, the Board further suspended the effective date of the proposed increases until August 22, 1978. The Board appointed Walter M. Braswell, Esq., and Edward D. Beslow, Esq., as Hearing Examiners to preside over this matter. Approximately 20 hearings were held during the past five months. The record in this proceeding includes over 2,000 pages of transcript, as well as direct prefiled testimony of numerous witnesses and over 90 exhibits.

In addition to the active participation by the Company throughout these proceedings, there has also been the active participation by the Board's Staff, the Department of the Public Advocate (Public Advocate), the Department of Energy (DOE), the Port Authority Transit Corporation (PATCO), Port Authority of New York and New Jersey (PANYNJ), Port Authority Trans-Hudson Corporation (PATH), Industrial Intervenors (I.I.), the General Services Administration on behalf of the Executive Agencies of the United States Government (GSA), Linden Chlorine Products, and the New Jersey Chapter of the National Association of Water Companies (Water Utilities).

On May 10, 1978, during a hearing conducted by this Board in this matter, all of the active parties in this proceeding presented a comprehensive Stipulation for consideration by the Hearing Examiners and the Board on all of the issues developed during this proceeding. This Stipulation of the parties sets forth their resolution of the test year, rate base, operating income, capitalization, rate of return, revenue requirements, rate design and tariff modifications. This Stipulation has been entered into by the parties after a review of the testimony of the Company witnesses and lengthy cross-examination, as well as consultation with various experts retained by the various participants in the proceeding. This Stipulation was entered as evidence in the proceeding as Joint Exhibit 1 (J-1) and provides for an increase in operating revenue for the Company of $153,118,000 (7.29%), with $130,744,000 (8.89%) allocated to electric and $22,374,000 (3.56%) allocated to gas.

On May 10, 1978, Everett L. Morris, Senior Vice President - Customer Operations and chief policy witness for the Company, testified that the Company was satisfied that the Stipulation represented a reasonable resolution of the issues. Robert Henkes of Touche Ross & Company, appearing as the accounting and revenue requirements expert on behalf of the Public Advocate, also testified that this Stipulation represented a reasonable resolution of the issues in this proceeding. During the course of this hearing on May 10, 1978, Counsel for all parties signing the Stipulation indicated that the Stipulation contained a resolution of the issues in this proceeding and that such resolution of the issues was reasonable. In addition, all such Counsel recommended that this Stipulation be the basis of the Board's Final Order in this matter. No active party in this proceeding objected to the entering of the Stipulation or having the Stipulation form the basis of the Board's Final Order in this proceeding.

Counsel for the Company and for the Department of the Public Advocate also indicated that two issues raised by the Public Advocate should be continued as a Phase II of this proceeding. The two issues relate to the construction audit presently being conducted on behalf of the Public Advocate by Theodore Barry & Associates on Salem Unit No. 1 and the appropriate depreciation rate for nuclear generating facilities. The impact of a final determination by the Board on these issues, if any, would be reflected in the next rate proceeding.

The Board has reviewed all of the evidence in this proceeding and the Stipulation presented by the active parties in this proceeding. The Board is satisfied that the Stipulation represents a reasonable resolution of the issues in this proceeding and notes that, except where the Stipulation particularly states, the resolutions of the various issues contained in the Stipulation are not binding on the parties or the Board in any future proceeding. The Board finds the whole Stipulation, as an entity, is reasonable and in the public interest. The parties are commended for their cooperative attitude throughout the case and in particular for their work in preparing this joint Stipulation.

Certain elements of the Stipulation should be specifically addressed before the Stipulation is accepted by the Board and used as a basis for resolving the issues in this proceeding. The Board notes that paragraph No. 1 of this Stipulation concerns the treatment in this proceeding for Atlantic Generating Station. The parties have agreed that there shall be no revenue requirements associated with Atlantic Generating Station in this proceeding. The parties have also agreed for rate case purposes that in all subsequent rate case proceedings if Atlantic Generating Station is abandoned before January 1, 1980, all legitimate costs, including the appropriate

AFDC, should be amortized over a 20-year period, beginning with the first rate order received after the project's cancellation. The resolution of the legitimate or appropriate costs to be charged against ratepayers in the event of cancellation is specifically reserved and is not determined by the stipulation or by the Board's acceptance of it. Furthermore, it has been agreed that the unamortized portion of this abandonment loss will not be included in rate base during the period of the amortization. This potential treatment of abandonment loss is consistent with previous Board policy which has allowed amortization of such losses over reasonable periods but has excluded the unamortized portion from rate base (Newbold Island, Docket No. 744-335). The Board herein notes that all parties signing this Stipulation will be bound by this paragraph in all future rate proceedings before this Board.

One of the key elements in every rate proceeding has been the finding and determination of a fair and reasonable rate of return for the utility. As part of this proceeding, the parties have stipulated that the fair and reasonable rate of return for the Company, as a result of this proceeding, is 8.83%, which is identical to that return found fair and reasonable in the Company's last rate proceeding (Docket No. 761-8). It is also noted that the return on equity provided for in this joint Stipulation is 13%, which, again, is the same return found fair and reasonable by the Board in the Company's last rate proceeding.

Several rate design issues, including cost-of-service study allocation methodology, were raised during the course of this proceeding and resolved by way of this joint Stipulation. The pre-existing rate design objectives of this Board have been maintained in that this Stipulation provides for the further reduction of the number of blocks in the tariffs, thereby flattening the charges, the maintenance of electric summer/winter differentials, the extension of that concept to the Company's largest electric customer classification, High Tension Service (HTS), and the implementation of full time-of-day rates for this service classification. In addition, the Company has proposed in this proceeding and all the parties have agreed that an optional electric residential time-of-day rate schedule would be offered to residential customers.

The Board views this movement to an optional time-of-day residential rate schedule as being in the public interest. Implementation of this rate schedule will not only give some residential customers with specific load characteristics an opportunity to save money and shift load, but also will provide this State and Petitioner with valuable information concerning the economics and impacts of residential time-of-day pricing.

The Board has been concerned about the effect which increasing energy prices have had on all consumers and, more particularly, on houses of worship. As part of the joint Stipulation, Petitioner has agreed to do a market research on such facilities to determine present load characteristics and the applicability of time-of-day rates. The Board expects this study to be undertaken as expeditiously as possible, and information should be filed with the Board's Staff as it becomes available.

The joint Stipulation also provides for the Company to perform, in connection with the next filing of a rate case, alternate electric cost-of-service studies. This will allow the Board and all parties to investigate in the next rate proceeding alternate cost-of-service methodologies.

The Board should also note that the Stipulation has addressed the particular operating problems unique to rail rapid transit. The Board finds the Stipulation to be a reasonable resolution of those problems but retains its interest in this area for review of the methodology in subsequent Public Service proceedings. The Stipulation also provides for a credit to water utilities equal to the amount of gross receipts and franchise tax associated with their contribution of revenue to Petitioner. This issue is generic to the utility industry; and, while the treatment in this Stipulation for this limited purpose is appropriate under N.J.S.A. 54:30A-49 et. seq., the generic impacts of this issue may be given further consideration by the Board.

Based on the entire record in this proceeding, including the joint Stipulation of the parties, the Board FINDS AND DETERMINES that:

1. A fair value rate base for Petitioner in this proceeding is $4,450,482,000.

2. The fair and reasonable rate of return of Petitioner for this proceeding is 8.83%.

3. The operating income requirement for the test year July 1, 1977 to June 30, 1978 is $392,978,000.

4. The pro forma operating income for Petitioner for the test period July 1, 1977 to June 30, 1978 is $323,379,000.

5. The additional revenue requirement for the Company to earn 8.83% on a rate base of $4,450,482,000 is $153,118,000, an increase in revenues of 7.29% allocated $130,744,000 (8.89%) to electric and $22,374,000 (3.56%) to gas.

6. The schedules designated A, B and C, attached hereto and made a part hereof, reflect the appropriate rate base (Schedule A), operating income (Schedule B) and revenue requirements (Schedule C).

7. The tariffs and the proof of revenue exhibit filed with the Stipulation as Attachment A and Attachment B, respectively, are just and reasonable and are accepted for filing to be effective for consumption on or after June 1, 1978.

The Board HEREBY ACCEPTS the tariffs contained in the tipulation (Exhibit J-1, Attachment A) to be effective for consump-ion on or after June 1, 1978. It is HEREBY ORDERED that Petitioner ublish notice of the new electric and gas charges in newspapers having daily circulation within Petitioner's service territory. This notice hould appear at least five days prior to the implementation of the new ates. Petitioner is also ordered to file with the Board and all rties to this proceeding by July 15, 1978 proposed charges for Rate hedule Residential Load Management (RLM).

All of the active parties in this proceeding concur with the rm and entry of this Order.

TED: May 19, 1978

BOARD OF PUBLIC UTILITIES
BY:

GEORGE H. BARBOUR
PRESIDENT

RICHARD B. McGLYNN
COMMISSIONER

TEST:

GERALD A. CALABRESE
SECRETARY

EDWARD H. HYNES
COMMISSIONER

Schedule A

STIPULATED RATE BASE - JUNE 30, 1978
(Thousands of Dollars)

	Electric	Gas	Total
lant in Service	$ 3 758 010	$ 874 648	$ 4 632 6
eld for Future Use	21 683	1 579	23 2
onstruction Work In Progress	788 978	10 723	799 7
uclear Fuel - In Reactor	20 316	-	20 3
uclear Fuel - In Process	87 824	-	87 8
Total Plant	4 676 811	886 950	5 563 7
epreciation Reserve	(1 040 130)	(328 729)	(1 368 8
ustomers Advances for Construction	(1 804)	(42)	(1 8
ccumulated Amortization of Nuclear Fuel Assemblies	(11 651)	-	(11 6
Net Plant	3 623 226	558 179	4 181 4
orking Capital:			
1/8 of O&M Expenses	100 601	49 628	150 2
Materials and Supplies	63 327	34 991	98 3
Total Working Capital	163 928	84 619	248 5
et Plant and Working Capital	3 787 154	642 798	4 429 9
ime of Day Meters	1 215	-	1 2
namortized Unrecovered Fuel Cost (Net)	27 298	4 461	31 7
nvestments and Advances:			
Energy Development Corporation	-	47 472	47 4
ross Receipts Tax Amortized since 7/1/75	(19 303)	(9 251)	(28 5
ross Receipts Tax Collected in Advance of Payments	(16 146)	(6 845)	(22 9
UC Assessment Collected in Advance of Payments	(434)	(185)	(6
onjurisdictional Customers	(7 752)	-	(7 7
	$ 3 772 032	$ 678 450	$ 4 450 4

STIPULATED PRO FORMA OPERATING INCOME
TWELVE MONTHS ENDING JUNE 30, 1978
(Thousands of Dollars)

	Electric	Gas	Total
Operating Income	$242 624	$51 600	$294 224
1. Wage Annualization and Normalization	(6 268)	(3 070)	(9 338)
Related Federal Income Taxes	3 009	1 473	4 482
2. Payroll Tax Increase	(1 398)	(681)	(2 079)
Related Federal Income Taxes	671	327	998
3. Pension Expense Increase	(1 941)	(897)	(2 838)
Related Federal Income Taxes	931	431	1 362
4. Donations	(323)	(138)	(461)
Related Federal Income Taxes	155	66	221
5. PUC Assessment Increase	(836)	(355)	(1 191)
Related Federal Income Taxes	402	170	572
6. Energy Development Corporation Net Earnings	-	1 208	1 208
7. Eliminate Resale Customers - Net	(334)	-	(334)
8. Include Test Year AFDC	31 376	634	32 010
9. Pre-sort discount related to customer bills	69	57	126
Related Federal Income Taxes	(33)	(27)	(60)
10. Amortization of Tocks Island Abandonment loss over 3 years	(178)	-	(178)
11. Withdrawn	-	-	-
12. Additional amortization of unrecovered electric fuel costs	(792)	-	(792)
Related Federal Income Taxes	380	-	380

STIPULATED PRO FORMA OPERATING INCOME
TWELVE MONTHS ENDING JUNE 30, 1978
(Thousands of Dollars)

	Electric	Gas	Total
13. Amortization of unrecovered gas fuel costs over 3 years	$ -	$(4 289)	$ (4 289)
Related Federal Income Taxes	-	2 059	2 059
14. Withdrawn	-	-	-
15. Pennsylvania Gross Receipts Tax	2 719	-	2 719
Related Federal Income Taxes	(1 305)	-	(1 305)
New Adjustments			
Gains on Sales of Property	274	31	305
Related Federal Income Taxes	(82)	(9)	(91)
Rate Case Expenses amortized over two years	288	124	412
Related Federal Income Taxes	(138)	(60)	(198)
Productivity Increases	96	89	185
Related Federal Income Taxes	(46)	(43)	(89)
Electric Revenue Growth	7 135	-	7 135
Related Federal Income Taxes	(3 425)	-	(3 425)
Essex 1 and Burlington 5 Inactive Status	587	-	587
Related Federal Income Taxes	(282)	-	(282)
Retirement of Paterson Gas Plant	-	1 703	1 703
Related Federal Income Taxes	-	(817)	(817)
Reduced Level of Employees	590	290	880
Related Federal Income Taxes	(283)	(139)	(422)
Operating Income After Stipulations	$273 642	$49 737	$323 379

Schedule C

STIPULATED REVENUE REQUIREMENT
(Thousands of Dollars)

	Electric	Gas	Total
e Base	$3 772 032	$678 450	$4 450 482
e of Return	8.83	8.83	8.83
rating Income Requirement	$ 333 071	$ 59 907	$ 392 978
Forma Operating Income	273 642	49 737	323 379
rating Income Deficiency	$ 59 429	$ 10 170	$ 69 599
enue Factor	2.200	2.200	2.200
Revenue Deficiency	$ 130 744	$ 22 374	$ 153 118

In the Matter of the Petition of Public Service Electric and Gas Company for an Increase in Rates. Docket No. 7711-1107.

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January 23, 2017

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition of The York Water Company for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Cost of Certain Customer-Owned Service Line Replacements to the Company's Services Account
Docket No. P-2016-2577404

Dear Secretary Chiavetta:

Enclosed please find the Joint Petition for Settlement and Request for Certification Pursuant to 52 Pa. Code § 5.531 in the above-referenced proceeding. As explained in the Joint Petition, the parties respectfully request that Administrative Law Judge Elizabeth H. Barnes (the "ALJ") certify the Settlement to the Pennsylvania Public Utility Commission ("Commission"), pursuant to 52 Pa. Code § 5.531, and that the Commission approve the Settlement expeditiously, preferably no later than the Commission's public meeting on January 26, 2017.

Expedited consideration and approval is necessary and in the public interest. York Water has committed to replacing all 1,660 Company-owned lead service lines in the next four years and seeks to begin that work immediately while contractors are available in the winter months. It is more cost-efficient to replace the Company-owned service line and the customer-owned service line at the same. Moreover, if a customer-owned lead service line is not replaced at the same time as the Company-owned service, there may be concerns about increased exposure to lead. Thus, in the interest of public safety, the Commission should approve the Settlement on an expedited basis.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Michael W. Hassell

Michael W. Hassell

MWH/skr
Enclosure

cc: Honorable Elizabeth Barnes
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

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Harrisburg, PA 17101-1923

Date: January 23, 2017

Michael W. Hassell

Michael W. Hassell

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of The York Water Company for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Cost of Certain Customer-Owned Service Line Replacements to the Company's Services Account	:	Docket No. P-2016-2577404

JOINT PETITION FOR SETTLEMENT AND REQUEST FOR CERTIFICATION PURSUANT TO 52 PA. CODE § 5.531

TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

I. INTRODUCTION

The Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission"), the Office of Consumer Advocate ("OCA"), and The York Water Company ("York Water" or the "Company"), parties to the above-captioned proceeding (hereinafter collectively referred to as the "Joint Petitioners"), hereby join in this Joint Petition for Settlement ("Settlement") and respectfully request that Administrative Law Judge Elizabeth H. Barnes (the "ALJ") certify the Settlement to the Commission, pursuant to the provisions of 52 Pa. Code § 5.531, and that the Commission approve the Settlement on an expedited basis, preferably no later than the Commission's public meeting on January 26, 2017, as set forth below.

In support of the Settlement, the Joint Petitioners state the following:

II. BACKGROUND

1. York Water is a public utility engaged in the business of supplying water and wastewater service in Pennsylvania subject to the regulatory jurisdiction of the Commission. *See* 66 Pa. C.S. § 102. York Water provides water service to approximately 66,100 customers throughout its certificated service territory, which includes the City of York and surrounding municipalities in portions of York and Adams Counties, Pennsylvania. York Water provides wastewater service to approximately 642 customers in portions of York County.

2. On November 28, 2016, York Water filed a Petition requesting the Commission to issue an Order on an expedited basis[1] that: (1) grants limited waivers of certain tariff provisions to permit the Company to replace customer-owned service lines made of lead; and (2) grants accounting approval to record the cost of replacement of customer-owned services made of lead to the Company's Services Account – Account No. 333.

3. The purpose of the Petition is to facilitate York Water's replacement of customer-owned lead service lines that the Company encounters while replacing its approximately 1,660 Company-owned lead service lines over the next four years ("Phase 1"), as well as the replacement of any additional customer-owned lead service lines whenever they are discovered and regardless of the material used for the Company-owned service line ("Phase 2").

4. On December 19, 2016, OCA and I&E each filed an Answer to the Petition.

5. A prehearing conference was scheduled for January 12, 2017. The Joint Petitioners filed prehearing memoranda identifying potential issues and witnesses.

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[1] The Company sought an Order granting the requested waiver, following consideration by the entire Commission, at the Commission's public meeting on December 22, 2016. Considering that date has passed and York Water's pressing need for the requested tariff waivers, the Joint Petitioners respectfully request that the Commission issue an Order granting York Water's Petition, as modified by and consistent with the Settlement, preferably no later than the Commission's public meeting on January 26, 2017.

6. The Joint Petitioners held numerous settlement discussions over the course of this proceeding. As a result of those discussions and the efforts of the Joint Petitioners to examine the issues in the proceeding, the Joint Petitioners have been able to agree to a settlement of all issues.

7. On January 18, 2017, the parties informed the ALJ that a settlement in principle of all issues had been reached.

8. The Settlement terms are set forth in the following Section III.

III. SETTLEMENT

9. The following terms of this Settlement reflect a carefully balanced compromise of the interests of all the Joint Petitioners in this proceeding. The Joint Petitioners unanimously agree that the Settlement, which resolves all issues in this proceeding, is in the public interest. The Joint Petitioners respectfully request that York Water's Petition for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Cost of Certain Customer-Owned Service Line Replacements to the Company's Services Account be granted subject to the terms and conditions of this Settlement specified below:

A. PHASE 1 REPLACEMENTS

10. York Water shall be granted a limited waiver of Rule 3.4 of its tariff so that it may replace lead customer-owned service lines that are discovered when the Company replaces the approximately 1,660 lead Company-owned service lines that exist in the Company's system.

11. This waiver shall be limited to those customers affected by York Water's lead Company-owned service replacement plan and does not change the rules regarding a customer's obligation to replace or repair leaking or otherwise defective customer-owned service lines unrelated to the replacement plan.

12. If a lead customer-owned service line that qualifies as a Phase 1 replacement is leaking or otherwise defective at the time it is discovered, the customer will not be required to repair the line prior to it being replaced by York Water.

13. Subsequent to replacing the customer-owned service lines, the customers' ownership of and duty to maintain the service lines will remain unchanged.

14. York Water shall replace these customer-owned service lines at its initial expense and shall record the costs of the Phase 1 replacements as a regulatory asset, to be recovered in future base rate proceedings as detailed in Subsection III.C. of this Settlement.

B. PHASE 2 REPLACEMENTS

15. York Water shall be granted a limited waiver of Rule 3.4 of its tariff so that it may, from time to time, replace lead customer-owned service lines whenever they are discovered, regardless of the material used for the Company-owned service line.

16. The Company shall make a payment towards the replacement cost of the lead customer-owned service line up to an amount not to exceed the Company's average contracted cost for replacing the customer-owned lead service in the year the replacement is made. For 2017, the average contracted cost is $1,150 for a service line replacement under 10 feet and $1,250 for a service line replacement over 10 feet. Customers shall be permitted to pay any difference as a lump sum, or as an amount added to the customer bill, to be paid over a reasonable period not to exceed one year. If the difference is included on the customer bill, the provisions of 52 Pa. Code § 56.23 shall apply, and the Company shall not terminate for non-payment of the amount included on the customer's bill. The Company agrees not to charge interest on any payment period for the difference, other than interest for late payment. If the Company is unable to collect the difference from a customer and the difference or any portion is

written off as uncollectible, York Water will be permitted to include the uncollected amount in the regulatory asset account established pursuant to Paragraph 29.

17. If York Water uses its own contractors to replace the lead customer-owned service line (see Petition at 6), there will be a 12-month warranty from the contractor and the customer will be required to sign an agreement authorizing York Water or its contractors to enter the customer's property to replace the service line. The Company will restore the property as nearly as practicable to its former condition.

18. York Water shall only make payments toward the cost of up to 400 Phase 2 replacements each year from the date a Commission order approving this Settlement is entered; provided, however, that York Water may petition the Commission to increase this number if it demonstrates that 400 per year is inadequate to replace all requests for replacement. All parties reserve their rights to support or oppose such petition.

19. In the event less than 400 customer-owned services are replaced in a year, the difference between 400 and the actual number replaced shall be added to the number of Phase 2 replacements that may be undertaken in subsequent years.

20. In the event the number of eligible Phase 2 replacements exceed the number of replacements authorized under Paragraphs 20 and 21 above, York Water will process requested replacements on a first-come, first served basis; provided, however, that if water test results reveal an exceedance of 15 parts per billion ("ppb"), then York Water may prioritize such customer for replacement.

21. This waiver shall be effective for nine years from the date a Commission order approving this Settlement is entered. York Water may petition the Commission to extend the term of the Phase 2 waiver. All parties reserve their rights to support or oppose such petition.

22. This waiver shall be limited to those customers with a lead customer-owned service line not connected to a lead Company-owned service line and does not change the rules regarding a customer's obligation to replace or repair leaking or otherwise defective customer-owned service lines.

23. If a lead customer-owned service line that qualifies as a Phase 2 replacement is leaking or otherwise defective at the time it is discovered, the customer will not be required to repair the line prior to it being replaced by York Water.

24. Subsequent to replacing the customer-owned service lines, the customers' ownership of and duty to maintain the service lines will remain unchanged.

25. York Water shall replace these customer-owned service lines at its initial expense and shall record the costs of the Phase 2 replacements as a regulatory asset, to be recovered in future base rate proceedings as detailed in Subsection III.C. of this Settlement.

26. If a customer has replaced their customer-owned lead service line in the past 4 years, and the Company's representative visits the site and determines that the service line has been replaced, and the customer provides the Company with a paid invoice, a certification from a certified plumber, and other documentation as determined by the Company, the Company will offer a cash payment as follows: between 3 and 4 years from date of this agreement: 20% of Company's current contractor lump sum rate; between 2 and 3 years: 40%; between 1 and 2 years 60%; and in the past year: 80%. Payment not to exceed actual cost on invoice.

C. RATE TREATMENT

27. The Joint Petitioners agree that York Water shall be permitted to record the cost of all customer-owned service line replacements to a regulatory asset account. York Water will be permitted to amortize the amounts booked to the regulatory asset account in a base rate proceeding over a reasonable period to be not less than four years and not to exceed six years.

No amortization will commence until the effective date of new rates in a base rate proceeding that establishes the amortization. The regulatory asset account will remain in place until all eligible costs are finally amortized. Because costs may be booked to the regulatory asset account for up to nine years, York Water will reconcile amounts amortized to amounts incurred, and the difference shall continue to be amortized in subsequent base rate proceedings. York Water agrees that it will not be permitted to recover interest or return on any unamortized balance.

28. The allocation among customer classes of the recovery of amortized costs will be determined in a base rate proceeding.

29. If the Commission subsequently permits any other water utility in Pennsylvania to capitalize for ratemaking purposes the costs of replacing customer-owned service lines made of lead, York Water shall be permitted to file a petition requesting that the Commission: (1) amend its Order approving this Settlement only as it pertains to the rate treatment of such costs to the extent not already collected in rates through the amortization; and (2) permit York Water to capitalize the Phase 1 replacement costs and/or Phase 2 replacement costs to its services account on a going-forward basis to the extent not already collected in rates through the amortization. All parties reserve their rights to support or oppose such petition if filed. Such amendment of the Commission's Order approving this Settlement shall not enable any of the Joint Petitioners to withdraw from the Settlement, as provided in Paragraph 43 herein.

D. OTHER PROVISIONS

30. York Water agrees to provide the other Joint Petitioners and the Commission annually a report on the number of Company-owned and customer-owned services replaced, and the cost of replacements, broken down by customer rate category (*i.e.*, residential, commercial, industrial).

31. York Water agrees to provide the other Joint Petitioners and the Commission annually an accounting of the cost of the tap water billing credit provided pursuant to Paragraphs 3(a)(vi) and (b)(iii) of the Consent Order and Agreement ("COA") with the Department of Environmental Protection ("DEP") dated December 23, 2016, which is attached hereto as **Appendix A.**

32. York Water agrees to provide the other Joint Petitioners with a copy of the evaluation of its corrosion control treatment system that it is required to perform under Paragraph 3(f) of the COA.

33. York Water shall undertake appropriate customer outreach efforts to advise customers to check their services for the possibility of lead. The customer outreach efforts will be an ongoing effort. Upon receipt of a customer report of a lead customer-owned service, York Water will dispatch York Water personnel to check the report and, if appropriate, to offer a kit for the customer to take a water sample that will then be tested for lead by York Water. If the result of York's inspection confirms that there is a lead customer-owned service line, then York agrees to proceed with replacement as described above. York Water shall report on its outreach efforts and results to the other Joint Petitioners and the Commission every six months.

34. York Water commits to search for opportunities for low or no cost funding of the cost of replacement of lead customer-owned services, including grants and loans. This commitment will run for as long as the waivers described above are in place. Any grants obtained for payment of replacement of lead customer-owned services shall be booked to the regulatory asset account, as an offset to costs. York Water agrees to include information regarding any funding it receives in its report it will be providing to the Joint Petitioners and to the Commission on an annual basis.

IV. REQUEST FOR CERTIFICATION OF SETTLEMENT

35. The Joint Petitioners respectfully request that the ALJ certify the stipulated record and this Settlement to the Commission pursuant to the provisions of 52 Pa. Code § 5.531. This request for expedited consideration is made in order to allow York Water to immediately begin work on Phase I replacements. As explained in the Petition, York Water has committed to replace all of the 1,660 Company-owned services in the next four years and desires to begin such replacements immediately. However, recent studies indicate that there may be concerns about increased exposure to lead through construction if a lead customer-owned service is permitted to remain in place when the Company-owned service is being replaced. In addition, replacement of a lead customer-owned service at the time a lead Company-owned service is being replaced is cost-efficient.

V. SETTLEMENT IS IN THE PUBLIC INTEREST

36. This Settlement was achieved by the Joint Petitioners after an investigation of York Water's filing, including informal discovery and settlement discussions.

37. Acceptance of the Settlement will avoid the necessity of further administrative and possibly appellate proceedings regarding the settled issues.

38. Acceptance of the Settlement will enable York Water to proceed with its plan to replace customer-owned service lines made of lead, thereby: (1) producing cost efficiencies by performing the Phase 1 replacements at the same time York Water is replacing its Company-owned service lines made of lead; and (2) the improving the safety and quality of York Water's service for customers.

39. This Settlement recognizes and will allow for York Water to take measures outlined in the COA.

40. The Joint Petitioners have submitted, along with this Settlement, their respective Statements in Support setting forth the basis upon which each believes the Settlement to be fair, just and reasonable, and therefore in the public interest. The Joint Petitioners' Statements in Support are attached hereto as **Appendices B** through **D**.

VI. CONDITIONS OF SETTLEMENT

41. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from this Settlement and may proceed with litigation and, in such event, this Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five business days after the entry of any Order modifying the Settlement.

42. If the matter remains with the ALJ for the issuance of an Initial Decision, and the Initial Decision approves the Settlement without modification, the Joint Petitioners waive their right to file any exceptions to the Initial Decision.

43. The Joint Petitioners acknowledge and agree that this Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

44. This Settlement and its terms and conditions may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

45. The Commission's approval of the Settlement shall not be construed to represent approval of any Joint Petitioner's position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement in this and future proceedings involving York Water.

46. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the position(s) that would have been advanced by any Joint Petitioner in this proceeding if it were fully litigated.

47. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner which is fair and reasonable. The Settlement is the product of compromise between and among the Joint Petitioners. This Settlement is presented without prejudice to any position that any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of this Settlement. This Settlement does not preclude the Joint Petitioners from taking other positions in any other proceeding involving another public utility.

WHEREFORE, the Joint Petitioners, by their respective counsel, respectfully request as follows:

1. That the Honorable Administrative Law Judge Elizabeth H. Barnes certify this Settlement to the Commission and that the Commission approve this Settlement including all terms and conditions thereof without modification;

2. That the proceeding at Docket No. P-2016-2577404 shall be marked closed.

3. That the Commission enter an expedited Order approving York Water's requested tariff waivers and accounting treatment, as modified by and consistent with this Settlement, preferably no later than the Commission's public meeting on January 26, 2017.

Respectfully submitted,

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For: The York Water Company

Date: 1/23/2017

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held March 2, 2017

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
John F. Coleman, Jr.
Robert F. Powelson, Statement
David W. Sweet

Petition of The York Water Company for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Costs of Certain Customer-Owned Service Line Replacements to the Company's Service Account — P-2016-2577404

ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) is the Recommended Decision of Administrative Law Judge (ALJ) Elizabeth H. Barnes recommending approval of a Joint Settlement Petition (Settlement) of all parties to a case filed by the York Water Company ("York Water" or "Company"). The Settlement seeks expedited approval of two issues: (1) a waiver of the portion of York Water's tariff that does not allow the Company to bear the costs associated with the replacement of customer-owned lines and (2) approval to record the associated costs as a regulatory asset to be amortized over a reasonable period as determined in the next base rate case.

As a water company subject to the Lead and Copper Rule (LCR) at 25 Pa. Code §§ 109.1101 through 109.1108, York Water must conduct periodic monitoring of the drinking water at consumer taps to determine the concentration of lead in the drinking water. The Company's most recent results for this test exceeded the lead action level set in the LCR. Consequently, the Pennsylvania Department of Environmental Protection (DEP) issued a Consent Order and Agreement (CO&A) requiring the Company to take specific action to reduce lead levels at customer taps.[1]

To that end, York Water filed a Petition for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Cost of Certain Customer-Owned Service Line Replacements to the Company's Services Account (Petition) on November 28, 2016. Specifically, York Water sought limited waivers of York Water Tariff Water – Pa. P.U.C. No 14, Supplement No. 68, Fourth Revised Page No. 10, Tariff Rule 3.4, which provides that customers are responsible for the installation, maintenance, and replacement of customer-owned service lines. York Water initially sought limited waivers of these tariff provisions in order to replace customer-owned lead service lines concurrent with its planned replacement of 1,660 Company-owned lead service lines over the next 4 years. Additionally, the Company requested an extended waiver of its tariff rule to replace customer-owned lead service lines when discovered, regardless of the material used for the Company-owned service line. York Water initially requested permission to capitalize these costs and an Order granting the waivers by December 22, 2016.

On December 19, 2016, the Commission's Bureau of Investigation and Enforcement (I&E) filed an Answer requesting discovery and an evidentiary hearing. On December 19, 2016, the Office of Consumer Advocate (OCA) filed an Answer, which generally supported the Petition but also expressed some reservations.

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[1] *In the Matter of: The York Water Company: Violations of the Pennsylvania Safe Drinking Water Act and Regulations,* PWSID No. 7670100, City of York, York County. *See also,* Stipulations of Fact, Exhibit B

On January 12, 2017, a prehearing conference was held and on January 23, 2017, the Company, OCA, and I&E (collectively, ("Joint Petitioners") filed the Settlement petition. Joint Petitioners also requested that ALJ Barnes certify the record to the Commission without issuing a decision in order to expedite the approval of the settlement on or before January 26, 2017. On January 26, 2017, a Secretarial Letter was issued by the Commission denying the request for certification of the record without a decision from the presiding officer and directing ALJ Barnes to prepare a Recommended Decision regarding the Joint Petition as expeditiously as possible. On February 6, 2017, ALJ Barnes issued the Recommended Decision approving the Petition as modified by the Settlement.

Background

York Water is a public utility engaged in the business of supplying water and wastewater services to approximately 66,100 customers in York and Adams Counties, Pennsylvania. In September 2016, York Water completed its triennial water sampling required by the Environmental Protection Agency. The Company's tests concluded that 6 of the 50 buildings tested had samples greater than 15 parts per billion of lead. Consequently, York Water is presently subject to a CO&A with the DEP that requires the Company to take specific action to reduce lead levels at customer taps.[2] Pursuant to this CO&A, York Water plans to expeditiously replace the 1,660 Company-owned service lines known to be constructed of lead.

The York Water tariff divides ownership of service lines that deliver water to a customer's premises into two parts: one part is Company-owned and the other is customer-owned. The Company-owned line extends from the water main to the curb stop and curb box. The customer-owned line extends from the curb stop and curb box to the

[2] Consent Order and Agreement entered into on December 23, 2016.

premises. Under the existing York Water tariff, it is the customer's responsibility to own and maintain the customer-owned line.

The current York Water tariff does not permit the utility to replace a customer-owned service line at the Company's initial cost. Rule 3.4 of the tariff provides that "[e]ach Customer's Service Line shall be installed . . . by or on behalf of such Customer at his expense." Rule 3.4, Supp. No. 68 to Water Pa. P.U.C. No. 14, Fourth Revised Page No. 10.

Replacing the Company-owned lead lines addresses only part of the problem. Customer-owned lead lines also need to be replaced. Under York Water's existing tariff, replacement of customer-owned lead lines would depend upon each customer assuming the burden and full expense of the replacement. Rather than rely upon customers to replace their lead service lines, which would result in a haphazard approach, York Water proposes to assume that responsibility at its initial expense. While performing the replacement of the Company-owned lead service lines, York Water proposes to simultaneously replace the customer-owned portions of the lead service lines as they are discovered. In instances where the customer-owned lead service line is connected to a Company-owned non-lead service line, York Water would still replace customer-owned lead service lines, as they are discovered. York Water proposes to pay up to the Company's average contracted cost for replacing a customer-owned lead service.

Under the terms of the Settlement, the waiver allowing the Company to assume the initial cost of replacing customer-owned lines would not extend to line repair/replacement for reasons other than the presence of lead. The Settlement also addresses limitations on later replacements. Finally, the Settlement addresses the rate treatment of York Water's initial expense and requires the Company to record the costs as a regulatory asset, to be recovered in future base rate proceedings.

The ALJ recommended granting York Water's Petition, as modified by the Settlement. Specifically, the ALJ recommended granting a limited two-phase waiver from compliance with its Tariff Rule 3.4: (1) a four-year waiver involving the replacement, at the Company's initial cost, of lead customer-owned service lines discovered when the Company replaces its own lead service (Phase 1) and (2) a nine year waiver involving the annual replacement of customer-owned lead service lines as they are discovered (Phase 2).

Discussion

In light of the gravity of the situation, York Water requested, and the settling parties agreed to, a waiver of Tariff Rule 3.4. Historically, the Commission has granted tariff waivers in very limited circumstances.[3] Considering the important role of utility tariffs, waiving such provisions is generally disfavored as a matter of law and policy. Tariffs set forth in writing the rules and provisions by which a utility operates so as to provide the utility and the public with a transparent understanding of a utility's obligation to provide non-discriminatory service.[4] As such, it is more appropriate for York Water to make the changes agreed upon in the Joint Settlement Petition through a tariff revision.

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[3] *See Petition of Peoples Natural Gas Co., LLC for Approval of Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement*, Docket Nos. P-2013-2346161, *et al.* 2013 Pa. PUC LEXIS 543, at 95-97 (Order Entered May 23, 2013); *Petition of Columbia Gas of Pennsylvania, Inc. for Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement,* Docket No. P-000724337, 2008 Pa. PUC LEXIS 344, at 9 (Order Entered May 19, 2008).

[4] A public utility may not charge a rate other than the rates set forth in its tariff. 66 Pa. C.S. 1303A tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. *PPL Electric Utilities Corp. v Pa. PUC*, 912 A.2d 386 (Pa. Cmwlth. 2006). Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations and practices so that the public may inspect its contents. 66 Pa. C.S. 1302; 52 Pa.Code 53.25. The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. *Philadelphia Suburban Water Co. v. Pa PUC*, 808 A.2d 1044 (2002); Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pennsylvania Electric Co. v Pa PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); Tariff provisions previously approved by the Commission are prima facie reasonable. *Zucker v. Pa PUC*, 437 A.2d 1067 (Pa.Cmwlth. 1981)

This case needs to move forward, as York Water is already gearing up for construction to ameliorate a problem of the utmost importance to its customers. Further, the proposed course of action by York Water coordinates the replacement of Company-owned and adjoining customer-owned service lines. As such, delay of customer-owned line replacements can result in a delay of Company-owned replacements, unnecessarily stalling the actions necessary under the CO&A and potentially harming the health and safety of York Water's customers. The efficiency of this approach minimizes total costs, thereby providing better service to York Water customers, particularly to those who might find the total cost of replacing the customer-owned line to be burdensome or too expensive a task to undertake independently. Additionally, a "partial lead service line replacement" may not significantly reduce the lead level at the customer's tap, but may temporarily increase lead at the customer's tap due to disturbing the customer-owned service line during the partial replacement.[5]

Accordingly, in order to delay this matter no longer, the Joint Petition for Settlement will be treated as a petition for approval to file a tariff supplement, and will be approved as such.[6] York Water shall file a tariff supplement that reflects the terms of the Settlement, including sunset dates consistent with the parties agreed upon waiver expiration timelines, within seven days of entry of this Order. Once filed, the amended tariff will be effective upon three days' notice, which will give the Commission and the Joint Petitioners an opportunity to ensure that the proposed tariff is consistent with the Settlement.

In the meantime, recognizing the pressing health and safety issue at hand, as well as the delay that has ensued in addressing this case of first impression, we will grant York Water a temporary waiver of Tariff Rule 3.4. This waiver will expire upon the effective

[5] *See*, Stipulations of Fact, Item 67.

[6] The Joint Settlement Petition already includes all of the necessary agreements among the litigating parties, so there is no prejudice in treating the Joint Petition as a petition for approval to file a tariff supplement.

date of the tariff supplement required by this Order. The Commission has, in narrow circumstances, issued such time-limited waivers, and doing so here is necessary to allow York Water to begin work replacing customer-owned lead service lines immediately in the context of a DEP-issued consent order.[7] **THEREFORE,**

IT IS ORDERED:

1. That the Petition of The York Water Company for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Cost of Certain Customer-Owned Service Line Replacements to the Company's Service Account, as modified by the Joint Petition for Settlement and this Order, shall be treated as a petition for approval to file a tariff supplement.

2. That the Petition of The York Water Company for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Cost of Certain Customer-Owned Service Line Replacements to the Company's Service Account, as modified by the Joint Petition for Settlement in the nature of a petition for approval to file a tariff supplement and this Order, is approved.

3. That The York Water Company is granted a temporary waiver of Tariff Rule 3.4, which will expire upon the effective date of the tariff supplement required in Ordering Paragraph 4.

4. That The York Water Company is required to file a tariff supplement consistent with the Joint Petition for Settlement and the Commission's final Order in this

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[7] *Joint Application of West Penn Power Company and Airco Carbon Division, BOC Group, Inc., for Temporary Waiver of Maximum Electrical Demand Provisions of Utility Tariff for Temporary Provision of Electric Service to Airco Carbon Division, BOC Group, Inc.'s St. Marys, Pennsylvania Facility*, Docket No. A-111250F009, 1987 Pa. PUC LEXIS 319; 63 Pa. PUC 557 (Order Entered April 16, 1987).

matter within seven (7) days of entry of this Order, and which will be effective upon three (3) days' notice.

5. That The York Water Company will serve its tariff supplement on the Joint Petitioners, who will have three (3) days to object to the tariff as inconsistent with the Joint Petition for Settlement and the Commission's final Order.

6. That The York Water Company be permitted to book costs related to customer-owned lead service line replacements to a regulatory asset account.

7. That The York Water Company shall provide to the Joint Petitioners and to the Commission an annual report on the number of Company-owned service lines replaced, and the cost of replacements, broken down by customer rate class (i.e., residential, commercial, industrial).

8. That The York Water Company shall provide to the Joint Petitioners and to the Commission an annual accounting of the cost of the tap water billing credit provided pursuant to paragraphs 3(a)(i)(c) and (b)(iii) of the Consent Order And Agreement with the DEP dated December 23, 2016, attached as Exhibit A to the Settlement.

9. That The York Water Company shall provide the Joint Petitioners with a copy of the evaluation of its corrosion control treatment system that it is required to perform under paragraph 3(f) of the Consent Order and Agreement with DEP.

10. That The York Water Company shall search for opportunities for low or no cost funding of the cost of replacement of lead customer-owned services, including grants and loans. Any grants obtained for payment of replacement of lead customer-owned services shall be booked to the regulatory asset account, as an offset to costs. The York Water Company shall include information regarding any funding it receives in its annual

line replacement report provided to the Joint Petitioners and Commission. If no funding is available, The York Water Company shall include any evidence of attempts to obtain said funding.

11. That The York Water Company shall undertake appropriate customer outreach efforts to advise customers to check their services for the possibility of lead. Upon receipt of a customer report of a customer-owned lead service line, The York Water Company will dispatch The York Water Company personnel to check the report and, if appropriate, to offer a kit for the customer to take a water sample that will then be tested for lead by The York Water Company. If the result of The York Water Company's inspection confirms a customer-owned lead service line, then The York Water Company shall proceed with replacement as described in the Joint Petition for Settlement. The York Water Company shall report on its outreach efforts and results to the Joint Petitioners and the Commission every six months.

12. That the Bureau of Technical Utility Services shall monitor The York Water Company's annual reporting in conjunction with the Joint Petition for Settlement, as modified by this Order.

13. That this docket be marked closed.

BY THE COMMISSION,

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 2, 2017

ORDER ENTERED: March 8, 2017

2018 WL 3769897 (Mo.P.S.C.)

In the Matter of Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas

WR-2017-0285

Missouri Public Service Commission

July 19, 2018

ORDER APPROVING RECONCILIATION OF CONTESTED ISSUES

BY THE COMMISSION.

*1 At a session of the Public Service Commission held at its office in Jefferson City on the 19 th day of July, 2018.

Section 386.420.4, RSMo 2016, requires the Commission to prepare and approve a detailed reconciliation regarding the dollar value and rate or charge impact of the contested issues decided by the Commission in this rate case. The law requires the Commission to allow the parties an opportunity to provide written input regarding that reconciliation.

On June 29, 2018, Missouri-American filed a proposed reconciliation. The Commission directed any party wishing to respond to Missouri-American's proposed reconciliation to do so by July 13. The Office of the Public Counsel filed a response on July 13, in which it challenged Missouri-American's calculation of the amount it would earn in interest on lead service line costs. Any party wishing to do so was ordered to respond to Public Counsel by July 17. Missouri-American responded to Public Counsel on July 17, contending that Public Counsel's challenge to Missouri-American's calculation of interest earned on lead service line costs is incorrect and untimely. The controlling statute, section 386.420.4, RSMo, does not require the Commission to resolve the disagreement between Public Counsel and Missouri-American regarding the reconciliation. Instead, the statute says "[i]n the event there is any dispute over the value of a particular issue ... the commission shall also include in the reconciliation a quantification of the dollar value and rate or charge impact associated with the dispute." Consistent with that statute, the Commission finds that the reconciliation submitted by Missouri-American on June 29, subject to the dispute identified by Public Counsel, is an accurate representation of the revenue requirement impact of the issues decided by the Commission in its report and order. A copy of Public Counsel's reply filed on July 13, as well as Missouri-American's July 17 response to that reply, will be included as a supplement to the reconciliation. The Commission further finds that the submitted reconciliation, as supplemented, satisfies the requirements of Section 386.420.4, RSMo 2016.

THE COMMISSION ORDERS THAT:

1. The Reconciliation filed by Missouri-American Water Company on June 29, 2018, as supplemented, is approved.

2. This order shall be effective when issued.

Morris L. Woodruff

Secretary

Hall, Chm., Kenney, Rupp, Coleman, and Silvey, CC., concur.

Woodruff, Chief Regulatory Law Judge

End of Document

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA-AMERICAN WATER COMPANY, INC. ("INDIANA AMERICAN") FOR (1) APPROVAL OF ITS LEAD SERVICE LINE PLAN PURSUANT TO IND. CODE CHAP. 8-1-31.6 AND (2) APPROVAL OF ASSOCIATED CHANGES TO INDIANA AMERICAN'S RULES AND REGULATIONS FOR WATER SERVICE.	)	CAUSE NO. 45043 APPROVED: JUL 25 2018

ORDER OF THE COMMISSION

Presiding Officers:
Sarah E. Freeman, Commissioner
David E. Veleta, Senior Administrative Law Judge

On January 29, 2018, Indiana American Water Company, Inc. ("Indiana American") filed its Petition and case-in-chief requesting the Commission for certain approvals of its lead service line plan. On February 12, 2018, Citizen Action Coalition of Indiana ("CAC") filed its Petition to Intervene, which was granted by docket entry issued February 23, 2018. On February 26, 2018, Schererville Municipal Water Works ("Schererville") filed its Petition to Intervene, which was granted on the record at the prehearing conference and preliminary hearing.

On April 13, 2018, the Office of Utility Consumer Counselor ("OUCC"), filed its case-in-chief. On April 23, 2018, Indiana American filed its Rebuttal Testimony and Attachments in this Cause.

An evidentiary hearing in this Cause was held commencing at 9:00 a.m. on May 7, 2018 in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. Indiana American, the CAC, Schererville, and the OUCC appeared and participated in the hearing.

Based upon the applicable law and evidence, the Commission now finds:

1. **Notice and Jurisdiction.** Notice of the public hearing conducted herein was given by the Commission as required by law. Indiana American is a "public utility" within the meaning of that term in Indiana Code § 8-1-2-1. Under Indiana Code Chapter 8-1-31.6, the Commission has authority to approve a water utility's plan for the replacement of the customer owned portion of lead service lines within or connected to the water utility's system. Therefore, the Commission has jurisdiction over Indiana American and the subject matter of this proceeding.

2. **Indiana American's Characteristics.** Indiana American is an Indiana corporation engaged in the provision of water utility service to the public in and around numerous communities throughout the State of Indiana for residential, commercial, industrial, public authority, sale for

resale and public and private fire protection purposes. Indiana American also provides sewer utility service in Wabash and Delaware Counties.

3. **Relief Requested.** Petitioner requests that the Commission approve its Customer Lead Service Line Replacement Plan and an Addendum to Section 4 of its Rules and Regulations.

4. **Indiana American's Direct Evidence.** Indiana American presented the direct testimony of Stacy S. Hoffman, Director of Engineering for Indiana American.

A. **Indiana Code § 8-1-31.6-6(a).** Mr. Hoffman testified in support of Indiana American's Lead Service Line Replacement Plan ("Plan"). He testified that the Plan is being submitted under House Enrolled Act No. 1519 ("HEA 1519"). Mr. Hoffman explained Indiana HEA 1519 was signed into law by Governor Eric Holcomb on April 20, 2017, and became effective as of July 1, 2017. He further testified that HEA 1519 contains, among other items, the addition of a new chapter to the Indiana Code, Chapter 8-1-31.6 which establishes a process for water utilities to obtain the authority to replace customer owned lead service lines and recover a return of and on the investments made to replace these lines, even though the lines are not owned by the utility.

Mr. Hoffman testified that Indiana Code § 8-1-31.6-5(a) provides that:

> [b]efore a water utility may seek to include customer lead service line improvements as eligible infrastructure improvements for purposes of Indiana Code Chapter 8-1-31, the water utility must first obtain approval from the commission of the water utility's plan for the customer lead service line improvements. To seek approval of the water utility's plan for the customer lead service line improvements, the water utility shall file with the Commission a petition and case-in-chief, including the information set forth in section 6 [IC 8-1-31.6-6] of this chapter.

He further testified that Indiana Code Chapter 8-1-31.6 includes ten specific items that must be addressed in a water utility's plan for customer lead service line improvements. Mr. Hoffman also testified that the Plan addresses each of the ten items included in Indiana Code § 8-1-31.6-6 in its own separate section.

B. **Customer Lead Service Line Replacement Plan.** Mr. Hoffman testified that Attachment GMV-1 is the Customer Lead Service Line Replacement Plan prepared by Indiana American under HEA 1519. He testified that the Plan is designed to be the document that is followed when replacing customer owned lead service lines under HEA 1519. Mr. Hoffman further testified that Indiana American personnel met with Commission Staff, OUCC staff, and the Indiana Utility Consumer Counselor to explain the Plan and receive their feedback in an effort to ensure the Plan is responsive to the questions they had. He also testified that Indiana American met with James McGoff, the Indiana Finance Authority ("IFA") Director of Environmental Programs, in developing the Plan relative to availability of grants and/or low interest rate loans. Various contractors were also consulted.

Mr. Hoffman testified that a review of Indiana American's available historic service records indicates that 50,748 lead service lines from the distribution main to the property line may have been present at one time at the addresses identified. He explained that it is anticipated that the number of lead service lines originally identified from these records will be reduced because a number of these premises may no longer have service or may have been redeveloped with a new address and a new non-lead service line. Moreover, he testified that Indiana American could also discover an additional number of lead services through field investigations of both Indiana American-owned and customer-owned portions of the service lines.

Mr. Hoffman also testified regarding Indiana American's time range to complete the customer owned lead service line replacement. He explained that for purposes of this Plan, Indiana American is providing a range of time for completion of replacement of all customer owned lead service lines of anywhere from 10 years to 24 years. The total estimated cost to replace an estimated 50,748 customer owned lead services at an average cost of $3,500 per service in 2017 dollars is $177,618,000. The range of replacement annually would be 1,000 to 6,000 service lines per year, with an annual cost range of $5,250,000 to $17,500,000, again in 2017 dollars. Mr. Hoffman testified that Indiana American has provided such a wide range of time because there are a number of conditions that could affect the timeframe for completion of customer owned lead line replacement. He explained completion will be most affected by the availability of contractors to complete the lead service line replacement. Additionally, the timeframe will be affected by the availability of lower interest rates or no interest financing; the availability of additional capital investment funds from other sources; changes in the main replacement scheduling; the opportunity to take advantage of contractors already mobilized to complete additional lead service line replacements in the area; and the impact on customers, including service cost and local street impacts and closing, among other things. He testified that Indiana American intends to replace lead service lines as quickly as is practical and as efficiently as possible, but the actual time frame could vary due to a variety of reasons, several of which are outside of Indiana American's control.

C. <u>Addendum to Section 4 of Indiana American's Rules and Regulations.</u> Mr. Hoffman testified that Indiana American is proposing an Addendum to Section 4 of its Rules and Regulations to create a new Section 4.4 (included as Attachment GMV-2) as part of its Plan to address premise locations that have been disconnected and inactive for a period of 24 consecutive months or that have been physically disconnected from Indiana American's mains. He explained that Indiana American is seeking this change because it has a number of premises where lead service lines are believed to exist but that have not been connected for service for 24 months or more—essentially no customers exist for these services. Section 4.4 states that any premise (account) with a lead service line that is or becomes inactive for a period of 24 consecutive months or that has been physically disconnected from Indiana American's mains will not be eligible for service reconnection unless and until the customer replaces the customer portion of the lead service line. He further testified that Indiana American would install a new non-lead service line to the property and require the property owner to install the customer owned portion of the service line that meets current building code and Indiana American standards before new water service is connected. The customer would also be subject to a connection fee per Indiana American's approved tariffs. Mr. Hoffman testified that Indiana American does not feel that disconnected accounts should be included in the customer replacement, but if there is interest in connecting an account that has been inactive or vacant for a period of more than 24 months, Indiana

American looks to ensure that the lines providing water to that service meet today's standards and thus do not utilize any existing lead service lines. He further testified if the Addendum to Section 4.4 of Indiana American's Rules and Regulations were not approved at this time, a customer request to reconnect a service that has not been connected for service for 24 months or more would be granted by connecting the new non-lead Indiana American portion of the service line to the existing customer lead service line.

5. **<u>OUCC's Evidence</u>.** Cynthia M. Armstrong testified on behalf of the OUCC. She testified that Indiana American's Plan addresses the ten criteria included in Ind. Code § 8-1-31.6-6(a). However, the OUCC has concerns regarding both the lack of detail and supporting materials for information presented within the Plan and with Indiana American's proposed execution of certain components of the Plan. Ms. Armstrong testified that the OUCC does not want to prevent Indiana American from beginning its replacement of both company- and customer-owned lead service lines. Ms. Armstrong expressed the following concerns with Indiana American's Plan: (1) Indiana American's description of low interest loans or grants to fund the program; (2) how Indiana American plans to accomplish the replacement of customer owned lead service lines; (3) lack of measures to determine the efficacy of the program; (4) its communication plan to customers with lead service lines; (5) the estimated length and cost of the program; and (6) Indiana American's request to change the eligibility of service requirements for properties that have been inactive for 24 or more consecutive months.

Ms. Armstrong testified regarding the OUCC's concerns with Indiana American's description of low interest loans or grants to fund the program. She explained that the concern involves more the lack of detail describing other potential funding sources that could lower program costs. She testified that this could be rectified through an annual reporting process, where Indiana American provides a status update on its application for the low or zero interest loans or any grants the IFA is making available for lead service line replacement programs. Ms. Armstrong also testified regarding her concerns with how Indiana American plans to replace customer-owned service lines. She explained the main concern with the proposed Plan is that it does not appear to be based on the areas that may currently be the most at risk for higher lead levels. She testified that the replacement order of lead service lines proposed in the Plan is largely driven by Indiana American's existing prioritization model. She recommended that Indiana American be required to incorporate measured lead water levels, as well as the concentration of lead service lines within an area, into its prioritization model for infrastructure improvements. Additionally, she recommended that Indiana American's methods and progress toward incorporating these factors into its prioritization model be reported as part of the Annual Report she recommended for Indiana American's lead service line replacement program. Ms. Armstrong also testified regarding her concerns with the lack of measures to determine the efficacy of the projects. She recommended that Indiana American be required to conduct testing both before and after replacement on a certain percentage of residences participating in the lead service line replacement program. Ms. Armstrong further recommended that the results of such tests should be provided in the recommended Annual Report.

Ms. Armstrong also testified regarding her concerns with Indiana American's plan for communicating its lead service line replacement program and replacement efforts with customers through written materials. She testified that the information provided should be simple and easy to understand for all customers. She also testified that Indiana American should be focusing on the face-to-face element of communicating its lead service line replacement efforts with customers and other important state agencies or organizations, like the Indiana State Department Health. Ms. Armstrong explained that customers must be able to speak with Indiana American personnel or contractors who are qualified and knowledgeable enough on project specifics to provide answers to questions that may not easily be answered by the written materials. She also testified that she is concerned about the indemnification language in the agreement and recommended that it be removed from the Water Service Line Replacement agreement. Ms. Armstrong also expressed concerns with both the estimated program cost provided by Indiana American and the program length. She recommended that a reauthorization date of five years be placed on the Plan. Finally, she testified that she does not agree with Indiana American's proposal for Addendum 4.4 of its Rules and Regulations. She explained that the Addendum is not necessary for Indiana American to implement its program. She testified that the 24-month time frame for account inactivity seems arbitrary and could exacerbate urban blight in neighborhoods where there are multiple homes in foreclosure. Ms. Armstrong further testified that if a property re-activates its account, Indiana American can provide the customer with the appropriate educational materials and obtain the customer's signature of acknowledgement that Indiana American has informed the customer of the presence of the lead service line. She recommended that the Addendum 4.4 be denied.

6. <u>Indiana American's Rebuttal Testimony</u>.

A. <u>Information to be Supplied and 5-Year Sunset</u>. Mr. Hoffman provided rebuttal testimony on behalf of Indiana American. Mr. Hoffman testified that Indiana American is agreeable to providing various categories of information about Plan implementation that Ms. Armstrong outlines. He testified that she is correct that there are potentially other sources of funding that may become available. Mr. Hoffman explained that in Indiana American's Plan, Indiana American only covered those funding sources that are currently available, but it is agreeable to including status reports on financing options. He further testified that this information is probably most effectively communicated either in work papers or as additional attachments that Indiana American would submit in future DSIC cases. Mr. Hoffman testified that Ms. Armstrong's request that Indiana American follow up with the OUCC 60 days after submitting information is unnecessary because if Indiana American provides the information in the context of DSIC cases, Indiana American will already be in communication with the OUCC and there should be no need for an additional step in the process. Mr. Hoffman testified in response to Ms. Armstrong's request that the program approval sunset after five years. He explained that to make the Plan automatically sunset, and require all of the parties to reconvene for another approval case when no one has identified a need to reopen the Plan, strikes him as unnecessary.

B. <u>Additional Testing</u>. Mr. Hoffman testified regarding Ms. Armstrong's request for additional lead testing. He explained Indiana American already collects a first sample immediately after replacing the service line and flushing the service line and the household or facility plumbing system. He further testified that Indiana American also offers customers an opportunity to collect a second sample within 72 hours after the first sample. Mr. Hoffman explained that many customers have been accepting the second sample opportunity thus far, though some customers either do not accept it or do not follow through with the offer. He also testified that Indiana American continues system sampling and testing at various tier 1 sites defined by the Indiana Department of Environmental Management ("IDEM") as part of the Lead and Copper Rule. He testified that Ms. Armstrong does not describe the specific purposes for the additional testing, i.e. what value it would add to the process, or how it might provide benefit to customers. Mr. Hoffman explained that testing for lead at sites defined by IDEM is already completed and reported by federal regulation known as the Lead and Copper Rule. He testified that Indiana American's use of corrosion inhibitors in treatment protects the customer prior to lead service line replacement and testing after the replacement confirms water quality.

Mr. Hoffman testified that such additional testing would provide little or no additional value in terms of carrying out the purpose of Indiana American's Plan. He testified that if the intended purpose for the additional testing is to collect data that could be utilized by other utilities or in other contexts, in his view it is not appropriate for Indiana American to conduct such testing at the expense of its customers. Mr. Hoffman also testified that what he believes Ms. Armstrong seeks is better obtained through a scientifically based survey, which would be handled through the commissioning of a study designed and funded either by the State, the U.S. Environmental Protection Agency or a non-governmental organization. He testified that expanded testing not designed for such research purposes, and conducted by one utility, is not going to provide data that will be useful or reliable because it will not be appropriately designed and it is not likely to be statistically significant. Additionally, he explained that such an undertaking would involve significant extra costs for funding research design, additional coordination, travel, sampling and testing activities, and study activities, which would be reflected in the rates of customers. He recommended that the expanded additional testing Ms. Armstrong desires, and the costs associated therewith, not be added to the cost of replacing customer-owned lead service lines. Rather, he recommended that those desiring the additional data should commission and fund a study.

During rebuttal, Mr. Hoffman shared information about Water Research Foundation ("WRF") Study #4713, now commencing, in which Indiana American is planning to participate along with approximately 20 other water utilities in the United States and Canada. The study focuses on whole house flushing protocols in conjunction with full lead service line replacements. The study is designed by two engineering firms and builds off of prior WRF studies. It will include pre-work sampling and testing, and post work sampling and testing. The WRF study will involve much greater coordination, and a larger data set as the study includes 21 water utilities in the United States and Canada. Further, it has been designed specifically to gather information for the purpose of developing best practices during and after lead service line replacements to reduce or eliminate potential lead exposure from drinking water. Mr. Hoffman testified that Indiana American plans to incorporate best practices that result from Study #4713 into its Plan, and to the extent the study results indicate a modification is needed, Indiana American would seek a modification of the Plan.

C. <u>Incorporating Lead in the Prioritization Model and Communications.</u> Mr. Hoffman testified that he found acceptable Ms. Armstrong's suggestion that Indiana American incorporate in the prioritization model those service areas that may be testing closer to the action level for the Lead and Copper Rule or that have greater concentrations of lead service lines. He testified that Indiana American will include in its reporting information how it has done so. He noted that when Indiana American does this, it may result in the lead service line replacement being accomplished at the higher end of the range set forth in its Plan, given that it will be adding weight to how quickly they are replaced.

Mr. Hoffman also testified in response to Ms. Armstrong's suggestions designed to improve communication, explaining that Indiana American must avoid marketing the Plan. He testified that if Indiana American is overly aggressive in its communications, everyone will want their line replaced immediately. Mr. Hoffman explained that Indiana American needs to communicate in a manner that avoids creating panic or upsetting customers. He testified that customer communication is important, but it should not rise to the level of a marketing plan. Mr. Hoffman also noted that Indiana American can communicate with the State Department of Health as suggested by Ms. Armstrong, but that it has already communicated with the Governor's Office. He also explained that thus far customers have been very welcoming of the program, which he believed has been in part due to the effective communication. Mr. Hoffman testified that he thinks the communication and customer participation has been so good thus far due to a subject that Ms. Armstrong also highlighted — face-to-face communication. He explained that Indiana American trains its own employees and consultants in interacting with customers face-to-face in this program, and has been communicating face-to-face through these projects with customers who can be helped with that interaction. Mr. Hoffman also testified that Indiana American always trains its employees and consultants that if they cannot immediately answer or resolve a unique question with a customer, they bring a supervisor or project manager into the conversation to assist. He testified that this is standard protocol for any type of project or activity, not only with the lead service line replacement program.

D. <u>Indemnification</u>. Mr. Hoffman testified regarding Ms. Armstrong's proposal on the indemnification clause in the lead service line replacement agreement. He explained that Indiana American and its parent company, American Water, use indemnification language for restoration of private property after company construction projects (e.g. main replacement and main relocation) to mitigate unanticipated and unknown costs. Mr. Hoffman testified that with lead service line replacement program, Indiana American is offering to replace a customer's assets, with a one year warranty on material and workmanship and site restoration with clearly defined limits. He testified that Ms. Armstrong states a concern for shifting risk from X to Y, but it is only through the offering of this program that Indiana American would be part of the equation. Currently, the customer bears the entire cost of replacement and any warranty it may obtain, as well as all of the risk. He explained that Ms. Armstrong further presumed, without support, that the replacement estimates include liability for damage, but removing indemnification language from the agreement, as she recommended, would prevent reliable estimation of liability and instead invite costly dispute.

E. <u>Proposed Rule 4.4 Addendum and Recovery through a Fixed Charge</u>. Mr. Hoffman also testified in response to Ms. Armstrong's request that the proposed rule 4.4 Addendum be denied. He testified that this is really a policy call for the Commission to make. He explained that for the most part, the properties subject to the rule would be premises that are nearly uninhabitable, given that they have been vacant for more than 24 months. He further testified that they will likely be owned by landlords and that communications concerning the dangers of lead and the existence of lead lines may not always reach the tenant. Indiana American proposed the rule change in order to eliminate the lead service lines as quickly as possible in this State, but such premises should not be eligible for service until that lead service line has been replaced. Additionally, given that they have not been customers for the past 24 months, Indiana American felt it was unfair for Indiana American to replace the lead service line pursuant to the Plan in the same fashion as it would the lead service line of any other customer. Mr. Hoffman testified that, if the Commission wishes for Indiana American to continue to treat these premises as eligible customers pursuant to Ms. Armstrong's suggestion, that is acceptable. Finally, Mr. Hoffman testified that Indiana American will recover the associated costs in general rate cases and intervening DSIC cases.

8. <u>Commission Discussion and Findings on Customer Owned Lead Service Line Replacement Plan</u>. For a plan to be eligible for our approval, it must address the following individual categories set forth in Indiana Code § 8-1-31.6-6(b):

> (1) The availability of grants or low interest loans and how the water utility plans to use available grants or low interest loans to help the water utility finance or reduce the cost of the customer lead service line improvements for the water utility and the water utility's customers, including any arrangements for the customer to receive available grants or financing directly.
>
> (2) A description of how the replacement of customer owned lead service lines will be accomplished in conjunction with distribution system infrastructure replacement projects.
>
> (3) The estimated savings in costs per service line that would be realized by the water utility replacing the customer owned portion of the lead service lines versus the anticipated replacement costs if customers were required to replace the customer owned portion of the lead service lines.
>
> (4) The number of lead mains and lead service lines estimated to be part of the water utility's system.
>
> (5) A range for the number of customer owned lead service lines estimated to be replaced annually.
>
> (6) A range for the total feet of lead mains estimated to be replaced annually.
>
> (7) The water utility's proposal for addressing the costs of unusual site restoration work necessitated by structures or improvements located above the customer owned portion of the lead service lines.
>
> (8) The water utility's proposal for:
>
> (A) communicating with the customer the availability of the water utility's plan to replace the customer owned portion of the lead service line in conjunction with the water utility's replacement of the utility owned portion of the lead service line; and
>
> (B) Documenting the customer's consent or lack of consent to replace the customer owned portion of the lead service line.
>
> (9) The water utility's proposal concerning whether the water utility or the customer will be responsible for future replacement or repair of the portion of the new service line corresponding to the previous customer owned lead service line.
>
> (10) The estimated total cost to replace all customer owned portions of the lead service lines within or connected to the water utility's system and an estimated

range for the annual cost to be incurred by the water utility under the water utility's plan.

Indiana American's Plan includes a recitation of each of these elements and a description of how the Plan addresses the element in question. For ease of reference, a copy of Indiana American's Plan is attached as Attachment A. The parties do not dispute the completeness of the Plan and we find that Indiana American's Plan addresses the required categories. We now proceed to address the additional suggested improvements suggested by Ms. Armstrong as they relate to the public interest.

A. <u>Additional Testing</u>. We appreciate and we share Ms. Armstrong's desire for more information about lead and the results and effects from replacing lead service lines, but we also appreciate and share Mr. Hoffman's opinion that such testing, to be meaningful, must be scientifically designed and not limited to one particular water utility. More information and implementation of best practices is an important goal we should set, but we must assure that we are appropriately responding to information rather than simply and sporadically gathering data. We find that Indiana American should continue its participation in the WRF Study and that it should share the results of the study with the OUCC and with this Commission when final. Furthermore, while we appreciate that Indiana American is continually looking at ways to improve its best practices, it would not be reasonable for the Commission to endorse practices without knowing what they are. Thus, to the extent the study results indicate a modification is needed, Indiana American should seek a modification of the Plan.

B. <u>Prioritization Model</u>. Ms. Armstrong suggested that lead and lead levels somehow be incorporated into Indiana American's prioritization model for distribution system improvements. Mr. Hoffman indicated this was an acceptable change to the Plan and that Indiana American could provide further updates on how this incorporation will be accomplished. However, Mr. Hoffman also indicated that altering the model could substantially shift the replacement of distribution mains to areas with a lower need. The OUCC has not offered any evidence that suggests that lead service lines on private property should be considered a greater threat than failures of the mains. Indiana American's proposed Plan appropriately focuses on the potential for increased lead levels that are experienced in conjunction with main and lateral replacement programs. Thus, we find that this is where the focus of Indiana American's Plan should remain. Therefore, we decline to accept Ms. Armstrong's suggestion that lead and lead levels be incorporated into Indiana American's prioritization model for distribution system improvements.

C. <u>Information Updates</u>. In addition to the information concerning the WRF Study, we find that Indiana American should also keep the Commission and the OUCC informed about the availability of funding for its Plan and the status of applications for any such funding. Indiana American shall provide this information as an additional work paper or testimony in future DSIC cases as appropriate.

D. <u>Length of Plan Approval</u>. Ms. Armstrong has requested that our approval expire automatically after five years and that a new proceeding then be convened to re-approve the Plan. We find this to be unnecessary. As noted previously, it is a state policy directive that customer-owned lead service lines be replaced as quickly as reasonably possible. The Commission and the OUCC will be continually updated on the progress of Plan implementation through the information updates Indiana American is required to file under Paragraph C above. If at any point the OUCC or this Commission believes there is a need to reconsider aspects of the Plan, there are statutory mechanisms in place to do that. *See.*, Indiana Code §§ 8-1-2-54, -58, -59, and -72. We find the public interest is adequately served by compliance with this Order and operation of existing law.

E. __Indemnification__. Ms. Armstrong objected to the inclusion of an indemnification provision in the standard contract that Indiana American will use when it replaces a customer owned lead service line. Because the specific provisions of the contract are not part of the Plan that we are being asked to approve, we therefore decline to make a determination whether the terms of a particular indemnification provision are appropriate or not.

F. __Overall finding on Indiana American's Plan__. We find Indiana American's Plan to be reasonable and in the public interest. Subject to the estimated total cost to replace all customer owned portions of the lead service lines within or connected to Indiana American's system and the estimated range for the annual cost as described in Indiana American's Plan, in general rate cases Indiana American shall for ratemaking purposes add to the value of its property for purposes of Indiana Code § 8-1-2-6 the actual costs incurred by it in replacing the customer owned portion of the lead service lines and in removing customer owned lead service lines from service in accordance with the Plan we have approved, notwithstanding the continued ownership of the service line by the customer.

For purposes of the revenue limitation calculation under Indiana Code § 8-1-31-13, infrastructure improvement costs associated with customer lead service line improvements shall not be counted as adjustment revenues in determining whether Indiana American's total adjustment revenues exceed ten percent of its base revenue level approved in its most recent general rate case.

Finally, Indiana American may include the actual costs it incurs in connection with completing customer lead service line improvements that: (1) have been placed in service; and (2) have not been included in Indiana American's rate base in its most recent general rate case as eligible infrastructure improvements for purposes of Indiana Code Chapter 8-1-31.

9. __Commission Finding On Proposed Rule Addendum 4.4__. Indiana American also seeks to modify its rules and regulations of service to include Addendum 4.4, which would deny service availability to certain inactive accounts that continue to have a lead service line. Under Indiana American's proposal, if such a property has a lead service line, Indiana American would not provide service unless and until the owner replaces the lead service line on the property.

Ms. Armstrong objected to this limitation of service availability, arguing that the 24-month time frame was arbitrary and could exacerbate urban blight. Ms. Armstrong indicated the prospective customer should be advised of the existence of the lead service line on their property.

We agree with Ms. Armstrong that the proposed rule Addendum 4.4 should be denied. In addition to the problems noted by Ms. Armstrong, the proposed rule addendum has no limitation on its applicability. Accordingly, we deny Indiana American's request to modify its rules and regulations of service to include Addendum 4.4.

10. **<u>Confidentiality</u>.** Indiana American filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information on April 23, 2018, which was supported by the Affidavit of Stacy S. Hoffman showing the information to be submitted to the Commission was confidential due to the confidential, proprietary, competitively sensitive and trade secret nature of the information. The Presiding Officers issued a Docket Entry on May 2, 2018, finding such information to be preliminarily confidential, after which such information was submitted by the OUCC under seal. We find all the information is confidential pursuant to Ind. Code § 8-1-2-29 and Ind. Code Chapter 5-14-3, is exempt from public access and disclosure by Indiana law, and shall continue to be held confidential and protected from public access and disclosure by the Commission.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. With the enhancements we have approved as described in Finding Paragraph No. 8, Indiana American's Plan for customer owned lead service line replacements attached as Attachment A is approved.

2. Indiana American's proposed Addendum 4.4 to its Rules and Regulations of Service in the form submitted as Attachment GMV-2 is denied.

3. This Order shall be effective upon and after the date of its approval.

<u>HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR</u>:

APPROVED: JUL 25 2018

I hereby certify that the above is a true and correct copy of the Order as approved.

Mary M. Becerra

Mary M. Becerra
Secretary of the Commission