

2004-1369-CD
RE: HOUTZDALE MUNICIPAL AUTHORITY - ERIC GTLLAND AL

In RE: Houtzdale Municipal et al
2004-1369-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

DECLARATION OF TAKING

The Houtzdale Municipal Authority does hereby file this Declaration of Taking, based on the provisions of Article IV, Section 402, of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. 1-402, as amended, and respectfully declares that:

1. The condemnor is the Houtzdale Municipal Authority, a Pennsylvania Municipal Authority, duly organized under the authority of the Municipal Authorities Act, Act of June 19, 2001, P.L. 287, No. 22 with its principal office located at 561 Kirk Street, P. O. Box 97, Houtzdale, Pennsylvania, 16651.

2. The interest in the property hereinafter described is hereby condemned as a right-of-way and/or easement for the purposes of constructing, maintaining and repairing of a utility and access

NO. 2004-1369-Cb
Eminent Domain
Proceeding-In Rem

FILED

SEP 01 2004
012001
William A. Shaw
Prothonotary/Clerk of Courts

2 cent to file

right of way and/or easement to allow for the development of a water transmission pipeline and other facilities for improvement of the water supply, water distribution and water treatment system pursuant to the Municipal Authorities Act of June 19, 2001, P.L. 287, No. 22, 55 Pa. C.S.A. §5601 et. seq. (the "Act"), specifically sections 5607(d)(15) and 5615(a) of the Act, and the Eminent Domain Code, Act of June 22, 1964, P.L. 84, as amended, Article IV, Section 402 (26 P.S. 1-402 et. seq.). The within condemnation has been authorized by Resolution adopted the 31st day of August, 2004 by the said condemnor. A copy of said resolution and accompanying exhibits is attached hereto and made a part hereof as Exhibit A. The original may be examined at the address of the condemnor.

3. The purpose of the condemnation is to provide a utility and vehicular access easement in order to insure access to the watershed and to expand the ground water system and the surface source of the Authority known as the Moshannon Creek Watershed and to specifically enlarge, upgrade and renovate the water acquisition, water treatment, and water distribution system already approved for use in that locale and throughout the area of operations of the condemnor in the Moshannon Valley.

4. The further purpose of the Condemnation is to acquire a right of way in, over, across and through the existing property of Eric and Bernadette Gilliland (the "Condemnee"), such Condemnee's property being located in Gulich Township, Clearfield County, Pennsylvania, having an address of 548 Hunt Club Drive, Ginter, Pennsylvania, and being more particularly described in that certain Deed dated April 30, 2001, and recorded in the Office of the

Recorder of Deeds of Clearfield County, Pennsylvania, in Instrument Number 200105981, (the "Subject Property"), for access and to place utilities, with the further right to construct, repair, and maintain the accessway for purposes of ingress, egress, and regress for its water pipeline and other facilities including electrical transmission lines as the width of the right of way permits and to further construct, lay, maintain, and service the transmission pipeline and other support facilities so as to permit the efficient transmittal of water from the watershed throughout the system of distribution (collectively, and specifically including the rights listed below, the "Right-of-Way." These rights shall include but shall not be limited to:

(a) A permanent right-of-way for purposes of this Declaration of Taking and/or easement together with the free and uninterrupted use, liberty and privilege of and passage in, over and through the Subject Property as depicted in an area which has been determined by the Authority and is set forth on the map and legal description attached to the Resolution as Exhibit 1 and 2.

(b) The said Right-of-Way shall not exceed sixty (60') feet in width, as Condemnees legal title shall so permit, or at a distance from and utilizing as a guide the existing roadway to permit the Condemnor to expand the road on either side of the said existing roadway, for a transmission pipeline and to provide additional access for the three phase power system demanded by GPU, the electrical subcontractor for the Condemnor; provided however, that said width is sufficient to accommodate these requirements failing which additional action may be warranted, all of which will

be fully depicted on the Condemnor's maps as they are drafted subject to the access roadway as herein depicted and described. Together with the right of free ingress, egress and regress to and for the said Condemnor, its successors and assigns, its tenants and undertenants, occupiers, or possessors of the said Condemnor's Right-of-Way, the said Right-of-Way to be used for vehicular access and for the purposes of constructing, maintaining and repairing of a water transmission pipeline and other facilities that the Condemnor shall within its sole discretion deem appropriate including but not limited to pressure reducing valves, shut offs, blow off valves, pump stations, electrical services and other related facilities. The specific description of the area to be acquired by the Condemnor as depicted on the map attached hereto and by a survey description establishing metes and bounds likewise attached hereto consists of a right of way not to exceed sixty (60') feet in width as Condemnees' legal title shall so permit subject to the same terms and conditions as are more fully set forth herein at length. Said 60 foot right of way shall likewise be established as 30 foot equi-distant where possible from the center line of the existing roadway but up to sixty feet from the main roadway as mandated by topography, terrain or other such man made or natural obstructions.

(c) The right of grading, conditioning, and installing drainage facilities, and seeding the soil of the Right-of-Way, and the removal of all obstructions from the Right-of-Way which may constitute a hindrance to the establishment and maintenance of Condemnor's facilities.

(d) The right to make alterations upon the Right-of-Way which alterations, fixtures, additions, structures or facilities so placed in or upon, or attached to the said Right-of-Way shall be and remain the property of the Condemnor, and may be removed upon the date of expiration or termination of this use, or within ninety (90) days thereafter, by or on behalf of the Condemnor, or its grantees, or purchasers of said alterations, fixtures, additions, structures, or facilities.

5. A description of the Right-of-Way over, across, upon and through the Subject Property sufficient for its identification is set forth on the attached map and legal description. On the same day as this declaration of taking is being filed with the prothonotary, plans showing the right-of-way and/or easement condemned are being lodged for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, in accordance with Section 404 of the Eminent Domain Code, 26 P. S. §1-404 and pursuant to the plan attached hereto and to be filed with the Prothonotary as part of these proceedings.

6. The Condemnor, in conjunction with this proceeding, also makes claim to an existing right of way believed to be comprised of a gravel roadway approximately 20' in width by 5149.76' in length traversing in part the same area specified herein for the Right-of-Way by virtue of previous actions by the Authority's predecessor in title which actions occurred in or about the period of time commencing in 1910 and terminating in the mid 1930's, as evidenced by the ancient documents maintained as part of the business records of the Condemnor specifying said action in the Moshannon Creek

Watershed and being formalized by the issuance of a water allocation permit to the Condemnor's predecessor in interest by the predecessor to the Commonwealth of Pennsylvania, Department of Environmental Protection, which records appear and are maintained in the business offices of the Condemnor and are available for inspection upon request.

7. The nature of the title acquired in and to the property is a right-of-way and/or an easement over, across, upon and through the Subject Property described in the exhibits attached hereto.

8. A plan showing the condemned Right-of-Way may also be inspected at the office of the condemnor which is located at 561 Kirk Street, Houtzdale, Pennsylvania.

9. The condemnor files with this Declaration of Taking an open ended bond without surety pursuant to Section 403(a) of the Eminent Domain Code 26 P.S. §1-403(a). Just compensation is made or secured by the filing of said bond. A copy of the bond is attached hereto as Exhibit C and stands as collateral for the reasonable value of the right-of-way as established by a real estate appraisal in the amount of \$29,500.00 as prepared by a real estate agent qualified to perform valuations in condemnation proceedings.

HOUTZDALE MUNICIPAL AUTHORITY

BY Donald A. Resch

ATTEST:

James M. McHugh

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Donald D Ross

Dated: August 31, 2004

R E S O L U T I O N

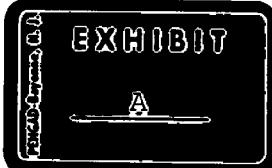
AUTHORIZING THE SELECTION AND APPROPRIATION OF AN ACCESS AND UTILITY EASEMENT AND/OR RIGHT OF WAY SIXTY (60) FEET MORE OR LESS IN WIDTH AND 5149.76 FEET MORE OR LESS IN LENGTH FROM THE POINT OF BEGINNING TO THE POINT OF TERMINUS OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH LANDS OF THE CONDEMNNEES IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, AND AUTHORIZING THE FILING OF A DECLARATION OF TAKING AND ALL NECESSARY ACTION FOR THE ACQUISITION OF THE RIGHTS HEREIN SPECIFIED.

WHEREAS, the Houtzdale Municipal Authority has embarked upon the planning, approval, and financing to complete the enlargement, upgrading, and renovation of the water distribution system and the water treatment system of its facilities located throughout the Moshannon Valley, specifically those areas referred to as the Moshannon Creek Production Well, Surface Source and Intake; and

WHEREAS, in order to carry out the proposed purposes, it is necessary for the Houtzdale Municipal Authority to acquire an access and utility right of way and/or easement over, across, upon and through the lands and properties of Eric and Bernadette Gilliland (the "Condemnee"), such lands being located in Gulich Township, Clearfield County, Pennsylvania, having an address of 548 Hunt Club Drive, Ginter, Pennsylvania, and being more particularly described in that certain Deed dated April 30, 2001, and recorded in the Office of the Recorder of Deeds in and for Clearfield County, Pennsylvania, in Instrument Number 200105981, specified for the purpose of laying out, constructing, repairing and maintaining of a transmission pipeline to be included within the sixty (60) foot easement established for the roadway and pipeline to provide improved services throughout the Houtzdale Municipal Authority's service area; and

Whereas, the Houtzdale Municipal Authority makes claim to an existing right of way believed to be comprised of a gravel roadway approximately 20' in width by 5149.76' in length traversing the same area specified herein by virtue of previous actions by the Authority's predecessors in title which actions occurred in or about the period of time commencing in 1910 and terminating in the mid 1930's, as evidenced by the ancient documents contained within the business records of the Authority specifying said action in the Moshannon Creek Watershed and being formalized by the issuance of a water allocation permit to the Authority by the predecessor in interest to the Commonwealth of Pennsylvania, Department of Environmental Protection, which records appear and are maintained in the business offices of the Houtzdale Municipal Authority where they are available for inspection upon request.

WHEREAS, the Houtzdale Municipal Authority has been unable to agree with the Condemnees on the price or damages to be paid; and



WHEREAS, in accordance with Sections 5607(d)(15) and 5615(a) of the Municipal Authorities Act (55 Pa. C.S.A. §§5601 et. seq.) as amended, the Authority is authorized to acquire an interest in property through Eminent Domain proceedings;

NOW THEREFORE BE IT RESOLVED, That the Houtzdale Municipal Authority, in accordance with the authority conferred by law, selects and appropriates for the purposes hereinabove set forth a right of way and/or easement consisting of a Sixty (60) foot permanent right of way, 5149.76 ft. over, across, upon and through lands of the Condemnee as depicted on the survey map attached hereto and as more fully defined by the legal description for the proposed right-of-way which is likewise attached hereto as an exhibit.

RESOLVED, That all title and private rights or easements of whatever nature of property owners in the hereinabove described property are hereby selected and appropriated for the purposes set forth herein in accordance with law.

RESOLVED, That the title to be acquired shall be a right-of-way and/or easement in the subject property.

RESOLVED, That counsel for the Houtzdale Municipal Authority and its proper officers are hereby authorized to file a declaration of taking and such other proceedings, including the entry of such bond as may be necessary or desirable to carry out the purpose of this resolution.

RESOLVED, That the institution of such proceedings, and any damages which may be agreed upon or awarded to any party in interest, including the owner or owners of said properties located within the area, shall be paid out of the funds of the Houtzdale Municipal Authority based upon an estimate of just compensation as provided by an appraisal for the right of way prepared for the Condemnor by a real estate agent qualified to perform appraisals in matters involving the condemnation of real property.

HOUTZDALE MUNICIPAL AUTHORITY

By Donald D. Rush

ATTEST:

James M. McHugh
Secretary

Dated: August 31, 2004



DESCRIPTION

ALL that certain piece or parcel of land situate in Gulich Township, Clearfield County, Pennsylvania, being a sixty (60) foot right of way following an existing road as shown on the map prepared by Yost Surveying, as revised August 24, 2004, said right of way to be sixty (60) feet in width (30 feet on the western side of the centerline of the existing roadway and 30 feet on the eastern side of the centerline of the existing roadway) and 5149.76 feet in length bounded and described as follows:

BEGINNING at a point in the centerline of the existing road known as and referred to as Third Avenue, said point being in the southern line of Third Avenue at an existing gate which crosses the existing road; thence along the centerline of the proposed 60 foot road the following courses and distances: (S 31° 38' 54" E) 115.22 feet to a point; (S 34° 20' 38" E) 119.90 feet to a point; (S 32° 02' 17" E) 124.40 feet to a point; (S 27° 03' 08" E) 26.49 feet to a point; (S 19° 05' 48" E) 148.69 feet to a point; (S 21° 01' 41" E) 118.37 feet to a point; (S 34° 36' 19" E) 122.94 feet to a point; (S 46° 08' 18" E) 324.87 feet to a point; (S 49° 39' 24" E) 244.58 feet to a point; (S 30° 31' 07" E) 167.13 feet to a point; (S 20° 16' 28" E) 168.33 feet to a point; (S 37° 04' 15" E) 108.93 feet to a point; (S 33° 56' 23" E) 86.73 feet to a point; (S 38° 06' 32" E) 188.72 feet to a point; (S 60° 26' 09" E) 72.10 feet to a point; (S 53° 20' 42" E) 127.74 feet to a point; (S 43° 15' 04" E) 157.16 feet to a point; (S 30° 24' 24" E) 131.33 feet to a point; (S 26° 51' 39" E) 99.03 feet to a point; (S 21° 43' 29" E) 133.99 feet to a point; (S 33° 10' 00" E) 149.94 feet to a point; thence by a curve to the right with a Delta of 15° 22' 37"; a Radius of 1316.46 feet; a Length of 353.31 feet and a Long Chord of (S 12° 28' 23" E) 352.25 feet to a point; (S 28° 40' 28" E) 117.19 feet to a point; thence by a curve to the right with a Delta of 30° 21' 15", a Radius of 440.98 feet; a Length of 233.62 feet and a Long Chord of (S 16° 14' 35" E) 230.90 feet to a point; (S 44° 51' 47" E) 21.42 feet to a point; (S 65° 27' 27" E) 38.03 feet to a point; thence by a curve to the right with a Delta of 46° 54' 11"; a Radius of 371.42 feet, a Length of 304.05 feet, a Long Chord of (S 51° 59' 01" E) 295.63 feet to a point; (S 45° 43' 42" E) 151.01 feet to a point; (S 46° 04' 04" E) 130.41 feet to a point; (S 46° 51' 05" E) 31.76 feet to a point; (S 52° 53' 38" E) 106.89 feet to a point; (S 51° 07' 59" E) 22.94 feet to a point; (S 48° 36' 37" E) 78.44 feet to a point; (S 42° 41' 15" E) 189.42 feet to a point; (S 38° 26' 46" E) 72.93 feet to a point; (S 35° 32' 10" E) 303.68 feet to a point; and (S 45° 52' 22" E) 58.07 feet to a point in the centerline of said sixty (60) foot right-of-way, said point being in the northern property line of land of the Houtzdale Municipal Authority.

Containing 7.093 acres.

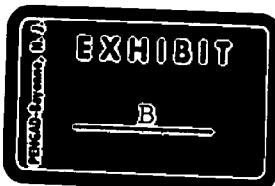


DESCRIPTION

ALL that certain piece or parcel of land situate in Gulich Township, Clearfield County, Pennsylvania, being a sixty (60) foot right of way following an existing road as shown on the map prepared by Yost Surveying, as revised August 24, 2004, said right of way to be sixty (60) feet in width (30 feet on the western side of the centerline of the existing roadway and 30 feet on the eastern side of the centerline of the existing roadway) and 5149.76 feet in length bounded and described as follows:

BEGINNING at a point in the centerline of the existing road known as and referred to as Third Avenue, said point being in the southern line of Third Avenue at an existing gate which crosses the existing road; thence along the centerline of the proposed 60 foot road the following courses and distances: (S 31° 38' 54" E) 115.22 feet to a point; (S 34° 20' 38" E) 119.90 feet to a point; (S 32° 02' 17" E) 124.40 feet to a point; (S 27° 03' 08" E) 26.49 feet to a point; (S 19° 05' 48" E) 148.69 feet to a point; (S 21° 01' 41" E) 118.37 feet to a point; (S 34° 36' 19" E) 122.94 feet to a point; (S 46° 08' 18" E) 324.87 feet to a point; (S 49° 39' 24" E) 244.58 feet to a point; (S 30° 31' 07" E) 167.13 feet to a point; (S 20° 16' 28" E) 168.33 feet to a point; (S 37° 04' 15" E) 108.93 feet to a point; (S 33° 56' 23" E) 86.73 feet to a point; (S 38° 06' 32" E) 188.72 feet to a point; (S 60° 26' 09" E) 72.10 feet to a point; (S 53° 20' 42" E) 127.74 feet to a point; (S 43° 15' 04" E) 157.16 feet to a point; (S 30° 24' 24" E) 131.33 feet to a point; (S 26° 51' 39" E) 99.03 feet to a point; (S 21° 43' 29" E) 133.99 feet to a point; (S 33° 10' 00" E) 149.94 feet to a point; thence by a curve to the right with a Delta of 15° 22' 37"; a Radius of 1316.46 feet; a Length of 353.31 feet and a Long Chord of (S 12° 28' 23" E) 352.25 feet to a point; (S 28° 40' 28" E) 117.19 feet to a point; thence by a curve to the right with a Delta of 30° 21' 15" a Radius of 440.98 feet; a Length of 233.62 feet and a Long Chord of (S 16° 14' 35" E) 230.90 feet to a point; (S 44° 51' 47" E) 21.42 feet to a point; (S 65° 27' 27" E) 38.03 feet to a point; thence by a curve to the right with a Delta of 46° 54' 11"; a Radius of 371.42 feet, a Length of 304.05 feet, a Long Chord of (S 51° 59' 01" E) 295.63 feet to a point; (S 45° 43' 42" E) 151.01 feet to a point; (S 46° 04' 04" E) 130.41 feet to a point; (S 46° 51' 05" E) 31.76 feet to a point; (S 52° 53' 38" E) 106.89 feet to a point; (S 51° 07' 59" E) 22.94 feet to a point; (S 48° 36' 37" E) 78.44 feet to a point; (S 42° 41' 15" E) 189.42 feet to a point; (S 38° 26' 46" E) 72.93 feet to a point; (S 35° 32' 10" E) 303.68 feet to a point; and (S 45° 52' 22" E) 58.07 feet to a point in the centerline of said sixty (60) foot right-of-way, said point being in the northern property line of land of the Houtzdale Municipal Authority.

Containing 7.093 acres.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

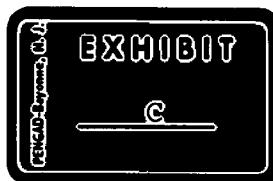
THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

B O N D

KNOW ALL MEN BY THESE PRESENTS, that a Declaration of Taking having been filed the 1st day of September, 2004, by the Houtzdale Municipal Authority, (Obligor), a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania, being held and firmly bound unto the Commonwealth of Pennsylvania ("obligee") for the use and benefit of Eric and Bernadette Gilliland, the owner or owners of the Property upon which the right of way and/or easement being condemned is located, and other proper parties in interest, (the "Condemnee") for such amount of damages as the Condemnee shall be entitled to receive after the same shall have been agreed upon or assessed in the manner prescribed by law, by reason of the condemnation of such right-of-way and/or easement



by obligor of a right of way and/or easement within those certain lands and improvements owned by the Condemnee, being more particularly described in that certain deed dated April 30, 2001, and recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Instrument Number 200105981, such right of way and/or easement being specifically described in the Declaration of Taking and generally described as follows:

ALL THAT CERTAIN piece of ground consisting of approximately 7.093 acres more or less located in Gulich Township, Clearfield County, Pennsylvania, more particularly bounded and described as follows on the map affixed hereto as Exhibit 1 and the legal description as Exhibit 2. This field survey establishing the location of the sixty (60) feet wide, 5149.76 feet long right of way and/or easement and the legal description by metes and bounds is filed with this bond and in conjunction with the Declaration of Taking, Resolution and all other documents supporting this condemnation action; to which payment well and truly to be made, the obligor does bind itself and its successors, and assigns, firmly by these presents.

WHEREAS, the obligor has condemned the said right of way and/or easement and cannot agree with the Condemnee upon the just compensation to be paid for the damages sustained by the Condemnee as a result of the condemnation:

NOW THE CONDITION of this bond is such that if the obligor shall pay or cause to be paid such amount of damages as the Condemnee shall be entitled to receive by reason of such condemnation, after the same shall have been agreed upon or

assessed in the manner provided by law, then this obligation shall be void; otherwise, to be and remain in full force and effect.

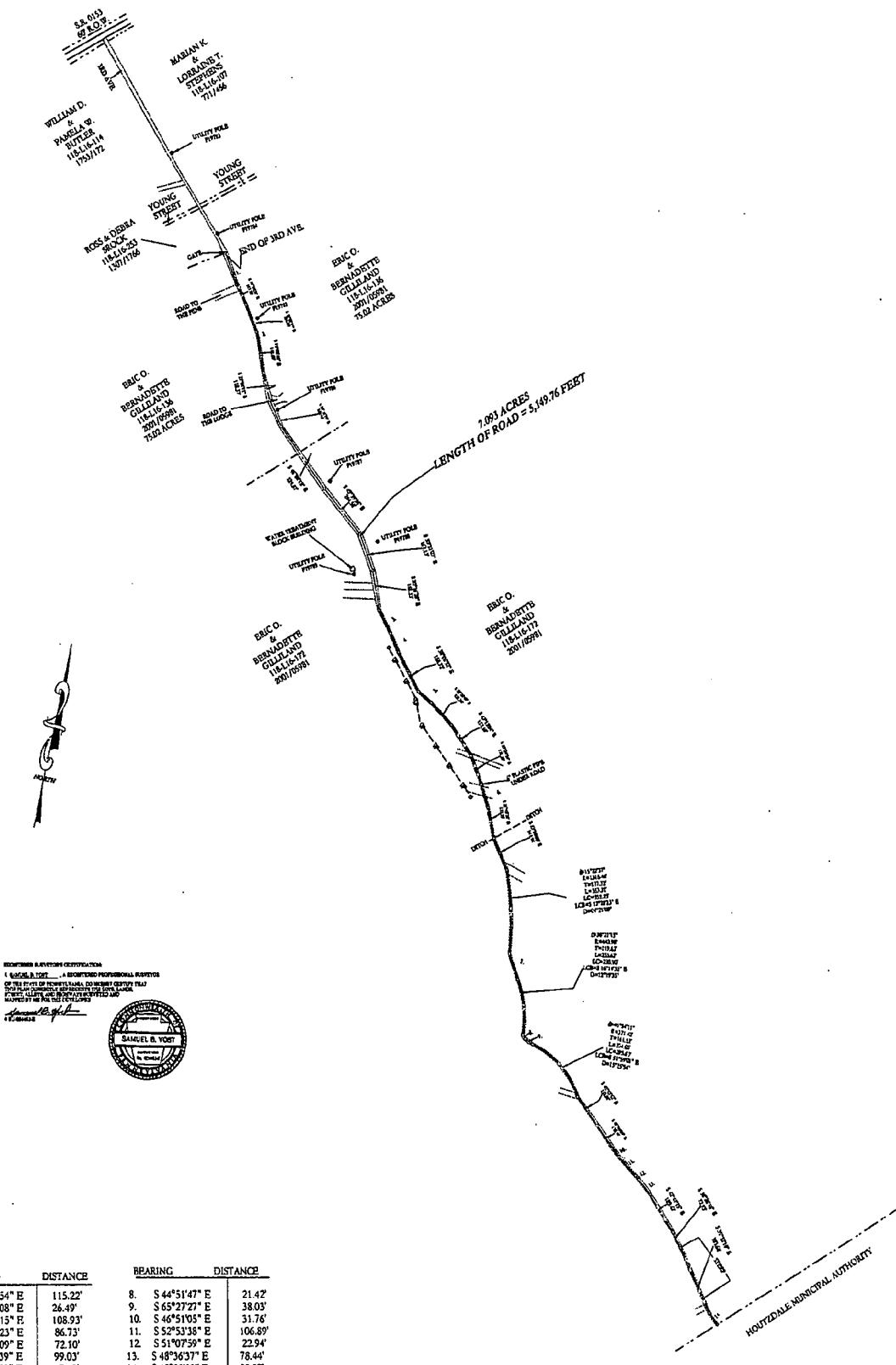
SEALED with the corporate seal and duly executed this 1st day of September, 2004.

HOUTZDALE MUNICIPAL AUTHORITY

By Donald N. Runk

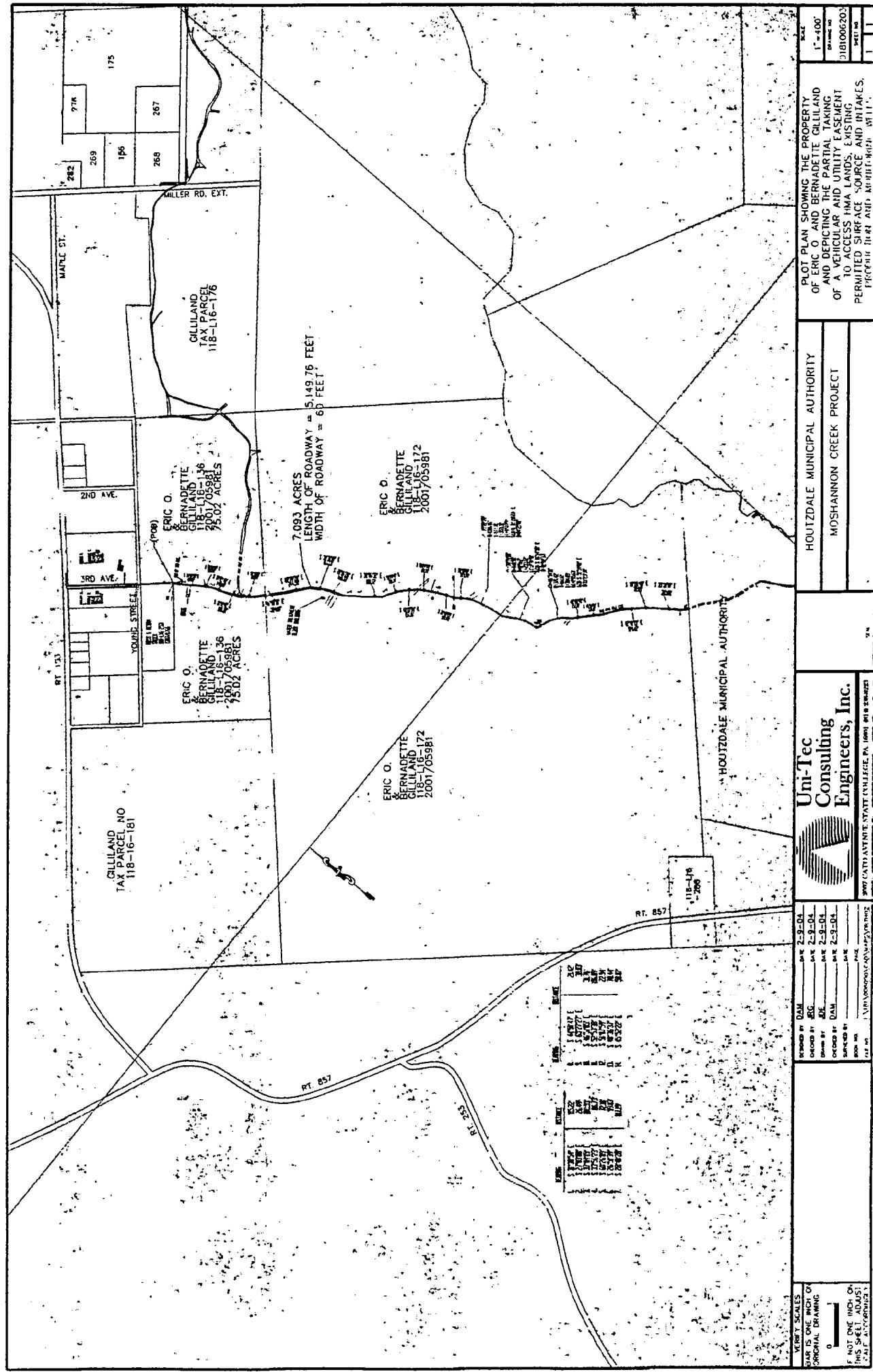
ATTEST:

James M. McHugh



BEARING	DISTANCE	BEARING	DISTANCE
1. $S\ 31^{\circ}18'54''\ E$	115.22'	8. $S\ 44^{\circ}51'47''\ E$	21.42'
2. $S\ 27^{\circ}03'08''\ E$	26.49'	9. $S\ 45^{\circ}27'27''\ E$	38.03'
3. $S\ 37^{\circ}04'15''\ E$	108.93'	10. $S\ 45^{\circ}51'10''\ E$	31.76'
4. $S\ 33^{\circ}56'23''\ E$	86.73'	11. $S\ 45^{\circ}53'38''\ E$	106.89'
5. $S\ 60^{\circ}26'09''\ E$	72.10'	12. $S\ 51^{\circ}07'59''\ E$	22.94'
6. $S\ 26^{\circ}51'39''\ E$	99.03'	13. $S\ 48^{\circ}36'37''\ E$	78.44'
7. $S\ 28^{\circ}40'28''\ E$	117.19'	14. $S\ 45^{\circ}52'22''\ E$	58.07'

CD # 3 DRAFT BY: WRY
**MAP OF
GILLILAND ROAD
THIRDAVE TO
HMA LAND**
**GULICH TOWNSHIP
CLEARFIELD COUNTY, PA**
1 INCH = 200 FEET
JULY 12, 2004
**YOST SURVEYING
CLEARFIELD, PA.**



DESCRIPTION

ALL that certain piece or parcel of land situate in Gulich Township, Clearfield County, Pennsylvania, being a sixty (60) foot right of way following an existing road as shown on the map prepared by Yost Surveying, as revised August 24, 2004, said right of way to be sixty (60) feet in width (30 feet on the western side of the centerline of the existing roadway and 30 feet on the eastern side of the centerline of the existing roadway) and 5149.76 feet in length bounded and described as follows:

BEGINNING at a point in the centerline of the existing road known as and referred to as Third Avenue, said point being in the southern line of Third Avenue at an existing gate which crosses the existing road; thence along the centerline of the proposed 60 foot road the following courses and distances: (S 31° 38' 54" E) 115.22 feet to a point; (S 34° 20' 38" E) 119.90 feet to a point; (S 32° 02' 17" E) 124.40 feet to a point; (S 27° 03' 08" E) 26.49 feet to a point; (S 19° 05' 48" E) 148.69 feet to a point; (S 21° 01' 41" E) 118.37 feet to a point; (S 34° 36' 19" E) 122.94 feet to a point; (S 46° 08' 18" E) 324.87 feet to a point; (S 49° 39' 24" E) 244.58 feet to a point; (S 30° 31' 07" E) 167.13 feet to a point; (S 20° 16' 28" E) 168.33 feet to a point; (S 37° 04' 15" E) 108.93 feet to a point; (S 33° 56' 23" E) 86.73 feet to a point; (S 38° 06' 32" E) 188.72 feet to a point; (S 60° 26' 09" E) 72.10 feet to a point; (S 53° 20' 42" E) 127.74 feet to a point; (S 43° 15' 04" E) 157.16 feet to a point; (S 30° 24' 24" E) 131.33 feet to a point; (S 26° 51' 39" E) 99.03 feet to a point; (S 21° 43' 29" E) 133.99 feet to a point; (S 33° 10' 00" E) 149.94 feet to a point; thence by a curve to the right with a Delta of 15° 22' 37"; a Radius of 1316.46 feet; a Length of 353.31 feet and a Long Chord of (S 12° 28' 23" E) 352.25 feet to a point; (S 28° 40' 28" E) 117.19 feet to a point; thence by a curve to the right with a Delta of 30° 21' 15" a Radius of 440.98 feet; a Length of 233.62 feet and a Long Chord of (S 16° 14' 35" E) 230.90 feet to a point; (S 44° 51' 47" E) 21.42 feet to a point; (S 65° 27' 27" E) 38.03 feet to a point; thence by a curve to the right with a Delta of 46° 54' 11"; a Radius of 371.42 feet, a Length of 304.05 feet, a Long Chord of (S 51° 59' 01" E) 295.63 feet to a point; (S 45° 43' 42" E) 151.01 feet to a point; (S 46° 04' 04" E) 130.41 feet to a point; (S 46° 51' 05" E) 31.76 feet to a point; (S 52° 53' 38" E) 106.89 feet to a point; (S 51° 07' 59" E) 22.94 feet to a point; (S 48° 36' 37" E) 78.44 feet to a point; (S 42° 41' 15" E) 189.42 feet to a point; (S 38° 26' 46" E) 72.93 feet to a point; (S 35° 32' 10" E) 303.68 feet to a point; and (S 45° 52' 22" E) 58.07 feet to a point in the centerline of said sixty (60) foot right-of-way, said point being in the northern property line of land of the Houtzdale Municipal Authority.

Containing 7.093 acres.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

NO. 2004-1369-C0

Eminent Domain
Proceedings
In Rem

FILED

SET 01 2004
01/22/04
V
Prothonotary Clerk of Courts

1 CEN to ATTY

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

B O N D

KNOW ALL MEN BY THESE PRESENTS, that a Declaration of Taking having been filed the 1st day of September, 2004, by the Houtzdale Municipal Authority, (Obligor), a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania, being held and firmly bound unto the Commonwealth of Pennsylvania ("obligee") for the use and benefit of Eric and Bernadette Gilliland, the owner or owners of the Property upon which the right of way and/or easement being condemned is located, and other proper parties in interest, (the "Condemnee") for such amount of damages as the Condemnee shall be entitled to receive after the same shall have been agreed upon or assessed in the manner prescribed by law, by reason of the condemnation of such right-of-way and/or easement

by obligor of a right of way and/or easement within those certain lands and improvements owned by the Condemnee, being more particularly described in that certain deed dated April 30, 2001, and recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Instrument Number 200105981, such right of way and/or easement being specifically described in the Declaration of Taking and generally described as follows:

ALL THAT CERTAIN piece of ground consisting of approximately 7.093 acres more or less located in Gulich Township, Clearfield County, Pennsylvania, more particularly bounded and described as follows on the map affixed hereto as Exhibit 1 and the legal description as Exhibit 2. This field survey establishing the location of the sixty (60) feet wide, 5149.76 feet long right of way and/or easement and the legal description by metes and bounds is filed with this bond and in conjunction with the Declaration of Taking, Resolution and all other documents supporting this condemnation action; to which payment well and truly to be made, the obligor does bind itself and its successors, and assigns, firmly by these presents.

WHEREAS, the obligor has condemned the said right of way and/or easement and cannot agree with the Condemnee upon the just compensation to be paid for the damages sustained by the Condemnee as a result of the condemnation:

NOW THE CONDITION of this bond is such that if the obligor shall pay or cause to be paid such amount of damages as the Condemnee shall be entitled to receive by reason of such condemnation, after the same shall have been agreed upon or

assessed in the manner provided by law, then this obligation shall be void; otherwise, to be and remain in full force and effect.

SEALED with the corporate seal and duly executed this 1st day of September, 2004.

HOUTZDALE MUNICIPAL AUTHORITY

By Donald J. Rorsh

ATTEST:

James M. McHugh



FILED

SEP 01 2004

William A. Shaw
Prothonotary/Clerk of Courts

DESCRIPTION

ALL that certain piece or parcel of land situate in Gulich Township, Clearfield County, Pennsylvania, being a sixty (60) foot right of way following an existing road as shown on the map prepared by Yost Surveying, as revised August 24, 2004, said right of way to be sixty (60) feet in width (30 feet on the western side of the centerline of the existing roadway and 30 feet on the eastern side of the centerline of the existing roadway) and 5149.76 feet in length bounded and described as follows:

BEGINNING at a point in the centerline of the existing road known as and referred to as Third Avenue, said point being in the southern line of Third Avenue at an existing gate which crosses the existing road; thence along the centerline of the proposed 60 foot road the following courses and distances: (S 31° 38' 54" E) 115.22 feet to a point; (S 34° 20' 38" E) 119.90 feet to a point; (S 32° 02' 17" E) 124.40 feet to a point; (S 27° 03' 08" E) 26.49 feet to a point; (S 19° 05' 48" E) 148.69 feet to a point; (S 21° 01' 41" E) 118.37 feet to a point; (S 34° 36' 19" E) 122.94 feet to a point; (S 46° 08' 18" E) 324.87 feet to a point; (S 49° 39' 24" E) 244.58 feet to a point; (S 30° 31' 07" E) 167.13 feet to a point; (S 20° 16' 28" E) 168.33 feet to a point; (S 37° 04' 15" E) 108.93 feet to a point; (S 33° 56' 23" E) 86.73 feet to a point; (S 38° 06' 32" E) 188.72 feet to a point; (S 60° 26' 09" E) 72.10 feet to a point; (S 53° 20' 42" E) 127.74 feet to a point; (S 43° 15' 04" E) 157.16 feet to a point; (S 30° 24' 24" E) 131.33 feet to a point; (S 26° 51' 39" E) 99.03 feet to a point; (S 21° 43' 29" E) 133.99 feet to a point; (S 33° 10' 00" E) 149.94 feet to a point; thence by a curve to the right with a Delta of 15° 22' 37"; a Radius of 1316.46 feet, a Length of 353.31 feet and a Long Chord of (S 12° 28' 23" E) 352.25 feet to a point; (S 28° 40' 28" E) 117.19 feet to a point; thence by a curve to the right with a Delta of 30° 21' 15" a Radius of 440.98 feet, a Length of 233.62 feet and a Long Chord of (S 16° 14' 35" E) 230.90 feet to a point; (S 44° 51' 47" E) 21.42 feet to a point; (S 65° 27' 27" E) 38.03 feet to a point; thence by a curve to the right with a Delta of 46° 54' 11"; a Radius of 371.42 feet, a Length of 304.05 feet, a Long Chord of (S 51° 59' 01" E) 295.63 feet to a point; (S 45° 43' 42" E) 151.01 feet to a point; (S 46° 04' 04" E) 130.41 feet to a point; (S 46° 51' 05" E) 31.76 feet to a point; (S 52° 53' 38" E) 106.89 feet to a point; (S 51° 07' 59" E) 22.94 feet to a point; (S 48° 36' 37" E) 78.44 feet to a point; (S 42° 41' 15" E) 189.42 feet to a point; (S 38° 26' 46" E) 72.93 feet to a point; (S 35° 32' 10" E) 303.68 feet to a point; and (S 45° 52' 22" E) 58.07 feet to a point in the centerline of said sixty (60) foot right-of-way, said point being in the northern property line of land of the Houtzdale Municipal Authority.

Containing 7.093 acres.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

NO. 2004-1369 CD

Eminent Domain
Proceedings
In Rem

④
FILED
01/30/04
SEP 01 2004
NO PC

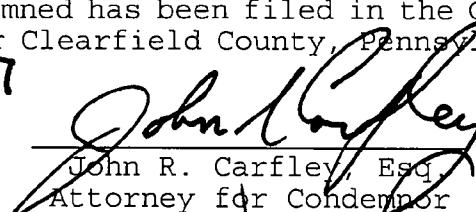
William A. Shaw
Prothonotary/Clerk of Courts

MEMORANDUM TO PROTHONOTARY OF FILING OF NOTICE WITH
RECORDER OF DEEDS

TO THE PROTHONOTARY:

Notice is hereby given that the Houtzdale Municipal Authority, as "Condemnor", on September 1, 2004, filed a Declaration of Taking in the above-named Court to the above term and number in an action to condemn the right-of-way and/or easement more particularly described in that Declaration of Taking, a copy of which is attached hereto as Exhibit "A" and made a part hereof. The name of the owner of the property on, across, within and upon which the right-of-way and/or easement is located is Eric and Bernadette Gilliland, the "Condemnee". A Notice of Condemnation for the right-of-way and/or easement condemned has been filed in the Office of the Recorder of Deeds in and for Clearfield County, Pennsylvania as Instrument Number 200414417

with Condemnation Maps
filed to Instrument
Numbers 200414418
and 200414419


John R. Carfley, Esq.
Attorney for Condemnor
222 Presqueisle Street
Philipsburg, Pa., 16866
(814) 342-5581

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

NO. 2004-1369-cv

Eminent Domain

Proceeding-In Rem

I hereby certify this to be a true and attested copy of the original statement filed in this case.

SEP 01 2004

Attest.

William B. Penn
Prothonotary/
Clerk of Courts

DECLARATION OF TAKING

The Houtzdale Municipal Authority does hereby file this Declaration of Taking, based on the provisions of Article IV, Section 402, of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. 1-402, as amended, and respectfully declares that:

1. The condemnor is the Houtzdale Municipal Authority, a Pennsylvania Municipal Authority, duly organized under the authority of the Municipal Authorities Act, Act of June 19, 2001, P.L. 287, No. 22 with its principal office located at 561 Kirk Street, P. O. Box 97, Houtzdale, Pennsylvania, 16651.

2. The interest in the property hereinafter described is hereby condemned as a right-of-way and/or easement for the purposes of constructing, maintaining and repairing of a utility and access



right of way and/or easement to allow for the development of a water transmission pipeline and other facilities for improvement of the water supply, water distribution and water treatment system pursuant to the Municipal Authorities Act of June 19, 2001, P.L. 287, No. 22, 55 Pa. C.S.A. §5601 et. seq. (the "Act"), specifically sections 5607(d)(15) and 5615(a) of the Act, and the Eminent Domain Code, Act of June 22, 1964, P.L. 84, as amended, Article IV, Section 402 (26 P.S. 1-402 et. seq.). The within condemnation has been authorized by Resolution adopted the 31st day of August, 2004 by the said condemnor. A copy of said resolution and accompanying exhibits is attached hereto and made a part hereof as Exhibit A. The original may be examined at the address of the condemnor.

3. The purpose of the condemnation is to provide a utility and vehicular access easement in order to insure access to the watershed and to expand the ground water system and the surface source of the Authority known as the Moshannon Creek Watershed and to specifically enlarge, upgrade and renovate the water acquisition, water treatment, and water distribution system already approved for use in that locale and throughout the area of operations of the condemnor in the Moshannon Valley.

4. The further purpose of the Condemnation is to acquire a right of way in, over, across and through the existing property of Eric and Bernadette Gilliland (the "Condemnee"), such Condemnee's property being located in Gulich Township, Clearfield County, Pennsylvania, having an address of 548 Hunt Club Drive, Ginter, Pennsylvania, and being more particularly described in that certain Deed dated April 30, 2001, and recorded in the Office of the

Recorder of Deeds of Clearfield County, Pennsylvania, in Instrument Number 200105981, (the "Subject Property"), for access and to place utilities, with the further right to construct, repair, and maintain the accessway for purposes of ingress, egress, and regress for its water pipeline and other facilities including electrical transmission lines as the width of the right of way permits and to further construct, lay, maintain, and service the transmission pipeline and other support facilities so as to permit the efficient transmittal of water from the watershed throughout the system of distribution (collectively, and specifically including the rights listed below, the "Right-of-Way." These rights shall include but shall not be limited to:

(a) A permanent right-of-way for purposes of this Declaration of Taking and/or easement together with the free and uninterrupted use, liberty and privilege of and passage in, over and through the Subject Property as depicted in an area which has been determined by the Authority and is set forth on the map and legal description attached to the Resolution as Exhibit 1 and 2.

(b) The said Right-of-Way shall not exceed sixty (60') feet in width, as Condemnees legal title shall so permit, or at a distance from and utilizing as a guide the existing roadway to permit the Condemnor to expand the road on either side of the said existing roadway, for a transmission pipeline and to provide additional access for the three phase power system demanded by GPU, the electrical subcontractor for the Condemnor; provided however, that said width is sufficient to accommodate these requirements failing which additional action may be warranted, all of which will

be fully depicted on the Condemnor's maps as they are drafted subject to the access roadway as herein depicted and described. Together with the right of free ingress, egress and regress to and for the said Condemnor, its successors and assigns, its tenants and undertenants, occupiers, or possessors of the said Condemnor's Right-of-Way, the said Right-of-Way to be used for vehicular access and for the purposes of constructing, maintaining and repairing of a water transmission pipeline and other facilities that the Condemnor shall within its sole discretion deem appropriate including but not limited to pressure reducing valves, shut offs, blow off valves, pump stations, electrical services and other related facilities. The specific description of the area to be acquired by the Condemnor as depicted on the map attached hereto and by a survey description establishing metes and bounds likewise attached hereto consists of a right of way not to exceed sixty (60') feet in width as Condemnees' legal title shall so permit subject to the same terms and conditions as are more fully set forth herein at length. Said 60 foot right of way shall likewise be established as 30 foot equi-distant where possible from the center line of the existing roadway but up to sixty feet from the main roadway as mandated by topography, terrain or other such man made or natural obstructions.

(c) The right of grading, conditioning, and installing drainage facilities, and seeding the soil of the Right-of-Way, and the removal of all obstructions from the Right-of-Way which may constitute a hindrance to the establishment and maintenance of Condemnor's facilities.

(d) The right to make alterations upon the Right-of-Way which alterations, fixtures, additions, structures or facilities so placed in or upon, or attached to the said Right-of-Way shall be and remain the property of the Condemnor, and may be removed upon the date of expiration or termination of this use, or within ninety (90) days thereafter, by or on behalf of the Condemnor, or its grantees, or purchasers of said alterations, fixtures, additions, structures, or facilities.

5. A description of the Right-of-Way over, across, upon and through the Subject Property sufficient for its identification is set forth on the attached map and legal description. On the same day as this declaration of taking is being filed with the prothonotary, plans showing the right-of-way and/or easement condemned are being lodged for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, in accordance with Section 404 of the Eminent Domain Code, 26 P. S. §1-404 and pursuant to the plan attached hereto and to be filed with the Prothonotary as part of these proceedings.

6. The Condemnor, in conjunction with this proceeding, also makes claim to an existing right of way believed to be comprised of a gravel roadway approximately 20' in width by 5149.76' in length traversing in part the same area specified herein for the Right-of-Way by virtue of previous actions by the Authority's predecessor in title which actions occurred in or about the period of time commencing in 1910 and terminating in the mid 1930's, as evidenced by the ancient documents maintained as part of the business records of the Condemnor specifying said action in the Moshannon Creek

Watershed and being formalized by the issuance of a water allocation permit to the Condemnor's predecessor in interest by the predecessor to the Commonwealth of Pennsylvania, Department of Environmental Protection, which records appear and are maintained in the business offices of the Condemnor and are available for inspection upon request.

7. The nature of the title acquired in and to the property is a right-of-way and/or an easement over, across, upon and through the Subject Property described in the exhibits attached hereto.

8. A plan showing the condemned Right-of-Way may also be inspected at the office of the condemnor which is located at 561 Kirk Street, Houtzdale, Pennsylvania.

9. The condemnor files with this Declaration of Taking an open ended bond without surety pursuant to Section 403(a) of the Eminent Domain Code 26 P.S. §1-403(a). Just compensation is made or secured by the filing of said bond. A copy of the bond is attached hereto as Exhibit C and stands as collateral for the reasonable value of the right-of-way as established by a real estate appraisal in the amount of \$29,500.00 as prepared by a real estate agent qualified to perform valuations in condemnation proceedings.

HOUTZDALE MUNICIPAL AUTHORITY

BY Donald D. Ross Jr.

ATTEST:

James M. McHugh

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Donald D Ross

Dated: August 31, 2004

R E S O L U T I O N

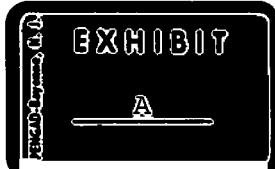
AUTHORIZING THE SELECTION AND APPROPRIATION OF AN ACCESS AND UTILITY EASEMENT AND/OR RIGHT OF WAY SIXTY (60) FEET MORE OR LESS IN WIDTH AND 5149.76 FEET MORE OR LESS IN LENGTH FROM THE POINT OF BEGINNING TO THE POINT OF TERMINUS OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH LANDS OF THE CONDEMNNEES IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, AND AUTHORIZING THE FILING OF A DECLARATION OF TAKING AND ALL NECESSARY ACTION FOR THE ACQUISITION OF THE RIGHTS HEREIN SPECIFIED.

WHEREAS, the Houtzdale Municipal Authority has embarked upon the planning, approval, and financing to complete the enlargement, upgrading, and renovation of the water distribution system and the water treatment system of its facilities located throughout the Moshannon Valley, specifically those areas referred to as the Moshannon Creek Production Well, Surface Source and Intake; and

WHEREAS, in order to carry out the proposed purposes, it is necessary for the Houtzdale Municipal Authority to acquire an access and utility right of way and/or easement over, across, upon and through the lands and properties of Eric and Bernadette Gilliland (the "Condemnee"), such lands being located in Gulich Township, Clearfield County, Pennsylvania, having an address of 548 Hunt Club Drive, Ginter, Pennsylvania, and being more particularly described in that certain Deed dated April 30, 2001, and recorded in the Office of the Recorder of Deeds in and for Clearfield County, Pennsylvania, in Instrument Number 200105981, specified for the purpose of laying out, constructing, repairing and maintaining of a transmission pipeline to be included within the sixty (60) foot easement established for the roadway and pipeline to provide improved services throughout the Houtzdale Municipal Authority's service area; and

Whereas, the Houtzdale Municipal Authority makes claim to an existing right of way believed to be comprised of a gravel roadway approximately 20' in width by 5149.76' in length traversing the same area specified herein by virtue of previous actions by the Authority's predecessors in title which actions occurred in or about the period of time commencing in 1910 and terminating in the mid 1930's, as evidenced by the ancient documents contained within the business records of the Authority specifying said action in the Moshannon Creek Watershed and being formalized by the issuance of a water allocation permit to the Authority by the predecessor in interest to the Commonwealth of Pennsylvania, Department of Environmental Protection, which records appear and are maintained in the business offices of the Houtzdale Municipal Authority where they are available for inspection upon request.

WHEREAS, the Houtzdale Municipal Authority has been unable to agree with the Condemnees on the price or damages to be paid; and



WHEREAS, in accordance with Sections 5607(d)(15) and 5615(a) of the Municipal Authorities Act (55 Pa. C.S.A. §5601 et. seq.) as amended, the Authority is authorized to acquire an interest in property through Eminent Domain proceedings;

NOW THEREFORE BE IT RESOLVED, That the Houtzdale Municipal Authority, in accordance with the authority conferred by law, selects and appropriates for the purposes hereinabove set forth a right of way and/or easement consisting of a Sixty (60) foot permanent right of way, 5149.76 ft. over, across, upon and through lands of the Condemnee as depicted on the survey map attached hereto and as more fully defined by the legal description for the proposed right-of-way which is likewise attached hereto as an exhibit.

RESOLVED, That all title and private rights or easements of whatever nature of property owners in the hereinabove described property are hereby selected and appropriated for the purposes set forth herein in accordance with law.

RESOLVED, That the title to be acquired shall be a right-of-way and/or easement in the subject property.

RESOLVED, That counsel for the Houtzdale Municipal Authority and its proper officers are hereby authorized to file a declaration of taking and such other proceedings, including the entry of such bond as may be necessary or desirable to carry out the purpose of this resolution.

RESOLVED, That the institution of such proceedings, and any damages which may be agreed upon or awarded to any party in interest, including the owner or owners of said properties located within the area, shall be paid out of the funds of the Houtzdale Municipal Authority based upon an estimate of just compensation as provided by an appraisal for the right of way prepared for the Condemnor by a real estate agent qualified to perform appraisals in matters involving the condemnation of real property.

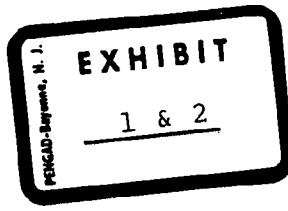
HOUTZDALE MUNICIPAL AUTHORITY

By Donald D. Kosch

ATTEST:

James M. McHugh
Secretary

Dated: 8-31-04

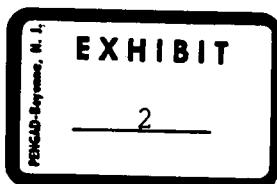


DESCRIPTION

ALL that certain piece or parcel of land situate in Gulich Township, Clearfield County, Pennsylvania, being a sixty (60) foot right of way following an existing road as shown on the map prepared by Yost Surveying, as revised August 24, 2004, said right of way to be sixty (60) feet in width (30 feet on the western side of the centerline of the existing roadway and 30 feet on the eastern side of the centerline of the existing roadway) and 5149.76 feet in length bounded and described as follows:

BEGINNING at a point in the centerline of the existing road known as and referred to as Third Avenue, said point being in the southern line of Third Avenue at an existing gate which crosses the existing road; thence along the centerline of the proposed 60 foot road the following courses and distances: (S 31° 38' 54" E) 115.22 feet to a point; (S 34° 20' 38" E) 119.90 feet to a point; (S 32° 02' 17" E) 124.40 feet to a point; (S 27° 03' 08" E) 26.49 feet to a point; (S 19° 05' 48" E) 148.69 feet to a point; (S 21° 01' 41" E) 118.37 feet to a point; (S 34° 36' 19" E) 122.94 feet to a point; (S 46° 08' 18" E) 324.87 feet to a point; (S 49° 39' 24" E) 244.58 feet to a point; (S 30° 31' 07" E) 167.13 feet to a point; (S 20° 16' 28" E) 168.33 feet to a point; (S 37° 04' 15" E) 108.93 feet to a point; (S 33° 56' 23" E) 86.73 feet to a point; (S 38° 06' 32" E) 188.72 feet to a point; (S 60° 26' 09" E) 72.10 feet to a point; (S 53° 20' 42" E) 127.74 feet to a point; (S 43° 15' 04" E) 157.16 feet to a point; (S 30° 24' 24" E) 131.33 feet to a point; (S 26° 51' 39" E) 99.03 feet to a point; (S 21° 43' 29" E) 133.99 feet to a point; (S 33° 10' 00" E) 149.94 feet to a point; thence by a curve to the right with a Delta of 15° 22' 37"; a Radius of 1316.46 feet; a Length of 353.31 feet and a Long Chord of (S 12° 28' 23" E) 352.25 feet to a point; (S 28° 40' 28" E) 117.19 feet to a point; thence by a curve to the right with a Delta of 30° 21' 15" a Radius of 440.98 feet; a Length of 233.62 feet and a Long Chord of (S 16° 14' 35" E) 230.90 feet to a point; (S 44° 51' 47" E) 21.42 feet to a point; (S 65° 27' 27" E) 38.03 feet to a point; thence by a curve to the right with a Delta of 46° 54' 11"; a Radius of 371.42 feet, a Length of 304.05 feet, a Long Chord of (S 51° 59' 01" E) 295.63 feet to a point; (S 45° 43' 42" E) 151.01 feet to a point; (S 46° 04' 04" E) 130.41 feet to a point; (S 46° 51' 05" E) 31.76 feet to a point; (S 52° 53' 38" E) 106.89 feet to a point; (S 51° 07' 59" E) 22.94 feet to a point; (S 48° 36' 37" E) 78.44 feet to a point; (S 42° 41' 15" E) 189.42 feet to a point; (S 38° 26' 46" E) 72.93 feet to a point; (S 35° 32' 10" E) 303.68 feet to a point; and (S 45° 52' 22" E) 58.07 feet to a point in the centerline of said sixty (60) foot right-of-way, said point being in the northern property line of land of the Houtzdale Municipal Authority.

Containing 7.093 acres.



DESCRIPTION

ALL that certain piece or parcel of land situate in Gulich Township, Clearfield County, Pennsylvania, being a sixty (60) foot right of way following an existing road as shown on the map prepared by Yost Surveying, as revised August 24, 2004, said right of way to be sixty (60) feet in width (30 feet on the western side of the centerline of the existing roadway and 30 feet on the eastern side of the centerline of the existing roadway) and 5149.76 feet in length bounded and described as follows:

BEGINNING at a point in the centerline of the existing road known as and referred to as Third Avenue, said point being in the southern line of Third Avenue at an existing gate which crosses the existing road; thence along the centerline of the proposed 60 foot road the following courses and distances: (S 31° 38' 54" E) 115.22 feet to a point; (S 34° 20' 38" E) 119.90 feet to a point; (S 32° 02' 17" E) 124.40 feet to a point; (S 27° 03' 08" E) 26.49 feet to a point; (S 19° 05' 48" E) 148.69 feet to a point; (S 21° 01' 41" E) 118.37 feet to a point; (S 34° 36' 19" E) 122.94 feet to a point; (S 46° 08' 18" E) 324.87 feet to a point; (S 49° 39' 24" E) 244.58 feet to a point; (S 30° 31' 07" E) 167.13 feet to a point; (S 20° 16' 28" E) 168.33 feet to a point; (S 37° 04' 15" E) 108.93 feet to a point; (S 33° 56' 23" E) 86.73 feet to a point; (S 38° 06' 32" E) 188.72 feet to a point; (S 60° 26' 09" E) 72.10 feet to a point; (S 53° 20' 42" E) 127.74 feet to a point; (S 43° 15' 04" E) 157.16 feet to a point; (S 30° 24' 24" E) 131.33 feet to a point; (S 26° 51' 39" E) 99.03 feet to a point; (S 21° 43' 29" E) 133.99 feet to a point; (S 33° 10' 00" E) 149.94 feet to a point; thence by a curve to the right with a Delta of 15° 22' 37"; a Radius of 1316.46 feet; a Length of 353.31 feet and a Long Chord of (S 12° 28' 23" E) 352.25 feet to a point; (S 28° 40' 28" E) 117.19 feet to a point; thence by a curve to the right with a Delta of 30° 21' 15" a Radius of 440.98 feet; a Length of 233.62 feet and a Long Chord of (S 16° 14' 35" E) 230.90 feet to a point; (S 44° 51' 47" E) 21.42 feet to a point; (S 65° 27' 27" E) 38.03 feet to a point; thence by a curve to the right with a Delta of 46° 54' 11"; a Radius of 371.42 feet, a Length of 304.05 feet, a Long Chord of (S 51° 59' 01" E) 295.63 feet to a point; (S 45° 43' 42" E) 151.01 feet to a point; (S 46° 04' 04" E) 130.41 feet to a point; (S 46° 51' 05" E) 31.76 feet to a point; (S 52° 53' 38" E) 106.89 feet to a point; (S 51° 07' 59" E) 22.94 feet to a point; (S 48° 36' 37" E) 78.44 feet to a point; (S 42° 41' 15" E) 189.42 feet to a point; (S 38° 26' 46" E) 72.93 feet to a point; (S 35° 32' 10" E) 303.68 feet to a point; and (S 45° 52' 22" E) 58.07 feet to a point in the centerline of said sixty (60) foot right-of-way, said point being in the northern property line of land of the Houtzdale Municipal Authority.

Containing 7.093 acres.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

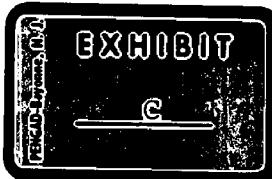
CONDEMNOR

NO. 2004-
Eminent Domain
Proceedings
In Rem

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

B O N D

KNOW ALL MEN BY THESE PRESENTS, that a Declaration of Taking having been filed the 1st day of September, 2004, by the Houtzdale Municipal Authority, (Obligor), a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania, being held and firmly bound unto the Commonwealth of Pennsylvania ("obligee") for the use and benefit of Eric and Bernadette Gilliland, the owner or owners of the Property upon which the right of way and/or easement being condemned is located, and other proper parties in interest, (the "Condemnee") for such amount of damages as the Condemnee shall be entitled to receive after the same shall have been agreed upon or assessed in the manner prescribed by law, by reason of the condemnation of such right-of-way and/or easement



· by obligor of a right of way and/or easement within those certain lands and improvements owned by the Condemnee, being more particularly described in that certain deed dated April 30, 2001, and recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Instrument Number 200105981, such right of way and/or easement being specifically described in the Declaration of Taking and generally described as follows:

ALL THAT CERTAIN piece of ground consisting of approximately 7.093 acres more or less located in Gulich Township, Clearfield County, Pennsylvania, more particularly bounded and described as follows on the map affixed hereto as Exhibit 1 and the legal description as Exhibit 2. This field survey establishing the location of the sixty (60) feet wide, 5149.76 feet long right of way and/or easement and the legal description by metes and bounds is filed with this bond and in conjunction with the Declaration of Taking, Resolution and all other documents supporting this condemnation action; to which payment well and truly to be made, the obligor does bind itself and its successors, and assigns, firmly by these presents.

WHEREAS, the obligor has condemned the said right of way and/or easement and cannot agree with the Condemnee upon the just compensation to be paid for the damages sustained by the Condemnee as a result of the condemnation:

NOW THE CONDITION of this bond is such that if the obligor shall pay or cause to be paid such amount of damages as the Condemnee shall be entitled to receive by reason of such condemnation, after the same shall have been agreed upon or

assessed in the manner provided by law, then this obligation shall be void; otherwise, to be and remain in full force and effect.

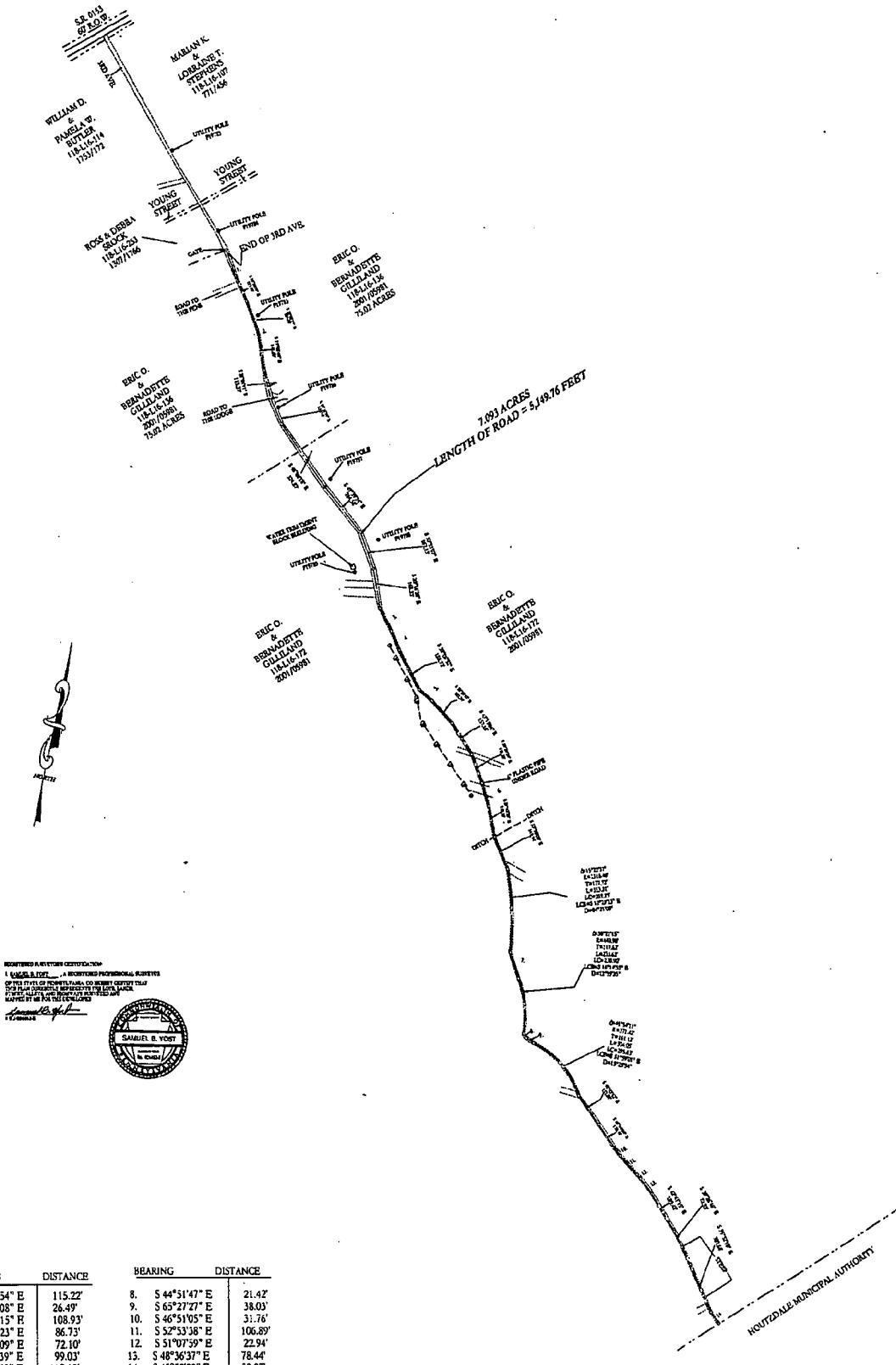
SEALED with the corporate seal and duly executed this 1st day of September, 2004.

HOUTZDALE MUNICIPAL AUTHORITY

By Donald D. Ross

ATTEST:

James M. McHugh



BEARING	DISTANCE	BEARING	DISTANCE
1. S 31°38'54" E	115.22'	8. S 44°51'47" E	21.42'
2. S 27°03'08" E	26.49'	9. S 65°27'27" E	38.03'
3. S 70°41'15" E	108.93'	10. S 46°51'05" E	31.76'
4. S 33°56'23" E	86.73'	11. S 25°33'38" E	106.89'
5. S 60°26'09" E	72.10'	12. S 01°57'59" E	22.94'
6. S 26°51'39" E	99.03'	13. S 48°36'37" E	78.44'
7. S 28°40'28" E	117.19'	14. S 49°52'22" E	58.07'

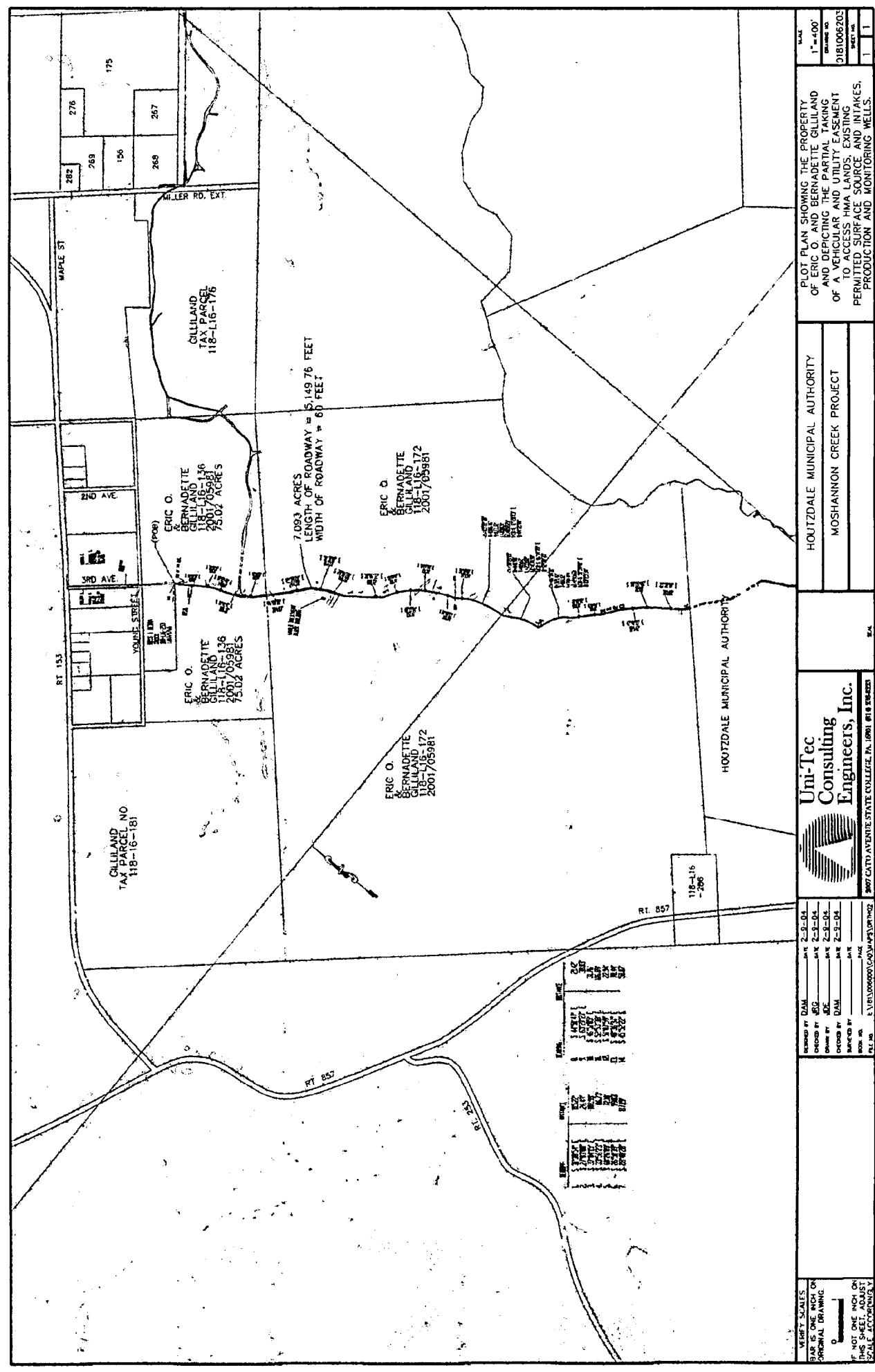
CD # 3 DRAWN BY: WRY

DRIVEN BY: STYLZ

MAP OF
GILLILAND ROAD
THIRD AVE TO
HMA LAND

GULICH TOWNSHIP
CLEARFIELD COUNTY, PA
1 INCH = 300 FEET
MAY 12 2004

REVISED AUGUST 24, 2004



DESCRIPTION

ALL that certain piece or parcel of land situate in Gulich Township, Clearfield County, Pennsylvania, being a sixty (60) foot right of way following an existing road as shown on the map prepared by Yost Surveying, as revised August 24, 2004, said right of way to be sixty (60) feet in width (30 feet on the western side of the centerline of the existing roadway and 30 feet on the eastern side of the centerline of the existing roadway) and 5149.76 feet in length bounded and described as follows:

BEGINNING at a point in the centerline of the existing road known as and referred to as Third Avenue, said point being in the southern line of Third Avenue at an existing gate which crosses the existing road; thence along the centerline of the proposed 60 foot road the following courses and distances: (S 31° 38' 54" E) 115.22 feet to a point; (S 34° 20' 38" E) 119.90 feet to a point; (S 32° 02' 17" E) 124.40 feet to a point; (S 27° 03' 08" E) 26.49 feet to a point; (S 19° 05' 48" E) 148.69 feet to a point; (S 21° 01' 41" E) 118.37 feet to a point; (S 34° 36' 19" E) 122.94 feet to a point; (S 46° 08' 18" E) 324.87 feet to a point; (S 49° 39' 24" E) 244.58 feet to a point; (S 30° 31' 07" E) 167.13 feet to a point; (S 20° 16' 28" E) 168.33 feet to a point; (S 37° 04' 15" E) 108.93 feet to a point; (S 33° 56' 23" E) 86.73 feet to a point; (S 38° 06' 32" E) 188.72 feet to a point; (S 60° 26' 09" E) 72.10 feet to a point; (S 53° 20' 42" E) 127.74 feet to a point; (S 43° 15' 04" E) 157.16 feet to a point; (S 30° 24' 24" E) 131.33 feet to a point; (S 26° 51' 39" E) 99.03 feet to a point; (S 21° 43' 29" E) 133.99 feet to a point; (S 33° 10' 00" E) 149.94 feet to a point; thence by a curve to the right with a Delta of 15° 22' 37"; a Radius of 1316.46 feet; a Length of 353.31 feet and a Long Chord of (S 12° 28' 23" E) 352.25 feet to a point; (S 28° 40' 28" E) 117.19 feet to a point; thence by a curve to the right with a Delta of 30° 21' 15" a Radius of 440.98 feet; a Length of 233.62 feet and a Long Chord of (S 16° 14' 35" E) 230.90 feet to a point; (S 44° 51' 47" E) 21.42 feet to a point; (S 65° 27' 27" E) 38.03 feet to a point; thence by a curve to the right with a Delta of 46° 54' 11"; a Radius of 371.42 feet, a Length of 304.05 feet, a Long Chord of (S 51° 59' 01" E) 295.63 feet to a point; (S 45° 43' 42" E) 151.01 feet to a point; (S 46° 04' 04" E) 130.41 feet to a point; (S 46° 51' 05" E) 31.76 feet to a point; (S 52° 53' 38" E) 106.89 feet to a point; (S 51° 07' 59" E) 22.94 feet to a point; (S 48° 36' 37" E) 78.44 feet to a point; (S 42° 41' 15" E) 189.42 feet to a point; (S 38° 26' 46" E) 72.93 feet to a point; (S 35° 32' 10" E) 303.68 feet to a point; and (S 45° 52' 22" E) 58.07 feet to a point in the centerline of said sixty (60) foot right-of-way, said point being in the northern property line of land of the Houtzdale Municipal Authority.

Containing 7.093 acres.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

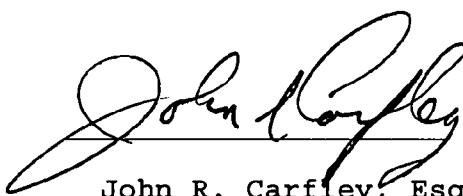
PROOF OF SERVICE OF NOTICE TO CONDEMNEE

I hereby certify that the Notice to Condemnee with attached Declaration of Taking was served on Eric Gilliland and Bernadette Gilliland by the Sheriff of Clearfield County on Wednesday, September 8, 2004, at 4:35 P.M. at their residence at 548 Hunt Club Drive, Ginter, Clearfield County, Pennsylvania.

FILED

0 12:14 SA Nocc (ESW)

SEP 10 2004



John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Condemnor

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY

VS.

GILLILAND, ERIC & BERNADETTE

Sheriff Docket #

16232

04-1369-CD

NOTICE OF CONDEMNATION; DECLARATION OF TAKING

SHERIFF RETURNS

NOW SEPTEMBER 8, 2004 AT 4:35 PM SERVED THE WITHIN NOTICE OF CONDEMNATION & DECLARATION OF TAKING ON ERIC GILLILAND, DEFENDANT AT RESIDENCE, 548 HUNT CLUB DRIVE, GINTER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ERIC GILLILAND A TRUE AND ATTESTED COPY OF THE ORIGINAL NOTICE OF CONDEMNATION & DECLARATION OF TAKING AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: NEVLING/HUNTER

NOW SEPTEMBER 8, 2004 AT 4:35 PM SERVED THE WITHIN NOTICE OF CONDEMNATION & DECLARATION OF TAKING ON BERNADETTE GILLILAND, DEFENDANT AT RESIDENCE, 548 HUNT CLUB DRIVE, GINTER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO BERNADETTE GILLILAND A TRUE AND ATTESTED COPY OF THE ORIGINAL NOTICE OF CONDEMNATION & DECLARATION OF TAKING AND MADE KNOWN TO HER THE CONTENTS THEREOF.

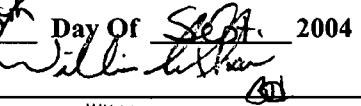
SERVED BY: NEVLING/HUNTER

Return Costs

Cost	Description
57.37	SHERIFF HAWKINS PAID BY: ATTY CK# 973
20.00	SURCHARGE PAID BY: ATTY CK# 974

Sworn to Before Me This

20th Day Of Sept, 2004


WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,


Chester A. Hawkins
Sheriff

FILED
02:54 PM
SEP 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

BY: DAVID C. MASON, ESQUIRE
409 North Front Street
PO Box 28
Philipsburg, PA 16866
Telephone: (814) 342-2240
Facsimile (814) 342-5318
Email: dmason@masonlawoffice.com

REAGER & ADLER, P.C.
BY: SUSAN J. SMITH, ESQUIRE
Attorney I.D. No. 62531
2331 Market Street
Camp Hill, PA 17011
Telephone: (717) 763-1383
Facsimile: (717) 730-7366
Email: SSmith@ReagerAdlerPC.com

Attorneys for Condemnees

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL
AUTHORITY, OF A UTILITY AND ACCESS EASEMENT
SIXTY (60') MORE OR LESS IN WIDTH FROM THE
POINT OF BEGINNING FOR A DISTANCE OF 5149.76
FEET MORE OR LESS IN LENGTH TO THE TERMINUS
OF THE EASEMENT OR A TOTAL OF 7.093 ACRES
OVER, ACROSS, UPON AND THROUGH CERTAIN
PROPERTY, SITUATE IN GULICH TOWNSHIP,
CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO
BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF
CONSTRUCTING, EXPLORING, DRILLING AND
EXPLOITATING THE SURFACE SOURCE, UNDERGROUND
WATER RESOURCES AND THE INTAKE AT THE
MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE
OF CONSTRUCTING, MAINTAINING AND REPAIRING
OF PRODUCTION WELLS, MONITORING WELLS, AND
SURFACE SOURCES TOGETHER WITH THE NECESSARY
WATER TRANSMISSION PIPELINE, ELECTRICAL
POWERGRID AND OTHER FACILITIES INVOLVED IN
THE UPGRADE AND RENOVATION OF HMA'S WATER
SUPPLY, WATER DISTRIBUTION AND WATER
TREATMENT SERVICES,

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND

FILED
mjt:4864
OCT 06 2004
NO CC

William A. Shaw
Prothonotary/Clerk of Courts

NO. 2004-1369 CD

Eminent Domain
Proceedings
In Rem

PRAECIPE TO ENTER APPEARANCE

TO THE PROTHONOTARY:

Please enter the appearance of David C. Mason, Esquire and Susan J. Smith, Esquire on behalf of Condemnees, Eric Gilliland and Bernadette Gilliland, in the above captioned action.

Respectfully submitted,

REAGER & ADLER, PC

Date: 10.4.04

By:



Susan J. Smith, Esquire
I.D. No. 62531
2331 Market Street
Camp Hill, PA 17011
Telephone: (717) 763-1383
Facsimile: (717) 730-7366

David Mason, Esquire
409 North Front Street
PO Box 28
Philipsburg, PA 16866
Telephone: (814) 342-2240
Facsimile (814) 342-5318

**Attorneys for Condemnees,
Eric and Bernadette Gilliland**

CERTIFICATE OF SERVICE

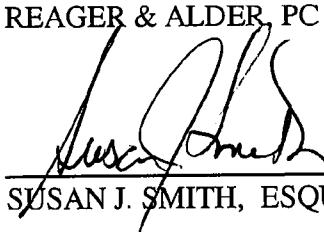
AND NOW, this 4th day of **October, 2004**, I hereby verify that I have caused a true and correct copy of the foregoing Praeclipe for Entry of Appearance to be placed in the U.S. mail, first class, postage prepaid and addressed as follows:

John R. Carfley, Esquire
222 Presqueisle Street
Philipsburg, PA 16866

Attorney for Condemnor

REAGER & ALDER, PC

By:



SUSAN J. SMITH, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

THE CONDEMNATION BY THE HOUTZDALE :
MUNICIPAL AUTHORITY, OF A UTILITY :
AND ACCESS EASEMENT SIXTY :
EASEMENT SIXTY (60') MORE OR LESS IN :
WIDTH ... :
CONDEMNOR :
vs. : EMINENT DOMAIN PROCEEDINGS
ERIC O. GILLILAND and BERNADETTE :
GILLILAND, his wife, : IN REM
CONDEMNNEES :
: TYPE OF PLEADING: PRELIMINARY
: OBJECTIONS TO THE
: DECLARATION OF TAKING
: FILED ON BEHALF OF:
: CONDEMNNEES
: ATTORNEYS FOR CONDEMNNEES:
: David C. Mason, Esquire
: Supreme Court ID #39180
: DAVID C. MASON LAW OFFICE
: P.O. Box 28
: Philipsburg, PA 16866
: (814) 342-2240
: Susan J. Smith, Esquire
: Supreme Court ID #62531
: REAGER & ADLER, P.C.
: 2331 Market Street
: Camp Hill, PA 17011
: Telephone: (717) 763-1383
: ATTORNEY FOR CONDEMNOR:
: John R. Carfley, Esquire
: Supreme Court ID #17621
: P. O. Box 249
: Philipsburg, PA 16866
: (814) 342-5581

FILED ✓

OCT 08 2004

6/11/04

Prost - Clerk of Courts
6 cent to Attn

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SERVICES,

CONDEMNOR

NO. 2004-1369 CD

Eminent Domain
Proceedings
In Rem

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND

NOTICE TO PLEAD

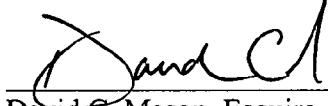
To: Houtzdale Municipal Authority, Condemnor
c/o John R. Carfley, Esquire
222 Presqueisle Street
Philipsburg, PA 16866

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Dated: October 8, 2004

BY:

Respectfully submitted,



David C. Mason, Esquire

Attorney I.D. No. 39180
409 North Front Street
PO Box 28
Philipsburg, PA 16866

Susan J. Smith, Esquire
Attorney I.D. No. 62531
2331 Market Street
Camp Hill, Pa 17011

Attorneys for Condemnees Eric and
Bernadette Gilliland

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL :
AUTHORITY, OF A UTILITY AND ACCESS EASEMENT :
SIXTY (60') MORE OR LESS IN WIDTH FROM THE :
POINT OF BEGINNING FOR A DISTANCE OF 5149.76 :
FEET MORE OR LESS IN LENGTH TO THE TERMINUS :
OF THE EASEMENT OR A TOTAL OF 7.093 ACRES :
OVER, ACROSS, UPON AND THROUGH CERTAIN :
PROPERTY, SITUATE IN GULICH TOWNSHIP, :
CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO :
BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF :
CONSTRUCTING, EXPLORING, DRILLING AND :
EXPLOITATING THE SURFACE SOURCE, UNDERGROUND :
WATER RESOURCES AND THE INTAKE AT THE :
MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE :
OF CONSTRUCTING, MAINTAINING AND REPAIRING :
OF PRODUCTION WELLS, MONITORING WELLS, AND :
SURFACE SOURCES TOGETHER WITH THE NECESSARY :
WATER TRANSMISSION PIPELINE, ELECTRICAL :
POWERGRID AND OTHER FACILITIES INVOLVED IN :
THE UPGRADE AND RENOVATION OF HMA'S WATER :
SUPPLY, WATER DISTRIBUTION AND WATER :
TREATMENT SERVICES, :
CONDEMNOR :
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND :
NO. 2004-1369 CD
Eminent Domain
Proceedings
In Rem

PRELIMINARY OBJECTIONS
TO THE DECLARATION OF TAKING
FILED BY HOUTZDALE MUNICIPAL AUTHORITY

AND NOW, comes Eric and Bernadette Gilliland, Condemnees, by and through their attorneys David C. Mason, Esquire, and Reager & Adler, PC, and file Preliminary Objections pursuant to 26 P.S. Section 1-406 to Houtzdale Municipal Authority's Declaration of Taking and in support thereof aver the following:

1. Eric and Bernadette Gilliland (“Gillilands”) are title owners of property located at 548 Hunt Club Drive, Ginter, Pennsylvania 16651 (“Gilliland Property”).

2. The Gillilands own and operate a hunting preserve on the Gilliland Property, including, among others, such uses and activities as field dog trials, archery shoots, upland bird hunting, turkey hunting, deer hunting, dog training and clay target shooting (“Hunting Preserve”). The Gillilands use the Gilliland Property for such uses and activities year round.

3. The Gillilands access the Gilliland Property by private drives that traverse the Gilliland Property and intersect with State Road 153 (“Gilliland Access”).

4. Houtzdale Municipal Authority (“Authority”) is a municipal authority organized under the Pennsylvania Municipal Authorities Act and operating in Clearfield County, Pennsylvania.

5. The Authority owns 325± acres, more or less, of property that abut Moshannon Creek and that has 2,500± linear feet of road frontage on State Road 453.

6. By Stipulation entered into on June 9, 2004, in the matter of *Houtzdale Municipal Authority v. Eric O. Gilliland and Bernadette Gilliland*, Docket No. 03-1895-CD, Court of Common Pleas of Clearfield County (“Stipulation”), the Authority agreed to in good faith to site and construct an access, at Gillilands cost and expense, from State Road 453 across the Authority Property to serve as access for the purpose described in the Declaration of Taking (“State Road 453 Access”).

7. The Authority made no reasonable or good faith effort to construct the State Road 453 Access.

8. On September 1, 2004, Houtzdale Municipal Authority filed a Declaration of Taking for a utility and vehicular easement over the Gilliland Property as described in the Declaration of Taking.

9. The vehicular easement sought by the Declaration of Taking includes the area presently occupied by the Gilliland Access, which is used by the Gillilands to access and traverse the Gilliland Property.

10. Hunting Preserve activities take place around and across the vehicular easement sought by the Declaration of Taking.

11. Pursuant to 26 P.S. Section 1-406(4), Condemnees object to and hereby challenge the Declaration of Taking for the reasons that follow:

PRELIMINARY OBJECTION NO. 1

12. The Authority filed its Notice of Condemnation identifying its enabling authority as deriving from Title 55.

13. Title 55 provides no authority for the Authority to exercise the powers of eminent domain.

14. Pursuant to 26 P.S. Section 1-406(a)(1), the Gillilands object to the Declaration of Taking on the grounds that the Authority acted without the power or right to condemn Condemnees' property.

PRELIMINARY OBJECTION NO. 2

15. The power of eminent domain may not be employed unless the public is to be the primary and paramount beneficiary of its exercise. *In the Matter of Condemnation of Bruce*

Avenue, 438 Pa. 498, 504, 266 A.2d 96, 99(1970). The power of eminent domain may not be employed for the mere purpose of devoting it to the private use of another, even though there be involved in the transaction an incidental benefit to the public. *In Re Condemnation of Legislative Route 62214*, 425 Pa. 349, 229 A.2d 1(1967).

16. The taking of the Gilliland property is entirely unnecessary to accomplish the objective stated in the Declaration of Taking, as the Authority has within its means the ability to site and construct an equivalent access road (State Road 453 Access) over property owned by the Authority.

17. The Gillilands agreed in the aforementioned Stipulation to finance the cost of the access road over the Authority's property.

18. The Authority's actions in failing to exercise its rights under the Stipulation and instead condemning the Gilliland property demonstrates that the Authority is exercising its eminent domain powers arbitrarily, in bad faith and for a purpose other than the public good.

19. To the extent that the Authority states any public purpose for the Condemnation, that stated public purpose is either merely incidental or specious because there is no necessity or reason for the Authority to condemn the Gilliland Property given the State Road 453 Access recognized in the Stipulation.

20. Pursuant to 26 P.S. Section 1-406(a)(1) & (4), the Gillilands object to the Declaration of Taking on the grounds that, notwithstanding the Authority's purported public purpose for its exercise of eminent domain powers, the Authority's action is arbitrary, capricious, or actuated by bad faith, impermissible motive and for an improper purpose.

PRELIMINARY OBJECTION NO. 3

21. The Authority may not condemn a greater amount of property than is reasonably required for the contemplated purpose. *PennDOT v. Montgomery Township*, 655 A.2d 1086(1995); *Winger v. Aires*, 371 Pa. 242, 89 A.2d 521(1952).

22. By the Declaration of Taking, the Authority seeks to condemn the Gilliland Property to provide access to the Authority Property, notwithstanding the State Road 453 Access.

23. As previously stated, the Authority does not need the Gilliland property to accomplish the objective stated in the Declaration of Taking. Therefore, the Taking is excessive because it exceeds the amount reasonably required to fulfill the stated purpose.

24. The taking is excessive in nature because it not only diminishes the value of the portion of the property subject to the easement, but also diminishes the value of the remaining property by inhibiting its beneficial use as a hunting preserve.

25. Pursuant to 26 P.S. Section 1-406(a)(1) & (4), the Gillilands object to the Declaration of Taking on the grounds that the Authority abused its discretion and acted in bad faith to the extent it seeks to condemn Gilliland Property that is not reasonably required or necessary to provide access for the stated public purposes.

PRELIMINARY OBJECTION NO. 4

26. The Authority is required to give security of just compensation as it lacks the power of taxation. 26 P.S. 1-403 (a) & (b).

27. The Authority has posted a bond without surety as security for the Declaration of Taking.

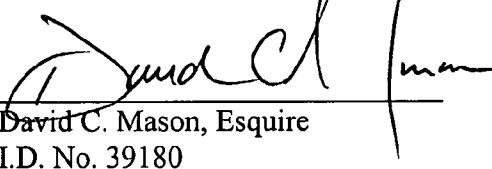
28. Pursuant to 26 P.S. Sections 1-403(c) and 1-406(a)(2) and Article X, Section 4 of the Pennsylvania Constitution, the Gillilands object to the Declaration of Taking on the grounds that the bond posted by the Authority as security is inadequate, insufficient and valueless.

WHEREFORE, the Condemnees respectfully request This Honorable Court to enter an order:

- (i) sustaining their Preliminary Objections;
- (ii) terminating the condemnation action;
- (iii) revesting title to the condemned property in the Gillilands; and
- (iv) granting damages and such other relief as the Court deems just and proper.

Respectfully submitted,

BY:


David C. Mason, Esquire
I.D. No. 39180
409 North Front Street
PO Box 28
Philipsburg, PA 16866

Susan J. Smith, Esquire
I.D. No. 62531
2331 Market Street
Camp Hill, PA 17011

Attorneys for Condemnees Eric and Bernadette Gilliland

VERIFICATION

I, ERIC GILLILAND, verify the averments of the foregoing document are true and correct to my personal knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Date: 10/8/04

By: 
Eric Gilliland

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

THE CONDEMNATION BY THE HOUTZDALE :
MUNICIPAL AUTHORITY, OF A UTILITY :
AND ACCESS EASEMENT SIXTY : NO. 2004-1369 CD
EASEMENT SIXTY (60') MORE OR LESS IN :
WIDTH . . .
CONDEMNOR :
vs. : EMINENT DOMAIN PROCEEDINGS
ERIC O. GILLILAND and BERNADETTE : IN REM
GILLILAND, his wife, :
CONDEMNEES : TYPE OF PLEADING: CERTIFICATE
: OF SERVICE
: FILED ON BEHALF OF:
: CONDEMNEES
: ATTORNEYS FOR CONDEMNEES:
: David C. Mason, Esquire
: Supreme Court ID #39180
: DAVID C. MASON LAW OFFICE
: P.O. Box 28
: Philipsburg, PA 16866
: (814) 342-2240
: Susan J. Smith, Esquire
: Supreme Court ID #62531
: REAGER & ADLER, P.C.
: 2331 Market Street
: Camp Hill, PA 17011
: Telephone: (717) 763-1383
: ATTORNEY FOR CONDEMNOR:
: John R. Carfley, Esquire
: Supreme Court ID #17621
: P. O. Box 249
: Philipsburg, PA 16866
: (814) 342-5581

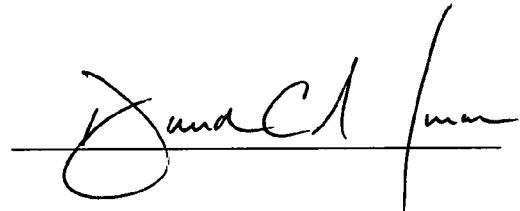
CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a true and correct copy of the foregoing document was served on the following individuals via United States First Class Mail, postage prepaid as follows:

John R. Carfley, Esquire
222 Presqueisle Street
Philipsburg, PA 16866

Attorney for Condemnor

Dated: October 8, 2004

A handwritten signature in black ink, appearing to read "John R. Carfley", is written over a horizontal line. The signature is fluid and cursive, with "John" and "R." being more stylized and "Carfley" being more clearly legible.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

William A. Shaw
Prothonotary

CONDEMNOR'S ANSWER TO CONDEMNNEES' PRELIMINARY OBJECTIONS

AND NOW comes the Houtzdale Municipal Authority, which by and through its attorneys, John R. Carfley, Esquire and Peter J. Carfley, Esquire files this Answer to the Preliminary Objections filed by the Condemnees, pursuant to 26 P.S. §1-406 and in support thereof aver as follows:

1. Denied. Eric and Bernadette Gilliland are the record title holders of the property located at 548 Hunt Club Drive, Ginter, Pennsylvania, 16651, ("Gilliland Property"). It is believed and therefore averred that Condemnor, upon the filing of its Declaration of Taking, acquired ownership rights in and to a portion of the said property consistent with its Declaration and is entitled to possession or right of entry to the said property upon

FILED
O 1/14/04 2004 atty.
OCT 20 2004

payment of or upon a written offer to pay to the Condemnees the amount of just compensation as estimated by the Condemnor pursuant to Section 407 of the Eminent Domain Code, 26 P.S. §1-407.

2. Denied. On the contrary it is averred that after reasonable investigation, Condemnor is without knowledge or information sufficient to form a belief as to the truth of the averments set forth herein but do demand that the Condemnees offer proof and verification of these facts and offer proof of the relevancy of said facts stated in Paragraph 2 of their Preliminary Objections at time of hearing.

3. It is denied that the access road referred to by the Condemnor in its Declaration of Taking is a private drive that traverses the Gilliland property and intersects with State Road 153. By way of further answer it is averred that the said roadway herein referenced was created not only by the subject declaration but also was taken in part and has remained in use by virtue of action undertaken by Condemnor's predecessors in title during the early 1920's as specifically outlined in Condemnor's Declaration of Taking.

4. Admitted.

5. It is admitted that the Authority owns 325 acres more or less that abut the Moshannon Creek and lies adjacent to land owned by the Condemnees. It is further admitted that the roadway which crosses the Gilliland property provides the only constructed, finished roadway providing access from State Route 453 on a direct line to the Moshannon Creek Watershed. Insofar as the Condemnor's ownership of 2500 linear feet of road frontage on State Road 453 is

relevant to this proceeding, proof thereof is demanded at time of hearing.

6. It is denied that the Stipulation entered into on June 9, 2004, in partial settlement of the case captioned in Paragraph 6 hereof was binding upon the Authority to design and construct an access road to the headwaters of Moshannon Creek at Gilliland's cost and expense or that the alleged agreement provided for a roadway to exit from State Route 453 to ingress over the Authority's property to serve as access for the purposes described in this Declaration of Taking. By way of further answer it is averred that the Stipulation and Court Order dismissing Condemnor's civil action without prejudice are affixed to this pleading as Exhibit A and speak for themselves. It is averred that this stipulation provided that the Authority would undertake a study to determine the feasibility of constructing such a roadway and the projected costs for completing such a roadway in the location suggested by the Condemnees. The feasibility study prepared by Unitec Engineering, projected costs in the range of \$385,000.00 to construct the said roadway. The economic and practical impossibility of constructing the roadway along this alternate site was referenced in Counsel's letter of July 19, 2004, to Condemnees' counsel which letter also communicated the decision of the Authority to reject this alternative route as a means of completing this project for the benefit of the public and the community at large. By way of further answer it is averred that notwithstanding where the Condemnor may choose to locate the vehicular easement to provide access to the wellfield and surface source, the Condemnor

has been notified by the electric supplier which will construct the electrical grid to service the wells, the pump station, the telemetry stations and other facilities at the Moshannon Creek headwaters that the right of way specified in the Declaration of Taking will be the only way in which that utility will ingress the site so as to provide power from State Road 453 to the Moshannon Creek wellfield. Moreover plans call for the water pipeline which will carry the raw water from the surface source and production wells at Moshannon Creek to the treatment facility in Houtzdale to follow the existing line of the roadway as past recorded easements reflect. Condemnation of the utility easement and the accompanying roadway was thus pre-ordained by the decision of Penelec on the location of its utility lines.

7. It is denied that the Authority made no reasonable or good faith effort to construct the State Road 453 access as specified in Paragraph 7 of Condemnor's preliminary objections. By way of further answer it is averred that the Authority expended over \$5,000.00 in engineering fees to complete a feasibility study to consider an alternative route over and across property and topography which was ill suited to accommodate a roadway of the type intended and ill suited for the purposes of the project in that it would require several switchbacks and other diversions in order to allow for access to heavy equipment approaching the watershed and well field during the winter months and in other inclement weather conditions.

8. It is admitted that on September 1, 2004, the Houtzdale Municipal Authority filed a Declaration of Taking for a utility and

vehicular easement over the Gilliland property as described in the Declaration of Taking. By way of further answer it is averred that prior to undertaking this step Counsel directed a letter to Condemnees' counsel attempting to enter into amicable negotiations concerning the utilization and/or purchase of a right of way in its present location. A true and correct copy of said letter is attached hereto as Exhibit "B".

9. It is admitted that the vehicular easement sought in the Declaration of Taking includes the area presently occupied by an access road which is used by the Gillilands to access and traverse the Gilliland property. It is denied that the Gilliland access is owned by Eric and Bernadette Gilliland exclusively for those reasons more fully set forth hereinabove in Paragraph 6 and throughout this answer which averments are incorporated herein by reference as fully as though set forth at length.

10. Denied. On the contrary it is averred that after reasonable investigation, Condemnor is without knowledge sufficient to form a belief as to the truth of the averments set forth herein and insofar as these facts may be relevant to the matter at issue proof thereof is demanded at time of trial.

11. Denied. On the contrary it is averred that Section 1-406.4 specifies that preliminary objections may be filed where there is a failure by Condemnor to faithfully comply with its own requirements. Insofar as Paragraph 11 fails to state its challenges with any degree of specificity, this paragraph is deemed moot and no further response is considered necessary.

PRELIMINARY OBJECTION NO. 1

12. It is denied that the Authority filed its notice of condemnation identifying as its sole enabling authority Title 55 of Purdons Statutes. The citation included in the declaration and supporting documents is based on the amendments to Title 53, Pa. C.S.A. Chapter 55 and 56 which was enacted in 2001, a copy of the pertinent provisions of which are attached hereto as Exhibit "C". Insofar as Title 55 is referenced in the Declaration and the resolution this represents a typographical error and should have reflected the citation as 53 Pa. C.S.A. with appropriate sections cited. By way of further answer it is averred that the preamble to the Declaration of Taking specifically states that the Condemnor files its Declaration of Taking based upon the provisions of Article IV, Section 402 of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. 1, 402 as amended and then goes on to state in Paragraph 2 the various provisions of the Municipal Authorities Act of June 19, 2001, P.L. 287, No. 22, 55 Sic. Pa. C.S.A. §5601, et. seq. (the Act specifically sections 5607(d)(15) and 5615(a) of the Act and Eminent Domain Code, Act of June 22, 1964, etc. as the statutory authority which enables a municipality to acquire property by condemnation. The Declaration then recites this dual authority which serves as the basis for a municipal authority to act to acquire or improve its water supply, water distribution and water treatment systems by use of its power of Eminent Domain. The Condemnor has clearly and accurately cited the statutory authority under which it filed its Declaration but for

the typographical error explained above. It is Condemnor's contention that the Condemnees are guilty of misrepresenting these facts to the Court by challenging the Declaration of Taking. As a result this objection should be dismissed and the Condemnees' sanctioned.

13. The amendments to Title 53 as cited grants the power to a Municipal Authority to develop a water transmission system and other facilities and to develop or utilize a water supply, water distribution and water treatment system pursuant to those amending Chapters and when interpreted in combination with the Eminent Domain Code as cited enables the authority to secure ownership of property by condemnation. In this context the Condemnees have misstated and misrepresented the position of the Condemnor; therefore, this preliminary objection should be dismissed with prejudice and the Condemnee should be sanctioned for the delay they have occasioned by the frivolous use of these preliminary objections.

14. Denied. Condemnor has complied with the appropriate provisions of Section 406 of the Eminent Domain Code and insofar as Condemnees' objection attempts to take advantage of a typographical error and to delay the Authority actions and to infer that the Authority acted without power or right to condemn the Condemnees' property, proof thereof is demanded at time of hearing; in the alternative this court should dismiss said objection with the imposition of attorney's fees and costs as sanctions for the filing of such frivolous pleadings which are known to be without merit and designed only to cause delay as well as additional costs to the

Condemnor and its customers.

PRELIMINARY OBJECTION NO. 2

15. It is recognized that the power of Eminent Domain should be employed to enhance the public health, safety and welfare pursuant to the Municipal Authorities Act and the Eminent Domain Code as previously cited. It is specifically denied that in this instance the power of Eminent Domain is employed for the purpose of devoting it to the private use of any other private entity, corporation, or individual in that the said right to use the roadway is unique and serves as a means to secure access to the Moshannon Creek surface source and wellfield, an Authority asset which has been used by the Authority as a source of water for its customer base since the 1920's.

16. It is specifically denied that the taking of the Gilliland property is unnecessary to accomplish the objective stated in the Declaration of Taking for those reasons more fully set forth hereinabove and throughout this Answer. It is further denied that the Authority has within its means the ability to develop an alternative site and construct an equivalent access road over property owned by the Authority for an economically reasonable cost given the disparity in the economic data compiled in the feasibility study completed by the Condemnor's engineering firm and the real estate appraisal establishing market value for the existing roadway.

17. It is denied that the Gillilands agreed to finance the cost of constructing the access road over the Authority's property. Moreover, the said stipulation never took into consideration all of

the pre-construction requirements and conditions precedent which would be imposed by local, state and federal authorities or other regulatory agencies prior to approval of an alternate route and the cost of such permitting; Condemnees also did not consider the potential environmental impact of such construction, juxtaposed to the utilization of the existing roadway and the expansion of the roadway through condemnation proceedings since this could be accomplished at a fraction of the cost particularly since the existing right of way was to be utilized by the electrical company as the right of way for its overhead power lines notwithstanding any other action by the Condemnor.

18. Denied. The Authority's action in failing to exploit its rights under the Stipulation was based on sound economic judgment combined with a general concern for the overall environmental impact involved in altering the route. Moreover the Condemnor also had to consider the excessive costs and expenditure of time in the construction of a roadway in the location suggested. It is denied that the Authority is exercising its powers of Eminent Domain arbitrarily, in bad faith, or for any other purpose than for the public good.

19. It is denied that the Authority has stated any incidental or specious public purpose since it is condemning a property right which it has clearly used for over eighty (80) years, it is the shortest, and most direct route from State Road 453 to the Moshannon Creek watershed, the wellfield and surface source, it is the most direct access to the major areas in question and follows the existing pipeline planned by the Condemnor's engineers as well

as representing the area selected by the power company as the way its power transmission line will be constructed prior to becoming operational.

20. It is specifically denied that Condemnees are citing correctly the sections of the Eminent Domain Code which applies to this Declaration of Taking in that the Authority as the Condemnor has condemned this property for public purposes only, its action is not arbitrary, capricious, or actuated by bad faith, impermissible motive and/or for an improper purpose. The sole motive of the Authority is to promote in the most economical and feasible manner the health, safety and welfare of the community and to advance and enhance those objectives.

PRELIMINARY OBJECTION NO. 3

21. Denied. In this instance the Authority had condemned a right of way 60 feet by 5149 feet which constitutes not only the most direct route from State Road 453 to the headwaters of the Moshannon Creek but also encompasses only so much acreage as is required for a vehicular and utility easement according to Condemnor's Engineering Consultants and Penelec staff. Moreover the Condemnor sought only a right of way and not fee ownership of the road which was within its right. In addition the courts have generally held that the Authority's decision with respect to the amount of property necessary or reasonably required for its contemplated purpose is within the sound discretion of the Authority and will not be set aside unless there is an arbitrary, capricious, use of its power or the Authority has acted in bad faith or with a fraudulent motivation, something which is entirely

absent from these proceedings; therefore this preliminary objection should be dismissed and the Condemnee should be sanctioned for failure to state any supportive facts for such a scandalous accusation.

22. It is admitted that the Authority seeks to acquire a right of way over the Gilliland property to confirm its access to the Moshannon Creek watershed. It is specifically denied that the Condemnor had any other access from State Road 453; rather it is averred that such access would require the wholesale construction of a road through areas of steep terrain, unknown geology with unforeseen environmental problems including wet lands and other environmentally significant considerations such as geological concentrations of acid producing strata and possibly acid mine drainage from former mining activities. It is further argued that Condemnees' preliminary objections are frivolous, given the directness of the existing roadway and the outrageous expense and speculative nature of the roadway suggested by the Condemnees, which would be required to be constructed should the condemnees prevail in this action.

23. Denied for those reasons more fully set forth throughout this answer. By way of further answer it is averred that the taking is not excessive because it does not exceed the amount of property reasonably required to fulfill the stated purpose of the Declaration of Taking which is to provide the most direct, efficient and cost effective access to the Condemnor's water resources.

24. It is denied that the taking is excessive or that it

diminishes the value of this portion of the property which is subject to the easement or further diminishes the value of the remaining property by inhibiting its beneficial use as a hunting preserve and insofar as these facts are relevant, proof thereof is demanded at time of trial. By way of further answer it is averred that the improvement to the roadway and the installation of the power grid will enhance the ease of access and the ability of the Condemnees and their clients to ingress, egress and regress the Gilliland property to points throughout the hunting preserve. In that respect the value of the property is enhanced by the improvements so the argument of the Condemnees is once again specious and without merit.

25. It is denied that the sections of the Eminent Domain Code cited by Gillilands are relevant to the principal case or that the Authority abused its discretion and/or acted in bad faith. By way of further answer it is averred that the roadway in question provides the most direct, cost efficient and expeditious manner of accessing the Condemnor's property from State Road 453. It is averred, therefore, that the condemnation was done solely for stated public purposes and for the health, benefit, safety and welfare of the Moshannon Valley community.

PRELIMINARY OBJECTION NO. 4

26. Admitted. It is denied, however, that the Authority has failed to give security for just compensation in that it has filed its bond without surety as required by law with its initial filing in the office of the Prothonotary in Clearfield County and has further tendered an offer of just compensation for the right of way

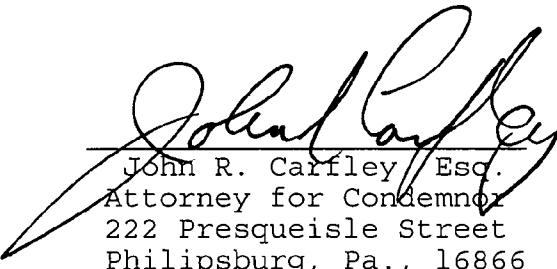
as established by a qualified realtor. A copy of Condemnor's tender of fair market value is attached hereto as Exhibit "D".

27. Admitted.

28. Denied. On the contrary it is averred that insofar as the sections of the Eminent Domain Code and the section of the Pennsylvania Constitution are relevant to this proceeding, proof thereof is demanded at time of trial. It is specifically denied that the Gillilands may object to the Declaration of Taking on the grounds that the bond posted by the Authority as security is inadequate, insufficient and valueless in that the Houtzdale Municipal Authority is a solvent corporation with liquid assets of over \$2,500,000.00 available in various banking institutions in the region, with total assets of \$20,000,000.00 as verified by its accounting firm of Johnson, Nelson & Shimmel.

WHEREFORE, Condemnor respectfully requests that this Honorable Court enter an Order dismissing Condemnees' Preliminary Objections, denying Condemnees' request to terminate the Condemnation action, denying Condemnees' right to revest title to the condemned property in the Condemnees and the granting of any damages or any other relief as the Court may consider proper to the Condemnees. In the alternative Condemnor would respectfully request that the Preliminary Objections filed by these Condemnees are frivolous and specious in nature, designed solely for delay and so egregious that the Court should sanction the Condemnees by ordering the payment of legal fees and costs in an amount to be liquidated by this Court at a later date.

Condemnor further requests this Honorable Court to issue an Order denying Condemnees' preliminary objections and granting possession of the right of way to Condemnor upon payment of just compensation and upon such other conditions as this court shall so direct.



John R. Carlley, Esq.
Attorney for Condemnor
222 Presqueisle Street
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

Dated: October 19, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :
Plaintiff

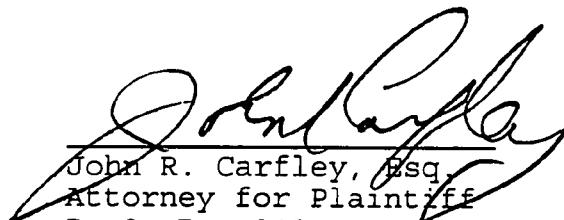
vs. : No. 2003-1895-CD

ERIC O. GILLILAND and BERNADETTE :
GILLILAND, his wife,
Defendants :
:

PRAECIPE

TO THE PROTHONOTARY:

PLEASE enter the attached agreement between counsel to be filed along with the Court's Order of June 9, 2004, in partial disposition of the above matter and as an interim settlement thereto.


John R. Carfley, Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581

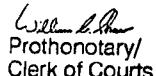
Dated: June 17, 2004

I hereby certify this to be a true and attested copy of the original statement filed in this case.



JUN 17 2004

Attest.


Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HOUTZDALE MUNICIPAL AUTHORITY :

VS. : NO. 03-1895-CD

ERIC O. GILLILAND and :

BERNADETTE GILLILAND :

O R D E R

NOW this 9th day of June, 2004, the Court hereby confirms that the Plaintiff has withdrawn its complaint, without prejudice.

BY THE COURT:

/s/ Fredric J. Ammerman

President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JUN 09 2004

Attest.

...the Clerk
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HOUTZDALE MUNICIPAL AUTHORITY :
VS. : NO. 03-1895-CD
ERIC O. GILLILAND and :
BERNADETTE GILLILAND :

STIPULATION

1. Eric O. Gilliland and Bernadette Gilliland will agree to grant to HMA and its contractors, agents and consultants the right to travel over, across and through the Gilliland land for purposes consistent with water company business, including the monitoring and development of the Moshannon Creek Watershed surface, intake and well sources.

The roadway, for access purposes, will be located closest to the existing pipeline. The right of access shall be until August 31, 2004. Access by HMA to its well field and surface source through any other existing roads located on the Gillilands' property shall be only after consultation with the Gillilands and with their expressed approval.

2. HMA agrees to repair any damage on the roadway on the Gilliland land occasioned as a result of previous timbering activities, as well as anticipated use by heavier vehicles.

3. HMA and the Gillilands, including Eric Gilliland and Bernadette Gilliland, agree that the gate situate near the

ingress to their property shall be secured by one lock, with keys to be provided only to HMA personnel and the aforementioned Gillilands.

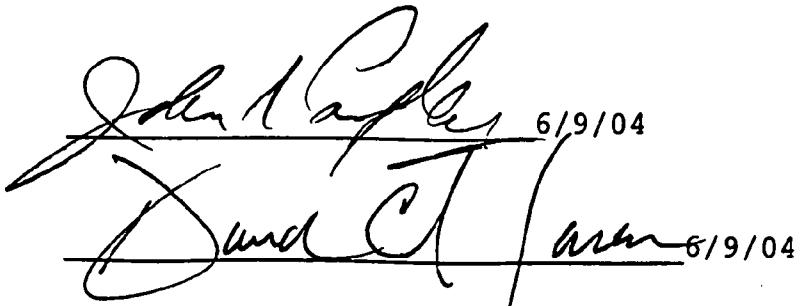
4. HMA and the Gillilands shall meet as often as necessary through the end of June 2004 to determine the standards for the proposed roadway and general location of the proposed roadway and a preliminary estimate of costs for construction.

5. Subsequent to the conclusion of June 2004, the HMA's engineers will design and obtain any necessary permits to allow the road to be constructed. Construction should proceed expeditiously, if this proves to be feasible.

6. HMA shall make every effort to complete the construction of the roadway by August 31, 204, if feasible.

7. Nothing herein previously stated shall prohibit HMA in the event that negotiations shall fail, from instituting a condemnation proceeding under the appropriate statute.

8. For the purposes of this agreement, the Gillilands acknowledge that the installation of GPU facilities along the roadway closest to the proposed pipeline previously referenced in Paragraph 2 is not of major concern; however, they would prefer that it be installed underground.



John P. Parker 6/9/04

David C. T. 6/9/04

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

July 19, 2004

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

David Mason, Esq.
P. O. Box 28
Philipsburg, Pa., 16866

RE: HMA v. Gilliland
No. 03-1895-CD

Dear Dave:

As much as I would like to be able to report that it appears likely that we will be able to resolve the issue of the vehicular/electrical and transmission right of way in an amicable fashion, the prospect of constructing a separate vehicular right of way from the township road across HMA lands to interconnect with the roadway on HMA lands at or near the Moshannon Creek wellfield while utilizing the existing Gilliland right of way for the electrical lines and the transmission pipeline is economically, practically and logically unfeasible. As a result it is my opinion that HMA must begin to prepare for the taking of the roadway by virtue of the power granted the Authority under the Eminent Domain Code. Be advised therefore, that we intend to acquire the right of way by condemnation unless we are able to reach an agreement in the very near future to purchase an easement from your client.

Please understand that when I refer to the right of way as the "Gilliland right of way" and refer to the purchase of an easement from your client, this is without any acknowledgement of ownership of the existing right of way and certainly should in no way be construed as an admission by the Authority that Mr. Gilliland, in fact, owns this right of way, free of those rights asserted by the Authority. These statements are made much in the same manner as would be those statements made in a letter of demand where certain facts are asserted only for purposes of settlement negotiation and will not be admitted outside that limited venue and for no other purposes.

Before incurring the expense of drafting the resolution, declaration of taking, bond, and other related documents, I did wish to confer with you one last time on whether your clients would be willing to accept the estimated fair market value for the right of way as established by our real estate expert in exchange for a deed in lieu of condemnation? Our expert has indicated that the value of the existing right of way is approximately \$10,000.

EXHIBIT

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

(2)

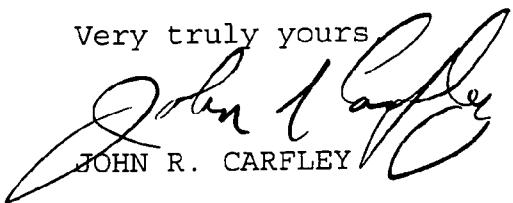
The value of a right of way 50' wide x 5100' in length is valued at approximately \$25,000. I am prepared to discuss the purchase of the right of way based upon these appraisals and would offer these figures as the basis for negotiating the estimated just compensation payable to your client in lieu of condemnation.

If your clients are adamant that they will not entertain an offer to purchase, please state this fact and we will proceed with our actions as authorized under the Eminent Domain Code.

The Board has authorized me to negotiate for a period of ten (10) days and thereafter to undertake condemnation proceedings. I do not want this to appear threatening nor do I wish this timetable to be confrontational. I believe we have discussed this issue enough for your clients to know whether they are amenable to some type of amicable solution now that the Board has rejected the concept of constructing an entirely new roadway over HMA land and has expressed its intent to proceed against the existing roadway for reasons stated by our experts.

Your consideration and cooperation in this regard has been and will in the future be appreciated.

Very truly yours



JOHN R. CARFLEY

CC: HMA

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 780 Session of 2001

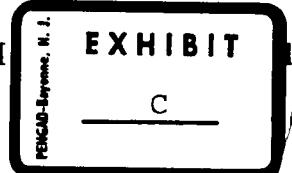
INTRODUCED BY ROBBINS, PUNT, EARLL, THOMPSON, WOZNIAK, WENGER,
LEMMOND, CORMAN, M. WHITE, RHOADES, WAUGH, MOWERY AND CONTI,
APRIL 4, 2001

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 12, 2001

AN ACT

1 Amending the act of May 2, 1945 (P.L. 382, No. 164), entitled "An
2 act providing for the incorporation as bodies corporate and
3 politic of "Authorities" for municipalities, counties and
4 townships; prescribing the rights, powers and duties of such
5 Authorities heretofore or hereafter incorporated; authorizing
6 such Authorities to acquire, construct, improve, maintain and
7 operate projects, and to borrow money and issue bonds
8 therefor; providing for the payment of such bonds, and
9 prescribing the rights of the holders thereof; conferring the
10 right of eminent domain on such Authorities; authorizing such
11 Authorities to enter into contracts with and to accept grants
12 from the Federal Government or any agency thereof; and
13 conferring exclusive jurisdiction on certain courts over
14 rates," further providing for the purposes and powers of an
15 authority and for governing body residency requirements. <--

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:
26 ~~Section 7A of the act of May 2, 1945 (P.L. 392, No. 164), known as the Municipality Authorities Act of 1945, amended December 20, 2000 (P.L. 792, No. 112), is amended to read:~~
27 ~~Section 7. Governing Body. — A. The powers of each Authority shall be exercised by a governing body (herein called the "Board") composed as follows:~~
1 ~~(a) If the Authority is incorporated by one municipality the board shall consist of such number of members not less than five as shall be set forth in the articles of incorporation or amendment thereto. The governing body of such municipality shall~~
2
3
4
5
6
7
8



16 BE DEEMED COMPLETE FOR THE ACQUISITION BY AGREEMENT OF A PROJECT
17 LOCATED WHOLLY WITHIN OR PARTIALLY WITHOUT THE MUNICIPALITY
18 CAUSING THE AUTHORITY TO BE INCORPORATED; AND NO PROCEEDINGS OR
19 OTHER ACTION SHALL BE REQUIRED EXCEPT AS PRESCRIBED IN THIS
20 SECTION.

21 § 5517. SEVERABILITY.

22 THE PROVISIONS OF THIS CHAPTER ARE SEVERABLE. IF ANY
23 PROVISION OF THIS CHAPTER OR ITS APPLICATION TO ANY PERSON OR
24 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT
25 OTHER PROVISIONS OR APPLICATIONS OF THIS CHAPTER WHICH CAN BE
26 GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

27 CHAPTER 56

28 MUNICIPAL AUTHORITIES

29 SEC.

30 5601. SHORT TITLE OF CHAPTER.

20010S0780B1186 - 41 -

1 5602. DEFINITIONS.

2 5603. METHOD OF INCORPORATION.

3 5604. MUNICIPALITIES WITHDRAWING FROM AND JOINING IN JOINT
4 AUTHORITIES.

5 5605. AMENDMENT OF ARTICLES.

6 5606. SCHOOL DISTRICT PROJECTS.

7 5607. PURPOSES AND POWERS.

8 5608. BONDS.

9 5609. BONDHOLDERS.

10 5610. GOVERNING BODY.

11 5611. INVESTMENT OF AUTHORITY FUNDS.

12 5612. MONEY OF AUTHORITY.

13 5613. TRANSFER OF EXISTING FACILITIES TO AUTHORITY.

14 5614. COMPETITION IN AWARD OF CONTRACTS.

15 5615. ACQUISITION OF LANDS, WATER AND WATER RIGHTS.

16 5616. ACQUISITION OF CAPITAL STOCK.

17 5617. USE OF PROJECTS.

18 5618. PLEDGE BY COMMONWEALTH.

19 5619. TERMINATION OF AUTHORITY.

20 5620. EXEMPTION FROM TAXATION AND PAYMENTS IN LIEU OF TAXES.

21 5621. CONSTITUTIONAL CONSTRUCTION.

22 5622. CONVEYANCE BY AUTHORITIES TO MUNICIPALITIES OR SCHOOL
23 DISTRICTS OF ESTABLISHED PROJECTS.

24 § 5601. SHORT TITLE OF CHAPTER.

25 THIS CHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE

26 MUNICIPALITY AUTHORITIES ACT.

27 § 5602. DEFINITIONS.

28 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
29 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
30 CONTEXT CLEARLY INDICATES OTHERWISE:

20010S0780B1186 - 42 -

1 "ADMINISTRATIVE SERVICE." IN THE CASE OF AUTHORITIES CREATED
2 FOR THE PURPOSE OF MAKING BUSINESS IMPROVEMENTS OR PROVIDING
3 ADMINISTRATIVE SERVICES, THE TERM MEANS THOSE SERVICES WHICH
4 IMPROVE THE ABILITY OF THE COMMERCIAL ESTABLISHMENTS OF A
5 DISTRICT TO SERVE THE CONSUMERS, SUCH AS FREE OR REDUCED FEE
6 PARKING FOR CUSTOMERS, TRANSPORTATION REPAYMENTS, PUBLIC
7 RELATIONS PROGRAMS, GROUP ADVERTISING, AND DISTRICT MAINTENANCE
8 AND SECURITY SERVICES.

9 "AUTHORITY." A BODY POLITIC AND CORPORATE, CREATED UNDER
10 THIS CHAPTER OR UNDER THE ACT OF MAY 2, 1945 (P.L.382, NO.164),
11 KNOWN AS THE MUNICIPALITY AUTHORITIES ACT OF 1945.

12 "BOARD." THE GOVERNING BODY OF AN AUTHORITY.

13 "BONDS." NOTES, BONDS AND OTHER EVIDENCE OF INDEBTEDNESS OR
14 OBLIGATIONS WHICH EACH AUTHORITY IS AUTHORIZED TO ISSUE PURSUANT
15 TO SECTION 5608 (RELATING TO BONDS).

16 "BUSINESS IMPROVEMENT." IN THE CASE OF AUTHORITIES CREATED
17 FOR THE PURPOSE OF MAKING BUSINESS IMPROVEMENTS OR PROVIDING

18 ADMINISTRATIVE SERVICES, THE TERM MEANS THOSE IMPROVEMENTS
19 DESIGNATED BY AN AUTHORITY TO BE NEEDED BY A DISTRICT IN GENERAL
20 OR BY SPECIFIC AREAS OR INDIVIDUAL PROPERTIES WITHIN OR NEAR THE
21 DISTRICT, INCLUDING, BUT NOT LIMITED TO, SIDEWALKS, RETAINING
22 WALLS, STREET PAVING, STREET LIGHTING, PARKING LOTS, PARKING
23 GARAGES, TREES AND SHRUBBERY, PEDESTRIAN WALKS, SEWERS, WATER
24 LINES, REST AREAS AND ACQUISITION AND REMODELING OR DEMOLITION
25 OF BLIGHTED BUILDINGS OR STRUCTURES. IMPROVEMENTS SHALL NOT BE
26 MADE TO PROPERTY NOT ACQUIRED BY PURCHASE OR LEASE, OTHER THAN
27 THOSE IMPROVEMENTS MADE WITHIN A RIGHT-OF-WAY.

28 "CONSTRUCTION." ACQUISITION AND CONSTRUCTION. THE TERM "TO
29 CONSTRUCT" SHALL MEAN AND INCLUDE TO ACQUIRE AND TO CONSTRUCT,
30 ALL IN SUCH MANNER AS MAY BE DEEMED DESIRABLE.

20010S0780B1186

- 43 -

1 "ELIGIBLE EDUCATIONAL INSTITUTION." AN INDEPENDENT
2 INSTITUTION OF HIGHER EDUCATION LOCATED IN AND CHARTERED BY THE
3 COMMONWEALTH OR A PRIVATE, SECONDARY SCHOOL LOCATED IN THIS
4 COMMONWEALTH AND APPROVED BY THE DEPARTMENT OF EDUCATION WHICH
5 IS NOT A STATE-OWNED INSTITUTION, WHICH IS OPERATED NOT FOR
6 PROFIT, WHICH IS DETERMINED BY THE AUTHORITY NOT TO BE A
7 THEOLOGICAL SEMINARY OR SCHOOL OF THEOLOGY OR A SECTARIAN AND
8 DENOMINATIONAL INSTITUTION AND WHICH IS APPROVED AS ELIGIBLE BY
9 THE AUTHORITY PURSUANT TO REGULATIONS APPROVED BY IT.

10 "FEDERAL AGENCY." THE UNITED STATES OF AMERICA, THE
11 PRESIDENT OF THE UNITED STATES OF AMERICA AND ANY DEPARTMENT OF
12 OR CORPORATION, AGENCY OR INSTRUMENTALITY CREATED, DESIGNATED OR
13 ESTABLISHED BY THE UNITED STATES OF AMERICA.

14 "FINANCING," "TO FINANCE" OR "FINANCED." THE LENDING OR
15 PROVIDING OF FUNDS TO OR ON BEHALF OF A PERSON FOR PAYMENT OF
16 THE COSTS OF A PROJECT OR FOR REFINANCING SUCH COSTS, REPAYMENT
17 OF LOANS PREVIOUSLY INCURRED TO PAY THE COST OF A PROJECT OR
18 OTHERWISE.

19 "HEALTH CENTER." A FACILITY WHICH:

20 (1) IS OPERATED BY A NONPROFIT CORPORATION AND:
21 (I) PROVIDES HEALTH CARE SERVICES TO THE PUBLIC;
22 (II) PROVIDES HEALTH CARE-RELATED SERVICES OR
23 ASSISTANCE TO ONE OR MORE ORGANIZATIONS IN AID OF THE
24 PROVISION OF HEALTH CARE SERVICES TO THE PUBLIC,
25 INCLUDING, WITHOUT LIMITATION, SUCH FACILITIES AS BLOOD
26 BANKS, LABORATORIES, RESEARCH AND TESTING FACILITIES,
27 MEDICAL AND ADMINISTRATIVE OFFICE BUILDINGS AND ANCILLARY
28 FACILITIES;
29 (III) CONSTITUTES AN INTEGRATED FACILITY WHICH
30 PROVIDES SUBSTANTIAL HEALTH CARE SERVICES ON A

20010S0780B1186

- 44 -

1 NONSECTARIAN BASIS AND OTHER REASONABLY RELATED SERVICES,
2 INCLUDING, WITHOUT LIMITATION, LIFE CARE OR CONTINUING
3 CARE COMMUNITIES AND NURSING, PERSONAL CARE OR ASSISTED
4 LIVING FACILITIES FOR THE ELDERLY, HANDICAPPED OR
5 DISABLED; OR

6 (IV) PROVIDES EDUCATIONAL AND COUNSELING SERVICES
7 REGARDING THE PREVENTION, DIAGNOSIS AND TREATMENT OF
8 HEALTH CARE PROBLEMS; AND

9 (2) IF REQUIRED BY LAW TO BE LICENSED TO PROVIDE SUCH
10 SERVICES BY THE DEPARTMENT OF HEALTH, THE DEPARTMENT OF
11 PUBLIC WELFARE OR THE INSURANCE DEPARTMENT, IS SO LICENSED
12 OR, IN THE CASE OF A FACILITY TO BE CONSTRUCTED, RENOVATED OR
13 EXPANDED, IS DESIGNED TO COMPLY WITH APPLICABLE STANDARDS FOR
14 SUCH LICENSURE.

15 "IMPROVEMENT." EXTENSION, ENLARGEMENT AND IMPROVEMENT. THE
16 TERM "TO IMPROVE" SHALL MEAN AND INCLUDE TO EXTEND, TO ENLARGE
17 AND TO IMPROVE ALL IN SUCH MANNER AS MAY BE DEEMED DESIRABLE.

18 "LOCAL GOVERNMENT UNIT." THIS TERM SHALL HAVE THE SAME
19 MEANING AS PROVIDED UNDER SECTION 8002 (RELATING TO

20 DEFINITIONS).

21 "MUNICIPAL AUTHORITY." THE BODY OR BOARD AUTHORIZED BY LAW
22 TO ENACT ORDINANCES OR ADOPT RESOLUTIONS FOR THE PARTICULAR
23 MUNICIPALITY.

24 "MUNICIPALITY." A COUNTY, CITY, TOWN, BOROUGH, TOWNSHIP OR
25 SCHOOL DISTRICT OF THE COMMONWEALTH.

26 "PROJECT." EQUIPMENT LEASED BY AN AUTHORITY TO THE
27 MUNICIPALITY OR MUNICIPALITIES THAT ORGANIZED IT OR TO ANY
28 MUNICIPALITY OR SCHOOL DISTRICT LOCATED WHOLLY OR PARTIALLY
29 WITHIN THE BOUNDARIES OF THE MUNICIPALITY OR MUNICIPALITIES THAT
30 ORGANIZED IT, OR ANY STRUCTURE, FACILITY OR UNDERTAKING WHICH AN
20010S0780B1186 - 45 -

1 AUTHORITY IS AUTHORIZED TO ACQUIRE, CONSTRUCT, FINANCE, IMPROVE,
2 MAINTAIN OR OPERATE, OR PROVIDE FINANCING FOR INSURANCE RESERVES
3 UNDER THE PROVISIONS OF THIS CHAPTER, OR ANY WORKING CAPITAL
4 WHICH AN AUTHORITY IS AUTHORIZED TO FINANCE UNDER THE PROVISIONS
5 OF THIS CHAPTER.

6 "PROVIDE FINANCING FOR INSURANCE RESERVES." FINANCING, ON
7 BEHALF OF ONE OR MORE LOCAL GOVERNMENT UNITS OR AUTHORITIES, ALL
8 OR ANY PORTION OF A RESERVE OR A CONTRIBUTION TOWARD A COMBINED
9 RESERVE, POOL OR OTHER ARRANGEMENT RELATING TO SELF-INSURANCE
10 WHICH HAS BEEN ESTABLISHED BY ONE OR MORE LOCAL GOVERNMENT UNITS
11 PURSUANT TO 42 P.A.C.S. § 8564 (RELATING TO LIABILITY INSURANCE
12 AND SELF-INSURANCE) UP TO, BUT NOT EXCEEDING, THE AMOUNT
13 PROVIDED IN SECTION 8227 (RELATING TO SINKING FUND NOT REQUIRED
14 FOR SMALL BORROWINGS).

15 "WORKING CAPITAL." SHALL INCLUDE, BUT NOT BE LIMITED TO,
16 FUNDS FOR SUPPLIES, MATERIALS, SERVICES, SALARIES, PENSIONS AND
17 ANY OTHER PROPER OPERATING EXPENSES, PROVIDED THAT THE TERM
18 SHALL BE LIMITED SOLELY TO HOSPITALS AND HEALTH CENTERS, AND
19 PRIVATE, NONPROFIT, NONSECTARIAN COLLEGES AND UNIVERSITIES,
20 STATE-RELATED UNIVERSITIES AND COMMUNITY COLLEGES, WHICH ARE
21 DETERMINED BY THE AUTHORITY TO BE ELIGIBLE EDUCATIONAL
22 INSTITUTIONS. NOTHING IN THIS CHAPTER SHALL PROHIBIT THE
23 BORROWING OF WORKING CAPITAL AS MAY BE NECESSARY OR INCIDENTAL
24 TO THE UNDERTAKING OR PLACING IN OPERATION OF ANY PROJECT
25 UNDERTAKEN IN WHOLE OR IN PART PURSUANT TO THIS CHAPTER.

26 S 5603. METHOD OF INCORPORATION.

27 (A) RESOLUTION OF INTENT.--WHENEVER THE MUNICIPAL
28 AUTHORITIES OF ANY MUNICIPALITY SINGLY OR OF TWO OR MORE
29 MUNICIPALITIES JOINTLY DESIRE TO ORGANIZE AN AUTHORITY UNDER
30 THIS CHAPTER, THEY SHALL ADOPT A RESOLUTION OR ORDINANCE
20010S0780B1186 - 46 -

1 SIGNIFYING THEIR INTENTION TO DO SO. NO SUCH RESOLUTION OR
2 ORDINANCE SHALL BE ADOPTED UNTIL AFTER A PUBLIC HEARING HAS BEEN
3 HELD, THE NOTICE OF WHICH SHALL BE GIVEN AT LEAST 30 DAYS BEFORE
4 THE HEARING AND IN THE SAME MANNER AS PROVIDED IN SUBSECTION (B)
5 FOR THE GIVING OF NOTICE OF THE ADOPTION OF THE RESOLUTION OR
6 ORDINANCE.

7 (B) GENERAL NOTICE OF ADOPTED RESOLUTION.--IF THE RESOLUTION
8 OR ORDINANCE IS ADOPTED, THE MUNICIPAL AUTHORITIES OF SUCH
9 MUNICIPALITY OR MUNICIPALITIES SHALL CAUSE A NOTICE OF SUCH
10 RESOLUTION OR ORDINANCE TO BE PUBLISHED AT LEAST ONE TIME IN THE
11 LEGAL PERIODICAL OF THE COUNTY OR COUNTIES IN WHICH THE
12 AUTHORITY IS TO BE ORGANIZED AND AT LEAST ONE TIME IN A
13 NEWSPAPER PUBLISHED AND IN GENERAL CIRCULATION IN SUCH COUNTY OR
14 COUNTIES. THE NOTICE SHALL CONTAIN A BRIEF STATEMENT OF THE
15 SUBSTANCE OF THE RESOLUTION OR ORDINANCE, INCLUDING THE
16 SUBSTANCE OF THE ARTICLES MAKING REFERENCE TO THIS CHAPTER. IN
17 THE CASE OF AUTHORITIES CREATED FOR THE PURPOSE OF MAKING
18 BUSINESS IMPROVEMENTS OR PROVIDING ADMINISTRATIVE SERVICES, IF
19 APPROPRIATE, THE NOTICE SHALL SPECIFICALLY PROVIDE THAT THE
20 MUNICIPALITY OR MUNICIPALITIES HAVE RETAINED THE RIGHT WHICH
21 EXISTS UNDER THIS CHAPTER TO APPROVE ANY PLAN OF THE AUTHORITY.

22 THE NOTICE SHALL STATE THAT ON A DAY CERTAIN, NOT LESS THAN
23 THREE DAYS AFTER PUBLICATION OF THE NOTICE, ARTICLES OF
24 INCORPORATION OF THE PROPOSED AUTHORITY SHALL BE FILED WITH THE
25 SECRETARY OF THE COMMONWEALTH. NO MUNICIPALITY SHALL BE REQUIRED
26 TO MAKE ANY OTHER PUBLICATION OF THE RESOLUTION OR ORDINANCE
27 UNDER THE PROVISIONS OF EXISTING LAW.

28 (C) FILING ARTICLES OF INCORPORATION.--ON OR BEFORE THE DAY
29 SPECIFIED IN THE NOTICE REQUIRED UNDER SUBSECTION (B), THE
30 MUNICIPAL AUTHORITIES SHALL FILE WITH THE SECRETARY OF THE
20010S0780B1186 - 47 -

1 COMMONWEALTH ARTICLES OF INCORPORATION, TOGETHER WITH PROOF OF
2 PUBLICATION OF THE NOTICE REQUIRED UNDER SUBSECTION (B). THE
3 ARTICLES OF INCORPORATION SHALL SET FORTH:

4 (1) THE NAME OF THE AUTHORITY.

5 (2) A STATEMENT THAT THE AUTHORITY IS FORMED UNDER THIS
6 CHAPTER.

7 (3) A STATEMENT WHETHER ANY OTHER AUTHORITY HAS BEEN
8 ORGANIZED UNDER THIS CHAPTER OR UNDER THE FORMER ACT OF JUNE
9 28, 1935 (P.L. 463, NO. 191), ENTITLED "AN ACT PROVIDING, FOR A
10 LIMITED PERIOD OF TIME, FOR THE INCORPORATION, AS BODIES
11 CORPORATE AND POLITIC, OF "AUTHORITIES" FOR MUNICIPALITIES;
12 DEFINING THE SAME; PRESCRIBING THE RIGHTS, POWERS, AND DUTIES
13 OF SUCH AUTHORITIES; AUTHORIZING SUCH AUTHORITIES TO ACQUIRE,
14 CONSTRUCT, IMPROVE, MAINTAIN, AND OPERATE PROJECTS, AND TO
15 BORROW MONEY AND ISSUE BONDS THEREFOR; PROVIDING FOR THE
16 PAYMENT OF SUCH BONDS, AND PRESCRIBING THE RIGHTS OF THE
17 HOLDERS THEREOF; CONFERRING THE RIGHT OF EMINENT DOMAIN ON
18 SUCH AUTHORITIES; AUTHORIZING SUCH AUTHORITIES TO ENTER INTO
19 CONTRACTS WITH AND TO ACCEPT GRANTS FROM THE FEDERAL
20 GOVERNMENT OR ANY AGENCY THEREOF; AND FOR OTHER PURPOSES," OR
21 THE ACT OF MAY 2, 1945 (P.L. 382, NO. 164), KNOWN AS THE
22 MUNICIPALITY AUTHORITIES ACT OF 1945, AND IS IN EXISTENCE IN
23 OR FOR THE INCORPORATING MUNICIPALITY OR MUNICIPALITIES. IF
24 ANY ONE OR MORE OF THE MUNICIPALITIES HAVE ALREADY JOINED
25 WITH OTHER MUNICIPALITIES NOT COMPOSING THE SAME GROUP IN
26 ORGANIZING A JOINT AUTHORITY, THE APPLICATION SHALL SET FORTH
27 THE NAME OF THAT AUTHORITY, TOGETHER WITH THE NAMES OF THE
28 MUNICIPALITIES JOINING IN IT.

29 (4) THE NAME OF THE INCORPORATING MUNICIPALITY OR
30 MUNICIPALITIES, TOGETHER WITH THE NAMES AND ADDRESSES OF ITS
20010S0780B1186 - 48 -

1 MUNICIPAL AUTHORITIES.

2 (5) THE NAMES, ADDRESSES AND TERM OF OFFICE OF THE FIRST
3 MEMBERS OF THE BOARD OF THE AUTHORITY.

4 (6) IN THE CASE OF AUTHORITIES CREATED FOR THE PURPOSE
5 OF MAKING BUSINESS IMPROVEMENTS OR PROVIDING ADMINISTRATIVE
6 SERVICES, IF APPROPRIATE, A STATEMENT THAT THE MUNICIPALITY
7 OR MUNICIPALITIES HAVE RETAINED THE RIGHT WHICH EXISTS UNDER
8 THIS CHAPTER TO APPROVE ANY PLAN OF THE AUTHORITY.

9 (7) ANY OTHER MATTER WHICH SHALL BE DETERMINED IN
10 ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER.

11 (D) EXECUTION OF ARTICLES.--THE ARTICLES OF INCORPORATION
12 SHALL BE EXECUTED BY EACH INCORPORATING MUNICIPALITY BY ITS
13 PROPER OFFICERS AND UNDER ITS MUNICIPAL SEAL.

14 (E) CERTIFICATION OF INCORPORATION.--IF THE SECRETARY OF THE
15 COMMONWEALTH FINDS THAT THE ARTICLES OF INCORPORATION CONFORM TO
16 LAW, HE SHALL, BUT NOT PRIOR TO THE DAY SPECIFIED IN THE NOTICE
17 PUBLISHED IN ACCORDANCE WITH SUBSECTION (B), ENDORSE HIS
18 APPROVAL OF THEM AND, WHEN ALL PROPER FEES AND CHARGES HAVE BEEN
19 PAID, SHALL FILE THE ARTICLES AND ISSUE A CERTIFICATE OF
20 INCORPORATION, TO WHICH SHALL BE ATTACHED A COPY OF THE APPROVED
21 ARTICLES. UPON THE ISSUANCE OF A CERTIFICATE OF INCORPORATION BY
22 THE SECRETARY OF THE COMMONWEALTH, THE CORPORATE EXISTENCE OF
23 THE AUTHORITY SHALL BEGIN. THE CERTIFICATE OF INCORPORATION

24 SHALL BE CONCLUSIVE EVIDENCE OF THE FACT THAT THE AUTHORITY HAS
25 BEEN INCORPORATED, BUT PROCEEDINGS MAY BE INSTITUTED BY THE
26 COMMONWEALTH TO DISSOLVE AN AUTHORITY WHICH WAS FORMED WITHOUT
27 SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.

28 (F) CERTIFICATION OF OFFICERS.--WHEN AN AUTHORITY HAS BEEN
29 ORGANIZED AND ITS OFFICERS ELECTED, ITS SECRETARY SHALL CERTIFY
30 TO THE SECRETARY OF THE COMMONWEALTH THE NAMES AND ADDRESSES OF
20010S0780B1186 - 49 -

1 ITS OFFICERS, AS WELL AS THE PRINCIPAL OFFICE OF THE AUTHORITY.
2 ANY CHANGE IN THE LOCATION OF THE PRINCIPAL OFFICE SHALL
3 LIKEWISE BE CERTIFIED TO THE SECRETARY OF THE COMMONWEALTH
4 WITHIN TEN DAYS AFTER SUCH CHANGE. AN AUTHORITY CREATED UNDER
5 THE LAWS OF THE COMMONWEALTH EXISTING AT THE TIME THIS CHAPTER
6 IS ENACTED, IN ADDITION TO POWERS GRANTED OR CONFERRED UPON THE
7 AUTHORITY, SHALL POSSESS ALL THE POWERS PROVIDED UNDER THIS
8 CHAPTER.

9 S 5604. MUNICIPALITIES WITHDRAWING FROM AND JOINING IN JOINT
10 AUTHORITIES.

11 (A) POWER TO WITHDRAW.--WHEN AN AUTHORITY HAS BEEN
12 INCORPORATED BY TWO OR MORE MUNICIPALITIES, ANY ONE OR MORE OF
13 SUCH MUNICIPALITIES MAY WITHDRAW FROM IT, BUT NO MUNICIPALITY
14 SHALL BE PERMITTED TO WITHDRAW FROM AN AUTHORITY AFTER AN
15 OBLIGATION HAS BEEN INCURRED BY THAT AUTHORITY.

16 (B) POWER TO JOIN.--WHEN AN AUTHORITY HAS BEEN INCORPORATED
17 BY ONE OR MORE MUNICIPALITIES, A MUNICIPALITY NOT HAVING JOINED
18 IN THE ORIGINAL INCORPORATION MAY SUBSEQUENTLY JOIN IN THE
19 AUTHORITY.

20 (C) PROCEDURE.--ANY MUNICIPALITY WISHING TO WITHDRAW FROM OR
21 TO BECOME A MEMBER OF AN EXISTING AUTHORITY SHALL SIGNIFY ITS
22 DESIRE BY RESOLUTION OR ORDINANCE. IF THE AUTHORITY SHALL BY
23 RESOLUTION EXPRESS ITS CONSENT TO SUCH WITHDRAWAL OR JOINING,
24 THE MUNICIPAL AUTHORITIES OF THE WITHDRAWING OR JOINING
25 MUNICIPALITY SHALL CAUSE A NOTICE OF ITS RESOLUTION OR ORDINANCE
26 TO BE PUBLISHED AT LEAST ONE TIME IN THE LEGAL PERIODICAL OF THE
27 COUNTY OR COUNTIES IN WHICH THE AUTHORITY IS ORGANIZED AND AT
28 LEAST ONE TIME IN A NEWSPAPER PUBLISHED AND IN GENERAL
29 CIRCULATION IN SUCH COUNTY OR COUNTIES. THIS NOTICE SHALL
30 CONTAIN A BRIEF STATEMENT OF THE SUBSTANCE OF THE RESOLUTION OR
20010S0780B1186 - 50 -

1 ORDINANCE, MAKING REFERENCE TO THIS CHAPTER, AND SHALL STATE
2 THAT ON A DAY CERTAIN, NOT LESS THAN THREE DAYS AFTER
3 PUBLICATION OF THE NOTICE, AN APPLICATION TO WITHDRAW FROM OR TO
4 BECOME A MEMBER OF THE AUTHORITY, AS THE CASE MAY BE, WILL BE
5 FILED WITH THE SECRETARY OF THE COMMONWEALTH.

6 (D) FILING AN APPLICATION TO WITHDRAW OR JOIN.--ON OR BEFORE
7 THE DAY SPECIFIED IN THE NOTICE, THE MUNICIPAL AUTHORITIES SHALL
8 FILE AN APPLICATION WITH THE SECRETARY OF THE COMMONWEALTH,
9 TOGETHER WITH PROOF OF PUBLICATION OF THE NOTICE REQUIRED UNDER
10 SUBSECTION (C). IN THE CASE OF A MUNICIPALITY SEEKING TO BECOME
11 A MEMBER OF THE AUTHORITY, THE APPLICATION SHALL SET FORTH ALL
12 OF THE INFORMATION REQUIRED IN THE CASE OF ORIGINAL
13 INCORPORATION INSOFAR AS IT APPLIES TO THE INCOMING
14 MUNICIPALITY, INCLUDING THE NAME AND ADDRESS AND TERM OF OFFICE
15 OF THE FIRST MEMBER OR MEMBERS OF THE BOARD OF THE AUTHORITY
16 FROM THE INCOMING MUNICIPALITY AND, IF THERE IS TO BE A
17 REAPPORTIONMENT OF REPRESENTATION OR REVISION OF THE TERMS OF
18 OFFICE OF THE MEMBERS OF THE BOARD, THE NAMES, ADDRESSES AND
19 TERMS OF OFFICE OF ALL THE MEMBERS OF THE BOARD AS SO
20 REAPPORTIONED OR REVISED. THE APPLICATION IN ALL CASES SHALL BE
21 EXECUTED BY THE PROPER OFFICERS OF THE WITHDRAWING OR INCOMING
22 MUNICIPALITY UNDER ITS MUNICIPAL SEAL AND SHALL BE JOINED IN BY
23 THE PROPER OFFICERS OF THE GOVERNING BODY OF THE AUTHORITY AND,
24 IN THE CASE OF A MUNICIPALITY SEEKING TO BECOME A MEMBER OF THE
25 AUTHORITY, ALSO BY THE PROPER OFFICERS OF EACH OF THE

26 MUNICIPALITIES THAT ARE THEN MEMBERS OF THE AUTHORITY, PURSUANT
27 TO RESOLUTIONS BY THE MUNICIPAL AUTHORITIES OF THE PARTICIPATING
28 MUNICIPALITIES.

29 (E) CERTIFICATION OF WITHDRAWAL OR JOINDER.--IF THE
30 SECRETARY OF THE COMMONWEALTH FINDS THAT THE APPLICATION
20010S0780B1186 - 51 -

1 CONFORMS TO LAW, HE SHALL, BUT NOT PRIOR TO THE DAY SPECIFIED IN
2 THE NOTICE, ENDORSE HIS APPROVAL OF IT, AND, WHEN ALL PROPER
3 FEES AND CHARGES HAVE BEEN PAID, SHALL FILE THE SAME AND ISSUE A
4 CERTIFICATE OF WITHDRAWAL OR A CERTIFICATE OF JOINDER, AS THE
5 CASE MAY BE, TO WHICH SHALL BE ATTACHED A COPY OF THE APPROVED
6 APPLICATION. THE WITHDRAWAL OR JOINING SHALL BECOME EFFECTIVE
7 UPON THE ISSUING OF THE CERTIFICATE.

8 § 5605. AMENDMENT OF ARTICLES.

9 (A) PURPOSE.--AN AUTHORITY MAY AMEND ITS ARTICLES FOR THE
10 FOLLOWING REASONS:

11 (1) TO ADOPT A NEW NAME.

12 (2) TO MODIFY OR ADD A PROVISION TO INCREASE ITS TERM OF
13 EXISTENCE TO A DATE NOT EXCEEDING 50 YEARS FROM THE DATE OF
14 APPROVAL OF THE ARTICLES OF AMENDMENT.

15 (3) TO CHANGE, ADD TO OR DIMINISH ITS POWERS OR PURPOSES
16 OR TO SET FORTH DIFFERENT OR ADDITIONAL POWERS OR PURPOSES.

17 (4) TO INCREASE OR DECREASE THE NUMBER OF MEMBERS OF THE
18 BOARD OF THE AUTHORITY, TO REAPPORTION THE REPRESENTATION ON
19 THE BOARD OF THE AUTHORITY AND TO REVISE THE TERMS OF OFFICE
20 OF MEMBERS, ALL IN A MANNER CONSISTENT WITH THE PROVISIONS OF
21 SECTION 5610 (RELATING TO GOVERNING BODY).

22 (B) PROCEDURE.--EVERY AMENDMENT TO THE ARTICLES SHALL FIRST
23 BE PROPOSED BY THE BOARD BY THE ADOPTION OF A RESOLUTION SETTING
24 FORTH THE PROPOSED AMENDMENT AND DIRECTING THAT IT BE SUBMITTED
25 TO THE GOVERNING AUTHORITIES OF THE MUNICIPALITY OR
26 MUNICIPALITIES COMPOSING THE AUTHORITY. THE RESOLUTION SHALL
27 CONTAIN THE LANGUAGE OF THE PROPOSED AMENDMENT TO THE ARTICLES
28 BY PROVIDING THAT THE ARTICLES SHALL BE AMENDED SO AS TO READ AS
29 SET FORTH IN FULL IN THE RESOLUTION, THAT ANY PROVISION OF THE
30 ARTICLES BE AMENDED SO AS TO READ AS SET FORTH IN FULL IN THE
20010S0780B1186 - 52 -

1 RESOLUTION, OR THAT THE MATTER STATED IN THE RESOLUTION BE ADDED
2 TO OR STRICKEN FROM THE ARTICLES. AFTER THE AMENDMENTS HAVE BEEN
3 SUBMITTED TO THE MUNICIPALITY OR MUNICIPALITIES, SUCH
4 MUNICIPALITY OR MUNICIPALITIES SHALL ADOPT OR REJECT SUCH
5 AMENDMENT BY RESOLUTION OR ORDINANCE.

6 (C) EXECUTION AND VERIFICATION.--AFTER AN AMENDMENT HAS BEEN
7 ADOPTED BY THE MUNICIPALITY OR MUNICIPALITIES, ARTICLES OF
8 AMENDMENT SHALL BE EXECUTED UNDER THE SEAL OF THE AUTHORITY AND
9 VERIFIED BY TWO DULY AUTHORIZED OFFICERS OF THE CORPORATION AND
10 SHALL SET FORTH:

11 (1) THE NAME AND LOCATION OF THE REGISTERED OFFICE OF
12 THE AUTHORITY.

13 (2) THE ACT UNDER WHICH THE AUTHORITY WAS FORMED AND THE
14 DATE WHEN THE ORIGINAL ARTICLES WERE APPROVED AND FILED.

15 (3) THE RESOLUTION OR ORDINANCE OF THE MUNICIPALITY OR
16 MUNICIPALITIES ADOPTING THE AMENDMENT.

17 (4) THE AMENDMENT ADOPTED BY THE MUNICIPALITY OR
18 MUNICIPALITIES WHICH SHALL BE SET FORTH IN FULL.

19 (D) ADVERTISEMENT.--THE AUTHORITY SHALL ADVERTISE ITS
20 INTENTION TO FILE ARTICLES OF AMENDMENT WITH THE SECRETARY OF
21 THE COMMONWEALTH AS PROVIDED UNDER SECTION 5603 (RELATING TO
22 METHOD OF INCORPORATION) FOR FORMING AN AUTHORITY.

23 ADVERTISEMENTS SHALL APPEAR AT LEAST THREE DAYS PRIOR TO THE DAY
24 UPON WHICH THE ARTICLES OF AMENDMENT ARE PRESENTED TO THE
25 SECRETARY OF THE COMMONWEALTH AND SHALL SET FORTH BRIEFLY:

26 (1) THE NAME AND LOCATION OF THE REGISTERED OFFICE OF
27 THE AUTHORITY.

28 (2) A STATEMENT THAT THE ARTICLES OF AMENDMENT ARE TO BE
29 FILED UNDER THE PROVISIONS OF THIS CHAPTER.
30 (3) THE NATURE AND CHARACTER OF THE PROPOSED AMENDMENT.

20010S0780B1186

- 53 -

1 (4) THE TIME WHEN THE ARTICLES OF AMENDMENT WILL BE
2 FILED WITH THE SECRETARY OF THE COMMONWEALTH.
3 (E) FILING THE AMENDMENT.--THE ARTICLES OF AMENDMENT AND
4 PROOF OF THE REQUIRED ADVERTISEMENT SHALL BE DELIVERED BY THE
5 AUTHORITY OR ITS REPRESENTATIVE TO THE SECRETARY OF THE
6 COMMONWEALTH. IF THE SECRETARY OF THE COMMONWEALTH FINDS THAT
7 THE ARTICLES CONFORM TO LAW, HE SHALL FORTHWITH, BUT NOT PRIOR
8 TO THE DAY SPECIFIED IN THE ADVERTISEMENT REQUIRED IN SUBSECTION
9 (D), ENDORSE HIS APPROVAL OF IT AND, WHEN ALL FEES AND CHARGES
10 HAVE BEEN PAID, SHALL FILE THE ARTICLES AND ISSUE TO THE
11 AUTHORITY OR ITS REPRESENTATIVE A CERTIFICATE OF AMENDMENT TO
12 WHICH SHALL BE ATTACHED A COPY OF THE APPROVED ARTICLES.
13 § 5606. SCHOOL DISTRICT PROJECTS.

14 (A) MERGER AND CONSOLIDATION AUTHORIZED.--ANY TWO OR MORE
15 EXISTING AUTHORITIES, ALL THE PROJECTS OF ALL OF WHICH ARE
16 LEASED TO THE SAME SCHOOL DISTRICT, MAY BE MERGED INTO ONE
17 AUTHORITY, HEREINAFTER DESIGNATED AS THE SURVIVING AUTHORITY, OR
18 CONSOLIDATED INTO A NEW AUTHORITY.

19 (B) ARTICLES OF MERGER OR CONSOLIDATION.--ARTICLES OF MERGER
20 OR ARTICLES OF CONSOLIDATION, AS THE CASE MAY BE, SHALL FIRST BE
21 PROPOSED BY THE BOARD OF SCHOOL DIRECTORS OF THE SCHOOL DISTRICT
22 LEASING THE PROJECTS. THE GOVERNING BODY OF THE SCHOOL DISTRICT
23 AND OF ANY OTHER MUNICIPALITY OR MUNICIPALITIES INCORPORATING
24 ONE OR MORE OF THE EXISTING AUTHORITIES SHALL EACH ADOPT A
25 RESOLUTION WHICH SHALL CONTAIN THE LANGUAGE OF THE PROPOSED
26 MERGER OR CONSOLIDATION. THE ARTICLES OF MERGER OR CONSOLIDATION
27 SHALL BE SIGNED BY THE PROPER OFFICERS OF THE RESPECTIVE SCHOOL
28 DISTRICTS AND OTHER MUNICIPALITIES, IF ANY, AND UNDER THEIR
29 RESPECTIVE MUNICIPAL SEALS AND SHALL SET FORTH THE FOLLOWING:

30 (1) THE NAME OF THE SURVIVING OR NEW AUTHORITY.

20010S0780B1186

- 54 -

1 (2) THE LOCATION OF THE REGISTERED OFFICE OF THE
2 SURVIVING OR NEW AUTHORITY.

3 (3) THE NAMES AND ADDRESSES AND TERM OF OFFICE OF THE
4 MEMBERS OF THE BOARD OF THE SURVIVING OR NEW AUTHORITY AS
5 SPECIFIED IN THE PLAN OF MERGER OR CONSOLIDATION, AND THE
6 INITIAL TERMS OF OFFICE SHALL BE STAGGERED AS PROVIDED IN
7 THIS CHAPTER WITH RESPECT TO THE INCORPORATION OF AN
8 AUTHORITY.

9 (4) A STATEMENT INDICATING THE DATE ON WHICH EACH
10 EXISTING AUTHORITY WAS FORMED AND THE PURPOSE FOR WHICH IT
11 WAS FORMED, TAKEN FROM THE ARTICLES OF INCORPORATION, THE
12 NAME OF THE ORIGINAL INCORPORATING SCHOOL DISTRICT OR
13 DISTRICTS OR OTHER INCORPORATING MUNICIPALITY OR
14 MUNICIPALITIES AND THE NAME OF ANY SUCCESSOR TO ANY THEREOF.

15 (5) THE TIME AND PLACE OF THE MEETINGS OF THE GOVERNING
16 BODIES OF THE SCHOOL DISTRICT AND OTHER MUNICIPALITIES
17 PARTIES TO THE PLAN OF MERGER OR CONSOLIDATION.

18 (6) A STATEMENT OF THE PLAN OF MERGER.

19 (7) ANY CHANGES IN THE ARTICLES OF INCORPORATION OF THE
20 SURVIVING AUTHORITY IN THE CASE OF A MERGER AND A STATEMENT
21 OF THE ARTICLES OF INCORPORATION IN FULL IN THE CASE OF THE
22 NEW AUTHORITY TO BE FORMED, IN EACH CASE IN CONFORMITY WITH
23 THE PROVISIONS OF THIS CHAPTER RELATING TO THE INCORPORATION
24 OF AUTHORITIES, EXCEPT THAT ANY ITEM REQUIRED TO BE STATED
25 WHICH IS COVERED ELSEWHERE IN THE ARTICLES OF MERGER OR
26 CONSOLIDATION NEED NOT BE REPEATED.

27 (C) PUBLICATION OF RESOLUTION.--THE REORGANIZED SCHOOL
28 DISTRICT AND EACH OTHER MUNICIPALITY PARTY TO THE PLAN OF MERGER
29 OR CONSOLIDATION SHALL CAUSE A NOTICE OF THE RESOLUTION SETTING

30 FORTH THE MERGER OR CONSOLIDATION TO BE PUBLISHED AT LEAST ONE
20010S0780B1186 - 55 -

1 TIME IN THE LEGAL PERIODICAL OF THE COUNTY OR COUNTIES IN WHICH
2 THE SURVIVING AUTHORITY IS TO BE ORGANIZED AND AT LEAST ONE TIME
3 IN A NEWSPAPER PUBLISHED AND IN GENERAL CIRCULATION IN SUCH
4 COUNTY OR COUNTIES. THE NOTICE SHALL CONTAIN A BRIEF STATEMENT
5 OF THE SUBSTANCE OF THE RESOLUTION, INCLUDING THE SUBSTANCE OF
6 THE ARTICLES OF MERGER MAKING REFERENCE TO THIS CHAPTER, AND
7 SHALL STATE THAT ON A DAY CERTAIN, NOT LESS THAN THREE DAYS
8 AFTER PUBLICATION OF THE NOTICE, ARTICLES OF MERGER OR
9 CONSOLIDATION, SHALL BE FILED WITH THE SECRETARY OF THE
10 COMMONWEALTH. THE PUBLICATION SHALL BE SUFFICIENT COMPLIANCE
11 WITH THE LAWS OF THIS COMMONWEALTH OR ANY EXISTING LAWS DEALING
12 WITH PUBLICATION FOR MUNICIPALITIES.

13 (D) DOCUMENTATION.--THE ARTICLES OF MERGER OR CONSOLIDATION
14 SHALL BE FILED ON OR BEFORE THE DAY SPECIFIED IN THE
15 ADVERTISEMENT TO THE SECRETARY OF THE COMMONWEALTH, TOGETHER
16 WITH THE PROOF OF PUBLICATION OF THE NOTICE REQUIRED UNDER
17 SUBSECTION (C).

18 (E) CERTIFICATION OF MERGER OR CONSOLIDATION.--THE SECRETARY
19 OF THE COMMONWEALTH SHALL FILE THE ARTICLES OF MERGER OR
20 CONSOLIDATION AND THE PROOF OF ADVERTISEMENT REQUIRED IN
21 SUBSECTION (C) BUT NOT PRIOR TO THE DAY SPECIFIED IN THE
22 ADVERTISEMENT, CERTIFY THE DATE OF SUCH FILING WHEN ALL FEES AND
23 CHARGES HAVE BEEN PAID AND ISSUE TO THE SURVIVING OR NEW
24 AUTHORITY OR ITS REPRESENTATIVE A CERTIFICATE OF MERGER OR
25 CONSOLIDATION TO WHICH SHALL BE ATTACHED A COPY OF THE FILED
26 ARTICLES OF MERGER OR CONSOLIDATION.

27 (F) FILING THE ARTICLES OF MERGER OR CONSOLIDATION.--UPON
28 THE FILING OF THE ARTICLES OF MERGER OR THE ARTICLES OF
29 CONSOLIDATION BY THE SECRETARY OF THE COMMONWEALTH, THE MERGER
30 OR CONSOLIDATION SHALL BE EFFECTIVE, AND, IN THE CASE OF A
20010S0780B1186 - 56 -

1 CONSOLIDATION, THE NEW AUTHORITY SHALL COME INTO EXISTENCE, AND,
2 IN EITHER CASE, THE ARTICLES OF MERGER AND CONSOLIDATION SHALL
3 CONSTITUTE THE ARTICLES OF INCORPORATION OF THE SURVIVING OR NEW
4 AUTHORITY, AND THE REORGANIZED SCHOOL DISTRICT, LESSEE OF THE
5 PROJECTS, SHALL BE DEEMED TO BE THE INCORPORATING MUNICIPALITY
6 OF THE AUTHORITY.

7 (G) CREATION OF SURVIVING OR NEW AUTHORITY.--UPON THE MERGER
8 OR CONSOLIDATION BECOMING EFFECTIVE, THE SEVERAL EXISTING
9 AUTHORITIES TO THE PLAN OF MERGER OR CONSOLIDATION SHALL BECOME
10 A SINGLE AUTHORITY, WHICH IN THE CASE OF A MERGER SHALL BE THAT
11 AUTHORITY DESIGNATED IN THE ARTICLES OF MERGER AS THE SURVIVING
12 AUTHORITY AND IN THE CASE OF A CONSOLIDATION SHALL BE A NEW
13 AUTHORITY AS PROVIDED IN THE ARTICLES OF CONSOLIDATION. THE
14 SEPARATE EXISTENCE OF ALL EXISTING AUTHORITIES NAMED IN THE
15 ARTICLES OF MERGER OR CONSOLIDATION SHALL CEASE, EXCEPT THAT OF
16 THE SURVIVING AUTHORITY IN THE CASE OF A MERGER.

17 (H) DISPOSITION OF PROPERTY AND ACCOUNTS.--ALL OF THE
18 PROPERTY, REAL, PERSONAL AND MIXED AND ALL INTERESTS THEREIN OF
19 EACH, OF THE EXISTING AUTHORITIES NAMED IN THE PLAN OF MERGER OR
20 CONSOLIDATION, ALL DEBTS DUE AND WHATEVER AMOUNT DUE TO ANY OF
21 THEM, INCLUDING THEIR RESPECTIVE RIGHT, TITLE AND INTEREST IN
22 AND TO ALL LEASE RENTALS, SINKING FUNDS ON DEPOSIT, ALL FUNDS
23 DEPOSITED UNDER LEASE OR TRUST INSTRUMENTS SHALL BE TAKEN AND
24 DEEMED TO BE TRANSFERRED TO AND VESTED IN THE SURVIVING OR NEW
25 AUTHORITY, AS THE CASE MAY BE, WITHOUT FURTHER ACT OR DEED.

26 (I) CONTINUATION OF CONTRACTS.--THE SURVIVING AUTHORITY OR
27 THE NEW AUTHORITY SHALL BE RESPONSIBLE FOR THE LIABILITIES AND
28 OBLIGATIONS OF EACH OF THE EXISTING AUTHORITIES SO MERGED OR
29 CONSOLIDATED, BUT SHALL BE SUBJECT TO THE SAME LIMITATIONS,
30 PLEDGES, ASSIGNMENTS, LIENS, CHARGES, TERMS AND CONDITIONS AS TO
20010S0780B1186 - 57 -

1 REVENUES AND RESTRICTIONS AS TO AND LEASES OF PROPERTIES AS WERE
2 APPLICABLE TO EACH EXISTING AUTHORITY. THE LIABILITIES OF THE
3 MERGING OR CONSOLIDATING AUTHORITIES OF THE MEMBERS OF THEIR
4 BOARDS OR OFFICERS SHALL NOT BE AFFECTED NOR SHALL THE RIGHTS OF
5 CREDITORS THEREOF OR ANY PERSONS DEALING WITH SUCH AUTHORITIES
6 OR ANY LIENS UPON THE PROPERTY OF SUCH AUTHORITIES OR ANY
7 OUTSTANDING BONDS BE IMPAIRED BY THE MERGER OR CONSOLIDATION,
8 AND ANY CLAIM EXISTING OR ACTION OR PROCEEDING PENDING BY OR
9 AGAINST ANY SUCH AUTHORITIES SHALL BE PROSECUTED TO JUDGMENT AS
10 IF SUCH MERGER OR CONSOLIDATION HAD NOT TAKEN PLACE, OR THE
11 SURVIVING AUTHORITY OR THE NEW AUTHORITY MAY BE PROCEEDED
12 AGAINST OR SUBSTITUTED IN ITS PLACE.
13 § 5607. PURPOSES AND POWERS.

14 (A) SCOPE OF PROJECTS PERMITTED.--EVERY AUTHORITY
15 INCORPORATED UNDER THIS CHAPTER SHALL BE A BODY CORPORATE AND
16 POLITIC AND SHALL BE FOR THE PURPOSES OF: FINANCING WORKING
17 CAPITAL; ACQUIRING, HOLDING, CONSTRUCTING, IMPROVING,
18 MAINTAINING AND OPERATING, OWNING OR LEASING, EITHER IN THE
19 CAPACITY OF LESSOR OR LESSEE, PROJECTS OF THE FOLLOWING KIND AND
20 CHARACTER; AND PROVIDING FINANCING FOR INSURANCE RESERVES:

21 (1) EQUIPMENT TO BE LEASED BY AN AUTHORITY TO THE
22 MUNICIPALITY OR MUNICIPALITIES THAT ORGANIZED IT OR TO ANY
23 MUNICIPALITY OR SCHOOL DISTRICT LOCATED WHOLLY OR PARTIALLY
24 WITHIN THE BOUNDARIES OF THE MUNICIPALITY OR MUNICIPALITIES
25 THAT ORGANIZED IT.

26 (2) BUILDINGS TO BE DEVOTED WHOLLY OR PARTIALLY FOR
27 PUBLIC USES, INCLUDING PUBLIC SCHOOL BUILDINGS, AND
28 FACILITIES FOR THE CONDUCT OF JUDICIAL PROCEEDINGS AND FOR
29 REVENUE-PRODUCING PURPOSES.

30 (3) TRANSPORTATION, MARKETING, SHOPPING, TERMINALS,
20010S0780B1186 - 58 -

1 BRIDGES, TUNNELS, FLOOD CONTROL PROJECTS, HIGHWAYS, PARKWAYS,
2 TRAFFIC DISTRIBUTION CENTERS, PARKING SPACES, AIRPORTS AND
3 ALL FACILITIES NECESSARY OR INCIDENT THERETO.

4 (4) PARKS, RECREATION GROUNDS AND FACILITIES.

5 (5) SEWERS, SEWER SYSTEMS OR PARTS THEREOF.

6 (6) SEWAGE TREATMENT WORKS, INCLUDING WORKS FOR TREATING
7 AND DISPOSING OF INDUSTRIAL WASTE.

8 (7) FACILITIES AND EQUIPMENT FOR THE COLLECTION, REMOVAL
9 OR DISPOSAL OF ASHES, GARBAGE, RUBBISH AND OTHER REFUSE
10 MATERIALS BY INCINERATION, LANDFILL OR OTHER METHODS.

11 (8) STEAM HEATING PLANTS AND DISTRIBUTION SYSTEMS.

12 (9) INCINERATOR PLANTS.

13 (10) WATERWORKS, WATER SUPPLY WORKS, WATER DISTRIBUTION
14 SYSTEMS.

15 (11) FACILITIES TO PRODUCE STEAM WHICH IS USED BY THE
16 AUTHORITY OR IS SOLD ON A CONTRACT BASIS FOR INDUSTRIAL OR
17 SIMILAR USE OR ON A SALE-FOR-RESALE BASIS TO ONE OR MORE
18 ENTITIES AUTHORIZED TO SELL STEAM TO THE PUBLIC, PROVIDED
19 THAT SUCH FACILITIES HAVE BEEN APPROVED BY RESOLUTION OR
20 ORDINANCE ADOPTED BY THE GOVERNING BODY OF THE MUNICIPALITY
21 OR MUNICIPALITIES ORGANIZING SUCH AUTHORITY AND THAT THE
22 APPROVAL DOES NOT OBLIGATE THE TAXING POWER OF THE
23 MUNICIPALITY IN ANY WAY.

24 (12) FACILITIES FOR GENERATING SURPLUS ELECTRIC POWER
25 WHICH ARE RELATED TO INCINERATOR PLANTS, DAMS, WATER SUPPLY
26 WORKS, WATER DISTRIBUTION SYSTEMS OR SEWAGE TREATMENT PLANTS
27 PURSUANT, WHERE APPLICABLE, TO SECTION 3 OF THE FEDERAL POWER
28 ACT (41 STAT. 1063, 16 U.S.C. § 796) AND SECTION 210 OF THE
29 PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 (PUBLIC LAW
30 95-617, 16 U.S.C. § 824A-3) OR TITLE IV OF THE PUBLIC UTILITY
20010S0780B1186 - 59 -

1 REGULATORY POLICIES ACT OF 1978 (PUBLIC LAW 95-617, 16 U.S.C.
2 SS 2701 TO 2708), IF:

3 (I) ELECTRIC POWER GENERATED FROM THE FACILITIES IS
4 SOLD OR DISTRIBUTED ONLY ON A SALE-FOR-RESALE BASIS TO
5 ONE OR MORE ENTITIES AUTHORIZED TO SELL ELECTRIC POWER TO
6 THE PUBLIC;

7 (II) THE FACILITIES HAVE BEEN APPROVED BY RESOLUTION
8 OR ORDINANCE ADOPTED BY THE GOVERNING BODY OF THE
9 MUNICIPALITY OR MUNICIPALITIES ORGANIZING THE AUTHORITY
10 AND THE APPROVAL DOES NOT OBLIGATE THE TAXING POWER OF
11 THE MUNICIPALITY IN ANY WAY; AND

12 (III) THE INCINERATOR PLANTS, DAMS, WATER SUPPLY
13 WORKS, WATER DISTRIBUTION SYSTEMS OR SEWAGE TREATMENT
14 PLANTS ARE OR WILL BE LOCATED WITHIN OR CONTIGUOUS WITH A
15 COUNTY IN WHICH AT LEAST ONE OF THE MUNICIPALITIES
16 ORGANIZING THE AUTHORITY IS LOCATED, EXCEPT THAT THIS
17 SUBPARAGRAPH SHALL NOT APPLY TO INCINERATOR PLANTS, DAMS,
18 WATER SUPPLY WORKS, WATER DISTRIBUTION SYSTEMS OR SEWAGE
19 TREATMENT PLANTS LOCATED IN ANY COUNTY WHICH HAVE BEEN OR
20 WILL BE CONSTRUCTED BY OR ACQUIRED BY THE AUTHORITY TO
21 PERFORM FUNCTIONS, THE PRIMARY PURPOSES OF WHICH ARE
22 OTHER THAN THAT OF GENERATION OF ELECTRIC POWER, FOR
23 WHICH THE AUTHORITY HAS BEEN ORGANIZED.

24 (13) SWIMMING POOLS, PLAYGROUNDS, LAKES AND LOW-HEAD
25 DAMS.

26 (14) HOSPITALS AND HEALTH CENTERS.

27 (15) BUILDINGS AND FACILITIES FOR PRIVATE, NONPROFIT,
28 NONSECTARIAN SECONDARY SCHOOLS, COLLEGES AND UNIVERSITIES,
29 STATE-RELATED UNIVERSITIES AND COMMUNITY COLLEGES, WHICH ARE
30 DETERMINED BY THE AUTHORITY TO BE ELIGIBLE EDUCATIONAL

20010S0780B1186

- 60 -

1 INSTITUTIONS, PROVIDED THAT SUCH BUILDINGS AND FACILITIES
2 SHALL HAVE BEEN APPROVED BY RESOLUTION OR ORDINANCE ADOPTED
3 BY THE GOVERNING BODY OF THE MUNICIPALITY OR MUNICIPALITIES
4 ORGANIZING THE AUTHORITY AND THAT THE APPROVAL DOES NOT
5 OBLIGATE THE TAXING POWER OF THE GOVERNING BODY IN ANY WAY.

6 (16) MOTOR BUSES FOR PUBLIC USE, WHEN SUCH MOTOR BUSES
7 ARE TO BE USED WITHIN ANY MUNICIPALITY, AND SUBWAYS.

8 (17) INDUSTRIAL DEVELOPMENT PROJECTS, INCLUDING, BUT NOT
9 LIMITED TO, PROJECTS TO RETAIN OR DEVELOP EXISTING INDUSTRIES
10 AND THE DEVELOPMENT OF NEW INDUSTRIES, THE DEVELOPMENT AND
11 ADMINISTRATION OF BUSINESS IMPROVEMENTS AND ADMINISTRATIVE
12 SERVICES RELATED THERETO.

13 (B) LIMITATIONS.--THIS SECTION IS SUBJECT TO THE FOLLOWING
14 LIMITATIONS:

15 (1) AN AUTHORITY CREATED BY A SCHOOL DISTRICT OR SCHOOL
16 DISTRICTS SHALL HAVE THE POWER ONLY TO ACQUIRE, HOLD,
17 CONSTRUCT, IMPROVE, MAINTAIN, OPERATE AND LEASE PUBLIC SCHOOL
18 BUILDINGS AND OTHER SCHOOL PROJECTS ACQUIRED, CONSTRUCTED OR
19 IMPROVED FOR PUBLIC SCHOOL PURPOSES.

20 (2) THE PURPOSE AND INTENT OF THIS CHAPTER BEING TO
21 BENEFIT THE PEOPLE OF THE COMMONWEALTH BY, AMONG OTHER
22 THINGS, INCREASING THEIR COMMERCE, HEALTH, SAFETY AND
23 PROSPERITY, AND NOT TO UNNECESSARILY BURDEN OR INTERFERE WITH
24 EXISTING BUSINESS BY THE ESTABLISHMENT OF COMPETITIVE
25 ENTERPRISES; NONE OF THE POWERS GRANTED BY THIS CHAPTER SHALL
26 BE EXERCISED IN THE CONSTRUCTION, FINANCING, IMPROVEMENT,
27 MAINTENANCE, EXTENSION OR OPERATION OF ANY PROJECT OR
28 PROJECTS OR PROVIDING FINANCING FOR INSURANCE RESERVES WHICH
29 IN WHOLE OR IN PART SHALL DUPLICATE OR COMPETE WITH EXISTING
30 ENTERPRISES SERVING SUBSTANTIALLY THE SAME PURPOSES. THIS

20010S0780B1186

- 61 -

1 LIMITATION SHALL NOT APPLY TO THE EXERCISE OF THE POWERS
2 GRANTED UNDER THIS SECTION:

3 (I) FOR FACILITIES AND EQUIPMENT FOR THE COLLECTION,
4 REMOVAL OR DISPOSAL OF ASHES, GARBAGE, RUBBISH AND OTHER

5 REFUSE MATERIALS BY INCINERATION, LANDFILL OR OTHER
6 METHODS, IF EACH MUNICIPALITY ORGANIZING OR INTENDING TO
7 USE THE FACILITIES OF AN AUTHORITY HAVING SUCH POWERS
8 SHALL DECLARE BY RESOLUTION OR ORDINANCE THAT IT IS
9 DESIRABLE FOR THE HEALTH AND SAFETY OF THE PEOPLE OF SUCH
10 MUNICIPALITY THAT IT USE THE FACILITIES OF THE AUTHORITY
11 AND STATE IF ANY CONTRACT BETWEEN SUCH MUNICIPALITY AND
12 ANY OTHER PERSON, FIRM OR CORPORATION FOR THE COLLECTION,
13 REMOVAL OR DISPOSAL OF ASHES, GARBAGE, RUBBISH AND OTHER
14 REFUSE MATERIAL HAS BY ITS TERMS EXPIRED OR IS TERMINABLE
15 AT THE OPTION OF THE MUNICIPALITY OR WILL EXPIRE WITHIN
16 SIX MONTHS FROM THE DATE SUCH ORDINANCE BECOMES
17 EFFECTIVE;

18 (II) FOR INDUSTRIAL DEVELOPMENT PROJECTS IF THE
19 AUTHORITY DOES NOT DEVELOP INDUSTRIAL PROJECTS WHICH WILL
20 COMPETE WITH EXISTING INDUSTRIES;

21 (III) FOR AUTHORITIES CREATED FOR THE PURPOSE OF
22 PROVIDING BUSINESS IMPROVEMENTS AND ADMINISTRATIVE
23 SERVICES IF EACH MUNICIPALITY ORGANIZING AN AUTHORITY FOR
24 SUCH A PROJECT SHALL DECLARE BY RESOLUTION OR ORDINANCE
25 THAT IT IS DESIRABLE FOR THE ENTIRE LOCAL GOVERNMENT UNIT
26 TO IMPROVE THE BUSINESS DISTRICT;

27 (IV) TO HOSPITAL PROJECTS OR HEALTH CENTERS TO BE
28 LEASED TO OR FINANCED WITH LOANS TO PUBLIC HOSPITALS,
29 NONPROFIT CORPORATION HEALTH CENTERS OR NONPROFIT
30 HOSPITAL CORPORATIONS SERVING THE PUBLIC OR TO SCHOOL

20010S0780B1186

- 62 -

1 BUILDING PROJECTS AND FACILITIES TO BE LEASED TO OR
2 FINANCED WITH LOANS TO PRIVATE, NONPROFIT, NONSECTARIAN
3 SECONDARY SCHOOLS, COLLEGES AND UNIVERSITIES, STATE-
4 RELATED UNIVERSITIES AND COMMUNITY COLLEGES, OR TO
5 FACILITIES, AS LIMITED UNDER THE PROVISIONS OF THIS
6 SECTION, TO PRODUCE STEAM OR TO GENERATE ELECTRIC POWER,
7 IF EACH MUNICIPALITY ORGANIZING AN AUTHORITY FOR SUCH A
8 PROJECT SHALL DECLARE BY RESOLUTION OR ORDINANCE THAT IT
9 IS DESIRABLE FOR THE HEALTH, SAFETY AND WELFARE OF THE
10 PEOPLE IN THE AREA SERVED BY SUCH FACILITIES TO HAVE SUCH
11 FACILITIES PROVIDED BY OR FINANCED THROUGH AN AUTHORITY;

12 (V) TO PROVIDE FINANCING FOR INSURANCE RESERVES IF
13 EACH MUNICIPALITY OR AUTHORITY INTENDING TO USE ANY
14 PROCEEDS THEREOF SHALL DECLARE BY RESOLUTION OR ORDINANCE
15 THAT IT IS DESIRABLE FOR THE HEALTH, SAFETY AND WELFARE
16 OF THE PEOPLE IN SUCH LOCAL GOVERNMENT UNIT OR SERVED BY
17 SUCH AUTHORITY; OR

18 (VI) TO PROJECTS FOR FINANCING WORKING CAPITAL.

19 (3) IT IS THE INTENT OF THIS CHAPTER IN SPECIFYING AND
20 DEFINING THE AUTHORIZED PURPOSES AND PROJECTS OF AN AUTHORITY
21 TO PERMIT THE AUTHORITY TO BENEFIT THE PEOPLE OF THIS
22 COMMONWEALTH BY, AMONG OTHER THINGS, INCREASING THEIR
23 COMMERCE, HEALTH, SAFETY AND PROSPERITY WHILE NOT
24 UNNECESSARILY BURDENING OR INTERFERING WITH ANY MUNICIPALITY
25 WHICH HAS NOT INCORPORATED OR JOINED THAT AUTHORITY.
26 THEREFORE, NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS
27 CHAPTER, AN AUTHORITY SHALL NOT HAVE AS ITS PURPOSE AND SHALL
28 NOT UNDERTAKE AS A PROJECT SOLELY FOR REVENUE-PRODUCING
29 PURPOSES THE ACQUIRING OF BUILDINGS, FACILITIES OR TRACTS OF
30 LAND WHICH, IN THE CASE OF AN AUTHORITY INCORPORATED OR

20010S0780B1186

- 63 -

1 JOINED BY A COUNTY OR COUNTIES, ARE LOCATED EITHER WITHIN OR
2 OUTSIDE THE BOUNDARIES OF THE COUNTY OR COUNTIES AND, IN THE
3 CASE OF ALL OTHER AUTHORITIES, ARE LOCATED OUTSIDE THE
4 BOUNDARIES OF THE MUNICIPALITY OR MUNICIPALITIES THAT
5 INCORPORATED OR JOINED THE AUTHORITY, UNLESS EITHER:

6 (I) THE GOVERNING BODY OF EACH MUNICIPALITY IN WHICH

7 THE PROJECT WILL BE UNDERTAKEN HAS BY RESOLUTION
8 EVIDENCED ITS APPROVAL; OR
9
10 (II) IN CASES WHERE THE PROPERTY ACQUIRED IS NOT
11 SUBJECT TO TAX ABATEMENT, THE AUTHORITY COVENANTS AND
12 AGREES WITH EACH MUNICIPALITY IN WHICH THE AUTHORITY WILL
13 ACQUIRE REAL PROPERTY AS PART OF THE PROJECT EITHER TO
14 MAKE ANNUAL PAYMENTS IN LIEU OF REAL ESTATE TAXES AND
15 SPECIAL ASSESSMENTS FOR AMOUNTS AND TIME PERIODS
16 SPECIFIED IN THE AGREEMENT OR TO PAY ANNUALLY THE AMOUNT
17 OF REAL ESTATE TAXES AND SPECIAL ASSESSMENTS WHICH WOULD
18 BE PAYABLE IF THE REAL PROPERTY SO ACQUIRED WERE FULLY
TAXABLE AND SUBJECT TO SPECIAL ASSESSMENTS.

19 (C) EFFECT OF SPECIFICITY.--THE MUNICIPALITY OR
20 MUNICIPALITIES ORGANIZING SUCH AN AUTHORITY MAY, IN THE
21 RESOLUTION OR ORDINANCE SIGNIFYING THEIR INTENTION SO TO DO, OR
22 FROM TIME TO TIME BY SUBSEQUENT RESOLUTION OR ORDINANCE, SPECIFY
23 THE PROJECT OR PROJECTS TO BE UNDERTAKEN BY THE AUTHORITY, AND
24 NO OTHER PROJECTS SHALL BE UNDERTAKEN BY THE AUTHORITY THAN
25 THOSE SO SPECIFIED. IF THE MUNICIPAL AUTHORITIES ORGANIZING AN
26 AUTHORITY FAIL TO SPECIFY THE PROJECT OR PROJECTS TO BE
27 UNDERTAKEN, THEN THE AUTHORITY SHALL BE DEEMED TO HAVE ALL THE
28 POWERS GRANTED BY THIS CHAPTER.

29 (D) POWERS.--EVERY AUTHORITY MAY EXERCISE ALL POWERS
30 NECESSARY OR CONVENIENT FOR THE CARRYING OUT OF THE PURPOSES SET
2001050780B1186 - 64 -

1 FORTH IN THIS SECTION, INCLUDING, BUT WITHOUT LIMITING THE
2 GENERALITY OF THE FOREGOING, THE FOLLOWING RIGHTS AND POWERS:
3 (1) TO HAVE EXISTENCE FOR A TERM OF 50 YEARS AND FOR
4 SUCH FURTHER PERIOD OR PERIODS AS MAY BE PROVIDED IN ARTICLES
5 OF AMENDMENT APPROVED UNDER SECTION 5605(E) (RELATING TO
6 AMENDMENT OF ARTICLES).

7 (2) TO SUE AND BE SUED, IMPLEAD AND BE IMPLEADED,
8 COMPLAIN AND DEFEND IN ALL COURTS.

13 INTEREST THEREIN AT ANY TIME ACQUIRED BY IT.
14 (5) TO ACQUIRE BY PURCHASE, LEASE OR OTHERWISE AND TO
15 CONSTRUCT, IMPROVE, MAINTAIN, REPAIR AND OPERATE PROJECTS.
16 (6) TO FINANCE PROJECTS BY ISSUING NOTES, WHICH ARE
17

18 (6) TO FINANCE PROJECTS BY MAKING LOANS, WHICH MAY BE
19 EVIDENCED BY AND SECURED AS MAY BE PROVIDED IN LOAN
20 AGREEMENTS, MORTGAGES, SECURITY AGREEMENTS OR ANY OTHER
21 CONTRACTS, INSTRUMENTS OR AGREEMENTS, WHICH CONTRACTS,
22 INSTRUMENTS OR AGREEMENTS MAY CONTAIN SUCH PROVISIONS AS THE
23 AUTHORITY SHALL DEEM NECESSARY OR DESIRABLE FOR THE SECURITY
24 OR PROTECTION OF THE AUTHORITY OR ITS BONDHOLDERS.

25 (7) TO MAKE BYLAWS FOR THE MANAGEMENT AND REGULATION OF
26 ITS AFFAIRS.

27 (8) TO APPOINT OFFICERS, AGENTS, EMPLOYEES AND SERVANTS,
28 TO PRESCRIBE THEIR DUTIES AND TO FIX THEIR COMPENSATION.

29 (9) TO FIX, ALTER, CHARGE AND COLLECT RATES AND OTHER
30 CHARGES IN THE AREA SERVED BY ITS FACILITIES AT REASONABLE

20010S0780B1186 - 65 -
1 AND UNIFORM RATES TO BE DETERMINED EXCLUSIVELY BY IT, FOR THE

2 PURPOSE OF PROVIDING FOR THE PAYMENT OF THE EXPENSES OF THE
3 AUTHORITY, THE CONSTRUCTION, IMPROVEMENT, REPAIR, MAINTENANCE
4 AND OPERATION OF ITS FACILITIES AND PROPERTIES, AND, IN THE
5 CASE OF AN AUTHORITY CREATED FOR THE PURPOSE OF MAKING
6 BUSINESS IMPROVEMENTS OR PROVIDING ADMINISTRATIVE SERVICES, A
7 CHARGE FOR SUCH SERVICES WHICH IS TO BE BASED ON ACTUAL
8 BENEFITS AND WHICH MAY BE MEASURED ON, AMONG OTHER THINGS,

9 GROSS SALES OR GROSS OR NET PROFITS, THE PAYMENT OF THE
10 PRINCIPAL OF AND INTEREST ON ITS OBLIGATIONS, AND TO FULFILL
11 THE TERMS AND PROVISIONS OF ANY AGREEMENTS MADE WITH THE
12 PURCHASERS OR HOLDERS OF ANY SUCH OBLIGATIONS, OR WITH A
13 MUNICIPALITY SERVED OR TO BE SERVED BY THE AUTHORITY AND TO
14 DETERMINE BY ITSELF EXCLUSIVELY THE SERVICES AND IMPROVEMENTS
15 REQUIRED TO PROVIDE ADEQUATE, SAFE AND REASONABLE SERVICE,
16 INCLUDING EXTENSIONS THEREOF, IN THE AREAS SERVED. IF THE
17 SERVICE AREA INCLUDES MORE THAN ONE MUNICIPALITY, THE
18 REVENUES FROM ANY PROJECT SHALL NOT BE EXPENDED DIRECTLY OR
19 INDIRECTLY ON ANY OTHER PROJECT UNLESS SUCH EXPENDITURES ARE
20 MADE FOR THE BENEFIT OF THE ENTIRE SERVICE AREA. ANY PERSON
21 QUESTIONING THE REASONABLENESS OR UNIFORMITY OF A RATE FIXED
22 BY AN AUTHORITY OR THE ADEQUACY, SAFETY AND REASONABLENESS OF
23 THE AUTHORITY'S SERVICES, INCLUDING EXTENSIONS THEREOF, MAY
24 BRING SUIT AGAINST THE AUTHORITY IN THE COURT OF COMMON PLEAS
25 OF THE COUNTY WHERE THE PROJECT IS LOCATED OR, IF THE PROJECT
26 IS LOCATED IN MORE THAN ONE COUNTY, IN THE COURT OF COMMON
27 PLEAS OF THE COUNTY WHERE THE PRINCIPAL OFFICE OF THE PROJECT
28 IS LOCATED. THE COURT OF COMMON PLEAS SHALL HAVE EXCLUSIVE
29 JURISDICTION TO DETERMINE QUESTIONS INVOLVING RATES OR
30 SERVICE. EXCEPT IN MUNICIPAL CORPORATIONS HAVING A POPULATION
20010S0780B1186 - 66 -

1 DENSITY OF 300 PERSONS OR MORE PER SQUARE MILE, ALL OWNERS OF
2 REAL PROPERTY IN EIGHTH CLASS COUNTIES MAY DECLINE IN WRITING
3 THE SERVICES OF A SOLID WASTE AUTHORITY.

4 (10) IN THE CASE OF AN AUTHORITY WHICH HAS AGREED TO
5 PROVIDE WATER SERVICE THROUGH A SEPARATE METER AND SEPARATE
6 SERVICE LINE TO A RESIDENTIAL DWELLING UNIT IN WHICH THE
7 OWNER DOES NOT RESIDE, TO ENFORCE THE OWNER'S DUTY TO PAY A
8 TENANT'S BILL FOR SERVICE RENDERED TO THE TENANT BY THE
9 AUTHORITY ONLY IF THE AUTHORITY NOTIFIES THE OWNER AND THE
10 TENANT WITHIN 30 DAYS AFTER THE BILL FIRST BECOMES OVERDUE.
11 NOTIFICATION SHALL BE PROVIDED BY FIRST CLASS MAIL TO THE
12 ADDRESS OF THE OWNER PROVIDED TO THE AUTHORITY BY THE OWNER
13 AND TO THE BILLING ADDRESS OF THE TENANT, RESPECTIVELY.
14 NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO REQUIRE AN
15 AUTHORITY TO TERMINATE SERVICE TO A TENANT, AND THE OWNER
16 SHALL NOT BE LIABLE FOR ANY SERVICE WHICH THE AUTHORITY
17 PROVIDES TO THE TENANT 90 OR MORE DAYS AFTER THE TENANT'S
18 BILL FIRST BECOMES DUE UNLESS THE AUTHORITY HAS BEEN
19 PREVENTED BY COURT ORDER FROM TERMINATING SERVICE TO THAT
20 TENANT.

21 (11) IN THE CASE OF AN AUTHORITY WHICH HAS AGREED TO
22 PROVIDE SEWER SERVICE TO A RESIDENTIAL DWELLING UNIT IN WHICH
23 THE OWNER DOES NOT RESIDE, TO ENFORCE THE OWNER'S DUTY TO PAY
24 A TENANT'S BILL FOR SERVICE RENDERED BY THE AUTHORITY TO THE
25 TENANT. THE AUTHORITY SHALL NOTIFY THE OWNER AND THE TENANT
26 WITHIN 30 DAYS AFTER THE TENANT'S BILL FOR THAT SERVICE FIRST
27 BECOMES OVERDUE. NOTIFICATION SHALL BE PROVIDED BY FIRST
28 CLASS MAIL TO THE ADDRESS OF THE OWNER PROVIDED TO THE
29 AUTHORITY BY THE OWNER AND TO THE BILLING ADDRESS OF THE
30 TENANT, RESPECTIVELY. NOTHING IN THIS PARAGRAPH SHALL BE
20010S0780B1186 - 67 -

1 CONSTRUED TO RELIEVE THE OWNER OF LIABILITY FOR SUCH SERVICE
2 UNLESS THE AUTHORITY FAILS TO PROVIDE THE NOTICE REQUIRED IN
3 THIS PARAGRAPH.

4 (12) TO BORROW MONEY, MAKE AND ISSUE NEGOTIABLE NOTES,
5 BONDS, REFUNDING BONDS AND OTHER EVIDENCES OF INDEBTEDNESS OR
6 OBLIGATIONS, HEREINAFTER CALLED BONDS, OF THE AUTHORITY.
7 BONDS SHALL HAVE A MATURITY DATE NOT LONGER THAN 40 YEARS
8 FROM THE DATE OF ISSUE, EXCEPT THAT NO REFUNDING BONDS SHALL
9 HAVE A MATURITY DATE LATER THAN THE LIFE OF THE AUTHORITY;
10 ALSO, TO SECURE THE PAYMENT OF THE BONDS OR ANY PART THEREOF

11 BY PLEDGE OR DEED OF TRUST OF ALL OR ANY OF ITS REVENUES AND
12 RECEIPTS; TO MAKE AGREEMENTS WITH THE PURCHASERS OR HOLDERS
13 OF THE BONDS, OR WITH OTHERS IN CONNECTION WITH ANY BONDS,
14 WHETHER ISSUED OR TO BE ISSUED, AS THE AUTHORITY SHALL DEEM
15 ADVISABLE; AND IN GENERAL TO PROVIDE FOR THE SECURITY FOR THE
16 BONDS AND THE RIGHTS OF THE BONDHOLDERS. IN RESPECT TO ANY
17 PROJECT CONSTRUCTED AND OPERATED UNDER AGREEMENT WITH ANY
18 AUTHORITY OR ANY PUBLIC AUTHORITY OF ANY ADJOINING STATE, TO
19 BORROW MONEY AND ISSUE NOTES, BONDS AND OTHER EVIDENCES OF
20 INDEBTEDNESS AND OBLIGATIONS JOINTLY WITH THAT AUTHORITY.
21 NOTWITHSTANDING ANY OF THE FOREGOING, NO AUTHORITY SHALL
22 BORROW MONEY ON OBLIGATIONS TO BE PAID PRIMARILY OUT OF LEASE
23 RENTALS OR OTHER CURRENT REVENUES OTHER THAN CHARGES MADE TO
24 THE PUBLIC FOR THE USE OF THE CAPITAL PROJECTS FINANCED IF
25 THE NET DEBT OF THE LESSEE MUNICIPALITY OR MUNICIPALITIES
26 SHALL EXCEED ANY LIMIT PROVIDED BY ANY LAW OF THE
27 COMMONWEALTH.

28 (13) TO MAKE CONTRACTS OF EVERY NAME AND NATURE AND TO
29 EXECUTE ALL INSTRUMENTS NECESSARY OR CONVENIENT FOR THE
30 CARRYING ON OF ITS BUSINESS.

20010S0780B1186

- 68 -

1 (14) WITHOUT LIMITATION OF THE FOREGOING, TO BORROW
2 MONEY AND ACCEPT GRANTS FROM AND TO ENTER INTO CONTRACTS,
3 LEASES OR OTHER TRANSACTIONS WITH ANY FEDERAL AGENCY, THE
4 COMMONWEALTH OR A MUNICIPALITY, SCHOOL DISTRICT, CORPORATION
5 OR AUTHORITY.

6 (15) TO HAVE THE POWER OF EMINENT DOMAIN.

7 (16) TO PLEDGE, HYPOTHECATE OR OTHERWISE ENCUMBER ALL OR
8 ANY OF THE REVENUES OR RECEIPTS OF THE AUTHORITY AS SECURITY
9 FOR ALL OR ANY OF THE OBLIGATIONS OF THE AUTHORITY.

10 (17) TO DO ALL ACTS AND THINGS NECESSARY OR CONVENIENT
11 FOR THE PROMOTION OF ITS BUSINESS AND THE GENERAL WELFARE OF
12 THE AUTHORITY TO CARRY OUT THE POWERS GRANTED TO IT BY THIS
13 CHAPTER OR OTHER LAW.

14 (18) TO CONTRACT WITH ANY MUNICIPALITY, CORPORATION OR A
15 PUBLIC AUTHORITY OF THIS AND AN ADJOINING STATE, ON TERMS AS
16 THE AUTHORITY SHALL DEEM PROPER, FOR THE CONSTRUCTION AND
17 OPERATION OF ANY PROJECT WHICH IS PARTLY IN THIS COMMONWEALTH
18 AND PARTLY IN THE ADJOINING STATE.

19 (19) TO ENTER INTO CONTRACTS TO SUPPLY WATER AND OTHER
20 SERVICES TO AND FOR MUNICIPALITIES THAT ARE NOT MEMBERS OF
21 THE AUTHORITY, OR TO AND FOR THE COMMONWEALTH,
22 MUNICIPALITIES, SCHOOL DISTRICTS, PERSONS OR AUTHORITIES, AND
23 FIX THE AMOUNT TO BE PAID THEREFOR.

24 (20) (I) TO MAKE CONTRACTS OF INSURANCE WITH AN
25 INSURANCE COMPANY, ASSOCIATION OR EXCHANGE AUTHORIZED TO
26 TRANSACT BUSINESS IN THIS COMMONWEALTH, INSURING ITS
27 EMPLOYEES AND APPOINTED OFFICERS AND OFFICIALS UNDER A
28 POLICY OR POLICIES OF INSURANCE COVERING LIFE, ACCIDENTAL
29 DEATH AND DISMEMBERMENT AND DISABILITY INCOME. STATUTORY
30 REQUIREMENTS FOR SUCH INSURANCE, INCLUDING, BUT NOT

20010S0780B1186

- 69 -

1 LIMITED TO, REQUISITE NUMBER OF ELIGIBLE EMPLOYEES,
2 APPOINTED OFFICERS AND OFFICIALS, AS PROVIDED FOR IN
3 SECTION 621.2 OF THE ACT OF MAY 17, 1921 (P.L.682,
4 NO.284), KNOWN AS THE INSURANCE COMPANY LAW OF 1921, AND
5 SECTIONS 1, 2, 6, 7 AND 9 OF THE ACT OF MAY 11, 1949
6 (P.L.1210, NO.367), KNOWN AS THE GROUP LIFE INSURANCE
7 POLICY LAW, SHALL BE MET.

8 (II) TO MAKE CONTRACTS WITH AN INSURANCE COMPANY,
9 ASSOCIATION OR EXCHANGE OR ANY HOSPITAL PLAN CORPORATION
10 OR PROFESSIONAL HEALTH SERVICE CORPORATION AUTHORIZED TO
11 TRANSACT BUSINESS IN THIS COMMONWEALTH, INSURING OR
12 COVERING ITS EMPLOYEES AND THEIR DEPENDENTS, BUT NOT ITS

13 APPPOINTED OFFICERS AND OFFICIALS NOR THEIR DEPENDENTS,
14 FOR HOSPITAL AND MEDICAL BENEFITS; AND TO CONTRACT FOR
15 ITS EMPLOYEES, BUT NOT ITS APPOINTED OFFICERS AND
16 OFFICIALS, WITH AN INSURANCE COMPANY, ASSOCIATION OR
17 EXCHANGE AUTHORIZED TO TRANSACT BUSINESS IN THIS
18 COMMONWEALTH GRANTING ANNUITIES OR TO ESTABLISH,
19 MAINTAIN, OPERATE AND ADMINISTER ITS OWN PENSION PLAN
20 COVERING ITS EMPLOYEES, BUT NOT ITS APPOINTED OFFICERS
21 AND OFFICIALS.

22 (III) FOR THE PURPOSES SET FORTH UNDER THIS
23 PARAGRAPH, TO AGREE TO PAY PART OR ALL OF THE COST OF
24 THIS INSURANCE, INCLUDING THE PREMIUMS OR CHARGES FOR
25 CARRYING THESE CONTRACTS, AND TO APPROPRIATE OUT OF ITS
26 TREASURY ANY MONEY NECESSARY TO PAY SUCH COSTS, PREMIUMS
27 OR CHARGES. THE PROPER OFFICERS OF THE AUTHORITY WHO ARE
28 AUTHORIZED TO ENTER INTO SUCH CONTRACTS ARE AUTHORIZED,
29 ENABLED AND PERMITTED TO DEDUCT FROM THE OFFICERS' OR
30 EMPLOYEES' PAY, SALARY OR COMPENSATION THAT PART OF THE
20010S0780B1186 - 70 -

1 PREMIUM OR COST WHICH IS PAYABLE BY THE OFFICER OR
2 EMPLOYEE AND AS MAY BE SO AUTHORIZED BY THE OFFICER OR
3 EMPLOYEE IN WRITING.

4 (21) TO CHARGE THE COST OF CONSTRUCTION OF ANY SEWER OR
5 WATER MAIN CONSTRUCTED BY THE AUTHORITY AGAINST THE
6 PROPERTIES BENEFITED, IMPROVED OR ACCOMMODATED THEREBY TO THE
7 EXTENT OF SUCH BENEFITS. THESE BENEFITS SHALL BE ASSESSED IN
8 THE MANNER PROVIDED UNDER THIS CHAPTER FOR THE EXERCISE OF
9 THE RIGHT OF EMINENT DOMAIN.

10 (22) TO CHARGE THE COST OF CONSTRUCTION OF A SEWER OR
11 WATER MAIN CONSTRUCTED BY THE AUTHORITY AGAINST THE
12 PROPERTIES BENEFITED, IMPROVED OR ACCOMMODATED BY THE
13 CONSTRUCTION ACCORDING TO THE FOOT FRONT RULE. CHARGES SHALL
14 BE BASED UPON THE FOOT FRONTAGE OF THE PROPERTIES BENEFITED
15 AND SHALL BE A LIEN AGAINST PROPERTIES. CHARGES MAY BE
16 ASSESSED AND COLLECTED AND LIENS MAY BE ENFORCED IN THE
17 MANNER PROVIDED BY LAW FOR THE ASSESSMENT AND COLLECTION OF
18 CHARGES AND THE ENFORCEMENT OF LIENS OF THE MUNICIPALITY IN
19 WHICH SUCH AUTHORITY IS LOCATED. NO CHARGE SHALL BE ASSESSED
20 UNLESS PRIOR TO THE CONSTRUCTION OF A SEWER OR WATER MAIN THE
21 AUTHORITY SUBMITTED THE PLAN OF CONSTRUCTION AND ESTIMATED
22 COST TO THE MUNICIPALITY IN WHICH THE PROJECT IS TO BE
23 UNDERTAKEN, AND THE MUNICIPALITY APPROVED IT. THE PROPERTIES
24 BENEFITED, IMPROVED OR ACCOMMODATED BY THE CONSTRUCTION MAY
25 NOT BE CHARGED AN AGGREGATE AMOUNT IN EXCESS OF THE APPROVED
26 ESTIMATED COST.

27 (23) TO REQUIRE THE POSTING OF FINANCIAL SECURITY TO
28 INSURE THE COMPLETION, IN ACCORDANCE WITH THE APPROVED PLAT
29 AND WITH THE RULES AND REGULATIONS OF THE AUTHORITY, OF ANY
30 WATER MAINS OR SANITARY SEWER LINES, OR BOTH, AND RELATED
20010S0780B1186 - 71 -

1 APPARATUS AND FACILITIES, REQUIRED TO BE INSTALLED BY OR ON
2 BEHALF OF A DEVELOPER UNDER AN APPROVED LAND DEVELOPMENT OR
3 SUBDIVISION PLAT AS THESE TERMS ARE DEFINED UNDER THE ACT OF
4 JULY 31, 1968 (P.L.805, NO.247), KNOWN AS THE PENNSYLVANIA
5 MUNICIPALITIES PLANNING CODE. IF FINANCIAL SECURITY IS
6 REQUIRED BY THE AUTHORITY, AND WITHOUT LIMITATION AS TO OTHER
7 TYPES OF FINANCIAL SECURITY WHICH THE AUTHORITY MAY APPROVE,
8 WHICH APPROVAL SHALL NOT BE UNREASONABLY withheld, FEDERALLY
9 CHARTERED OR COMMONWEALTH-CHARTERED LENDING INSTITUTION
10 IRREVOCABLE LETTERS OF CREDIT AND RESTRICTIVE OR ESCROW
11 ACCOUNTS IN THESE LENDING INSTITUTIONS SHALL BE DEEMED
12 ACCEPTABLE FINANCIAL SECURITY. FINANCIAL SECURITY SHALL BE
13 POSTED WITH A BONDING COMPANY OR FEDERALLY CHARTERED OR
14 COMMONWEALTH-CHARTERED LENDING INSTITUTION CHOSEN BY THE

15 PARTY POSTING THE FINANCIAL SECURITY, IF THE BONDING COMPANY
16 OR LENDING INSTITUTION IS AUTHORIZED TO CONDUCT BUSINESS
17 WITHIN THIS COMMONWEALTH. THE BOND OR OTHER SECURITY SHALL
18 PROVIDE FOR AND SECURE TO THE AUTHORITY THE COMPLETION OF
19 REQUIRED IMPROVEMENTS WITHIN ONE YEAR FROM THE DATE OF
20 POSTING OF THE SECURITY. THE AMOUNT OF FINANCIAL SECURITY
21 SHALL BE EQUAL TO 110% OF THE COST OF THE REQUIRED
22 IMPROVEMENTS FOR WHICH FINANCIAL SECURITY IS TO BE POSTED.
23 THE COST OF REQUIRED IMPROVEMENTS SHALL BE ESTABLISHED BY
24 SUBMITTING TO THE AUTHORITY A BONA FIDE BID FROM A CONTRACTOR
25 CHOSEN BY THE PARTY POSTING THE FINANCIAL SECURITY. IN THE
26 ABSENCE OF A BONA FIDE BID, THE COST SHALL BE ESTABLISHED BY
27 AN ESTIMATE PREPARED BY THE AUTHORITY'S ENGINEER. IF THE
28 PARTY POSTING THE FINANCIAL SECURITY REQUIRES MORE THAN ONE
29 YEAR FROM THE DATE OF POSTING THE FINANCIAL SECURITY TO
30 COMPLETE THE REQUIRED IMPROVEMENTS, THE AMOUNT OF FINANCIAL
20010S0780B1186 - 72 -

1 SECURITY MAY BE INCREASED BY AN ADDITIONAL 10% FOR EACH ONE-
2 YEAR PERIOD BEYOND THE FIRST ANNIVERSARY DATE FROM THE
3 INITIAL POSTING DATE OR TO 110% OF THE COST OF COMPLETING THE
4 REQUIRED IMPROVEMENTS AS REESTABLISHED ON OR ABOUT THE
5 EXPIRATION OF THE PRECEDING ONE-YEAR PERIOD BY USING THE
6 ABOVE BIDDING PROCEDURE. AS THE WORK OF INSTALLING THE
7 REQUIRED IMPROVEMENTS PROCEEDS, THE PARTY POSTING THE
8 FINANCIAL SECURITY MAY REQUEST THE AUTHORITY TO RELEASE OR
9 AUTHORIZE THE RELEASE OF, FROM TIME TO TIME, PORTIONS OF THE
10 FINANCIAL SECURITY NECESSARY TO PAY THE CONTRACTOR PERFORMING
11 THE WORK. RELEASE REQUESTS SHALL BE IN WRITING ADDRESSED TO
12 THE AUTHORITY, AND THE AUTHORITY SHALL HAVE 45 DAYS AFTER
13 RECEIVING A REQUEST TO ASCERTAIN FROM THE AUTHORITY ENGINEER,
14 CERTIFIED IN WRITING, THAT THE PORTION OF THE WORK HAS BEEN
15 COMPLETED IN ACCORDANCE WITH THE APPROVED PLAT. UPON
16 RECEIVING WRITTEN CERTIFICATION, THE AUTHORITY SHALL
17 AUTHORIZE RELEASE BY THE BONDING COMPANY OR LENDING
18 INSTITUTION AN AMOUNT ESTIMATED BY THE AUTHORITY ENGINEER TO
19 FAIRLY REPRESENT THE VALUE OF THE IMPROVEMENTS COMPLETED. IF
20 THE AUTHORITY FAILS TO ACT WITHIN THE 45-DAY PERIOD, IT SHALL
21 BE DEEMED TO HAVE APPROVED THE REQUESTED RELEASE OF FUNDS.
22 THE AUTHORITY MAY, PRIOR TO FINAL RELEASE AT THE TIME OF
23 COMPLETION AND CERTIFICATION BY ITS ENGINEER, REQUIRE
24 RETENTION OF 10% OF THE ESTIMATED COST OF IMPROVEMENTS. IF
25 THE AUTHORITY ACCEPTS DEDICATION OF ALL OR SOME OF THE
26 REQUIRED IMPROVEMENTS FOLLOWING COMPLETION, IT MAY REQUIRE
27 THE POSTING OF FINANCIAL SECURITY TO SECURE STRUCTURAL
28 INTEGRITY OF THE IMPROVEMENTS, AS WELL AS THE FUNCTIONING OF
29 THE IMPROVEMENTS IN ACCORDANCE WITH THE DESIGN AND
30 SPECIFICATIONS AS DEPICTED ON THE FINAL PLAT. THIS FINANCIAL
20010S0780B1186 - 73 -

1 SECURITY MAY EXPIRE 18 MONTHS FROM THE DATE OF ACCEPTANCE OF
2 DEDICATION AND SHALL BE OF THE SAME TYPE AS SET FORTH IN THIS
3 PARAGRAPH WITH REGARD TO THAT WHICH IS REQUIRED FOR
4 INSTALLATION OF THE IMPROVEMENTS, EXCEPT THAT IT SHALL NOT
5 EXCEED 15% OF THE ACTUAL COST OF INSTALLATION OF THE
6 IMPROVEMENTS. ANY INCONSISTENT ORDINANCE, RESOLUTION OR
7 STATUTE INCONSISTENT IS NULL AND VOID.

8 (24) TO CHARGE ENUMERATED FEES TO PROPERTY OWNERS WHO
9 DESIRE TO OR ARE REQUIRED TO CONNECT TO THE AUTHORITY'S SEWER
10 OR WATER SYSTEM. FEES SHALL BE BASED UPON THE DULY ADOPTED
11 FEE SCHEDULE WHICH IS IN EFFECT AT THE TIME OF PAYMENT AND
12 SHALL BE PAYABLE AT THE TIME OF APPLICATION FOR CONNECTION OR
13 AT A TIME TO WHICH THE PROPERTY OWNER AND THE AUTHORITY
14 AGREE. IN THE CASE OF PROJECTS TO SERVE EXISTING DEVELOPMENT,
15 FEES SHALL BE PAYABLE AT A TIME TO BE DETERMINED BY THE
16 AUTHORITY. AN AUTHORITY MAY REQUIRE THAT NO CAPACITY BE

17 GUARANTEED FOR A PROPERTY OWNER UNTIL THE TAPPING FEES HAVE
18 BEEN PAID OR SECURED BY OTHER FINANCIAL SECURITY. THE FEES
19 SHALL BE IN ADDITION TO ANY CHARGES ASSESSED AGAINST THE
20 PROPERTY IN THE CONSTRUCTION OF A SEWER OR WATER MAIN BY THE
21 AUTHORITY UNDER PARAGRAPHS (21) AND (22) AS WELL AS ANY OTHER
22 USER CHARGES IMPOSED BY THE AUTHORITY UNDER PARAGRAPH (9) BUT
23 SHALL NOT INCLUDE COSTS INCLUDED IN THE CALCULATION OF SUCH
24 FEES.

25 (I) THE FEES MAY INCLUDE ANY OF THE FOLLOWING FEE
26 COMPONENTS, IF THEY ARE SEPARATELY SET FORTH IN A
27 RESOLUTION ADOPTED BY THE AUTHORITY TO ESTABLISH THESE
28 FEES:

29 (A) CONNECTION FEE. IT MAY NOT EXCEED AN AMOUNT
30 BASED UPON THE ACTUAL COST OF THE CONNECTION OF THE
20010S0780B1186 - 74 -

1 PROPERTY EXTENDING FROM THE AUTHORITY'S MAIN TO THE
2 PROPERTY LINE OR CURB STOP OF THE PROPERTY CONNECTED.
3 THE AUTHORITY MAY ALSO BASE THE CONNECTION FEE UPON
4 AN AVERAGE COST FOR PREVIOUSLY INSTALLED CONNECTIONS
5 OF SIMILAR TYPE AND SIZE. IN LIEU OF PAYMENT OF THE
6 FEES, AN AUTHORITY MAY REQUIRE THE CONSTRUCTION AND
7 DEDICATION OF THOSE FACILITIES BY THE PROPERTY OWNER
8 WHO REQUESTED THE CONNECTION.

9 (B) CUSTOMER FACILITIES FEE. IT MAY NOT EXCEED
10 AN AMOUNT BASED UPON THE ACTUAL COST OF FACILITIES
11 SERVING THE CONNECTED PROPERTY FROM THE PROPERTY LINE
12 OR CURB STOP TO THE PROPOSED DWELLING OR BUILDING TO
13 BE SERVED. THE FEE SHALL BE CHARGEABLE ONLY IF THE
14 AUTHORITY INSTALLS THE CUSTOMER FACILITIES. IN LIEU
15 OF PAYMENT OF THE CUSTOMER FACILITIES FEE, AN
16 AUTHORITY MAY REQUIRE THE CONSTRUCTION OF THOSE
17 FACILITIES BY THE PROPERTY OWNER WHO REQUESTS
18 CUSTOMER FACILITIES. IN THE CASE OF WATER SERVICE,
19 THE FEE MAY INCLUDE THE COST OF A WATER METER
20 INSTALLATION IF THE AUTHORITY PROVIDES OR INSTALLS
21 THE WATER METER. IF THE PROPERTY CONNECTED OR TO BE
22 CONNECTED WITH THE SEWER SYSTEM OF THE AUTHORITY IS
23 NOT EQUIPPED WITH A WATER METER, THE AUTHORITY MAY
24 INSTALL A METER AT ITS OWN COST AND EXPENSE. IF THE
25 PROPERTY IS SUPPLIED WITH WATER FROM THE FACILITIES
26 OF A PUBLIC WATER SUPPLY AGENCY, THE AUTHORITY SHALL
27 NOT INSTALL A METER WITHOUT THE CONSENT AND APPROVAL
28 OF THE PUBLIC WATER SUPPLY AGENCY.

29 (C) TAPPING FEE. IT MAY NOT EXCEED AN AMOUNT
30 BASED UPON SOME OR ALL OF THE FOLLOWING FEE
20010S0780B1186 - 75 -

1 COMPONENTS, IF THEY ARE SEPARATELY SET FORTH IN THE
2 RESOLUTION ADOPTED BY THE AUTHORITY TO ESTABLISH
3 THESE FEES. IN LIEU OF PAYMENT OF THIS FEE, AN
4 AUTHORITY MAY REQUIRE THE CONSTRUCTION AND DEDICATION
5 OF ONLY SUCH CAPACITY, DISTRIBUTION-COLLECTION OR
6 SPECIAL PURPOSE FACILITIES NECESSARY TO SUPPLY
7 SERVICE TO THE PROPERTY OWNER OR OWNERS.

8 (I) CAPACITY PART. THE FEE MAY NOT EXCEED AN
9 AMOUNT THAT IS BASED UPON THE COST OF CAPACITY-
10 RELATED FACILITIES, INCLUDING, BUT NOT LIMITED
11 TO, SOURCE OF SUPPLY, TREATMENT, PUMPING,
12 TRANSMISSION, TRUNK, INTERCEPTOR AND OUTFALL
13 MAINS, STORAGE, SLUDGE TREATMENT OR DISPOSAL,
14 INTERCONNECTION OR OTHER GENERAL SYSTEM
15 FACILITIES. FACILITIES MAY INCLUDE THOSE THAT
16 PROVIDE EXISTING SERVICE OR WILL PROVIDE FUTURE
17 SERVICE. THE COST OF EXISTING FACILITIES,
18 EXCLUDING FACILITIES CONTRIBUTED TO THE AUTHORITY

19 BY ANY PERSON, GOVERNMENT OR AGENCY, SHALL BE
20 BASED UPON THEIR REPLACEMENT COST OR UPON
21 HISTORICAL COST TRENDED TO CURRENT COST USING
22 PUBLISHED COST INDEXES, OR UPON THE HISTORICAL
23 COST PLUS INTEREST AND OTHER FINANCING FEES PAID
24 ON BONDS FINANCING SUCH FACILITIES. IN THE CASE
25 OF EXISTING FACILITIES, OUTSTANDING DEBT RELATED
26 TO THE FACILITIES SHALL BE SUBTRACTED FROM THE
27 COST, BUT DEBT MAY NOT BE SUBTRACTED WHICH IS
28 ATTRIBUTABLE TO FACILITIES EXCLUSIVELY SERVING
29 NEW CUSTOMERS. UNDER ALL COST APPROACHES, THE
30 COST OF CAPACITY-RELATED FACILITIES SHALL BE
20010S0780B1186

- 76 -

1 REDUCED BY THE AMOUNT OF GRANTS OR CAPITAL
2 CONTRIBUTIONS WHICH HAVE FINANCED THEM. THE
3 CAPACITY PART OF THE TAPPING FEE PER UNIT OF
4 CAPACITY REQUIRED BY THE NEW CUSTOMER MAY NOT
5 EXCEED THE COST OF THE FACILITIES DIVIDED BY THE
6 DESIGN CAPACITY. AN AUTHORITY MAY ALLOCATE ITS
7 CAPACITY-RELATED FACILITIES TO DIFFERENT SECTIONS
8 OR DISTRICTS OF ITS SYSTEM AND MAY IMPOSE
9 ADDITIONAL CAPACITY-RELATED TAPPING FEES ON
10 SPECIFIC GROUPS OF EXISTING CUSTOMERS SUCH AS
11 COMMERCIAL AND INDUSTRIAL CUSTOMERS, IN
12 CONJUNCTION WITH ADDITIONAL CAPACITY REQUIREMENTS
13 OF THOSE CUSTOMERS. IN THE CASE OF FACILITIES TO
14 BE CONSTRUCTED OR ACQUIRED, THE COST SHALL NOT
15 EXCEED THEIR REASONABLE ESTIMATED COST SET FORTH
16 IN A DULY ADOPTED ANNUAL BUDGET OR A FIVE-YEAR
17 CAPITAL IMPROVEMENT PLAN, AND THE AUTHORITY IN
18 FURTHERANCE OF THE FACILITIES MUST TAKE ANY
19 ACTION AS FOLLOWS:

20 (A) OBTAIN FINANCING FOR THE FACILITIES;
21 (B) ENTER INTO A CONTRACT OBLIGATING THE
22 AUTHORITY TO CONSTRUCT OR PAY FOR THE COST OF
23 CONSTRUCTION OF THE FACILITIES OR ITS PORTION
24 THEREOF IN THE EVENT THAT MULTIPLE PARTIES
25 ARE CONSTRUCTING THE FACILITIES;
26 (C) OBTAIN A PERMIT FOR THE FACILITIES;
27 (D) SPEND SUBSTANTIAL SUMS OR RESOURCES
28 IN FURTHERANCE OF THE FACILITIES;
29 (E) ENTER INTO A CONTRACT OBLIGATING THE
30 AUTHORITY TO PURCHASE OR ACQUIRE FACILITIES
20010S0780B1186

- 77 -

1 OWNED BY ANOTHER;

2 (F) PREPARE AN ENGINEERING FEASIBILITY
3 STUDY SPECIFICALLY RELATED TO THE FACILITIES,
4 WHICH STUDY RECOMMENDS THE CONSTRUCTION OF
5 THE FACILITIES WITHIN A FIVE-YEAR PERIOD; OR
6 (G) ENTER INTO A CONTRACT FOR THE DESIGN
7 OF THE FACILITIES.

8 (II) DISTRIBUTION OR COLLECTION PART. THE
9 FEE MAY NOT EXCEED AN AMOUNT BASED UPON THE COST
10 OF DISTRIBUTION OR COLLECTION FACILITIES REQUIRED
11 TO PROVIDE SERVICE, SUCH AS MAINS, HYDRANTS AND
12 PUMPING STATIONS. FACILITIES MAY INCLUDE THOSE
13 THAT PROVIDE EXISTING SERVICE OR THOSE THAT WILL
14 PROVIDE FUTURE SERVICE. THE COST OF EXISTING
15 FACILITIES, EXCLUDING FACILITIES CONTRIBUTED TO
16 THE AUTHORITY BY ANY PERSON, GOVERNMENT OR
17 AGENCY, SHALL BE BASED UPON THEIR REPLACEMENT
18 COST OR UPON HISTORICAL COST TRENDED TO CURRENT
19 COST USING PUBLISHED COST INDEXES OR UPON THE
20 HISTORICAL COST PLUS INTEREST AND OTHER FINANCING

21 FEES PAID ON BONDS FINANCING SUCH FACILITIES. IN
22 THE CASE OF EXISTING FACILITIES, OUTSTANDING DEBT
23 RELATED TO THE FACILITIES SHALL BE SUBTRACTED
24 FROM THE COST, BUT DEBT MAY NOT BE SUBTRACTED
25 WHICH IS ATTRIBUTABLE TO FACILITIES EXCLUSIVELY
26 SERVING NEW CUSTOMERS. IN THE CASE OF FACILITIES
27 TO BE CONSTRUCTED OR ACQUIRED, THE COST SHALL NOT
28 EXCEED THEIR REASONABLE ESTIMATED COST. UNDER ALL
29 COST APPROACHES, THE COST OF DISTRIBUTION OR
30 COLLECTION FACILITIES SHALL BE REDUCED BY THE
20010S0780B1186

- 78 -

1 AMOUNT OF GRANTS OR CAPITAL CONTRIBUTIONS WHICH
2 HAVE FINANCED THEM. THE DISTRIBUTION OR
3 COLLECTION PART OF THE TAPPING FEE PER UNIT OF
4 CAPACITY REQUIRED BY THE NEW CUSTOMER MAY NOT
5 EXCEED THE COST OF THE FACILITIES DIVIDED BY THE
6 DESIGN CAPACITY. AN AUTHORITY MAY ALLOCATE ITS
7 DISTRIBUTION-RELATED OR COLLECTION-RELATED
8 FACILITIES TO DIFFERENT SECTIONS OR DISTRICTS OF
9 ITS SYSTEM AND MAY IMPOSE ADDITIONAL
10 DISTRIBUTION-RELATED OR COLLECTION-RELATED
11 TAPPING FEES ON SPECIFIC GROUPS OF EXISTING
12 CUSTOMERS SUCH AS COMMERCIAL AND INDUSTRIAL
13 CUSTOMERS, IN CONJUNCTION WITH ADDITIONAL
14 CAPACITY REQUIREMENTS OF THOSE CUSTOMERS.
15 (III) SPECIAL PURPOSE PART. FEES FOR SPECIAL
16 PURPOSE FACILITIES SHALL BE APPLICABLE ONLY TO A
17 PARTICULAR GROUP OF CUSTOMERS OR FOR SERVING A
18 PARTICULAR PURPOSE OR A SPECIFIC AREA, BASED UPON
19 THE COST OF THE FACILITIES, INCLUDING, BUT NOT
20 LIMITED TO, BOOSTER PUMP STATIONS, FIRE SERVICE
21 FACILITIES AND INDUSTRIAL WASTEWATER TREATMENT
22 FACILITIES. FACILITIES MAY INCLUDE THOSE THAT
23 PROVIDE EXISTING SERVICE OR THOSE THAT WILL
24 PROVIDE FUTURE SERVICE. THE COST OF EXISTING
25 FACILITIES, EXCLUDING FACILITIES CONTRIBUTED TO
26 THE AUTHORITY BY ANY PERSON, GOVERNMENT OR
27 AGENCY, SHALL BE BASED UPON THEIR REPLACEMENT
28 COST OR UPON HISTORICAL COST TRENDED TO CURRENT
29 COST USING PUBLISHED COST INDEXES OR UPON THE
30 HISTORICAL COST PLUS INTEREST AND OTHER FINANCING
20010S0780B1186

- 79 -

1 FEES PAID ON BONDS FINANCING SUCH FACILITIES. IN
2 THE CASE OF EXISTING FACILITIES, OUTSTANDING DEBT
3 RELATED TO THE FACILITIES SHALL BE SUBTRACTED
4 FROM THE COST, BUT DEBT MAY NOT BE SUBTRACTED
5 WHICH IS ATTRIBUTABLE TO FACILITIES EXCLUSIVELY
6 SERVING NEW CUSTOMERS. IN THE CASE OF FACILITIES
7 TO BE CONSTRUCTED OR ACQUIRED, THE COST SHALL NOT
8 EXCEED THEIR REASONABLE ESTIMATED COST. UNDER ALL
9 COST APPROACHES, THE COST OF SPECIAL PURPOSE
10 FACILITIES SHALL BE REDUCED BY THE AMOUNT OF
11 GRANTS OR CAPITAL CONTRIBUTIONS WHICH HAVE
12 FINANCED SUCH FACILITIES. THE SPECIAL PURPOSE
13 PART OF THE TAPPING FEE PER UNIT OF CAPACITY
14 REQUIRED BY THE NEW CUSTOMER MAY NOT EXCEED THE
15 COST OF THE FACILITIES DIVIDED BY THE DESIGN
16 CAPACITY. AN AUTHORITY MAY ALLOCATE ITS SPECIAL
17 PURPOSE FACILITIES TO DIFFERENT SECTIONS OR
18 DISTRICTS OF ITS SYSTEM AND MAY IMPOSE ADDITIONAL
19 SPECIAL PURPOSE TAPPING FEES ON SPECIFIC GROUPS
20 OF EXISTING CUSTOMERS SUCH AS COMMERCIAL AND
21 INDUSTRIAL CUSTOMERS, IN CONJUNCTION WITH
22 ADDITIONAL CAPACITY REQUIREMENTS OF THOSE

23 CUSTOMERS.
24 (IV) REIMBURSEMENT COMPONENT. AN AMOUNT
25 NECESSARY TO RECAPTURE THE ALLOCABLE PORTION OF
26 FACILITIES IN ORDER TO REIMBURSE THE PROPERTY
27 OWNER OR OWNERS AT WHOSE EXPENSE THE FACILITIES
28 WERE CONSTRUCTED, AS SET FORTH IN PARAGRAPHS (30)
29 AND (31).
30 (V) CALCULATION OF TAPPING FEE COMPONENTS.

20010S0780B1186

- 80 -

1 (A) IN ARRIVING AT THE COST TO BE
2 INCLUDED IN THE TAPPING FEE COMPONENTS, THE
3 SAME COST MAY NOT BE INCLUDED IN MORE THAN
4 ONE PART OF THE TAPPING FEE.

5 (B) NO TAPPING FEE MAY BE BASED UPON OR
6 INCLUDE THE COST OF EXPANDING, REPLACING,
7 UPDATING OR UPGRADING FACILITIES SERVING
8 EXISTING CUSTOMERS IN ORDER TO MEET STRICTER
9 EFFICIENCY, ENVIRONMENTAL, REGULATORY OR
10 SAFETY STANDARDS OR TO PROVIDE BETTER SERVICE
11 TO OR MEET THE NEEDS OF EXISTING CUSTOMERS.

12 (C) THE COST USED IN CALCULATING TAPPING
13 FEES SHALL NOT INCLUDE MAINTENANCE AND
14 OPERATION EXPENSES.

15 (D) AS USED IN THIS SUBCLAUSE,
16 "MAINTENANCE AND OPERATION EXPENSES" ARE
17 THOSE EXPENDITURES MADE DURING THE USEFUL
18 LIFE OF A SEWER OR WATER SYSTEM FOR LABOR,
19 MATERIALS, UTILITIES, EQUIPMENT ACCESSORIES,
20 APPURTEANCES AND OTHER ITEMS WHICH ARE
21 NECESSARY TO MANAGE AND MAINTAIN THE SYSTEM
22 CAPACITY AND PERFORMANCE AND TO PROVIDE THE
23 SERVICE FOR WHICH THE SYSTEM WAS CONSTRUCTED.

24 (II) EVERY AUTHORITY CHARGING A TAPPING, CUSTOMER
25 FACILITIES OR CONNECTION FEE SHALL DO SO AT A PUBLIC
26 MEETING OF THE AUTHORITY. THE AUTHORITY SHALL HAVE
27 AVAILABLE FOR PUBLIC INSPECTION A DETAILED ITEMIZATION OF
28 ALL CALCULATIONS, CLEARLY SHOWING THE MANNER IN WHICH THE
29 FEES WERE DETERMINED. A REVISED TAPPING, CUSTOMER
30 FACILITIES OR CONNECTION FEE MAY BE IMPOSED UPON THOSE

20010S0780B1186

- 81 -

1 WHO SUBSEQUENTLY CONNECT TO THE SYSTEM.

2 (III) NO AUTHORITY MAY IMPOSE A CONNECTION FEE,
3 CUSTOMER FACILITIES FEE, TAPPING FEE OR SIMILAR FEE,
4 EXCEPT AS PROVIDED SPECIFICALLY UNDER THIS SECTION.

5 (IV) A MUNICIPALITY OR MUNICIPAL AUTHORITY WITH
6 AVAILABLE EXCESS SEWAGE CAPACITY, WISHING TO SELL A
7 PORTION OF THAT CAPACITY TO ANOTHER MUNICIPALITY OR
8 MUNICIPAL AUTHORITY, MAY NOT CHARGE A HIGHER COST FOR THE
9 CAPACITY PORTION OF THE TAPPING FEE AS THE SELLING ENTITY
10 CHARGES TO ITS CUSTOMERS FOR THE CAPACITY PORTION OF THE
11 TAPPING FEE. IN TURN, THE MUNICIPALITY OR MUNICIPAL
12 AUTHORITY BUYING THIS EXCESS CAPACITY MAY NOT CHARGE A
13 HIGHER COST FOR THE CAPACITY PORTION OF THE TAPPING FEE
14 TO ITS RESIDENTIAL CUSTOMERS THAN THAT CHARGED TO THEM BY
15 THE SELLING ENTITY.

16 (V) AS USED IN THIS PARAGRAPH, THE TERM "RESIDENTIAL
17 CUSTOMER" SHALL ALSO INCLUDE THOSE DEVELOPING PROPERTY
18 FOR RESIDENTIAL DWELLINGS THAT REQUIRE MULTIPLE TAPPING
19 FEE PERMITS. THIS PARAGRAPH SHALL NOT BE APPLICABLE TO
20 INTERMUNICIPAL OR INTERAUTHORITY AGREEMENTS RELATIVE TO
21 THE PURCHASE OF EXCESS CAPACITY BY AN AUTHORITY OR
22 MUNICIPALITY IN EFFECT PRIOR TO DECEMBER 20, 2000.

23 (25) TO CONSTRUCT TUNNELS, BRIDGES, VIADUCTS,
24 UNDERPASSES OR OTHER STRUCTURES AND RELOCATE THE FACILITIES

25 OF PUBLIC SERVICE COMPANIES TO EFFECT OR PERMIT THE ABOLITION
26 OF A GRADE CROSSING OR GRADE CROSSINGS SUBJECT TO APPROVAL OF
27 AND IN ACCORDANCE WITH A DULY ISSUED ORDER OF THE
28 PENNSYLVANIA PUBLIC UTILITY COMMISSION. A COMMISSION ORDER
29 SHALL PROVIDE THAT COSTS PAYABLE BY A PUBLIC UTILITY,
30 POLITICAL SUBDIVISION, THE COMMONWEALTH OR OTHERS SHALL BE
20010S0780B1186 - 82 -

1 PAYABLE TO THE AUTHORITY. BEFORE PROCEEDINGS ARE INSTITUTED
2 BEFORE THE COMMISSION, THE AUTHORITY AND THE PUBLIC UTILITIES
3 OR THE POLITICAL SUBDIVISIONS SHALL ENTER AN AGREEMENT TO
4 PROVIDE FOR THE CONVEYANCE TO THE AUTHORITY OF TITLE TO THE
5 LAND, STRUCTURE OR IMPROVEMENT INVOLVED, AS SECURITY FOR
6 BONDS ISSUED TO FINANCE THE IMPROVEMENT AND THE LEASING OF
7 THE IMPROVEMENT TO THE UTILITY OR UTILITIES OR THE POLITICAL
8 SUBDIVISION OR SUBDIVISIONS INVOLVED, ON SUCH TERMS AS WILL
9 PROVIDE FOR INTEREST AND SINKING FUND CHARGES ON THE BONDS
10 ISSUED FOR THE IMPROVEMENT.

11 (26) TO APPOINT POLICE OFFICERS WHO SHALL HAVE THE SAME
12 RIGHTS AS OTHER PEACE OFFICERS IN THIS COMMONWEALTH WITH
13 RESPECT TO THE PROPERTY OF THE AUTHORITY.

14 (27) (I) IN THE CASE OF AN AUTHORITY CREATED TO PROVIDE
15 BUSINESS IMPROVEMENTS AND ADMINISTRATIVE SERVICES, TO
16 IMPOSE AN ASSESSMENT ON EACH BENEFITED PROPERTY WITHIN A
17 BUSINESS IMPROVEMENT DISTRICT. THIS ASSESSMENT SHALL BE
18 BASED UPON THE ESTIMATED COST OF THE IMPROVEMENTS OR
19 SERVICES IN THE DISTRICT STATED IN THE PLANNING OR
20 FEASIBILITY STUDY AND SHALL BE DETERMINED BY ONE OF THE
21 FOLLOWING METHODS:

22 (A) BY AN ASSESSMENT DETERMINED BY MULTIPLYING
23 THE TOTAL IMPROVEMENT OR SERVICE COST BY THE RATIO OF
24 THE ASSESSED VALUE OF THE BENEFITED PROPERTY TO THE
25 TOTAL ASSESSED VALUATION OF ALL BENEFITED PROPERTIES
26 IN THE DISTRICT.

27 (B) BY AN ASSESSMENT UPON THE SEVERAL PROPERTIES
28 IN THE DISTRICT IN PROPORTION TO BENEFITS AS
29 ASCERTAINED BY VIEWERS APPOINTED IN ACCORDANCE WITH
30 MUNICIPAL LAW.

20010S0780B1186 - 83 -

1 (II) AN ASSESSMENT OR CHARGE MAY NOT BE MADE UNLESS:
2 (A) AN AUTHORITY SUBMITS A PLAN FOR BUSINESS
3 IMPROVEMENTS AND ADMINISTRATIVE SERVICES, TOGETHER
4 WITH ESTIMATED COSTS AND THE PROPOSED METHOD OF
5 ASSESSMENTS FOR BUSINESS IMPROVEMENTS AND CHARGES FOR
6 ADMINISTRATIVE SERVICES, TO THE MUNICIPALITY IN WHICH
7 THE PROJECT IS TO BE UNDERTAKEN.

8 (B) THE MUNICIPALITY APPROVES THE PLAN, THE
9 ESTIMATED COSTS AND THE PROPOSED METHOD OF ASSESSMENT
10 AND CHARGES.

11 (III) AN AUTHORITY MAY NOT ASSESS CHARGES AGAINST
12 THE IMPROVED PROPERTIES IN AN AGGREGATE AMOUNT IN EXCESS
13 OF THE ESTIMATED COST.

14 (IV) AN AUTHORITY MAY, BY RESOLUTION, AUTHORIZE
15 PAYMENT OF AN ASSESSMENT OR CHARGE IN EQUAL, ANNUAL OR
16 MORE FREQUENT INSTALLMENTS OVER A FIXED PERIOD OF TIME
17 AND BEARING INTEREST OF 6% OR LESS. IF BONDS, NOTES OR
18 GUARANTEES ARE USED TO RAISE REVENUE TO PROVIDE FOR THE
19 COST OF IMPROVEMENTS OR SERVICES, THE INSTALLMENTS SHALL
20 NOT BE PAYABLE BEYOND THE TERM FOR WHICH THE BONDS, NOTES
21 OR GUARANTEES ARE PAYABLE.

22 (V) CLAIMS TO SECURE THE PAYMENT OF ASSESSMENTS
23 SHALL BE ENTERED IN THE PROTHONOTARY'S OFFICE OF THE
24 COUNTY AT THE SAME TIME AND IN THE SAME FORM AND SHALL BE
25 COLLECTED IN THE SAME MANNER AS MUNICIPAL CLAIMS ARE
26 FILED AND COLLECTED NOTWITHSTANDING THE PROVISIONS OF

27 THIS SECTION AS TO INSTALLMENT PAYMENTS.
28 (VI) IN CASE OF DEFAULT OF 60 DAYS OR MORE AFTER AN
29 INSTALLMENT IS DUE, THE ENTIRE ASSESSMENT AND INTEREST
30 SHALL BE DUE.

20010S0780B1186

- 84 -

1 (V) AN OWNER OF PROPERTY AGAINST WHOM AN ASSESSMENT
2 HAS BEEN MADE MAY PAY THE ASSESSMENT IN FULL AT ANY TIME
3 ALONG WITH ACCRUED INTEREST AND COSTS. UPON PROOF OF
4 PAYMENT THE LIEN SHALL BE DISCHARGED.

5 (28) TO ADOPT RULES AND REGULATIONS TO PROVIDE FOR THE
6 SAFETY OF PERSONS USING FACILITIES OF AN AIRPORT AUTHORITY
7 PERTAINING TO VEHICULAR TRAFFIC CONTROL. POLICE OFFICERS
8 APPOINTED UNDER PARAGRAPH (26) SHALL ENFORCE THEM.

9 (29) TO PROVIDE FINANCING FOR INSURANCE RESERVES BY
10 MAKING LOANS, EVIDENCED AND SECURED BY LOAN AGREEMENTS,
11 SECURITY AGREEMENTS OR OTHER INSTRUMENTS OR AGREEMENTS. THESE
12 INSTRUMENTS OR AGREEMENTS MAY CONTAIN PROVISIONS THE
13 AUTHORITY DEEMS NECESSARY OR DESIRABLE FOR THE SECURITY OR
14 PROTECTION OF THE AUTHORITY OR ITS BONDHOLDERS.

15 (30) WHERE A SEWER OR WATER SYSTEM OF AN AUTHORITY IS TO
16 BE EXTENDED AT THE EXPENSE OF THE OWNER OF PROPERTIES OR
17 WHERE THE AUTHORITY OTHERWISE WOULD CONSTRUCT CUSTOMER
18 FACILITIES REFERRED TO IN PARAGRAPH (24), OTHER THAN WATER
19 METER INSTALLATION, TO ALLOW A PROPERTY OWNER TO CONSTRUCT
20 THE EXTENSION OR INSTALL THE CUSTOMER FACILITIES HIMSELF OR
21 THROUGH A SUBCONTRACTOR APPROVED BY THE AUTHORITY, WHICH
22 APPROVAL SHALL NOT BE UNREASONABLY WITHHELD. THE AUTHORITY
23 MAY PERFORM THE CONSTRUCTION ITSELF ONLY IF THE AUTHORITY
24 PROVIDES THE EXTENSION OR CUSTOMER FACILITIES AT A LOWER COST
25 AND WITHIN THE SAME TIMETABLE SPECIFIED OR PROPOSED BY THE
26 PROPERTY OWNER OR HIS APPROVED SUBCONTRACTOR. CONSTRUCTION BY
27 THE PROPERTY OWNER SHALL BE IN ACCORDANCE WITH AN AGREEMENT
28 FOR THE EXTENSION OF THE AUTHORITY'S SYSTEM AND PLANS AND
29 SPECIFICATIONS APPROVED BY THE AUTHORITY AND SHALL BE
30 UNDERTAKEN ONLY PURSUANT TO THE EXISTING REGULATIONS,

20010S0780B1186

- 85 -

1 REQUIREMENTS, RULES AND STANDARDS OF THE AUTHORITY APPLICABLE
2 TO SUCH CONSTRUCTION. CONSTRUCTION SHALL BE SUBJECT TO
3 INSPECTION BY AN INSPECTOR AUTHORIZED TO APPROVE SIMILAR
4 CONSTRUCTION AND EMPLOYED BY THE AUTHORITY DURING
5 CONSTRUCTION. WHEN A MAIN IS TO BE EXTENDED AT THE EXPENSE OF
6 THE OWNER OF PROPERTIES, THE PROPERTY OWNER MAY BE REQUIRED
7 TO DEPOSIT WITH THE AUTHORITY, IN ADVANCE OF CONSTRUCTION,
8 THE AUTHORITY'S ESTIMATED REASONABLE AND NECESSARY COST OF
9 REVIEWING PLANS, CONSTRUCTION INSPECTIONS, ADMINISTRATIVE,
10 LEGAL AND ENGINEERING SERVICES. THE AUTHORITY MAY REQUIRE
11 THAT CONSTRUCTION SHALL NOT COMMENCE UNTIL THE PROPERTY OWNER
12 HAS POSTED APPROPRIATE FINANCIAL SECURITY IN ACCORDANCE WITH
13 PARAGRAPH (23). THE AUTHORITY MAY REQUIRE THE PROPERTY OWNER
14 TO REIMBURSE IT FOR REASONABLE AND NECESSARY EXPENSES IT
15 INCURRED AS A RESULT OF THE EXTENSION. IF AN INDEPENDENT FIRM
16 IS EMPLOYED FOR ENGINEERING REVIEW OF THE PLANS AND THE
17 INSPECTION OF IMPROVEMENTS, REIMBURSEMENT FOR ITS SERVICES
18 SHALL BE REASONABLE AND IN ACCORDANCE WITH THE ORDINARY AND
19 CUSTOMARY FEES CHARGED BY THE INDEPENDENT FIRM FOR WORK
20 PERFORMED FOR SIMILAR SERVICES IN THE COMMUNITY. THE FEES MAY
21 NOT EXCEED THE RATE CHARGED BY THE INDEPENDENT FIRM TO THE
22 AUTHORITY WHEN FEES ARE NOT REIMBURSED OR OTHERWISE IMPOSED
23 ON APPLICANTS. UPON COMPLETION OF CONSTRUCTION, THE PROPERTY
24 OWNER SHALL DEDICATE AND THE AUTHORITY SHALL ACCEPT THE
25 EXTENSION OF THE AUTHORITY'S SYSTEM IF DEDICATION OF
26 FACILITIES AND THE INSTALLATION COMPLIES WITH THE PLANS,
27 SPECIFICATION, REGULATIONS OF THE AUTHORITY AND THE
28 AGREEMENT. AN AUTHORITY MAY PROVIDE IN ITS REGULATIONS THOSE

29 FACILITIES WHICH, HAVING BEEN CONSTRUCTED AT THE EXPENSE OF
30 THE OWNER OF PROPERTIES, THE AUTHORITY WILL ACCEPT AS A PART
20010S0780B1186 - 86 -
1 OF ITS SYSTEM.

(31) WHEEL

(31) WHERE A PROPERTY OWNER CONSTRUCTS OR CAUSES TO BE CONSTRUCTED AT HIS EXPENSE ANY EXTENSION OF A SEWER OR WATER SYSTEM OF AN AUTHORITY, THE AUTHORITY SHALL PROVIDE FOR THE REIMBURSEMENT TO THE PROPERTY OWNER WHEN THE OWNER OF ANOTHER PROPERTY NOT IN THE DEVELOPMENT FOR WHICH THE EXTENSION WAS CONSTRUCTED CONNECTS A SERVICE LINE DIRECTLY TO THE EXTENSION WITHIN TEN YEARS OF THE DATE OF THE DEDICATION OF THE EXTENSION TO THE AUTHORITY, IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

(I) REIMBURSEMENT SHALL BE EQUAL TO THE DISTRIBUTION OR COLLECTION PART OF EACH TAPPING FEE COLLECTED AS A RESULT OF SUBSEQUENT CONNECTIONS. AN AUTHORITY MAY DEDUCT FROM EACH REIMBURSEMENT PAYMENT AN AMOUNT EQUAL TO 5% OF IT, FOR ADMINISTRATIVE EXPENSES AND SERVICES RENDERED IN CALCULATING, COLLECTING, MONITORING AND DISBURSING THE REIMBURSEMENT PAYMENTS TO THE PROPERTY OWNER.

18 (II) REIMBURSEMENT SHALL BE LIMITED TO THOSE LINES
19 WHICH HAVE NOT PREVIOUSLY BEEN PAID FOR BY THE AUTHORITY.

20 (III) THE AUTHORITY SHALL, IN PREPARING NECESSARY
21 REIMBURSEMENT AGREEMENTS WITH A PROPERTY OWNER FOR WHOSE
22 BENEFIT REIMBURSEMENT WILL BE PROVIDED, ATTACH AS AN
23 EXHIBIT AN ITEMIZED LISTING OF ALL SEWER AND WATER
24 FACILITIES FOR WHICH REIMBURSEMENT SHALL BE PROVIDED.

(IV) THE TOTAL REIMBURSEMENT WHICH A PROPERTY OWNER
MAY RECEIVE MAY NOT EXCEED THE COST OF LABOR AND
MATERIAL, ENGINEERING DESIGN CHARGES, THE COST OF
PERFORMANCE AND MAINTENANCE BONDS, AUTHORITY REVIEW AND
INSPECTION CHARGES, AS WELL AS FLUSHING AND TELEVISING
CHARGES AND ANY AND ALL CHARGES INVOLVED IN THE

20010S0780B1186 - 87 -

1 ACCEPTANCE AND DEDICATION OF SUCH FACILITIES BY THE
2 AUTHORITY, LESS THE AMOUNT WHICH WOULD BE CHARGEABLE TO
3 THE PROPERTY OWNER BASED UPON THE AUTHORITY'S COLLECTION
4 AND DISTRIBUTION TAPPING FEES WHICH WOULD BE APPLICABLE
5 TO ALL LANDS OF THE PROPERTY OWNER DIRECTLY OR INDIRECTLY
6 SERVED THROUGH EXTENSIONS IF THE PROPERTY OWNER DID NOT
7 FUND THE EXTENSION.

8 (V) AN AUTHORITY SHALL NOTIFY BY CERTIFIED MAIL, TO
9 THE LAST KNOWN ADDRESS, THE PROPERTY OWNER FOR WHOSE
10 BENEFIT A REIMBURSEMENT SHALL APPLY. THIS SHALL BE DONE
11 WITHIN 30 DAYS OF THE AUTHORITY'S RECEIPT OF THE
12 REIMBURSEMENT PAYMENT. IF A PROPERTY OWNER DOES NOT CLAIM
13 A REIMBURSEMENT PAYMENT WITHIN 120 DAYS AFTER THE MAILING
14 OF THE NOTICE, THE PAYMENT SHALL BECOME THE SOLE PROPERTY
15 OF THE AUTHORITY WITH NO FURTHER OBLIGATION ON THE PART
16 OF THE AUTHORITY TO REFUND THE PAYMENT TO THE PROPERTY
17 OWNER.

(32) IF A SEWER SYSTEM OR WATER SYSTEM OR ANY PART OR EXTENSION OWNED BY AN AUTHORITY HAS BEEN CONSTRUCTED AT THE EXPENSE OF A PRIVATE PERSON OR CORPORATION, THE AUTHORITY MAY CHARGE ANOTHER TAPPING FEE. THE AUTHORITY SHALL REFUND THE TAPPING FEE TO THE PERSON OR CORPORATION WHO PAID FOR THE CONSTRUCTION OF THE SEWER OR WATER SYSTEM OR THE PART OR EXTENSION OF IT.

(33) PROVISIONS OF PARAGRAPHS (30), (31) AND (32) SHALL APPLY TO RESIDENTIAL CUSTOMERS IN A MUNICIPALITY WHERE THE SEWER SERVICE IS BEING PURCHASED BY THE MUNICIPALITY OR SEWER AUTHORITY FROM ANOTHER MUNICIPALITY OR SEWER AUTHORITY HAVING EXCESS SEWAGE CAPACITY.

30 (E) PROHIBITION.—

20010S0780B1186

- 88 -

1 (1) AN AUTHORITY MAY NOT PLEDGE THE CREDIT OR TAXING
2 POWER OF THE COMMONWEALTH OR POLITICAL SUBDIVISION.

3 (2) THE OBLIGATIONS OF AN AUTHORITY ARE NOT OBLIGATIONS
4 OF THE COMMONWEALTH OR ITS POLITICAL SUBDIVISION.

5 (3) NEITHER THE COMMONWEALTH NOR A POLITICAL SUBDIVISION
6 SHALL BE LIABLE FOR THE PAYMENT OF PRINCIPAL OF OR INTEREST
7 ON OBLIGATIONS OF AN AUTHORITY.

8 (F) AUTHORIZATION TO CONTROL AIRPORTS.--NOTHING IN THIS
9 CHAPTER SHALL BE CONSTRUED TO PREVENT AN AUTHORITY WHICH OWNS OR
10 OPERATES AN AIRPORT AS A PROJECT FROM LEASING AIRPORT LAND ON A
11 SHORT-TERM OR LONG-TERM BASIS FOR COMMERCIAL, INDUSTRIAL OR
12 RESIDENTIAL PURPOSES WHEN THE LAND IS NOT IMMEDIATELY NEEDED FOR
13 AVIATION OR AERONAUTICAL PURPOSES IN THE JUDGMENT OF THE
14 AUTHORITY.

15 (G) AUTHORIZATION TO MAKE BUSINESS IMPROVEMENTS AND PROVIDE
16 ADMINISTRATIVE SERVICES.--AN AUTHORITY MAY BE ESTABLISHED TO
17 MAKE BUSINESS IMPROVEMENTS OR PROVIDE ADMINISTRATIVE SERVICES IN
18 DISTRICTS DESIGNATED BY A MUNICIPALITY AND ZONED COMMERCIAL OR
19 USED FOR GENERAL COMMERCIAL PURPOSES OR IN CONTIGUOUS AREAS IF
20 THE INCLUSION OF A CONTIGUOUS AREA IS DIRECTLY RELATED TO THE
21 IMPROVEMENTS AND SERVICES PROPOSED BY THE AUTHORITY. THE
22 AUTHORITY SHALL MAKE PLANNING OR FEASIBILITY STUDIES TO
23 DETERMINE NEEDED IMPROVEMENTS OR ADMINISTRATIVE SERVICES.

24 (1) THE AUTHORITY SHALL BE REQUIRED TO HOLD A PUBLIC
25 HEARING ON THE PROPOSED IMPROVEMENT OR SERVICE, THE ESTIMATED
26 COSTS THEREOF AND THE PROPOSED METHOD OF ASSESSMENT AND
27 CHARGES. NOTICE OF THE HEARING SHALL BE ADVERTISED AT LEAST
28 TEN DAYS BEFORE IT OCCURS IN A NEWSPAPER WHOSE CIRCULATION IS
29 WITHIN THE MUNICIPALITY WHERE THE AUTHORITY IS ESTABLISHED.
30 AT THE PUBLIC HEARING ANY INTERESTED PARTY MAY BE HEARD.

20010S0780B1186

- 89 -

1 (2) WRITTEN NOTICE OF THE PROPOSED IMPROVEMENT OR
2 SERVICE, ITS ESTIMATED COST, THE PROPOSED METHOD OF
3 ASSESSMENT AND CHARGES AND PROJECT COST TO INDIVIDUAL
4 PROPERTY OWNERS SHALL BE GIVEN TO EACH PROPERTY OWNER AND
5 COMMERCIAL LESSEE IN BENEFITED PROPERTIES IN THE DISTRICT AT
6 LEAST 30 DAYS PRIOR TO THE PUBLIC HEARING.

7 (3) THE AUTHORITY SHALL TAKE NO ACTION ON PROPOSED
8 IMPROVEMENT OR SERVICE IF OBJECTION IS MADE IN WRITING BY
9 PERSONS REPRESENTING THE OWNERSHIP OF ONE-THIRD OF THE
10 BENEFITED PROPERTIES IN THE DISTRICT OR BY PROPERTY OWNERS OF
11 THE PROPOSED DISTRICT WHOSE PROPERTY VALUATION AS ASSESSED
12 FOR TAXABLE PURPOSES SHALL AMOUNT TO MORE THAN ONE-THIRD OF
13 THE TOTAL PROPERTY VALUATION OF THE DISTRICT. OBJECTION SHALL
14 BE MADE WITHIN 45 DAYS AFTER THE CONCLUSION OF THE PUBLIC
15 HEARING. OBJECTIONS MUST BE IN WRITING, SIGNED AND FILED IN
16 THE OFFICE OF THE GOVERNING BODY OF THE MUNICIPALITY IN WHICH
17 THE DISTRICT IS LOCATED AND IN THE REGISTERED OFFICE OF THE
18 AUTHORITY.

19 § 5608. BONDS.

20 (A) AUTHORIZATION.--

21 (1) A BOND MUST BE AUTHORIZED BY RESOLUTION OF THE
22 BOARD. THE RESOLUTION MUST SPECIFY ALL OF THE FOLLOWING:

23 (I) SERIES.

24 (II) DATE OF MATURITY NOT EXCEEDING 40 YEARS FROM
25 DATE OF ISSUE.

26 (III) INTEREST, NOT EXCEEDING 6% ANNUALLY, PAYABLE
27 SEMIANNUALLY. FOR THE PERIOD AFTER JULY 1, 1970, AND
28 ENDING JUNE 30, 1976, THE RATE OF INTEREST MAY EXCEED 6%
29 AS DETERMINED BY THE CORPORATE AUTHORITIES AS NECESSARY
30 TO ISSUE AND SELL THE BOND.

20010S0780B1186

- 90 -

1 (IV) DENOMINATION.

2 (V) FORM, EITHER COUPON OR FULLY REGISTERED WITHOUT
3 COUPONS.
4 (VI) REGISTRATION, EXCHANGEABILITY AND
5 INTERCHANGEABILITY PRIVILEGES.
6 (VII) MEDIUM OF PAYMENT AND PLACE OF PAYMENT.
7 (VIII) TERMS OF REDEMPTION, NOT EXCEEDING 105% OF
8 THE PRINCIPAL AMOUNT OF THE BOND.
9 (IX) PRIORITIES IN THE REVENUES OR RECEIPTS OF THE
10 AUTHORITY.
11 (2) A BOND MUST BE SIGNED BY OR SHALL BEAR THE FACSIMILE
12 SIGNATURE OF SUCH OFFICERS AS THE AUTHORITY DETERMINES.
13 COUPON BONDS MUST HAVE ATTACHED INTEREST COUPONS BEARING THE
14 FACSIMILE SIGNATURE OF THE TREASURER OF THE AUTHORITY, AS
15 PRESCRIBED IN THE AUTHORIZING RESOLUTION. A BOND MAY BE
16 ISSUED AND DELIVERED NOTWITHSTANDING THAT ONE OR MORE OF THE
17 SIGNING OFFICERS OR THE TREASURER HAS CEASED TO BE AN OFFICER
18 WHEN THE BOND IS ACTUALLY DELIVERED.
19 (3) A BOND MAY BE SOLD AT PUBLIC OR PRIVATE SALE FOR A
20 PRICE DETERMINED BY THE AUTHORITY. NO BOND MAY BE SOLD AT
21 LESS THAN 98% OF THE PRINCIPAL AMOUNT PLUS INTEREST CHARGES.
22 THE INTEREST COST TO MATURITY OF THE MONEY RECEIVED FOR A
23 BOND ISSUE MAY NOT EXCEED 6% ANNUALLY. FOR THE PERIOD AFTER
24 JULY 1, 1970, AND BEFORE JUNE 30, 1976, THE RATE OF INTEREST
25 MAY EXCEED 6% ANNUALLY AS DETERMINED BY THE CORPORATE
26 AUTHORITIES AS NECESSARY TO ISSUE AND SELL THE BOND.
27 (4) PENDING THE PREPARATION OF A DEFINITIVE BOND,
28 INTERIM RECEIPTS OR TEMPORARY BONDS, WITH OR WITHOUT COUPONS,
29 MAY BE ISSUED TO THE PURCHASER AND MAY CONTAIN TERMS AND
30 CONDITIONS AS THE AUTHORITY DETERMINES.

20010S0780B1186 - 91 -
1 (B) PROVISIONS.--A RESOLUTION AUTHORIZING A BOND MAY CONTAIN
2 PROVISIONS, WHICH SHALL BE PART OF THE CONTRACT WITH THE BOND
3 HOLDER, AS TO THE FOLLOWING:
4 (1) PLEDGING THE FULL FAITH AND CREDIT OF THE AUTHORITY
5 BUT NOT OF THE COMMONWEALTH OR ANY POLITICAL SUBDIVISIONS FOR
6 THE OBLIGATION OR RESTRICTING THE FULL FAITH AND CREDIT OF
7 THE AUTHORITY TO ALL OR ANY OF THE REVENUE OF THE AUTHORITY,
8 FROM ALL OR ANY PROJECTS OR PROPERTIES.
9 (2) THE CONSTRUCTION, IMPROVEMENT, OPERATION, EXTENSION,
10 ENLARGEMENT, MAINTENANCE AND REPAIR OF THE PROJECT AND THE
11 DUTIES OF THE AUTHORITY WITH REFERENCE TO THESE MATTERS.
12 (3) TERMS AND PROVISIONS OF THE BOND.
13 (4) LIMITATIONS ON THE PURPOSES TO WHICH THE PROCEEDS OF
14 THE BOND OR OF A LOAN OR GRANT BY THE UNITED STATES MAY BE
15 APPLIED.
16 (5) RATE OF TOLLS AND OTHER CHARGES FOR USE OF THE
17 FACILITIES OF, OR FOR THE SERVICES RENDERED BY, THE
18 AUTHORITY.
19 (6) THE SETTING ASIDE, REGULATION AND DISPOSITION OF
20 RESERVES AND SINKING FUNDS.
21 (7) LIMITATIONS ON THE ISSUANCE OF ADDITIONAL BONDS.
22 (8) TERMS AND PROVISIONS OF ANY DEED OF TRUST OR
23 INDENTURE SECURING THE BOND, OR UNDER WHICH ANY DEED OF TRUST
24 OR INDENTURE MAY BE ISSUED.
25 (9) OTHER ADDITIONAL AGREEMENTS WITH THE HOLDER OF THE
26 BOND.
27 (C) DEEDS OF TRUST.--AN AUTHORITY MAY ENTER INTO ANY DEED OF
28 TRUST, INDENTURE OR OTHER AGREEMENT, WITH ANY BANK OR TRUST
29 COMPANY OR OTHER PERSON IN THE UNITED STATES HAVING POWER TO
30 ENTER INTO SUCH AN ARRANGEMENT, INCLUDING ANY FEDERAL AGENCY, AS
20010S0780B1186 - 92 -
1 SECURITY FOR A BOND, AND MAY ASSIGN AND PLEDGE ALL OR ANY OF THE
2 REVENUES OR RECEIPTS OF THE AUTHORITY UNDER SUCH DEED, INDENTURE
3 OR AGREEMENT. THE DEED OF TRUST, INDENTURE OR OTHER AGREEMENT

4 MAY CONTAIN PROVISIONS AS MAY BE CUSTOMARY IN SUCH INSTRUMENTS
5 OR AS THE AUTHORITY MAY AUTHORIZE, INCLUDING PROVISIONS AS TO:
6 (1) CONSTRUCTION, FINANCING, IMPROVEMENT, OPERATION,
7 MAINTENANCE AND REPAIR OF A PROJECT AND THE DUTIES OF THE
8 AUTHORITY WITH REFERENCE TO THESE MATTERS;
9 (2) APPLICATION OF FUNDS AND THE SAFEGUARDING OF FUNDS
10 ON HAND OR ON DEPOSIT;
11 (3) RIGHTS AND REMEDIES OF TRUSTEE AND BONDHOLDER,
12 INCLUDING RESTRICTIONS UPON THE INDIVIDUAL RIGHT OF ACTION OF
13 A BONDHOLDER; AND
14 (4) TERMS AND PROVISIONS OF THE BOND OR THE RESOLUTION
15 AUTHORIZING THE ISSUANCE OF THE BOND.
16 (D) NEGOTIABILITY.--A BOND SHALL HAVE ALL THE QUALITIES OF
17 NEGOTIABLE INSTRUMENTS UNDER 13 P.A.C.S. DIV. 3 (RELATING TO
18 NEGOTIABLE INSTRUMENTS).
19 S 5609. BONDHOLDERS.
20 (A) RIGHTS AND REMEDIES.--THE RIGHTS AND THE REMEDIES
21 CONFERRED UPON BONDHOLDERS UNDER THIS SECTION SHALL BE IN
22 ADDITION TO AND NOT IN LIMITATION OF RIGHTS AND REMEDIES
23 LAWFULLY GRANTED THEM BY THE RESOLUTION FOR THE BOND ISSUE OR BY
24 ANY DEED OF TRUST, INDENTURE OR OTHER AGREEMENT UNDER WHICH THE
25 BOND IS ISSUED.
26 (B) TRUSTEE.--
27 (1) THE HOLDERS OF 25% OF THE AGGREGATE PRINCIPAL AMOUNT
28 OF OUTSTANDING BONDS MAY APPOINT A TRUSTEE TO REPRESENT THE
29 BONDHOLDERS FOR PURPOSES OF THIS CHAPTER IF ANY OF THE
30 FOLLOWING APPLY:

20010S0780B1186

- 93 -

1 (I) THE AUTHORITY DEFAULTS IN THE PAYMENT OF
2 PRINCIPAL OR INTEREST ON A BOND, AT MATURITY OR UPON CALL
3 FOR REDEMPTION; AND THE DEFAULT CONTINUES FOR 30 DAYS.
4 (II) THE AUTHORITY FAILS TO COMPLY WITH THIS
5 CHAPTER.
6 (III) THE AUTHORITY DEFAULTS IN AN AGREEMENT MADE
7 WITH THE BONDHOLDERS.
8 (2) THE TRUSTEE MUST BE APPOINTED BY INSTRUMENT:
9 (I) FILED IN THE OFFICE OF THE RECORDER OF DEEDS OF
10 THE COUNTY WHERE THE AUTHORITY IS LOCATED; AND
11 (II) PROVED OR ACKNOWLEDGED IN THE SAME MANNER AS A
12 DEED TO BE RECORDED.
13 (3) A TRUSTEE UNDER THIS SUBSECTION AND A TRUSTEE UNDER
14 ANY DEED OF TRUST, INDENTURE OR OTHER AGREEMENT, MAY AND,
15 UPON WRITTEN REQUEST OF THE HOLDERS OF 25% OF THE AGGREGATE
16 PRINCIPAL AMOUNT OF OUTSTANDING BONDS OR SUCH OTHER
17 PERCENTAGE SPECIFIED IN THE DEED OF TRUST, INDENTURE OR OTHER
18 AGREEMENT, SHALL, IN THE TRUSTEE'S NAME DO ANY OF THE
19 FOLLOWING:
20 (I) BY ACTION AT LAW OR IN EQUITY, ENFORCE RIGHTS OF
21 THE BONDHOLDERS. THIS SUBPARAGRAPH INCLUDES THE RIGHT TO
22 REQUIRE THE AUTHORITY TO:
23 (A) COLLECT RATES, RENTALS OR OTHER CHARGES
24 ADEQUATE TO CARRY OUT ANY AGREEMENT AS TO, OR PLEDGE
25 OF, REVENUES OR RECEIPTS OF THE AUTHORITY;
26 (B) CARRY OUT ANY OTHER AGREEMENTS WITH, OR FOR
27 THE BENEFIT OF, BONDHOLDERS; AND
28 (C) PERFORM ITS AND THEIR DUTIES UNDER THIS
29 CHAPTER.
30 (II) BRING SUIT UPON THE BOND.

20010S0780B1186

- 94 -

1 (III) BY ACTION IN EQUITY REQUIRE THE AUTHORITY TO
2 ACCOUNT AS IF IT WERE THE TRUSTEE OF AN EXPRESS TRUST FOR
3 THE BONDHOLDERS.
4 (IV) ENJOIN AN ACTION WHICH MAY BE UNLAWFUL OR IN
5 VIOLATION OF THE RIGHTS OF THE BONDHOLDERS.

6 (V) BY NOTICE IN WRITING TO THE AUTHORITY, DECLARE
7 ALL BONDS DUE AND PAYABLE AND, IF ALL DEFAULTS ARE MADE
8 GOOD, WITH THE CONSENT OF THE BONDHOLDERS OF 25% OF THE
9 PRINCIPAL AMOUNT OF OUTSTANDING BONDS, OR SUCH OTHER
10 PERCENTAGE SPECIFIED IN THE DEED OF TRUST, INDENTURE OR
11 OTHER AGREEMENT, TO ANNUL SUCH DECLARATION AND ITS
12 CONSEQUENCES.

13 (4) A TRUSTEE UNDER THIS SUBSECTION OR A TRUSTEE UNDER
14 ANY DEED OF TRUST, INDENTURE OR OTHER AGREEMENT, WHETHER OR
15 NOT ALL BONDS HAVE BEEN DECLARED DUE AND PAYABLE, SHALL BE
16 ENTITLED TO THE APPOINTMENT OF A RECEIVER.

17 (5) A RECEIVER UNDER PARAGRAPH (4):

18 (I) MAY ENTER AND TAKE POSSESSION OF A FACILITY OF
19 THE AUTHORITY OR ANY PART OF A FACILITY THE REVENUES OR
20 RECEIPTS FROM WHICH ARE OR MAY BE APPLICABLE TO THE
21 PAYMENT OF THE BONDS IN DEFAULT;

22 (II) MAY OPERATE AND MAINTAIN THE FACILITY OR PART;

23 (III) MAY COLLECT AND RECEIVE ALL RENTALS AND OTHER
24 REVENUES ARISING FROM THE FACILITY AFTER ENTRY AND
25 POSSESSION, IN THE SAME MANNER AS THE AUTHORITY OR THE
26 BOARD MIGHT DO; AND

27 (IV) SHALL DEPOSIT MONEY COLLECTED UNDER

28 SUBPARAGRAPH (III) IN A SEPARATE ACCOUNT AND APPLY THE
29 MONEY AS THE COURT DIRECTS.

30 (6) NOTHING IN THIS CHAPTER AUTHORIZES A RECEIVER

20010S0780B1186

- 95 -

1 APPOINTED UNDER PARAGRAPH (4) TO SELL, ASSIGN, MORTGAGE OR
2 OTHERWISE DISPOSE OF ASSETS OF WHATEVER KIND AND CHARACTER
3 BELONGING TO THE AUTHORITY. IT IS THE INTENTION OF THIS
4 CHAPTER TO LIMIT THE POWERS OF THE RECEIVER TO THE OPERATION
5 AND MAINTENANCE OF THE FACILITIES OF THE AUTHORITY AS THE
6 COURT DIRECTS. NO BONDHOLDER OR TRUSTEE SHALL HAVE THE RIGHT
7 IN AN ACTION AT LAW OR IN EQUITY TO COMPEL A RECEIVER, NOR
8 SHALL A RECEIVER BE AUTHORIZED OR A COURT EMPOWERED TO DIRECT
9 THE RECEIVER, TO SELL, ASSIGN, MORTGAGE OR OTHERWISE DISPOSE
10 OF ASSETS OF WHATEVER KIND OR CHARACTER BELONGING TO THE
11 AUTHORITY.

12 (7) THE TRUSTEE HAS ALL POWERS NECESSARY OR APPROPRIATE
13 FOR THE EXERCISE OF FUNCTIONS SPECIFICALLY SET FORTH IN THIS
14 SUBSECTION.

15 (C) JURISDICTION.--THE COURT OF COMMON PLEAS OF THE JUDICIAL
16 DISTRICT IN WHICH THE AUTHORITY IS LOCATED SHALL HAVE
17 JURISDICTION OF AN ACTION BY THE TRUSTEE ON BEHALF OF THE
18 BONDHOLDERS.

19 (D) COSTS AND FEES.--IN AN ACTION BY THE TRUSTEE THE COURT
20 COSTS, ATTORNEY FEES AND EXPENSES OF THE TRUSTEE AND OF THE
21 RECEIVER AND ALL COSTS AND DISBURSEMENTS ALLOTTED BY THE COURT
22 SHALL BE A FIRST CHARGE ON REVENUE AND RECEIPTS DERIVED FROM THE
23 FACILITIES OF THE AUTHORITY, THE REVENUE OR RECEIPTS FROM WHICH
24 ARE OR MAY BE APPLICABLE TO THE PAYMENT OF THE BONDS SO IN
25 DEFAULT.

26 (E) DEFINITION.--AS USED IN THIS SECTION, THE TERMS
27 "ADVERTISEMENT" OR "DUE PUBLIC NOTICE" SHALL MEAN A NOTICE
28 PUBLISHED AT LEAST TEN DAYS BEFORE THE AWARD OF A CONTRACT, IN A
29 NEWSPAPER OF GENERAL CIRCULATION PUBLISHED IN THE MUNICIPALITY
30 WHERE THE AUTHORITY HAS ITS PRINCIPAL OFFICE. IF NO NEWSPAPER IS

20010S0780B1186

- 96 -

1 PUBLISHED IN THAT MUNICIPALITY, THE NOTICE SHALL BE PUBLISHED IN
2 A NEWSPAPER IN THE COUNTY WHERE THE AUTHORITY HAS ITS PRINCIPAL
3 OFFICE. NOTICE MAY BE WAIVED IF THE AUTHORITY DETERMINES AN
4 EMERGENCY EXISTS, WHICH REQUIRES THE AUTHORITY TO PURCHASE THE
5 SUPPLIES AND MATERIALS IMMEDIATELY.

6 § 5610. GOVERNING BODY.

7 (A) BOARD.--THE POWERS OF EACH AUTHORITY SHALL BE EXERCISED

8 BY A BOARD COMPOSED AS FOLLOWS:

9 (1) IF THE AUTHORITY IS INCORPORATED BY ONE
10 MUNICIPALITY, THE BOARD SHALL CONSIST OF A NUMBER OF MEMBERS,
11 NOT LESS THAN FIVE, AS ENUMERATED IN THE ARTICLES OF
12 INCORPORATION. THE GOVERNING BODY OF THE MUNICIPALITY SHALL
13 APPOINT THE MEMBERS OF THE BOARD, WHOSE TERMS OF OFFICE SHALL
14 COMMENCE ON THE DATE OF APPOINTMENT. ONE MEMBER SHALL SERVE
15 FOR ONE YEAR, ONE FOR TWO YEARS, ONE FOR THREE YEARS, ONE FOR
16 FOUR YEARS AND ONE FOR FIVE YEARS COMMENCING WITH THE FIRST
17 MONDAY IN JANUARY NEXT SUCCEEDING THE DATE OF INCORPORATION
18 OR AMENDMENT. IF THERE ARE MORE THAN FIVE MEMBERS OF THE
19 BOARD, THEIR TERMS SHALL BE STAGGERED IN A SIMILAR MANNER FOR
20 TERMS OF ONE TO FIVE YEARS FROM THE FIRST MONDAY IN JANUARY
21 NEXT SUCCEEDING. THEREAFTER, WHENEVER A VACANCY HAS OCCURRED
22 BY REASON OF THE EXPIRATION OF THE TERM OF ANY MEMBER, THE
23 GOVERNING BODY SHALL APPOINT A MEMBER OF THE BOARD FOR A TERM
24 OF FIVE YEARS FROM THE DATE OF EXPIRATION OF THE PRIOR TERM
25 TO SUCCEED THE MEMBER WHOSE TERM HAS EXPIRED.

26 (2) IF THE AUTHORITY IS INCORPORATED BY TWO OR MORE
27 MUNICIPALITIES, THE BOARD SHALL CONSIST OF A NUMBER OF
28 MEMBERS AT LEAST EQUAL TO THE NUMBER OF MUNICIPALITIES
29 INCORPORATING THE AUTHORITY, BUT IN NO EVENT LESS THAN FIVE.
30 WHEN ONE OR MORE ADDITIONAL MUNICIPALITIES JOIN AN EXISTING

20010S0780B1186 - 97 -
1 AUTHORITY, EACH OF THE JOINING MUNICIPALITIES SHALL HAVE
2 SIMILAR MEMBERSHIP ON THE BOARD AS THE MUNICIPALITIES THEN
3 MEMBERS OF THE AUTHORITY AND THE JOINING MUNICIPALITIES MAY
4 DETERMINE BY APPROPRIATE RESOLUTIONS. THE MEMBERS OF THE
5 BOARD OF A JOINT AUTHORITY SHALL EACH BE APPOINTED BY THE
6 GOVERNING BODY OF THE INCORPORATING OR JOINING MUNICIPALITY
7 HE REPRESENTS, AND THEIR TERMS OF OFFICE SHALL COMMENCE ON
8 THE DATE OF APPOINTMENT. ONE MEMBER SHALL SERVE FOR ONE YEAR,
9 ONE FOR TWO YEARS, ONE FOR THREE YEARS, ONE FOR FOUR YEARS
10 AND ONE FOR FIVE YEARS FROM THE FIRST MONDAY IN JANUARY NEXT
11 SUCCEEDING THE DATE OF INCORPORATION, AMENDMENT OR JOINDER,
12 AND IF THERE ARE MORE THAN FIVE MEMBERS OF THE BOARD, THEIR
13 TERMS SHALL BE STAGGERED IN A SIMILAR MANNER FOR TERMS OF
14 FROM ONE TO FIVE YEARS COMMENCING WITH THE FIRST MONDAY IN
15 JANUARY NEXT SUCCEEDING. THEREAFTER, WHENEVER A VACANCY HAS
16 OCCURRED BY REASON OF THE EXPIRATION OF THE TERM OF ANY
17 MEMBER, THE GOVERNING BODY OF THE MUNICIPALITY WHICH HAS THE
18 POWER OF APPOINTMENT SHALL APPOINT A MEMBER OF THE BOARD FOR
19 A TERM OF FIVE YEARS FROM THE DATE OF EXPIRATION OF THE PRIOR
20 TERM.

21 (B) RESIDENCY.--EXCEPT AS PROVIDED FOR IN SUBSECTION (C),
22 THE MEMBERS OF THE BOARD, EACH OF WHOM SHALL BE A RESIDENT OF
23 THE MUNICIPALITY BY WHICH HE IS APPOINTED, SHALL BE APPOINTED,
24 THEIR TERMS FIXED AND STAGGERED AND VACANCIES FILLED, PURSUANT
25 TO THE ARTICLES OF INCORPORATION OR THE APPLICATION OF
26 MEMBERSHIP UNDER SECTION 5604 (RELATING TO MUNICIPALITIES
27 WITHDRAWING FROM AND JOINING IN JOINT AUTHORITIES). WHERE TWO OR
28 MORE MUNICIPALITIES ARE MEMBERS OF THE AUTHORITY, THEY SHALL BE
29 APPORTIONED PURSUANT TO THE ARTICLES OF INCORPORATION OR THE
30 APPLICATION FOR MEMBERSHIP UNDER SECTION 5604. EXCEPT FOR

20010S0780B1186 - 98 -

1 SPECIAL SERVICE DISTRICTS LOCATED IN WHOLE OR IN PART IN CITIES
2 OF THE FIRST CLASS, A MAJORITY OF AN AUTHORITY'S BOARD MEMBERS
3 SHALL BE CITIZENS RESIDING IN THE INCORPORATING MUNICIPALITY OR
4 INCORPORATING MUNICIPALITIES OF THE AUTHORITY.

5 (C) GRADE CROSSINGS.--IF THE AUTHORITY IS CREATED FOR THE
6 PURPOSE OF ELIMINATING GRADE CROSSINGS, THE MEMBERS OF THE
7 BOARD, THE MAJORITY OF WHOM SHALL BE CITIZENS OF THE
8 MUNICIPALITY BY WHICH THEY ARE APPOINTED OR OF A MUNICIPALITY
9 INTO WHICH ONE OR MORE OF THE PROJECTS OF THE AUTHORITY EXTENDS

10 OR IS TO EXTEND OR TO WHICH ONE OR MORE OF THE PROJECTS HAS BEEN
11 OR IS TO BE LEASED, SHALL BE APPOINTED, THEIR TERMS FIXED AND
12 STAGGERED, AND VACANCIES FILLED, PURSUANT TO THE ARTICLES OF
13 INCORPORATION OR THE APPLICATION OF MEMBERSHIP UNDER SECTION
14 5604. WHERE TWO OR MORE MUNICIPALITIES ARE MEMBERS OF THE
15 AUTHORITY, THEY SHALL BE APPORTIONED PURSUANT TO THE ARTICLES OF
16 INCORPORATION OR THE APPLICATION FOR MEMBERSHIP UNDER SECTION
17 5604.

18 (D) SUCCESSOR.--MEMBERS SHALL HOLD OFFICE UNTIL THEIR
19 SUCCESSORS HAVE BEEN APPOINTED AND MAY SUCCEED THEMSELVES AND,
20 EXCEPT MEMBERS OF THE BOARDS OF AUTHORITIES ORGANIZED OR CREATED
21 BY A SCHOOL DISTRICT, SHALL RECEIVE SUCH SALARIES AS MAY BE
22 DETERMINED BY THE GOVERNING BODY OF THE MUNICIPALITY, BUT NO
23 SALARIES SHALL BE INCREASED OR DIMINISHED BY A GOVERNING BODY
24 DURING THE TERM FOR WHICH THE MEMBER SHALL HAVE BEEN APPOINTED.
25 MEMBERS OF THE BOARD OF ANY AUTHORITY ORGANIZED OR CREATED BY A
26 SCHOOL DISTRICT SHALL RECEIVE NO COMPENSATION FOR THEIR
27 SERVICES. A MEMBER MAY BE REMOVED FOR CAUSE BY THE COURT OF
28 COMMON PLEAS OF THE COUNTY IN WHICH THE AUTHORITY IS LOCATED
29 AFTER HAVING BEEN PROVIDED WITH A COPY OF THE CHARGES AGAINST
30 HIM FOR AT LEAST TEN DAYS AND AFTER HAVING BEEN PROVIDED A FULL
20010S0780B1186 - 99 -

1 HEARING BY THE COURT. IF A VACANCY SHALL OCCUR BY REASON OF THE
2 DEATH, DISQUALIFICATION, RESIGNATION OR REMOVAL OF A MEMBER, THE
3 MUNICIPAL AUTHORITIES SHALL APPOINT A SUCCESSOR TO FILL HIS
4 UNEXPIRED TERM. IN JOINT AUTHORITIES, SUCH VACANCIES SHALL BE
5 FILLED BY THE MUNICIPAL AUTHORITIES OF THE MUNICIPALITY IN THE
6 REPRESENTATION OF WHICH THE VACANCY OCCURS. IF ANY MUNICIPALITY
7 WITHDRAWS FROM A JOINT AUTHORITY, THE TERM OF ANY MEMBER
8 APPOINTED FROM THE MUNICIPALITY SHALL IMMEDIATELY TERMINATE.

9 (E) QUORUM.--A MAJORITY OF THE MEMBERS SHALL CONSTITUTE A
10 QUORUM OF THE BOARD FOR THE PURPOSE OF ORGANIZING AND CONDUCTING
11 THE BUSINESS OF THE AUTHORITY AND FOR ALL OTHER PURPOSES, AND
12 ALL ACTION MAY BE TAKEN BY VOTE OF A MAJORITY OF THE MEMBERS
13 PRESENT UNLESS THE BYLAWS SHALL REQUIRE A LARGER NUMBER. THE
14 BOARD SHALL HAVE FULL AUTHORITY TO MANAGE THE PROPERTIES AND
15 BUSINESS OF THE AUTHORITY AND TO PRESCRIBE, AMEND AND REPEAL
16 BYLAWS, RULES AND REGULATIONS GOVERNING THE MANNER IN WHICH THE
17 BUSINESS OF THE AUTHORITY MAY BE CONDUCTED AND THE POWERS
18 GRANTED TO IT MAY BE EXERCISED AND EMBODIED. THE BOARD SHALL FIX
19 AND DETERMINE THE NUMBER OF OFFICERS, AGENTS AND EMPLOYEES OF
20 THE AUTHORITY AND THEIR RESPECTIVE POWERS, DUTIES AND
21 COMPENSATION AND MAY APPOINT TO SUCH OFFICE OR OFFICES ANY
22 MEMBER OF THE BOARD WITH SUCH POWERS, DUTIES AND COMPENSATION AS
23 THE BOARD MAY DEEM PROPER. THE TREASURER OF THE BOARD OF ANY
24 AUTHORITY ORGANIZED OR CREATED BY A SCHOOL DISTRICT SHALL GIVE
25 BOND IN SUCH SUMS AS MAY BE FIXED BY THE BYLAWS, WHICH BOND
26 SHALL BE SUBJECT TO THE APPROVAL OF THE BOARD AND THE PREMIUMS
27 FOR WHICH SHALL BE PAID BY THE AUTHORITY.

28 (F) REMOVAL.--UNLESS EXCUSED BY THE BOARD, A MEMBER OF A
29 BOARD WHO FAILS TO ATTEND THREE CONSECUTIVE MEETINGS OF THE
30 BOARD MAY BE REMOVED BY THE APPOINTING MUNICIPALITY UP TO 60
20010S0780B1186 - 100 -

1 DAYS AFTER THE DATE OF THE THIRD MEETING OF THE BOARD WHICH THE
2 MEMBER FAILED TO ATTEND.

3 S 5611. INVESTMENT OF AUTHORITY FUNDS.

4 (A) POWERS.--THE BOARD SHALL HAVE THE POWER TO:

5 (1) INVEST AUTHORITY SINKING FUNDS IN THE MANNER
6 PROVIDED FOR LOCAL GOVERNMENT UNITS BY SUBPART B OF PART VII
7 (RELATING TO INDEBTEDNESS AND BORROWING).

8 (2) INVEST MONEYS IN THE GENERAL FUND AND IN SPECIAL
9 FUNDS OF THE AUTHORITY OTHER THAN THE SINKING FUNDS AS
10 AUTHORIZED BY THIS SECTION.

11 (3) LIQUIDATE ANY SUCH INVESTMENT IN WHOLE OR IN PART,

12 BY DISPOSING OF SECURITIES OR WITHDRAWING FUNDS ON DEPOSIT.
13 ANY ACTION TAKEN TO MAKE OR TO LIQUIDATE ANY INVESTMENT SHALL
14 BE MADE BY THE OFFICERS DESIGNATED BY ACTION OF THE BOARD.

15 (B) INVESTMENT.--THE BOARD SHALL INVEST AUTHORITY FUNDS
16 CONSISTENT WITH SOUND BUSINESS PRACTICE AND THE STANDARD OF
17 PRUDENCE APPLICABLE TO THE STATE EMPLOYEES' RETIREMENT SYSTEM
18 SET FORTH IN 71 P.A.C.S. § 5931(A) (RELATING TO MANAGEMENT OF
19 FUND AND ACCOUNTS).

20 (C) PROGRAM.--THE BOARD SHALL PROVIDE FOR AN INVESTMENT
21 PROGRAM SUBJECT TO RESTRICTIONS CONTAINED IN THIS CHAPTER AND IN
22 ANY OTHER APPLICABLE STATUTE AND ANY RULES AND REGULATIONS
23 ADOPTED BY THE BOARD.

24 (D) TYPES.--AUTHORIZED TYPES OF INVESTMENTS FOR AUTHORITY
25 FUNDS SHALL BE:

26 (1) UNITED STATES TREASURY BILLS.

27 (2) SHORT-TERM OBLIGATIONS OF THE UNITED STATES
28 GOVERNMENT OR ITS AGENCIES OR INSTRUMENTALITIES.

29 (3) DEPOSITS IN SAVINGS ACCOUNTS OR TIME DEPOSITS OR
30 SHARE ACCOUNTS OF INSTITUTIONS INSURED BY THE FEDERAL DEPOSIT
20010S0780B1186 - 101 -

1 INSURANCE CORPORATION OR THE FEDERAL SAVINGS AND LOAN
2 INSURANCE CORPORATION OR THE NATIONAL CREDIT UNION SHARE
3 INSURANCE FUND TO THE EXTENT THAT SUCH ACCOUNTS ARE SO
4 INSURED AND FOR ANY AMOUNTS ABOVE THE INSURED MAXIMUM IF THE
5 APPROVED COLLATERAL AS PROVIDED BY LAW SHALL BE PLEDGED BY
6 THE DEPOSITORY.

7 (4) OBLIGATIONS OF THE UNITED STATES OF AMERICA OR ANY
8 OF ITS AGENCIES OR INSTRUMENTALITIES BACKED BY THE FULL FAITH
9 AND CREDIT OF THE UNITED STATES OF AMERICA, THE COMMONWEALTH
10 OR ANY OF ITS AGENCIES OR INSTRUMENTALITIES BACKED BY THE
11 FULL FAITH AND CREDIT OF THE COMMONWEALTH, OR OF ANY
12 POLITICAL SUBDIVISION OF THE COMMONWEALTH OR ANY OF ITS
13 AGENCIES OR INSTRUMENTALITIES BACKED BY THE FULL FAITH AND
14 CREDIT OF THE POLITICAL SUBDIVISION.

15 (5) SHARES OF AN INVESTMENT COMPANY REGISTERED UNDER THE
16 INVESTMENT COMPANY ACT OF 1940 (54 STAT. 789, 15 U.S.C. §
17 80A-1 ET SEQ.), WHOSE SHARES ARE REGISTERED UNDER THE
18 SECURITIES ACT OF 1933 (48 STAT. 74, 15 U.S.C. § 77A ET
19 SEQ.), IF THE ONLY INVESTMENTS OF THAT COMPANY ARE IN THE
20 AUTHORIZED INVESTMENTS FOR AUTHORITY FUNDS LISTED IN
21 PARAGRAPHS (1) THROUGH (4).

22 (6) SOVEREIGN DEBT, IF THE INSTRUMENTS ARE DOLLAR
23 DENOMINATED AND BACKED BY THE FULL FAITH AND CREDIT OF THE
24 SOVEREIGN GOVERNMENT AND IF THE INVESTMENTS DO NOT EXCEED
25 MORE THAN 2% OF THE MARKET VALUE OF THE AUTHORITY'S ASSETS AT
26 THE TIME OF INVESTMENT AND IF THE MATURITY OF THE INSTRUMENTS
27 DOES NOT EXCEED 15 YEARS AND IF THE OBLIGATIONS ARE PERMITTED
28 INVESTMENTS OF THE STATE EMPLOYEES' RETIREMENT SYSTEM AND IT
29 IS ESTABLISHED THAT THE ISSUER HAD ISSUED SUCH SOVEREIGN DEBT
30 OVER A PERIOD OF AT LEAST 30 YEARS AND HAS NOT DEFAULTED ON
20010S0780B1186 - 102 -

1 THE PAYMENT EITHER OF PRINCIPAL OR INTEREST ON ITS
2 OBLIGATIONS. THIS PARAGRAPH SHALL ONLY APPLY TO A BOARD IN A
3 COUNTY OF THE FIRST CLASS, SECOND CLASS OR SECOND CLASS A OR
4 IN A CITY OF THE FIRST CLASS, SECOND CLASS, SECOND CLASS A OR
5 THIRD CLASS.

6 (E) AUTHORITY.--IN MAKING INVESTMENTS OF AUTHORITY FUNDS,
7 THE BOARD SHALL HAVE AUTHORITY TO:

8 (1) PERMIT ASSETS PLEDGED AS COLLATERAL UNDER SUBSECTION
9 (D)(3), TO BE POOLED IN ACCORDANCE WITH THE ACT OF AUGUST 6,
10 1971 (P.L.281, NO.72), ENTITLED "AN ACT STANDARDIZING THE
11 PROCEDURES FOR PLEDGES OF ASSETS TO SECURE DEPOSITS OF PUBLIC
12 FUNDS WITH BANKING INSTITUTIONS PURSUANT TO OTHER LAWS;
13 ESTABLISHING A STANDARD RULE FOR THE TYPES, AMOUNTS AND

14 VALUATIONS OF ASSETS ELIGIBLE TO BE USED AS COLLATERAL FOR
15 DEPOSITS OF PUBLIC FUNDS; PERMITTING ASSETS TO BE PLEDGED
16 AGAINST DEPOSITS ON A POOLED BASIS; AND AUTHORIZING THE
17 APPOINTMENT OF CUSTODIANS TO ACT AS PLEDGEES OF ASSETS."

18 (2) COMBINE MONEYS FROM MORE THAN ONE FUND UNDER
19 AUTHORITY CONTROL FOR THE PURCHASE OF A SINGLE INVESTMENT IF
20 LACK OF THE FUNDS COMBINED FOR THE PURPOSE SHALL BE ACCOUNTED
21 FOR SEPARATELY IN ALL RESPECTS AND IF EARNINGS FROM THE
22 INVESTMENT ARE SEPARATELY AND INDIVIDUALLY COMPUTED, RECORDED
23 AND CREDITED TO THE ACCOUNTS FROM WHICH THE INVESTMENT WAS
24 PURCHASED.

25 (3) JOIN WITH ONE OR MORE OTHER POLITICAL SUBDIVISIONS
26 AND MUNICIPAL AUTHORITIES IN ACCORDANCE WITH SUBCHAPTER A OF
27 CHAPTER 23 (RELATING TO INTERGOVERNMENTAL COOPERATION) IN THE
28 PURCHASE OF A SINGLE INVESTMENT PURSUANT TO THE REQUIREMENTS
29 OF PARAGRAPH (2).

30 § 5612. MONEY OF AUTHORITY.

20010S0780B1186 - 103 -

1 (A) TREASURER.--ALL MONEY OF ANY AUTHORITY FROM WHATEVER
2 SOURCE DERIVED SHALL BE PAID TO THE TREASURER OF THE AUTHORITY.
3 (B) REPORT.--EVERY AUTHORITY WHOSE FISCAL YEAR ENDS DECEMBER
4 31 SHALL FILE ON OR BEFORE JULY 1 AN ANNUAL REPORT OF ITS FISCAL
5 AFFAIRS COVERING THE PRECEDING CALENDAR YEAR WITH THE DEPARTMENT
6 OF COMMUNITY AND ECONOMIC DEVELOPMENT AND WITH THE MUNICIPALITY
7 CREATING THE AUTHORITY ON FORMS PREPARED AND DISTRIBUTED BY THE
8 DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT. AUTHORITIES
9 WHOSE FISCAL YEAR DOES NOT END ON DECEMBER 31 SHALL FILE THE
10 REPORT WITHIN 90 DAYS AFTER THE END OF THEIR FISCAL YEAR. EVERY
11 AUTHORITY SHALL HAVE ITS BOOKS, ACCOUNTS AND RECORDS AUDITED
12 ANNUALLY BY A CERTIFIED PUBLIC ACCOUNTANT, AND A COPY OF HIS
13 AUDIT REPORT SHALL BE FILED IN THE SAME MANNER AND WITHIN THE
14 SAME TIME PERIOD AS THE ANNUAL REPORT. A CONCISE FINANCIAL
15 STATEMENT SHALL BE PUBLISHED ANNUALLY, AT LEAST ONCE IN A
16 NEWSPAPER OF GENERAL CIRCULATION IN THE MUNICIPALITY WHERE THE
17 PRINCIPAL OFFICE OF THE AUTHORITY IS LOCATED. IF THE PUBLICATION
18 IS NOT MADE BY THE AUTHORITY, THE MUNICIPALITY SHALL PUBLISH
19 SUCH STATEMENT AT THE EXPENSE OF THE AUTHORITY. IF THE AUTHORITY
20 FAILS TO MAKE SUCH AN AUDIT, THEN THE CONTROLLER, AUDITOR OR
21 ACCOUNTANT DESIGNATED BY THE MUNICIPALITY IS HEREBY AUTHORIZED
22 AND EMPOWERED FROM TIME TO TIME TO EXAMINE AT THE EXPENSE OF THE
23 AUTHORITY THE ACCOUNTS AND BOOKS OF IT, INCLUDING ITS RECEIPTS,
24 DISBURSEMENTS, CONTRACTS, LEASES, SINKING FUNDS, INVESTMENTS AND
25 ANY OTHER MATTERS RELATING TO ITS FINANCES, OPERATION AND
26 AFFAIRS.

27 (C) ATTORNEY GENERAL.--THE ATTORNEY GENERAL OF THE
28 COMMONWEALTH SHALL HAVE THE RIGHT TO EXAMINE THE BOOKS, ACCOUNTS
29 AND RECORDS OF ANY AUTHORITY.

30 § 5613. TRANSFER OF EXISTING FACILITIES TO AUTHORITY.

20010S0780B1186 - 104 -
1 (A) AUTHORIZATION.--ANY MUNICIPALITY, SCHOOL DISTRICT OR
2 OWNER MAY SELL, LEASE, LEND, GRANT, CONVEY, TRANSFER OR PAY OVER
3 TO ANY AUTHORITY WITH OR WITHOUT CONSIDERATION ANY PROJECT OR
4 ANY PART OF IT, ANY INTEREST IN REAL OR PERSONAL PROPERTY, ANY
5 FUNDS AVAILABLE FOR BUILDING CONSTRUCTION OR IMPROVEMENT
6 PURPOSES, INCLUDING THE PROCEEDS OF BONDS PREVIOUSLY OR
7 HERAFTER ISSUED FOR BUILDING CONSTRUCTION OR IMPROVEMENT
8 PURPOSES, WHICH MAY BE USED BY THE AUTHORITY IN THE
9 CONSTRUCTION, IMPROVEMENT, MAINTENANCE OR OPERATION OF ANY
10 PROJECT. ANY MUNICIPALITY OR SCHOOL DISTRICT MAY TRANSFER,
11 ASSIGN AND SET OVER TO ANY AUTHORITY ANY CONTRACTS WHICH MAY
12 HAVE BEEN AWARDED BY THE MUNICIPALITY OR SCHOOL DISTRICT FOR THE
13 CONSTRUCTION OF PROJECTS NOT INITIATED OR COMPLETED. THE
14 TERRITORY BEING SERVED BY ANY PROJECT OR THE TERRITORY WITHIN
15 WHICH A PROJECT IS AUTHORIZED TO RENDER SERVICE AT THE TIME OF

16 THE ACQUISITION OF A PROJECT BY AN AUTHORITY SHALL INCLUDE THE
17 AREA SERVED BY THE PROJECT AND THE AREA IN WHICH THE PROJECT IS
18 AUTHORIZED TO SERVE AT THE TIME OF ACQUISITION AND ANY OTHER
19 AREA INTO WHICH THE SERVICE MAY BE EXTENDED, SUBJECT TO THE
20 LIMITATIONS OF SECTION 5607(A) (RELATING TO PURPOSES AND
21 POWERS).

22 (B) ACQUISITION.--

23 (1) AN AUTHORITY MAY NOT ACQUIRE BY ANY DEVICE OR MEANS,
24 INCLUDING A CONSOLIDATION, MERGER, PURCHASE OR LEASE, OR
25 THROUGH THE PURCHASE OF STOCK, BONDS OR OTHER SECURITIES,
26 TITLE TO OR POSSESSION OR USE OF ALL OR A SUBSTANTIAL PORTION
27 OF ANY EXISTING FACILITIES CONSTITUTING A PROJECT AS DEFINED
28 UNDER THIS CHAPTER, IF THE PROJECT IS SUBJECT TO THE
29 JURISDICTION OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION,
30 WITHOUT FIRST REPORTING TO AND ADVISING THE MUNICIPALITY

20010S0780B1186 - 105 -

1 WHICH CREATED OR WHICH ARE MEMBERS OF THE AUTHORITY, OF THE
2 AGREEMENT TO ACQUIRE, INCLUDING ALL ITS TERMS AND CONDITIONS.

3 (2) THE PROPOSED ACTION OF THE AUTHORITY AND THE
4 PROPOSED AGREEMENT TO ACQUIRE SHALL BE APPROVED BY THE
5 GOVERNING BODY OF THE MUNICIPALITY WHICH CREATED OR WHICH ARE
6 MEMBERS OF THE AUTHORITY AND TO WHICH THE REPORT IS MADE.
7 WHERE THERE ARE ONE OR TWO MEMBER MUNICIPALITIES OF THE
8 AUTHORITY, SUCH APPROVAL SHALL BE BY TWO-THIRDS VOTE OF ALL
9 OF THE MEMBERS OF THE GOVERNING BODY OR OF EACH OF THE
10 GOVERNING BODIES. IF THERE ARE MORE THAN TWO MEMBER
11 MUNICIPALITIES OF THE AUTHORITY, APPROVAL SHALL BE BY
12 MAJORITY VOTE OF ALL THE MEMBERS OF EACH GOVERNING BODY OF
13 TWO-THIRDS OF THE MEMBER MUNICIPALITIES.

14 (C) COMPLETE PROVISION.--NOTWITHSTANDING ANY OTHER PROVISION
15 OF LAW, THIS SECTION, WITHOUT REFERENCE TO ANY OTHER LAW, SHALL
16 BE DEEMED COMPLETE FOR THE ACQUISITION BY AGREEMENT OF PROJECTS,
17 AS DEFINED IN THIS CHAPTER, LOCATED WHOLLY WITHIN OR PARTIALLY
18 WITHOUT THE MUNICIPALITY CAUSING SUCH AUTHORITY TO BE
19 INCORPORATED, AND NO PROCEEDINGS OR OTHER ACTION SHALL BE
20 REQUIRED EXCEPT AS PROVIDED FOR IN THIS SECTION.

21 § 5614. COMPETITION IN AWARD OF CONTRACTS.

22 (A) SERVICES.--

23 (1) EXCEPT AS SET FORTH IN PARAGRAPH (2), ALL
24 CONSTRUCTION, RECONSTRUCTION, REPAIR OR WORK OF ANY NATURE
25 MADE BY AN AUTHORITY, IF THE ENTIRE COST, VALUE OR AMOUNT,
26 INCLUDING LABOR AND MATERIALS, EXCEEDS \$10,000, SHALL BE DONE
27 ONLY UNDER CONTRACT TO BE ENTERED INTO BY THE AUTHORITY WITH
28 THE LOWEST RESPONSIBLE BIDDER, UPON PROPER TERMS, AFTER
29 PUBLIC NOTICE ASKING FOR COMPETITIVE BIDS AS PROVIDED IN THIS
30 SECTION.

20010S0780B1186 - 106 -

1 (2) PARAGRAPH (1) DOES NOT APPLY TO RECONSTRUCTION,
2 REPAIR OR WORK DONE BY EMPLOYEES OF THE AUTHORITY OR BY LABOR
3 SUPPLIED UNDER AGREEMENT WITH A FEDERAL OR STATE AGENCY WITH
4 SUPPLIES AND MATERIALS PURCHASED AS PROVIDED IN THIS SECTION.

5 (3) NO CONTRACT SHALL BE ENTERED INTO FOR CONSTRUCTION
6 OR IMPROVEMENT OR REPAIR OF A PROJECT, OR PORTION THEREOF,
7 UNLESS THE CONTRACTOR GIVES AN UNDERTAKING WITH A SUFFICIENT
8 SURETY APPROVED BY THE AUTHORITY AND IN AN AMOUNT FIXED BY
9 THE AUTHORITY FOR THE FAITHFUL PERFORMANCE OF THE CONTRACT.

10 (4) THE CONTRACT MUST PROVIDE, AMONG OTHER THINGS, THAT
11 THE PERSON OR CORPORATION ENTERING INTO THE CONTRACT WITH THE
12 AUTHORITY WILL PAY FOR ALL MATERIALS FURNISHED AND SERVICES
13 RENDERED FOR THE PERFORMANCE OF THE CONTRACT AND THAT ANY
14 PERSON OR CORPORATION FURNISHING MATERIALS OR RENDERING
15 SERVICES MAY MAINTAIN AN ACTION TO RECOVER FOR THEM AGAINST
16 THE OBLIGOR IN THE UNDERTAKING, AS THOUGH SUCH PERSON OR
17 CORPORATION WAS NAMED IN THE CONTRACT IF THE ACTION IS

18 BROUGHT WITHIN ONE YEAR AFTER THE TIME THE CAUSE OF ACTION
19 ACCRUED.

20 (5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT
21 THE POWER OF THE AUTHORITY TO CONSTRUCT, REPAIR OR IMPROVE A
22 PROJECT OR PORTION THEREOF, OR ANY ADDITION, BETTERMENT OR
23 EXTENSION THERETO DIRECTED BY THE OFFICERS, AGENTS AND
24 EMPLOYEES OF THE AUTHORITY OR OTHERWISE THAN BY CONTRACT.

25 (B) SUPPLIES AND MATERIALS.--ALL SUPPLIES AND MATERIALS
26 COSTING AT LEAST \$10,000 SHALL BE PURCHASED ONLY AFTER
27 ADVERTISEMENT AS PROVIDED IN THIS SECTION. THE AUTHORITY SHALL
28 ACCEPT THE LOWEST BID, KIND, QUALITY AND MATERIAL BEING EQUAL,
29 BUT THE AUTHORITY SHALL HAVE THE RIGHT TO REJECT ANY OR ALL BIDS
30 OR SELECT A SINGLE ITEM FROM ANY BID. THE PROVISIONS AS TO
20010S0780B1186 - 107 -

1 BIDDING SHALL NOT APPLY TO THE PURCHASE OF PATENTED AND
2 MANUFACTURED PRODUCTS OFFERED FOR SALE IN A NONCOMPETITIVE
3 MARKET OR SOLELY BY A MANUFACTURER'S AUTHORIZED DEALER.

4 (C) QUOTATIONS.--WRITTEN OR TELEPHONIC PRICE QUOTATIONS FROM
5 AT LEAST THREE QUALIFIED AND RESPONSIBLE CONTRACTORS SHALL BE
6 REQUESTED FOR A CONTRACT WHICH EXCEEDS \$4,000 BUT IS LESS THAN
7 THE AMOUNT REQUIRING ADVERTISEMENT AND COMPETITIVE BIDDING. IN
8 LIEU OF PRICE QUOTATIONS, A MEMORANDUM SHALL BE KEPT ON FILE
9 SHOWING THAT FEWER THAN THREE QUALIFIED CONTRACTORS EXIST IN THE
10 MARKET AREA WITHIN WHICH IT IS PRACTICABLE TO OBTAIN QUOTATIONS.
11 A WRITTEN RECORD OF TELEPHONIC PRICE QUOTATIONS SHALL BE MADE
12 AND SHALL CONTAIN AT LEAST THE DATE OF THE QUOTATION; THE NAME
13 OF THE CONTRACTOR AND THE CONTRACTOR'S REPRESENTATIVE; THE
14 CONSTRUCTION, RECONSTRUCTION, REPAIR, MAINTENANCE OR WORK WHICH
15 WAS THE SUBJECT OF THE QUOTATION; AND THE PRICE. WRITTEN PRICE
16 QUOTATIONS, WRITTEN RECORDS OF TELEPHONIC PRICE QUOTATIONS AND
17 MEMORANDA SHALL BE RETAINED FOR A PERIOD OF THREE YEARS.

18 (D) NOTICE.--THE TERM "ADVERTISEMENT" OR "PUBLIC NOTICE,"
19 WHEREVER USED IN THIS SECTION SHALL MEAN A NOTICE PUBLISHED AT
20 LEAST TEN DAYS BEFORE THE AWARD OF A CONTRACT IN A NEWSPAPER OF
21 GENERAL CIRCULATION PUBLISHED IN THE MUNICIPALITY WHERE THE
22 AUTHORITY HAS ITS PRINCIPAL OFFICE OR, IF NO NEWSPAPER OF
23 GENERAL CIRCULATION IS PUBLISHED THEREIN, IN A NEWSPAPER OF
24 GENERAL CIRCULATION IN THE COUNTY WHERE THE AUTHORITY HAS ITS
25 PRINCIPAL OFFICE.

26 (E) CONFLICT OF INTEREST.--NO MEMBER OF THE AUTHORITY OR
27 OFFICER OR EMPLOYEE OF THE AUTHORITY MAY DIRECTLY OR INDIRECTLY
28 BE A PARTY TO OR BE INTERESTED IN ANY CONTRACT OR AGREEMENT WITH
29 THE AUTHORITY IF THE CONTRACT OR AGREEMENT ESTABLISHES LIABILITY
30 AGAINST OR INDEBTEDNESS OF THE AUTHORITY. ANY CONTRACT OR
20010S0780B1186 - 108 -

1 AGREEMENT MADE IN VIOLATION OF THIS SUBSECTION IS VOID, AND NO
2 ACTION MAY BE MAINTAINED ON THE AGREEMENT AGAINST THE AUTHORITY.

3 (F) ENTRY INTO CONTRACTS.--

4 (1) SUBJECT TO SUBSECTION (E), AN AUTHORITY MAY ENTER
5 INTO AND CARRY OUT CONTRACTS OR ESTABLISH OR COMPLY WITH
6 RULES AND REGULATIONS CONCERNING LABOR AND MATERIALS AND
7 OTHER RELATED MATTERS IN CONNECTION WITH A PROJECT OR PORTION
8 THEREOF AS THE AUTHORITY DEEMS DESIRABLE, OR AS MAY BE
9 REQUESTED BY A FEDERAL AGENCY TO ASSIST IN THE FINANCING OF
10 THE PROJECT OR ANY PART THEREOF. THIS PARAGRAPH SHALL NOT
11 APPLY TO ANY OF THE FOLLOWING:

12 (I) A CASE IN WHICH THE AUTHORITY HAS TAKEN OVER BY
13 TRANSFER OR ASSIGNMENT A CONTRACT AUTHORIZED TO BE
14 ASSIGNED TO IT UNDER SECTION 5613 (RELATING TO TRANSFER
15 OF EXISTING FACILITIES TO AUTHORITY).

16 (II) A CONTRACT IN CONNECTION WITH THE CONSTRUCTION
17 OF A PROJECT WHICH THE AUTHORITY MAY HAVE HAD TRANSFERRED
18 TO IT BY ANY PERSON OR PRIVATE CORPORATION.

19 (2) THIS SUBSECTION IS NOT INTENDED TO LIMIT THE POWERS

20 OF AN AUTHORITY.

21 (G) COMPLIANCE.--A CONTRACT FOR THE CONSTRUCTION,
22 RECONSTRUCTION, ALTERATION, REPAIR, IMPROVEMENT OR MAINTENANCE
23 OF PUBLIC WORKS SHALL COMPLY WITH THE PROVISIONS OF THE ACT OF
24 MARCH 3, 1978 (P.L.6, NO.3), KNOWN AS THE STEEL PRODUCTS
25 PROCUREMENT ACT.

26 (H) EVASION.--

27 (1) AN AUTHORITY MAY NOT EVADE THE PROVISIONS OF THIS
28 SECTION AS TO BIDS OR PURCHASING MATERIALS OR CONTRACTING FOR
29 SERVICES PIECEMEAL FOR THE PURPOSE OF OBTAINING PRICES UNDER
30 \$10,000 UPON TRANSACTIONS WHICH SHOULD, IN THE EXERCISE OF

20010S0780B1186

- 109 -

1 REASONABLE DISCRETION AND PRUDENCE, BE CONDUCTED AS ONE
2 TRANSACTION AMOUNTING TO MORE THAN \$10,000.

3 (2) THIS SUBSECTION IS INTENDED TO MAKE UNLAWFUL THE
4 PRACTICE OF EVADING ADVERTISING REQUIREMENTS BY MAKING A
5 SERIES OF PURCHASES OR CONTRACTS EACH FOR LESS THAN THE
6 ADVERTISING REQUIREMENT PRICE OR BY MAKING SEVERAL
7 SIMULTANEOUS PURCHASES OR CONTRACTS EACH BELOW THAT PRICE
8 WHEN, IN EITHER CASE, THE TRANSACTION INVOLVED SHOULD HAVE
9 BEEN MADE AS ONE TRANSACTION FOR ONE PRICE.

10 (3) AN AUTHORITY MEMBER WHO VOTES TO UNLAWFULLY EVADE
11 THE PROVISIONS OF THIS SECTION AND WHO KNOWS THAT THE
12 TRANSACTION UPON WHICH THE MEMBER VOTES IS OR OUGHT TO BE A
13 PART OF A LARGER TRANSACTION AND THAT IT IS BEING DIVIDED IN
14 ORDER TO EVADE THE REQUIREMENTS AS TO ADVERTISING FOR BIDS
15 COMMITS A MISDEMEANOR OF THE THIRD DEGREE FOR EACH CONTRACT
16 ENTERED INTO AS A DIRECT RESULT OF THAT VOTE.

17 § 5615. ACQUISITION OF LANDS, WATER AND WATER RIGHTS.

18 (A) AUTHORIZATION.--

19 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2), THE AUTHORITY
20 SHALL HAVE THE POWER TO ACQUIRE, BY PURCHASE OR EMINENT
21 DOMAIN PROCEEDINGS, EITHER THE FEE OR THE RIGHTS, TITLE,
22 INTEREST OR EASEMENT IN SUCH LANDS, WATER AND WATER RIGHTS AS
23 THE AUTHORITY DEEMS NECESSARY FOR ANY OF THE PURPOSES OF THIS
24 CHAPTER. WATER AND WATER RIGHTS MAY NOT BE ACQUIRED UNLESS
25 APPROVAL IS OBTAINED FROM THE DEPARTMENT OF ENVIRONMENTAL
26 PROTECTION.

27 (2) THE RIGHT OF EMINENT DOMAIN DOES NOT APPLY TO:

28 (I) PROPERTY OWNED OR USED BY THE UNITED STATES, THE
29 COMMONWEALTH OR ANY OF ITS POLITICAL SUBDIVISIONS OR ANY
30 BODY POLITIC AND CORPORATE ORGANIZED AS AN AUTHORITY

20010S0780B1186

- 110 -

1 UNDER ANY LAW OF THE COMMONWEALTH OR BY ANY AGENCY.

2 (II) PROPERTY OF A PUBLIC SERVICE COMPANY.

3 (III) PROPERTY USED FOR BURIAL PURPOSES.

4 (IV) PLACES OF PUBLIC WORSHIP.

5 (B) EXERCISE.--THE RIGHT OF EMINENT DOMAIN SHALL BE
6 EXERCISED BY THE AUTHORITY IN THE MANNER PROVIDED BY LAW FOR THE
7 EXERCISE OF SUCH RIGHT BY MUNICIPALITIES OF THE SAME CLASS, AS
8 THE MUNICIPALITY WHICH ORGANIZED THE AUTHORITY. EMINENT DOMAIN
9 SHALL BE EXERCISED BY A JOINT AUTHORITY IN THE SAME MANNER AS IS
10 PROVIDED BY LAW FOR THE EXERCISE OF SUCH RIGHT BY MUNICIPALITIES
11 OF THE SAME CLASS AS THE MUNICIPALITY IN WHICH THE RIGHT OF
12 EMINENT DOMAIN IS TO BE EXERCISED. THE RIGHT OF EMINENT DOMAIN
13 HEREIN CONFERRED BY THIS SECTION MAY BE EXERCISED EITHER WITHIN
14 OR WITHOUT THE MUNICIPALITY.

15 § 5616. ACQUISITION OF CAPITAL STOCK.

16 (A) ACQUISITION.--IN THE EVENT THAT THE AUTHORITY SHALL OWN
17 90% OR MORE OF ALL THE OUTSTANDING CAPITAL STOCK ENTITLED TO
18 VOTE UPON LIQUIDATION AND DISSOLUTION AND WHICH IS NOT SUBJECT
19 BY ITS TERMS TO BE CALLED FOR REDEMPTION OF ANY CORPORATION
20 OWNING A PROJECT AND ORGANIZED AND EXISTING UNDER THE LAWS OF
21 THIS COMMONWEALTH, THE AUTHORITY SHALL HAVE THE POWER TO ACQUIRE

23 FOR THE LIQUIDATION OF THE CORPORATION.
24 (B) EXERCISE.--THE RIGHT OF EMINENT DOMAIN WITH RESPECT TO
25 THE REMAINDER OF CAPITAL STOCK SHALL BE EXERCISED BY THE
26 AUTHORITY PURSUANT TO THIS SUBSECTION. IN THE EVENT THAT THE
27 AUTHORITY HAS NOT AGREED WITH AN OWNER OF ANY OF THE CAPITAL
28 STOCK AS TO THE VALUE OF THE STOCK, THE AUTHORITY SHALL FILE,
29 WITH THE COURT OF COMMON PLEAS OF THE COUNTY IN WHICH THE
30 CORPORATION'S PRINCIPAL PLACE OF BUSINESS IS LOCATED, ITS BOND
20010S0780B1186 - 111 -

1 FOR THE BENEFIT OF THE OWNER AND FOR ANY OTHER PERSONS WHO MAY
2 BE FOUND ENTITLED TO RECEIVE DAMAGES FOR THE TAKING OF THE
3 CAPITAL STOCK, OF WHICH THE OWNER SHALL BE OBLIGEE, THE
4 CONDITION OF WHICH BOND SHALL BE THAT THE AUTHORITY SHALL PAY OR
5 CAUSE TO BE PAID TO THE OWNER OF THE STOCK OR TO SUCH OTHER
6 PERSONS AS MAY BE FOUND ENTITLED TO RECEIVE DAMAGES FOR THE
7 TAKING OF THE CAPITAL STOCK, AN AMOUNT AS THE OWNER OR SUCH
8 OTHER PERSONS SHALL BE ENTITLED TO RECEIVE FOR THE TAKING OF THE
9 STOCK, AFTER THE AMOUNT SHALL HAVE BEEN AGREED UPON BY THE
10 PARTIES OR ASSESSED IN THE MANNER PROVIDED BY SUBSECTION (D).
11 THE BOND SHALL BE ACCOMPANIED BY PROOF THAT NOTICE OF THE
12 PROPOSED FILING WAS MAILED BY REGISTERED MAIL NOT LESS THAN TEN
13 DAYS PRIOR TO THE PROPOSED FILING TO THE OWNER OF THE STOCK AT
14 HIS ADDRESS AS SHOWN BY THE RECORDS OF THE CORPORATION. UPON
15 APPROVAL BY THE COURT OF THE BOND, THE AUTHORITY SHALL BE VESTED
16 WITH ALL THE RIGHT, TITLE AND INTEREST IN AND TO THE STOCK, AND
17 THE OWNER AND ALL OTHER PERSONS SHALL CEASE TO HAVE ANY RIGHTS
18 OR INTEREST WITH REGARD TO THE STOCK OTHER THAN THE RIGHT TO
19 COMPENSATION FOR THE TAKING OF IT UNDER THE PROCEDURE SET FORTH
20 IN SUBSECTION (D). THE WORD "OWNER," AS USED IN THIS SUBSECTION,
21 SHALL MEAN THE PERSON IN WHOSE NAME THE STOCK IS REGISTERED ON
22 THE BOOKS OF THE CORPORATION.

23 (C) APPROVAL.--IN THE EVENT THAT THE AUTHORITY SHALL HAVE
24 CONTRACTED IN WRITING TO PURCHASE 90% OR MORE OF ANY OUTSTANDING
25 CAPITAL STOCK, IT SHALL HAVE THE RIGHT TO OBTAIN THE APPROVAL OF
26 THE COURT TO THE BOND REQUIRED BY THE PROVISIONS OF SUBSECTION
27 (B), BUT THE APPROVAL SHALL NOT BE EFFECTIVE FOR THE PURPOSES OF
28 THIS SECTION UNLESS AND UNTIL THERE IS ALSO FILED WITH THE
29 PROTHONOTARY OF THE COURT, WITHIN TEN DAYS AFTER THE APPROVAL, A
30 SWORN STATEMENT BY THE CHAIRMAN OF THE BOARD OF THE AUTHORITY,
20010S0780B1186 - 112 -

1 DULY ATTESTED BY THE SECRETARY OF THE AUTHORITY, THAT THE
2 AUTHORITY HAS BECOME THE OWNER OF 90% OR MORE OF THE CAPITAL
3 STOCK.

4 (D) APPRAISAL.--

5 (1) IF THE AUTHORITY AND THE FORMER OWNER OF THE STOCK
6 FAIL TO AGREE AS TO THE AMOUNT WHICH THE FORMER OWNER IS
7 ENTITLED TO RECEIVE AS COMPENSATION FOR THE TAKING OF THE
8 STOCK WITHIN 30 DAYS AFTER THE APPROVAL OF THE BOND BY THE
9 COURT UNDER THE PROVISIONS OF SUBSECTION (B) OR THE FILING OF
10 THE REQUIRED STATEMENT UNDER THE PROVISIONS OF SUBSECTION
11 (C), EITHER PARTY MAY APPLY BY PETITION TO THE COURT FOR THE
12 APPOINTMENT BY THE COURT OF THREE DISINTERESTED PERSONS TO
13 APPRAISE THE FAIR VALUE OF THE STOCK IMMEDIATELY PRIOR TO ITS
14 ACQUISITION BY THE AUTHORITY, WITHOUT REGARD TO ANY
15 DEPRECIATION OR APPRECIATION IN CONSEQUENCE OF THE
16 ACQUISITION.

17 (2) THE APPRAISERS OR A MAJORITY OF THEM SHALL FILE
18 THEIR AWARD, WHICH SHALL INCLUDE THE COSTS OF THE APPRAISAL,
19 WITH THE COURT AND SHALL MAIL A COPY TO EACH PARTY WITH THE
20 DATE OF FILING STATED THEREON. WHEN THE AWARD IS FILED WITH
21 THE COURT, THE PROTHONOTARY SHALL MARK THE SAME "CONFIRMED
22 NISI" AND IF NO EXCEPTIONS ARE FILED WITHIN TEN DAYS, HE
23 SHALL ENTER A DECREE THAT THE AWARD IS CONFIRMED ABSOLUTELY.

24 IF EXCEPTIONS TO THE AWARD ARE FILED BY EITHER PARTY BEFORE
25 THE AWARD IS CONFIRMED, THE COURT SHALL HEAR THE SAME AND
26 SHALL HAVE THE POWER TO CONFIRM, MODIFY, CHANGE OR OTHERWISE
27 CORRECT THE AWARD OR REFER THE SAME BACK TO THE SAME OR NEW
28 APPRAISERS WITH SIMILAR POWER AS TO THEIR AWARD.

29 § 5617. USE OF PROJECTS.

30 THE USE OF THE FACILITIES OF THE AUTHORITY AND THE OPERATION
20010S0780B1186 - 113 -

1 OF ITS BUSINESS SHALL BE SUBJECT TO THE RULES AND REGULATIONS AS
2 ADOPTED BY THE AUTHORITY. THE AUTHORITY SHALL NOT BE AUTHORIZED
3 TO DO ANYTHING WHICH WILL IMPAIR THE SECURITY OF THE HOLDERS OF
4 THE OBLIGATIONS OF THE AUTHORITY OR VIOLATE ANY AGREEMENTS WITH
5 THEM OR FOR THEIR BENEFIT.

6 § 5618. PLEDGE BY COMMONWEALTH.

7 (A) POWER OF AUTHORITIES.--THE COMMONWEALTH PLEDGES TO AND
8 AGREES WITH ANY PERSON, FIRM OR CORPORATION OR FEDERAL AGENCY
9 SUBSCRIBING TO OR ACQUIRING THE BONDS TO BE ISSUED BY THE
10 AUTHORITY FOR THE CONSTRUCTION, EXTENSION, IMPROVEMENT OR
11 ENLARGEMENT OF A PROJECT OR PART THEREOF THAT THE COMMONWEALTH
12 WILL NOT LIMIT OR ALTER THE RIGHTS VESTED BY THIS CHAPTER IN THE
13 AUTHORITY UNTIL ALL BONDS AND THE INTEREST ON THEM ARE FULLY MET
14 AND DISCHARGED.

15 (B) FEDERAL MATTERS.--THE COMMONWEALTH PLEDGES TO AND AGREES
16 WITH THE UNITED STATES AND ALL FEDERAL AGENCIES THAT, IF A
17 FEDERAL AGENCY CONSTRUCTS OR CONTRIBUTES FUNDS FOR THE
18 CONSTRUCTION, EXTENSION, IMPROVEMENT OR ENLARGEMENT OF A PROJECT
19 OR ANY PORTION THEREOF:

20 (1) THE COMMONWEALTH WILL NOT ALTER OR LIMIT THE RIGHTS
21 AND POWERS OF THE AUTHORITY IN ANY MANNER WHICH WOULD BE
22 INCONSISTENT WITH THE CONTINUED MAINTENANCE AND OPERATION OF
23 THE PROJECT OR THE IMPROVEMENT THEREOF OR WHICH WOULD BE
24 INCONSISTENT WITH THE DUE PERFORMANCE OF AGREEMENTS BETWEEN
25 THE AUTHORITY AND ANY FEDERAL AGENCY; AND

26 (2) THE AUTHORITY SHALL CONTINUE TO HAVE AND MAY
27 EXERCISE ALL POWERS GRANTED IN THIS CHAPTER AS LONG AS THE
28 POWERS ARE NECESSARY OR DESIRABLE FOR CARRYING OUT THE
29 PURPOSES OF THIS CHAPTER AND THE PURPOSES OF THE UNITED
30 STATES IN THE CONSTRUCTION OR IMPROVEMENT OR ENLARGEMENT OF

20010S0780B1186 - 114 -

1 THE PROJECT OR PORTION THEREOF.

2 § 5619. TERMINATION OF AUTHORITY.

3 (A) CONVEYANCE OF PROJECTS.--WHEN AN AUTHORITY HAS FINALLY
4 PAID AND DISCHARGED ALL BONDS, WITH INTEREST DUE, WHICH HAVE
5 BEEN SECURED BY A PLEDGE OF ANY OF THE REVENUES OR RECEIPTS OF A
6 PROJECT, THE AUTHORITY MAY, SUBJECT TO AGREEMENTS CONCERNING THE
7 OPERATION OR DISPOSITION OF THE PROJECT, CONVEY THE PROJECT TO
8 THE MUNICIPALITY CREATING THE AUTHORITY OR, IF THE PROJECT IS A
9 PUBLIC SCHOOL PROJECT, TO THE SCHOOL DISTRICT TO WHICH THE
10 PROJECT IS LEASED.

11 (B) CONVEYANCE OF PROPERTY.--WHEN AN AUTHORITY HAS FINALLY
12 PAID AND DISCHARGED ALL BONDS ISSUED AND OUTSTANDING AND THE
13 INTEREST DUE ON THEM, AND SETTLED ALL OTHER OUTSTANDING CLAIMS
14 AGAINST IT, THE AUTHORITY MAY CONVEY ALL ITS PROPERTY TO THE
15 MUNICIPALITY AND TERMINATE ITS EXISTENCE.

16 (C) CERTIFICATE.--A CERTIFICATE REQUESTING THE TERMINATION
17 OF THE EXISTENCE OF AN AUTHORITY SHALL BE FILED IN THE OFFICE OF
18 THE SECRETARY OF THE COMMONWEALTH. IF THE CERTIFICATE IS
19 APPROVED BY THE MUNICIPALITY CREATING THE AUTHORITY BY ITS
20 ORDINANCE, THE SECRETARY SHALL NOTE THE TERMINATION OF EXISTENCE
21 ON THE RECORD OF INCORPORATION AND RETURN THE CERTIFICATE WITH
22 APPROVAL TO THE BOARD. THE BOARD SHALL CAUSE THE CERTIFICATE TO
23 BE RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF THE
24 COUNTY. UPON RECORDING, THE PROPERTY OF THE AUTHORITY SHALL PASS
25 TO THE MUNICIPALITY, AND THE AUTHORITY SHALL CEASE TO EXIST.

26 S 5620. EXEMPTION FROM TAXATION AND PAYMENTS IN LIEU OF TAXES.
27 THE EFFECTUATION OF THE AUTHORIZED PURPOSES OF AUTHORITIES
28 CREATED UNDER THIS CHAPTER SHALL BE FOR THE BENEFIT OF THE
29 PEOPLE OF THIS COMMONWEALTH, FOR THE INCREASE OF THEIR COMMERCE
30 AND PROSPERITY AND FOR THE IMPROVEMENT OF THEIR HEALTH AND
20010S0780B1186 - 115 -

1 LIVING CONDITIONS. SINCE AUTHORITIES WILL BE PERFORMING
2 ESSENTIAL GOVERNMENTAL FUNCTIONS IN EFFECTUATING THESE PURPOSES,
3 AUTHORITIES SHALL NOT BE REQUIRED TO PAY TAXES OR ASSESSMENTS
4 UPON PROPERTY ACQUIRED OR USED BY THEM FOR SUCH PURPOSES.
5 WHENEVER IN EXCESS OF 10% OF THE LAND AREA OF ANY POLITICAL
6 SUBDIVISION IN A SIXTH, SEVENTH OR EIGHTH CLASS COUNTY HAS BEEN
7 TAKEN FOR A WATERWORKS, WATER SUPPLY WORKS OR WATER DISTRIBUTION
8 SYSTEM HAVING A SOURCE OF WATER WITHIN A POLITICAL SUBDIVISION
9 WHICH IS NOT PROVIDED WITH WATER SERVICE BY THE AUTHORITY, IN
10 LIEU OF SUCH TAXES OR SPECIAL ASSESSMENTS, THE AUTHORITY MAY
11 AGREE TO MAKE PAYMENTS IN THE COUNTY TO THE TAXING AUTHORITIES
12 OF ANY OR ALL OF THE POLITICAL SUBDIVISIONS WHERE ANY LAND HAS
13 BEEN TAKEN. THE BONDS ISSUED BY ANY AUTHORITY, THEIR TRANSFER
14 AND THE INCOME FROM THE BONDS, INCLUDING ANY PROFITS MADE ON
15 THEIR SALE, SHALL BE FREE FROM TAXATION WITHIN THE COMMONWEALTH.
16 S 5621. CONSTITUTIONAL CONSTRUCTION.
17 THE PROVISIONS OF THIS CHAPTER SHALL BE SEVERABLE, AND IF ANY
18 OF THE PROVISIONS ARE HELD TO BE UNCONSTITUTIONAL, IT SHALL NOT
19 AFFECT THE VALIDITY OF ANY OF THE REMAINING PROVISIONS OF THIS
20 CHAPTER. IT IS HEREBY DECLARED AS THE LEGISLATIVE INTENT THAT
21 THIS CHAPTER WOULD HAVE BEEN ADOPTED HAD SUCH UNCONSTITUTIONAL
22 PROVISIONS NOT BEEN INCLUDED.

23 S 5622. CONVEYANCE BY AUTHORITIES TO MUNICIPALITIES OR SCHOOL
24 DISTRICTS OF ESTABLISHED PROJECTS.

25 (A) PROJECT.--IF A PROJECT ESTABLISHED UNDER THIS CHAPTER BY
26 A BOARD APPOINTED BY A MUNICIPALITY IS OF A CHARACTER WHICH THE
27 MUNICIPALITY HAS POWER TO ESTABLISH, MAINTAIN OR OPERATE, AND
28 THE MUNICIPALITY DESIRES TO ACQUIRE THE PROJECT, IT MAY, BY
29 APPROPRIATE RESOLUTION OR ORDINANCE ADOPTED BY THE PROPER
30 AUTHORITIES, SIGNIFY ITS DESIRE TO DO SO, AND THE AUTHORITIES
20010S0780B1186 - 116 -

1 SHALL CONVEY BY APPROPRIATE INSTRUMENT THE PROJECT TO THE
2 MUNICIPALITY UPON THE ASSUMPTION BY THE MUNICIPALITY OF ALL THE
3 OBLIGATIONS INCURRED BY THE AUTHORITIES WITH RESPECT TO THAT
4 PROJECT.

5 (B) PUBLIC SCHOOL PROJECT.--A PUBLIC SCHOOL PROJECT
6 UNDERTAKEN UNDER THIS CHAPTER MAY BE ACQUIRED BY A SCHOOL
7 DISTRICT TO WHICH THE PROJECT WAS LEASED IF THE SCHOOL DISTRICT
8 BY APPROPRIATE RESOLUTION SIGNIFIES A DESIRE TO DO SO. AN
9 AUTHORITY SHALL CONVEY THE PUBLIC SCHOOL PROJECT TO THE SCHOOL
10 DISTRICT BY APPROPRIATE RESOLUTION UPON THE ASSUMPTION BY THE
11 SCHOOL DISTRICT OF ALL THE OBLIGATIONS INCURRED BY THE AUTHORITY
12 WITH RESPECT TO THAT PROJECT.

13 (C) CONVEYANCE.--AN AUTHORITY FORMED BY ANY COUNTY FOR THE
14 PURPOSE OF ACQUIRING, CONSTRUCTING, IMPROVING, MAINTAINING OR
15 OPERATING ANY PROJECT FOR THE BENEFIT OF ANY ONE OR MORE BUT NOT
16 ALL OF THE CITIES, BOROUGHS, TOWNS AND TOWNSHIPS OF THE COUNTY,
17 MAY, WITH THE APPROVAL OF THE BOARD OF COUNTY COMMISSIONERS OF
18 THE COUNTY, CONVEY THE PROJECT TO THE CITIES, BOROUGHS, TOWNS OR
19 TOWNSHIPS OF THE COUNTY, FOR THE BENEFIT OF WHICH THE PROJECT
20 WAS ACQUIRED, CONSTRUCTED, IMPROVED, MAINTAINED OR OPERATED, OR
21 TO ANY AUTHORITY ORGANIZED BY SUCH CITIES, BOROUGHS, TOWNS OR
22 TOWNSHIPS, FOR THE PURPOSE OF TAKING OVER SUCH PROJECT. ALL SUCH
23 CONVEYANCES SHALL BE MADE SUBJECT TO ANY AND ALL OBLIGATIONS
24 INCURRED BY THE AUTHORITY WITH RESPECT TO THE PROJECT CONVEYED.

25 (D) RESERVES.--FOLLOWING TRANSFER OF A PROJECT PURSUANT TO
26 THIS SECTION, THE MUNICIPALITY, INCLUDING AN INCORPORATED TOWN
27 OR HOME RULE MUNICIPALITY, WHICH HAS ACQUIRED THE PROJECT SHALL

28 RETAIN THE RESERVES RECEIVED FROM THE AUTHORITY WHICH HAVE BEEN
29 DERIVED FROM OPERATIONS IN A SEPARATE FUND, AND THE RESERVES
30 SHALL ONLY BE USED FOR THE PURPOSES OF OPERATING, MAINTAINING,
20010S0780B1186 - 117 -

1 REPAIRING, IMPROVING AND EXTENDING THE PROJECT. MONEY RECEIVED
2 FROM THE AUTHORITY WHICH REPRESENTS THE PROCEEDS OF FINANCING
3 SHALL BE RETAINED BY THE MUNICIPALITY IN A SEPARATE FUND WHICH
4 SHALL ONLY BE USED FOR IMPROVING OR EXTENDING THE PROJECT OR
5 OTHER CAPITAL PURPOSES RELATED TO IT.

6 SECTION 2. THE PROVISIONS OF 53 PA.C.S. CH. 56 SHALL APPLY
7 TO ALL AUTHORITIES NOW EXISTING THAT WERE INCORPORATED UNDER THE
8 PROVISIONS OF THE FORMER ACT OF JUNE 28, 1935 (P.L.463, NO.191)
9 ENTITLED "AN ACT PROVIDING, FOR A LIMITED PERIOD OF TIME, FOR
10 THE INCORPORATION, AS BODIES CORPORATE AND POLITIC, OF
11 'AUTHORITIES' FOR MUNICIPALITIES; DEFINING THE SAME; PRESCRIBING
12 THE RIGHTS, POWERS, AND DUTIES OF SUCH AUTHORITIES; AUTHORIZING
13 SUCH AUTHORITIES TO ACQUIRE, CONSTRUCT, IMPROVE, MAINTAIN, AND
14 OPERATE PROJECTS, AND TO BORROW MONEY AND ISSUE BONDS THEREFOR;
15 PROVIDING FOR THE PAYMENT OF SUCH BONDS, AND PRESCRIBING THE
16 RIGHTS OF THE HOLDERS THEREOF; CONFERRING THE RIGHT OF EMINENT
17 DOMAIN ON SUCH AUTHORITIES; AUTHORIZING SUCH AUTHORITIES TO
18 ENTER INTO CONTRACTS WITH AND TO ACCEPT GRANTS FROM THE FEDERAL
19 GOVERNMENT OR ANY AGENCY THEREOF; AND FOR OTHER PURPOSES," AND
20 THE ACT OF MAY 2, 1945 (P.L.382, NO.164), KNOWN AS THE
21 MUNICIPALITY AUTHORITIES ACT OF 1945. THE PROVISIONS OF 53
22 PA.C.S. CH. 56, SO FAR AS THEY ARE THE SAME AS THOSE OF EXISTING
23 LAWS, ARE INTENDED AS A CONTINUATION OF SUCH LAWS AND NOT AS NEW
24 ENACTMENTS. THE REPEAL BY THIS ACT OF ANY ACT OR PART OF ANY
25 ACT, SHALL NOT AFFECT THE EXISTENCE OF ANY AUTHORITY PREVIOUSLY
26 INCORPORATED. THE PROVISIONS OF THIS ACT SHALL NOT AFFECT ANY
27 ACT DONE, LIABILITY INCURRED OR RIGHT ACCRUED OR VESTED, OR
28 AFFECT ANY SUIT PENDING OR TO BE INSTITUTED, TO ENFORCE ANY
29 RIGHT OR PENALTY UNDER THE AUTHORITY OF SUCH REPEALED LAWS. ALL
30 RULES AND REGULATIONS MADE PURSUANT TO ANY ACT OR PART OF ANY
20010S0780B1186 - 118 -

1 ACT REPEALED BY 53 PA.C.S. CH. 56 SHALL CONTINUE WITH THE SAME
2 FORCE AND EFFECT AS IF SUCH ACT HAD NOT BEEN REPEALED.

3 SECTION 3. THE FOLLOWING ACTS ARE REPEALED:

4 ACT OF MAY 2, 1945 (P.L.382, NO.164), KNOWN AS THE
5 MUNICIPALITY AUTHORITIES ACT OF 1945.

6 ACT OF JUNE 5, 1947 (P.L.458, NO.208), KNOWN AS THE PARKING
7 AUTHORITY LAW.

8 SECTION 4. THE ADDITION OF 53 PA.C.S. CH. 56 IS A
9 CONTINUATION OF THE ACT OF MAY 2, 1945 (P.L.382, NO.164), KNOWN
10 AS THE MUNICIPALITY AUTHORITIES ACT OF 1945. THE FOLLOWING
11 APPLY:

12 (1) EXCEPT AS OTHERWISE PROVIDED IN 53 PA.C.S. CH. 56,
13 ALL ACTIVITIES INITIATED UNDER THE MUNICIPALITY AUTHORITIES
14 ACT OF 1945 SHALL CONTINUE AND REMAIN IN FULL FORCE AND
15 EFFECT AND MAY BE COMPLETED UNDER 53 PA.C.S. CH. 56. ORDERS,
16 REGULATIONS, RULES AND DECISIONS, WHICH WERE MADE UNDER THE
17 MUNICIPALITY AUTHORITIES ACT OF 1945 AND WHICH ARE IN EFFECT
18 ON THE EFFECTIVE DATE OF SECTION 3 OF THIS ACT, SHALL REMAIN
19 IN FULL FORCE AND EFFECT UNTIL REVOKED, VACATED OR MODIFIED
20 UNDER 53 PA.C.S. CH. 56. CONTRACTS, OBLIGATIONS AND
21 COLLECTIVE BARGAINING AGREEMENTS ENTERED INTO UNDER THE
22 MUNICIPALITY AUTHORITIES ACT OF 1945 ARE NOT AFFECTED NOR
23 IMPAIRED BY THE REPEAL OF THE MUNICIPALITY AUTHORITIES ACT OF
24 1945.

25 (2) EXCEPT AS SET FORTH IN PARAGRAPH (3), ANY DIFFERENCE
26 IN LANGUAGE BETWEEN 53 PA.C.S. CH. 56 AND THE MUNICIPALITY
27 AUTHORITIES ACT OF 1945 IS INTENDED ONLY TO CONFORM TO THE
28 STYLE OF THE PENNSYLVANIA CONSOLIDATED STATUTES AND IS NOT
29 INTENDED TO CHANGE OR AFFECT THE LEGISLATIVE INTENT, JUDICIAL

30 CONSTRUCTION OR ADMINISTRATION AND IMPLEMENTATION OF THE
20010S0780B1186 - 119 -
1 MUNICIPALITY AUTHORITIES ACT OF 1945.
2 (3) PARAGRAPH (2) DOES NOT APPLY TO ANY OF THE FOLLOWING
3 PROVISIONS:
4 (I) THE ADDITION OF THE LAST SENTENCE OF 53 PA.C.S.
5 S 5610(B).
6 (II) THE ADDITION OF 53 PA.C.S. S 5610(F).
7 SECTION 5. THE ADDITION OF 53 PA.C.S. CH. 55 IS A
8 CONTINUATION OF THE ACT OF JUNE 5, 1947 (P.L.458, NO.208), KNOWN
9 AS THE PARKING AUTHORITY LAW. THE FOLLOWING APPLY:
10 (1) EXCEPT AS OTHERWISE PROVIDED IN 53 PA.C.S. CH. 55,
11 ALL ACTIVITIES INITIATED UNDER THE PARKING AUTHORITY LAW
12 SHALL CONTINUE AND REMAIN IN FULL FORCE AND EFFECT AND MAY BE
13 COMPLETED UNDER 53 PA.C.S. CH. 55. ORDERS, REGULATIONS, RULES
14 AND DECISIONS, WHICH WERE MADE UNDER THE PARKING AUTHORITY
15 LAW AND WHICH ARE IN EFFECT ON THE EFFECTIVE DATE OF SECTION
16 3 OF THIS ACT, SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL
17 REVOKED, VACATED OR MODIFIED UNDER 53 PA.C.S. CH. 55.
18 CONTRACTS, OBLIGATIONS AND COLLECTIVE BARGAINING AGREEMENTS
19 ENTERED INTO UNDER THE PARKING AUTHORITY LAW ARE NOT AFFECTED
20 NOR IMPAIRED BY THE REPEAL OF THE PARKING AUTHORITY LAW.
21 (2) EXCEPT AS SET FORTH IN PARAGRAPH (3), ANY DIFFERENCE
22 IN LANGUAGE BETWEEN 53 PA.C.S. CH. 55 AND THE PARKING
23 AUTHORITY LAW IS INTENDED ONLY TO CONFORM TO THE STYLE OF THE
24 PENNSYLVANIA CONSOLIDATED STATUTES AND IS NOT INTENDED TO
25 CHANGE OR AFFECT THE LEGISLATIVE INTENT, JUDICIAL
26 CONSTRUCTION OR ADMINISTRATION AND IMPLEMENTATION OF THE
27 PARKING AUTHORITY LAW.
28 (3) PARAGRAPH (2) DOES NOT APPLY TO THE ADDITION OF 53
29 PA.C.S. SS 5508(A) AND 5508.1.
30 SECTION 6. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.

D2L64JS/20010S0780B1186

- 120 -

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

October 8, 2004

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

Mr. & Mrs. Eric Gilliland
548 Hunt Club Drive
Ginter, Pa., 16651

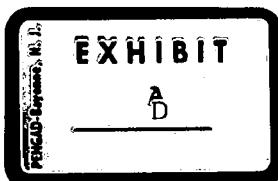
RE: Houtzdale Municipal Authority
vs. Eric Gilliland et. ux.
No. 2004-

Dear Mr. & Mrs. Gilliland:

Thirty days have passed since the date the Declaration of Taking was served on you by the Sheriff of Clearfield County. The procedure under the Eminent Domain Code provides for the transfer of possession of the condemned property after the expiration of time for filing preliminary objections to the taking. Condemnor's right of possession is conditioned upon payment or a written offer to pay to the Condemnee the amount of just compensation as estimated by the Condemnor.

In this instance we have had the property appraised by a real estate broker qualified to conduct appraisals in condemnation matters. Our expert's area of experience covers Clearfield County and the adjacent areas of Centre County. Our expert has determined that the total value of the right of way less the value of the existing roadway which is comprised of the lane 20 feet by 5149.76 feet is \$19,703.89. This is based upon a determination of a right of way consisting of 7.093 acres valued at \$4,167.00 per acre. HMA's claim of ownership to the existing roadway is premised on actions undertaken by HMA's predecessor in title, during the early 1900's which action is documented in the books and records of the Authority which are readily available for inspection by the public at large.

Please consider this to be a tender of payment in the amount of \$19,703.89 which you may retrieve by contacting my office within three work days from the date hereof. Absent your notification of acceptance of this payment and your delivery of possession of the property as well as your acknowledgement of HMA's unqualified right to enter upon the right of way without restriction, I will request the Prothonotary of Clearfield County to issue a praecipe for a Rule to Show Cause why a Writ of Possession should not issue to the Condemnor as specified under the Eminent Domain Code.



(2)

Please advise my office or the Authority Manager of your decision within the stated time framework. You will also receive a notice to vacate the premises with similar deadlines. If you have any questions in this regard, please contact your attorney or legal representative.

Very truly yours,

JOHN R. CARFLEY

JRC:sm
CC: HMA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED

10/11/04 NOCL
OCT 20 2004

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITuate IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNees, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

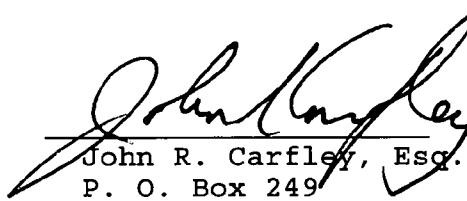
CONDEMNees: ERIC AND BERNADETTE GILLILAND:

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the within Condemnor's Answer to Condemnees' Preliminary Objections by by placing the same in the United States Mail, regular service to the following attorneys and parties of record by first class U.S. mail, postage prepaid on October 20, 2004.

David L. Mason, Esq.
P. O. Box 28
Philipsburg, Pa., 16866

Susan J. Smith, Esq.
REAGER & ADLER, P.C.
2331 Market Street
Camp Hill, Pa., 17011


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Condemnor

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

RULE TO SHOW CAUSE WHY ESTIMATED JUST COMPENSATION
SHOULD NOT BE DEPOSITED

AND NOW, this 26th day of October, 2004, upon consideration of the Petition of Houtzdale Municipal Authority, Condemnor, a rule is granted upon Eric and Bernadette Gilliland, Condemnee, to show cause why the estimated just compensation should not be deposited.

Rule returnable the 18 day of November, 2004, at 2:00 P. M. in Courtroom Number 1, Clearfield County Courthouse, Clearfield, Pa. for hearing thereon.

BY THE COURT:

BY THE COURT:
Frederick J. Zimmerman

FILED

0 11:03 AM 1 Oct 2004

1811 OCT 27 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR : NO. 2004-1369-CD

CONDEMNNEES : Eminent Domain Proceedings In Rem

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

ORDER

AND NOW, this _____ day of _____, 2004, upon presentation of the within Petition, IT IS HEREBY ORDERED and directed that the sum of \$19,703.89, representing the amount of just compensation estimated by the Houtzdale Municipal Authority to be due the Condemnees on the subject property be paid into Court, in an interest bearing account to be held until further Order of Court directing payment of said amount to the said condemnees and/or persons entitled thereto pursuant to Section 407, Section 521 and Section 522 of the Eminent Domain Code, (26 P.S. §§1-407, 1-521 and/or 1-522) as they may apply.

BY THE COURT:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

: NO. 2004-1369-CD

Eminent Domain
Proceedings
In Rem

FILED
02/25/04 *cc to atty*

OCT 22 2004

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

PETITION TO DEPOSIT ESTIMATED JUST COMPENSATION

*William A. Shaw
Prothonotary*

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

1. The Condemnor is the Houtzdale Municipal Authority ("Authority").

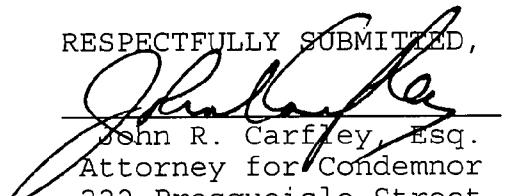
2. On September 1, 2004, a Declaration of Taking was filed to the above term and number by the Authority.

3. Although the Condemnees, named on the attached Schedule of Distribution, were offered by letter dated October 8, 2004 (a copy of which is attached hereto as Exhibit "A" and incorporated by this reference) the full amount of the Authority's estimated just compensation for the property as payment pro tanto of their damage without prejudice to their right to a final determination of their just compensation, the Condemnee has failed to apply for such sum and the Authority has been unable to make payment because the Condemnees have filed Preliminary Objections to the Declaration of Taking and have refused to accept the pro tanto payment and/or to deliver possession of the property or vacate the premises subject to dual use thereof.

4. A check in the total amount of estimated just compensation due the condemnees as estimated by the Authority made payable to the Prothonotary of this Court is attached hereto.

WHEREFORE, in order to assure possession of the condemnees' property by your Petitioner, the Authority, to which it is entitled under Section 407 of the Eminent Domain Code, 26 P.S. §1-407, your petitioner prays that the Honorable Court direct payment of the aforesaid estimated just compensation into Court through the Prothonotary thereof to be held until further Order of Court directing payment of said amount to the said Condemnees and/or persons entitled thereto pursuant to Section 407, 521 and/or 522 of the Eminent Domain Code, as they may apply.

RESPECTFULLY SUBMITTED,



John R. Carfley, Esq.
Attorney for Condemnor
222 Presqueisle Street
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

Dated: October 22, 2004

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

October 8, 2004

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

Mr. & Mrs. Eric Gilliland
548 Hunt Club Drive
Ginter, Pa., 16651

RE: Houtzdale Municipal Authority
vs. Eric Gilliland et. ux.
No. 2004-1369-CD

Dear Mr. & Mrs. Gilliland:

Thirty days have passed since the date the Declaration of Taking was served on you by the Sheriff of Clearfield County. The procedure under the Eminent Domain Code provides for the transfer of possession of the condemned property after the expiration of time for filing preliminary objections to the taking. Condemnor's right of possession is conditioned upon payment or a written offer to pay to the Condemnee the amount of just compensation as estimated by the Condemnor.

In this instance we have had the property appraised by a real estate broker qualified to conduct appraisals in condemnation matters. Our expert's area of experience covers Clearfield County and the adjacent areas of Centre County. Our expert has determined that the total value of the right of way less the value of the existing roadway which is comprised of the lane 20 feet by 5149.76 feet is \$19,703.89. This is based upon a determination of a right of way consisting of 7.093 acres valued at \$4,167.00 per acre. HMA's claim of ownership to the existing roadway is premised on actions undertaken by HMA's predecessor in title, during the early 1900's which action is documented in the books and records of the Authority which are readily available for inspection by the public at large.

Please consider this to be a tender of payment in the amount of \$19,703.89 which you may retrieve by contacting my office within three work days from the date hereof. Absent your notification of acceptance of this payment and your delivery of possession of the property as well as your acknowledgement of HMA's unqualified right to enter upon the right of way without restriction, I will request the Prothonotary of Clearfield County to issue a praecipe for a Rule to Show Cause why a Writ of Possession should not issue to the Condemnor as specified under the Eminent Domain Code.



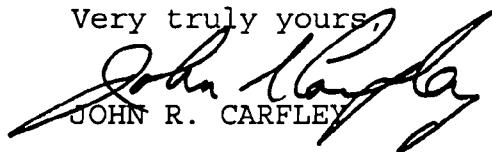
JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

(2)

Please advise my office or the Authority Manager of your decision within the stated time framework. You will also receive a notice to vacate the premises with similar deadlines. If you have any questions in this regard, please contact your attorney or legal representative.

Very truly yours,



John R. Carfley

JRC:sm
CC: HMA

6084

JOHN R. CARFLEY ESQ. 03-82
ATTORNEY ACCOUNT
222 PRESQUEISLE ST.
PHILIPSBURG, PA 16866

60-629/313

DATE 10/22/04

PAY
TO THE
ORDER OF PROTHONOTARY OF CLEARFIELD COUNTY

\$ 19,703.89

-----NINETEEN THOUSAND SEVEN HUNDRED THREE and 89/100-----

DOLLARS

Security Features
See Reverse
Dollars on Back

FOR HMA v. Gilliland-est.just comp



Philipsburg Office
19 Irwin Drive Extension
Philipsburg, PA 16866

006084 0313062940 1 2 22005 110

A handwritten signature of John R. Carfley in black ink, written over the signature line.

MP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID, AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

NO. 2004-1369-CD
Eminent Domain
Proceeding-In Rem'

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

RULE TO SHOW CAUSE WHY WRIT OF POSSESSION SHOULD NOT ISSUE

AND NOW, this 29th day of October, 2004, upon consideration of the Petition of Houtzdale Municipal Authority, Condemnor, a rule is granted upon Eric and Bernadette Gilliland, Condemnee, to show cause why a Writ of Possession shall not issue conditioned upon payment to the prothonotary of \$19,703.89 for the use of Eric and Bernadette Gilliland without any commissions or fees deductible therefrom, as its interests may appear.

Rule returnable the 4. day of November, 2004, at 9:00 A. M. in Courtroom Number 1, Clearfield County Courthouse, Clearfield, Pa. for hearing thereon.

BY THE COURT:

Judie J. Zimmerman

E64
10/03/04
1cc
01/10/03 B&L Atty Carley
K&W G 12604

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

William A. Shaw
Prothonotary

PETITION OF HOUTZDALE MUNICIPAL AUTHORITY, CONDEMNOR
FOR WRIT OF POSSESSION NOTWITHSTANDING THE PENDENCY
OF CONDEMNEE'S PRELIMINARY OBJECTIONS

The Petition of Houtzdale Municipal Authority, ("Condemnor") pursuant to §407(a) of the Eminent Domain Code, 26 P.S. §1-407, represents:

1. A declaration of taking was filed on September 1, 2004, at the above court term and number in the Court of Common Pleas of Clearfield County and was served by the Sheriff of Clearfield County on the Condemnees on September 8, 2004; Preliminary objections were filed by the Condemnees on Friday, October 8, 2004, at approximately 12:30 P.M. within the thirty day parameters established by Rule 406 of the Eminent Domain Code. 26 P.S. Section 1-406.

FILED
O 10:58 AM 10/27/04
OCT 27 2004

2. The declaration of taking filed by the Condemnor dealt exclusively with the condemnation of a right of way crossing property owned by Eric and Bernadette Gilliland ("Condemnee") and located at 548 Hunt Club Drive, Ginter, Gulich Township, Clearfield County, Pennsylvania, ("Property").

3. On October 8, 2004, Condemnor communicated to Condemnee a written offer to pay Condemnor's estimate of just compensation for Condemnee's real estate in the amount of \$19,703.89. A copy of that written offer is attached as Exhibit "A".

4. On October 18, 2004, the Condemnor notified Condemnee in writing that if the offer was rejected that they must vacate the property on or before Thursday, October 21, 2004. A copy of the notice to vacate is included herein attached as Exhibit "B".

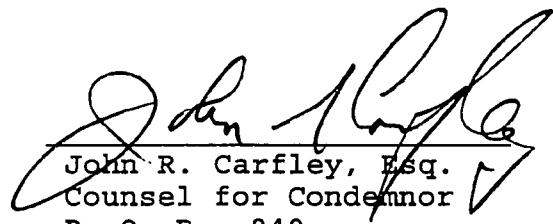
5. Notwithstanding this offer of fair market value as determined by Condemnor's real estate expert and of the notice to vacate in a timely fashion or consent to dual use of the roadway pending the outcome of the preliminary objections filed, Condemnee has withheld and continues to withhold possession of the property from Condemnor based upon the arguments set forth in the Condemnee's Preliminary Objections.

6. Condemnor believes and therefore avers that the preliminary objections filed by the Condemnees and attached hereto as Exhibit "C" are not justification for imposing a delay in granting possession of the roadway; rather the court should consider issuance of a Writ of Possession conditioned upon payment to the Condemnees or the Prothonotary of the estimated fair compensation for the easement and upon such other terms as the

court may deem appropriate under Section 407 of the Eminent Domain Code 26 P.S. §1-407.

7. Condemnor is entitled to possession of the property, conditioned upon payment to the prothonotary of Condemnor's estimate of just compensation in the amount of \$19,703.89 for the use and benefit of Condemnee as its interest may appear.

WHEREFORE, Condemnor, Houtzdale Municipal Authority, requests that this Court grant a rule upon Eric and Bernadette Gilliland (Condemnees) within the time constraints specified in the Act to appear and show cause why a writ of possession conditioned upon payment to the Prothonotary of \$19,703.89 to escrow for the use and benefit of Eric and Bernadette Gilliland, Condemnees, as their interest may appear.



John R. Carfley, Esq.
Counsel for Condemnor
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581

Dated: October 21 , 2004

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

October 8, 2004

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

Mr. & Mrs. Eric Gilliland
548 Hunt Club Drive
Ginter, Pa., 16651

RE: Houtzdale Municipal Authority
vs. Eric Gilliland et. ux.
No. 2004-

Dear Mr. & Mrs. Gilliland:

Thirty days have passed since the date the Declaration of Taking was served on you by the Sheriff of Clearfield County. The procedure under the Eminent Domain Code provides for the transfer of possession of the condemned property after the expiration of time for filing preliminary objections to the taking. Condemnor's right of possession is conditioned upon payment or a written offer to pay to the Condemnee the amount of just compensation as estimated by the Condemnor.

In this instance we have had the property appraised by a real estate broker qualified to conduct appraisals in condemnation matters. Our expert's area of experience covers Clearfield County and the adjacent areas of Centre County. Our expert has determined that the total value of the right of way less the value of the existing roadway which is comprised of the lane 20 feet by 5149.76 feet is \$19,703.89. This is based upon a determination of a right of way consisting of 7.093 acres valued at \$4,167.00 per acre. HMA's claim of ownership to the existing roadway is premised on actions undertaken by HMA's predecessor in title, during the early 1900's which action is documented in the books and records of the Authority which are readily available for inspection by the public at large.

Please consider this to be a tender of payment in the amount of \$19,703.89 which you may retrieve by contacting my office within three work days from the date hereof. Absent your notification of acceptance of this payment and your delivery of possession of the property as well as your acknowledgement of HMA's unqualified right to enter upon the right of way without restriction, I will request the Prothonotary of Clearfield County to issue a praecipe for a Rule to Show Cause why a Writ of Possession should not issue to the Condemnor as specified under the Eminent Domain Code.

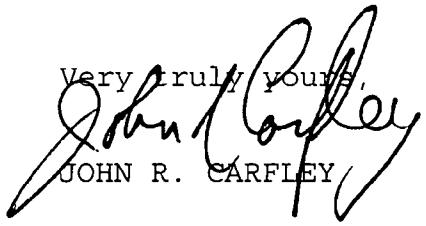


(2)

Please advise my office or the Authority Manager of your decision within the stated time framework. You will also receive a notice to vacate the premises with similar deadlines. If you have any questions in this regard, please contact your attorney or legal representative.

Very truly yours,

JOHN R. CARFLEY

A handwritten signature in black ink, appearing to read "John R. Carfley". The signature is fluid and cursive, with "John" and "R." being more stylized and "Carfley" being more legible.

JRC:sm
CC: HMA

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

October 18, 2004

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

Mr. & Mrs. Eric Gilliland
548 Hunt Club Drive
Ginter, Pa., 16651

RE: Houtzdale Municipal Authority
vs. Eric Gilliland et. ux.
No. 2004-1369-CD

Dear Mr. & Mrs. Gilliland:

The Houtzdale Municipal Authority has been unable to reach an agreement with you for the purchase of the premises described in its Declaration of Taking and since you have availed yourselves of the opportunity to file preliminary objections contesting the right of the Authority to gain possession of the right of way by Eminent Domain, it is imperative that the Authority undertake action to acquire access to the property or at least a recognition by you of a dual utilization of the right of way pending any decision by the Court on your preliminary objections and the responsive motions which I intend to file.

One of your most important rights is to receive payment together with other benefits defined by the Code and to that end the Authority has estimated and tendered an offer of the amount to which it believes you are entitled as just compensation for the easement. The tender of that offer was presented by letter dated the 8th day of October, 2004.

I would like you to understand that payment of the amount offered will not jeopardize in any way your right to petition the court to appoint a Board of View to determine the amount of damages to which you claim you are entitled. This payment can also be made immediately unless there are outstanding liens, mortgages or claims of others for this sum in which case steps must be taken to satisfy those liens or claims first. I assume that you do not wish to apply for payment on account and therefore will take the next steps required to escrow this sum with the Prothonotary.

At the present time the Authority is actively involved with the Department of Environmental Protection, The Pennsylvania Fish & Boat Commission and the Susquehanna River Basin Commission in the completion of studies and the final application preparatory to approval of the Moshannon Creek water permit authorizing completion



JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16868

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

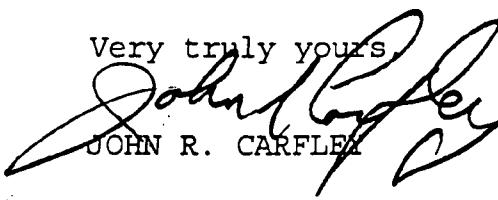
(2)

of the project and start up of the production wells and utilization of the surface source for additional water resources for the community. The Authority has not had access to its property and/or the Moshannon Creek watershed since August 31, 2004, when you unilaterally closed the right of way to use by the Authority and thereby prohibited access to the watershed.

Each day that the Authority is precluded from accessing its property and completing the necessary geological and hydrogeological studies to compile the data necessary to submit to the regulatory agencies substantial delay is incurred in the approval of the project for the acquisition of low interest funding to facilitate the beginning of construction on this public utility. We must, therefore, ask you to vacate the premises described in the Declaration of Taking and allow the Authority to assume possession of the Right of Way. In the alternative we would consider a dual use of the Right of Way pending resolution of the preliminary objections and our other outstanding motions. In no event can we continue to be prohibited from accessing the property which has been condemned under the provisions of the Eminent Domain Code and pursuant to the Authority's statutory enabling rights.

the Authority would, therefore, request that you vacate these premises no later than Thursday, October 21, 2004, or instruct your attorney that a dual use of the roadway will be implemented. Failing communication of either of these decisions, I will press our motion for a writ of possession notwithstanding the status of the preliminary objections which you have filed and to which we have now responded.

Very truly yours,



JOHN R. CARFLEY

JRC:sm

CC: HMA
David Mason, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

THE CONDEMNATION BY THE HOUTZDALE :
MUNICIPAL AUTHORITY, OF A UTILITY :
AND ACCESS EASEMENT SIXTY : NO. 2004-1369 CD
EASEMENT SIXTY (60') MORE OR LESS IN :
WIDTH ... :

CONDEMNOR :
vs. : EMINENT DOMAIN PROCEEDINGS
ERIC O. GILLILAND and BERNADETTE : IN REM
GILLILAND, his wife, :

CONDEMNEES : TYPE OF PLEADING: PRELIMINARY
: OBJECTIONS TO THE
: DECLARATION OF TAKING

: FILED ON BEHALF OF:
: CONDEMNEES

: ATTORNEYS FOR CONDEMNEES:
: David C. Mason, Esquire
: Supreme Court ID #39180
: DAVID C. MASON LAW OFFICE
: P.O. Box 28
: Philipsburg, PA 16866
: (814) 342-2240

: Susan J. Smith, Esquire
: Supreme Court ID #62531
: REAGER & ADLER, P.C.
: 2331 Market Street
: Camp Hill, PA 17011
: Telephone: (717) 763-1383

: ATTORNEY FOR CONDEMNOR:
: John R. Carfley, Esquire
: Supreme Court ID #17621
: P. O. Box 249
: Philipsburg, PA 16866
: (814) 342-5581

COPY



6 cent to Attn

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SERVICES,
CONDEMNOR : NO. 2004-1369 CD
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND :
Eminent Domain
Proceedings
In Rem

NOTICE TO PLEAD

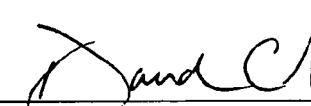
To: Houtzdale Municipal Authority, Condemnor
c/o John R. Carfley, Esquire
222 Presqueisle Street
Philipsburg, PA 16866

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Dated: October 8, 2004

Respectfully submitted,

BY:


David C. Mason, Esquire
Attorney I.D. No. 39180
409 North Front Street
PO Box 28
Philipsburg, PA 16866

Susan J. Smith, Esquire
Attorney I.D. No. 62531
2331 Market Street
Camp Hill, Pa 17011

Attorneys for Condemnees Eric and
Bernadette Gilliland

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL :
AUTHORITY, OF A UTILITY AND ACCESS EASEMENT :
SIXTY (60') MORE OR LESS IN WIDTH FROM THE :
POINT OF BEGINNING FOR A DISTANCE OF 5149.76 :
FEET MORE OR LESS IN LENGTH TO THE TERMINUS :
OF THE EASEMENT OR A TOTAL OF 7.093 ACRES :
OVER, ACROSS, UPON AND THROUGH CERTAIN :
PROPERTY, SITUATE IN GULICH TOWNSHIP, :
CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO :
BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF :
CONSTRUCTING, EXPLORING, DRILLING AND :
EXPLOITATING THE SURFACE SOURCE, UNDERGROUND :
WATER RESOURCES AND THE INTAKE AT THE :
MOSHANNOON CREEK HEADWATERS, FOR THE PURPOSE :
OF CONSTRUCTING, MAINTAINING AND REPAIRING :
OF PRODUCTION WELLS, MONITORING WELLS, AND :
SURFACE SOURCES TOGETHER WITH THE NECESSARY :
WATER TRANSMISSION PIPELINE, ELECTRICAL :
POWERGRID AND OTHER FACILITIES INVOLVED IN :
THE UPGRADE AND RENOVATION OF HMA'S WATER :
SUPPLY, WATER DISTRIBUTION AND WATER :
TREATMENT SERVICES, :
CONDEMNOR :
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND :
NO. 2004-1369 CD
Eminent Domain
Proceedings
In Rem

PRELIMINARY OBJECTIONS
TO THE DECLARATION OF TAKING
FILED BY HOUTZDALE MUNICIPAL AUTHORITY

AND NOW, comes Eric and Bernadette Gilliland, Condemnees, by and through their attorneys David C. Mason, Esquire, and Reager & Adler, PC, and file Preliminary Objections pursuant to 26 P.S. Section 1-406 to Houtzdale Municipal Authority's Declaration of Taking and in support thereof aver the following:

1. Eric and Bernadette Gilliland (“Gillilands”) are title owners of property located at 548 Hunt Club Drive, Ginter, Pennsylvania 16651 (“Gilliland Property”).

2. The Gillilands own and operate a hunting preserve on the Gilliland Property, including, among others, such uses and activities as field dog trials, archery shoots, upland bird hunting, turkey hunting, deer hunting, dog training and clay target shooting (“Hunting Preserve”). The Gillilands use the Gilliland Property for such uses and activities year round.

3. The Gillilands access the Gilliland Property by private drives that traverse the Gilliland Property and intersect with State Road 153 (“Gilliland Access”).

4. Houtzdale Municipal Authority (“Authority”) is a municipal authority organized under the Pennsylvania Municipal Authorities Act and operating in Clearfield County, Pennsylvania.

5. The Authority owns $325\pm$ acres, more or less, of property that abut Moshannon Creek and that has $2,500\pm$ linear feet of road frontage on State Road 453.

6. By Stipulation entered into on June 9, 2004, in the matter of *Houtzdale Municipal Authority v. Eric O. Gilliland and Bernadette Gilliland*, Docket No. 03-1895-CD, Court of Common Pleas of Clearfield County (“Stipulation”), the Authority agreed to in good faith to site and construct an access, at Gillilands cost and expense, from State Road 453 across the Authority Property to serve as access for the purpose described in the Declaration of Taking (“State Road 453 Access”).

7. The Authority made no reasonable or good faith effort to construct the State Road 453 Access.

8. On September 1, 2004, Houtzdale Municipal Authority filed a Declaration of Taking for a utility and vehicular easement over the Gilliland Property as described in the Declaration of Taking.

9. The vehicular easement sought by the Declaration of Taking includes the area presently occupied by the Gilliland Access, which is used by the Gillilands to access and traverse the Gilliland Property.

10. Hunting Preserve activities take place around and across the vehicular easement sought by the Declaration of Taking.

11. Pursuant to 26 P.S. Section 1-406(4), Condemnees object to and hereby challenge the Declaration of Taking for the reasons that follow:

PRELIMINARY OBJECTION NO. 1

12. The Authority filed its Notice of Condemnation identifying its enabling authority as deriving from Title 55.

13. Title 55 provides no authority for the Authority to exercise the powers of eminent domain.

14. Pursuant to 26 P.S. Section 1-406(a)(1), the Gillilands object to the Declaration of Taking on the grounds that the Authority acted without the power or right to condemn Condemnees' property.

PRELIMINARY OBJECTION NO. 2

15. The power of eminent domain may not be employed unless the public is to be the primary and paramount beneficiary of its exercise. *In the Matter of Condemnation of Bruce*

Avenue, 438 Pa. 498, 504, 266 A.2d 96, 99(1970). The power of eminent domain may not be employed for the mere purpose of devoting it to the private use of another, even though there be involved in the transaction an incidental benefit to the public. *In Re Condemnation of Legislative Route 62214*, 425 Pa. 349, 229 A.2d 1(1967).

16. The taking of the Gilliland property is entirely unnecessary to accomplish the objective stated in the Declaration of Taking, as the Authority has within its means the ability to site and construct an equivalent access road (State Road 453 Access) over property owned by the Authority.

17. The Gillilands agreed in the aforementioned Stipulation to finance the cost of the access road over the Authority's property.

18. The Authority's actions in failing to exercise its rights under the Stipulation and instead condemning the Gilliland property demonstrates that the Authority is exercising its eminent domain powers arbitrarily, in bad faith and for a purpose other than the public good.

19. To the extent that the Authority states any public purpose for the Condemnation, that stated public purpose is either merely incidental or specious because there is no necessity or reason for the Authority to condemn the Gilliland Property given the State Road 453 Access recognized in the Stipulation.

20. Pursuant to 26 P.S. Section 1-406(a)(1) & (4), the Gillilands object to the Declaration of Taking on the grounds that, notwithstanding the Authority's purported public purpose for its exercise of eminent domain powers, the Authority's action is arbitrary, capricious, or actuated by bad faith, impermissible motive and for an improper purpose.

PRELIMINARY OBJECTION NO. 3

21. The Authority may not condemn a greater amount of property than is reasonably required for the contemplated purpose. *PennDOT v. Montgomery Township*, 655 A.2d 1086(1995); *Winger v. Aires*, 371 Pa. 242, 89 A.2d 521(1952).

22. By the Declaration of Taking, the Authority seeks to condemn the Gilliland Property to provide access to the Authority Property, notwithstanding the State Road 453 Access.

23. As previously stated, the Authority does not need the Gilliland property to accomplish the objective stated in the Declaration of Taking. Therefore, the Taking is excessive because it exceeds the amount reasonably required to fulfill the stated purpose.

24. The taking is excessive in nature because it not only diminishes the value of the portion of the property subject to the easement, but also diminishes the value of the remaining property by inhibiting its beneficial use as a hunting preserve.

25. Pursuant to 26 P.S. Section 1-406(a)(1) & (4), the Gillilands object to the Declaration of Taking on the grounds that the Authority abused its discretion and acted in bad faith to the extent it seeks to condemn Gilliland Property that is not reasonably required or necessary to provide access for the stated public purposes.

PRELIMINARY OBJECTION NO. 4

26. The Authority is required to give security of just compensation as it lacks the power of taxation. 26 P.S. 1-403 (a) & (b).

27. The Authority has posted a bond without surety as security for the Declaration of Taking.

28. Pursuant to 26 P.S. Sections 1-403(c) and 1-406(a)(2) and Article X, Section 4 of the Pennsylvania Constitution, the Gillilands object to the Declaration of Taking on the grounds that the bond posted by the Authority as security is inadequate, insufficient and valueless.

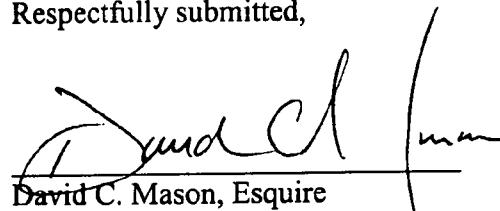
WHEREFORE, the Condemnees respectfully request This Honorable Court to enter an order:

- (i) sustaining their Preliminary Objections;
- (ii) terminating the condemnation action;
- (iii) revesting title to the condemned property in the Gillilands; and
- (iv) granting damages and such other relief as the Court deems just and proper.

DATED: October 8, 2004

Respectfully submitted,

BY:


David C. Mason, Esquire
I.D. No. 39180
409 North Front Street
PO Box 28
Philipsburg, PA 16866

Susan J. Smith, Esquire
I.D. No. 62531
2331 Market Street
Camp Hill, PA 17011

Attorneys for Condemnees Eric and Bernadette Gilliland

VERIFICATION

I, ERIC GILLILAND, verify the averments of the foregoing document are true and correct to my personal knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Date: 10/8/04

By: Eric Gilliland
Eric Gilliland

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

THE CONDEMNATION BY THE HOUTZDALE
MUNICIPAL AUTHORITY, OF A UTILITY
AND ACCESS EASEMENT SIXTY
EASEMENT SIXTY (60') MORE OR LESS IN
WIDTH ...

CONDEMNOR

vs.

ERIC O. GILLILAND and BERNADETTE
GILLILAND, his wife,

CONDEMNNEES

TYPE OF PLEADING: CERTIFICATE
OF SERVICE

FILED ON BEHALF OF:
CONDEMNNEES

ATTORNEYS FOR CONDEMNNEES:
David C. Mason, Esquire
Supreme Court ID #39180
DAVID C. MASON LAW OFFICE
P.O. Box 28
Philipsburg, PA 16866
(814) 342-2240

Susan J. Smith, Esquire
Supreme Court ID #62531
REAGER & ADLER, P.C.
2331 Market Street
Camp Hill, PA 17011
Telephone: (717) 763-1383

ATTORNEY FOR CONDEMNOR:
John R. Carfley, Esquire
Supreme Court ID #17621
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

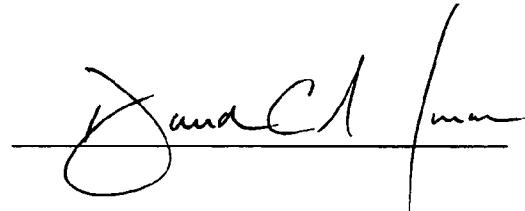
CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a true and correct copy of the foregoing document was served on the following individuals via United States First Class Mail, postage prepaid as follows:

John R. Carfley, Esquire
222 Presqueisle Street
Philipsburg, PA 16866

Attorney for Condemnor

Dated: October 8, 2004


John R. Carfley

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOCK CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

CERTIFICATE OF SERVICE

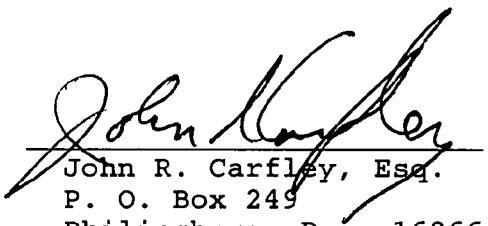
I hereby certify that I served a copy of the within Condemnor's Petition for Writ of Possession and Petition to Deposit Estimated Just Compensation by placing the same in the United States Mail, regular service to the following attorneys and parties of record by first class U.S. mail, postage prepaid on October 22, 2004.

David L. Mason, Esq.
P. O. Box 28
Philipsburg, Pa., 16866

Susan J. Smith, Esq.
REAGER & ADLER, P.C.
2331 Market Street
Camp Hill, Pa., 17011

FILED

6/10/59 AM NOCL
OCT 27 2004


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Condemnor

William C. Law
Prothonotary

(A)

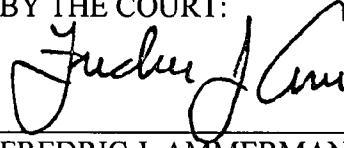
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

THE CONDEMNATION BY THE :
HOUTZDALE MUNICIPAL AUTHORITY :
OF A UTILITY AND ACCESS EASEMENT :
SIXTY (60') MORE OR LESS..... :
vs. : No. 04-1369-CD
ERIC O. GILLILAND and BERNADETTE :
GILLILAND, his wife :
:

ORDER

AND NOW, this 29th day of October, 2004, it is the
ORDER of the Court that argument on Attorney Mason's Preliminary Objections
filed in the above matter has been scheduled for the 18 day of
November, 2004, at 2:00 P.M, in Courtroom No. 1,
Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN

President Judge

02:42 PM
OCT 29 2004
3 CC Atty Mason -
to Serve

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOCK CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

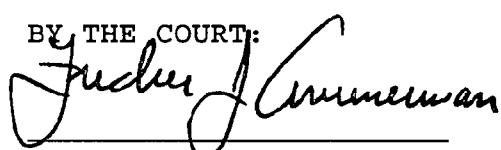
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

RULE RETURNABLE

AND NOW, this 1st day of November, 2004, upon consideration of the Motion to Correct a Typographical Error in the Declaration of Taking and the Resolution of Houtzdale Municipal Authority, Condemnor, a rule is granted upon Eric and Bernadette Gilliland, Condemnee, to show cause why the prayer of said Motion should not be granted.

Rule returnable the 18 day of November, 2004, at 2:00 P. M. in Courtroom Number 1, Clearfield County Courthouse, Clearfield, Pa. for hearing thereon.

BY THE COURT:



FILED

10 9:36 AM 10/2/04
cc to Atty. Conley

NOV 02 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

: NO. 2004-1369-CD
: Eminent Domain
: Proceeding-In Rem

FILED

OCT 29 2004

6/12:45 PM

William A. Shaw
Prothonotary
Court of Common Pleas

MOTION TO CORRECT A TYPOGRAPHICAL ERROR IN THE DECLARATION OF TAKING AND THE RESOLUTION FILED IN THE ABOVE CAPTIONED MATTER

AND NOW comes the Condemnor, Houtzdale Municipal Authority, which by and through its attorney, John R. Carfley, Esquire files this Motion to correct the statutory reference set forth in certain documents filed in the above Condemnation action including but not limited to the Declaration of Taking and the Resolution and in support thereof avers as follows:

1. Condemnor filed its Declaration of taking and its Resolution and other supporting documents on September 1, 2004.
2. In the proceeding, Condemnor cited as the enabling statute granting Condemnor the authority to act in the acquisition of property, the Municipal Authorities Act of June 19, 2001 P.L. 287

Number 22.

3. In the Declaration of Taking and the Resolution, however, Condemnor inadvertently stated that the text which contained the enabling sections appeared in Volume 55 P.A.C.S.A. §5601 et. seq. (The Act) specifically Sections 5607(d)(15) and 5615(a) of the Act and the Eminent Domain Code, Act of June 22, 1964, P.L. 84 as amended, Article IV, Section 402 (26 P.S. 1-402 et. seq.) when, in fact, the correct citation should have been 53 Pa.C.S.A. Section 5601 et. seq.

4. This referenced volume was a typographical error, but notwithstanding the obvious erroneous nature of this citation, Condemnee cited this technical defect as a preliminary objection to Condemnor's authority to acquire property.

5. Counsel for Condemnee correctly pointed out that 55 Purdons does not deal with the Municipal Authorities Act, which is reported in 53 Pa.C.S.A. at the specified references herein mentioned.

6. In fact, 55 P.S. deals with Navigation, not Municipal Authorities.

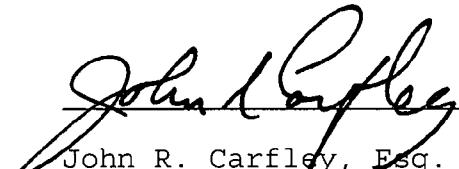
7. All other references to the Amending Act of 2001 were properly cited by Condemnor as was the text of "The Act."

8. Condemnor also correctly cited the references to the Eminent Domain Code under which the Municipal Authority exercised it's right to Condemn private property.

9. Since the reference was incorrectly cited as the result of a typographical error and did not prejudice the Condemnee in any way Condemnor would ask the Court to allow the Condemnor to correct this error in the originally filed documents.

10. As to the preliminary objection regarding the right of the Authority to condemn property, the Declaration of Taking and the Resolution, as well as all other documents filed of record specifically indicates that the Condemnor is condemning the right of way pursuant to the Municipal Authorities Act and, in that context, the actual reference to the Act was simply a typographical error as to the volume within which the text of the Enabling Act appears.

WHEREFORE, Condemnor, requests that this Honorable Court enter an Order directed to Eric and Bernadette Gilliland (Condemnees) to appear and show cause why the Condemnor should not be permitted to correct the citation by way of a praecipe to amend the referenced documents.



John R. Carfley, Esq.
Attorney for Condemnor
222 Presqueisle Street
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

Dated: October 28, 2004

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Donald O'Rorke

Dated: 10-25-04

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNED, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

RECEIVED
11-12-04

012:11 62 500 to
NOV 02 2004
B&L

William A. Shaw
Notary
NO. 2004-1369-CD

Eminent Domain
Proceeding-In Rem

CONDEMNOR

CONDEMNED: ERIC AND BERNADETTE GILLILAND:

AFFIDAVIT IN SUPPORT OF CONDEMNOR'S MOTION TO ACQUIRE POSSESSION
AND TO DISMISS CONDEMNED'S PRELIMINARY OBJECTIONS

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CENTRE :

Personally appeared before me the undersigned, Brent A. Thomas, C. P. A. who being duly sworn according to law deposes and states as follows:

1. I am Brent A. Thomas, an adult individual, certified public accountant, currently employed by the firm of Johnston, Nelson and Shimmel, LLP, of 106 E. Pine Street, Clearfield County, Pennsylvania, 16830.

2. The said firm acts as the sole accounting firm for the Houtzdale Municipal Authority, a municipal body organized under the provisions of the Municipalities Act of June 19, 2001, P.L. 287, No. 22, 53 Pa. C.S.A. §5601 et. seq. ("The Act").

3. As part of our duties for the Authority we are required to prepare a financial statement at the conclusion of each year after performing an audit for the Authority. The most recent audit and financial statement was completed in 2003, and a certified copy of the same is attached hereto as Exhibit A.

4. The said Authority according to this financial statement

and according to all records made available to this accounting firm had fixed assets of over \$18,000,000.00 and liquid assets of over \$2,500,000.00 which are readily available through various lending institutions in the County. These liquid assets are available to the said Authority as bank deposits, certificates of deposit, and/or other liquid accounts made readily available and designated as capital accounts and other accounts as specified in the financial statement.

5. These assets are available to the Authority for use in the acquisition of properties or for other property improvements as specified by the Board of Directors of the Municipal Authority upon the suggestion of its engineering and/or hydrogeological experts.

6. The said audits of the Authority are conducted each year and are performed by this firm for submission to the Board and other necessary parties who require confirmation of the financial undertakings of the Authority.

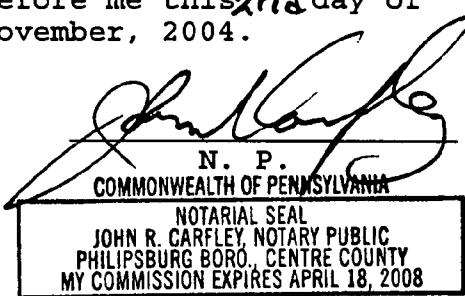
7. In conjunction with the Moshannon Creek project the said Authority filed a Declaration of Taking in order to acquire a right of way by virtue of its authority under the Eminent Domain Code and in conjunction with the filing of the Declaration of Taking filed a bond without surety under which the Houtzdale Municipal Authority as the obligor held itself firmly bound unto the Commonwealth of Pennsylvania, obligee, for the use and benefit of Eric and Bernadette Gilliland the owner or owners of the properties upon which the right of way being condemned was located for such damages as the Condemnee might be entitled to receive after the same has been agreed upon or has been assessed in the manner prescribed by law.

8. Under said bond the Authority is bound to pay the amount of damages as the Condemnee shall be entitled to receive and the Authority, recognizing said obligation, pledged its fixed and liquid assets for that purpose.

9. It is my opinion that the bond which is attached to the Declaration of Taking is sufficient collateral to guarantee payment of the reasonable value of the right of way as established by a qualified real estate appraisal to the extent that said fixed and liquid assets of the Authority are more than sufficient to meet that obligation.

Sworn to and subscribed
before me this 27th day of
November, 2004.

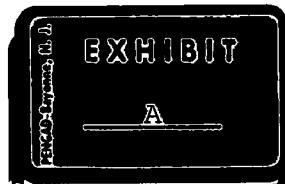
Brad G. Premer



Houtzdale Municipal Authority

FINANCIAL STATEMENTS

December 31, 2003 and 2002



Houtzdale Municipal Authority

TABLE OF CONTENTS

	<u>Page Number</u>
Independent Auditors' Report	1
Balance Sheets	2
Statements of Revenues, Expenses and Changes in Retained Earnings	3
Statements of Cash Flows	4
Notes to Financial Statements	5 – 10
Report on Compliance and on Internal Control over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards	11

Johnston, Nelson & Shimmel, LLP
Certified Public Accountants

INDEPENDENT AUDITORS' REPORT

To the Board of Directors
Houtzdale Municipal Authority
Houtzdale, Pennsylvania

We have audited the balance sheets of Houtzdale Municipal Authority as of December 31, 2003 and 2002, and the related statements of revenues, expenses and changes in retained earnings and cash flows for the years then ended. These financial statements are the responsibility of the Authority's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 1 to the financial statements, the financial statements present only the Houtzdale Municipal Authority and are not intended to present fairly the financial position and results of operations of the Borough of Houtzdale, PA, in conformity with accounting principles generally accepted in the United States of America.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Houtzdale Municipal Authority at December 31, 2003 and 2002, and the results of its operations and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated May 21, 2004, on our consideration of Houtzdale Municipal Authority's internal control structure over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grants. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

Johnston, Nelson & Shimmel LLP

Clearfield, Pennsylvania
May 21, 2004

Houtzdale Municipal Authority
BALANCE SHEETS
As of December 31, 2003 and 2002

	<u>ASSETS</u>	<u>2003</u>	<u>2002</u>
CURRENT ASSETS			
Cash	\$ 2,651,952	\$ 2,074,272	
Accounts Receivable - Consumers	21,308	35,894	
Accounts Receivable - Prison	151,188	114,809	
Accounts Receivable - Other	885	1,951	
Estimated Unbilled Water Service	152,740	155,484	
Interest Receivable	17,383	19,030	
Material and Supplies Inventory	61,217	58,964	
Prepaid Expenses	58,442	48,649	
Current Capital Contribution Receivable	<u>205,686</u>	<u>194,652</u>	
Total Current Assets	<u>3,320,801</u>	<u>2,703,705</u>	
FIXED ASSETS			
Cost	18,222,988	17,702,647	
Less: Accumulated Depreciation	<u>(3,480,000)</u>	<u>(3,080,511)</u>	
Net Fixed Assets	<u>14,742,988</u>	<u>14,622,136</u>	
OTHER ASSETS			
Debt Service Reserve Fund	351,509	345,017	
Capital Contribution Receivable	<u>1,698,309</u>	<u>1,888,601</u>	
Total Other Assets	<u>2,049,818</u>	<u>2,233,618</u>	
DEFERRED CHARGE			
Unamortized Note Issuance Cost	<u>63,028</u>	<u>70,907</u>	
TOTAL ASSETS	<u>\$ 20,176,635</u>	<u>\$ 19,630,366</u>	
<u>LIABILITIES AND FUND EQUITY</u>			
CURRENT LIABILITIES			
Accounts Payable - Trade	\$ 7,820	\$ 7,475	
Accounts Payable - Construction	268,802	84,094	
Accrued Interest Payable	16,077	17,558	
Payroll Taxes Payable	1,749	1,122	
Current Maturities of Long-Term Debt	<u>484,811</u>	<u>471,878</u>	
Total Current Liabilities	<u>779,259</u>	<u>582,127</u>	
LONG-TERM DEBT			
Compensated Absences	23,587	21,517	
Notes Payable	<u>5,359,054</u>	<u>5,843,866</u>	
Total Long-Term Debt	<u>5,382,641</u>	<u>5,865,383</u>	
FUND EQUITY			
Contributions in Aid of Construction	6,840,593	6,840,593	
Retained Earnings	<u>7,174,142</u>	<u>6,342,263</u>	
Total Fund Equity	<u>14,014,735</u>	<u>13,182,856</u>	
TOTAL LIABILITIES AND FUND EQUITY	<u>\$ 20,176,635</u>	<u>\$ 19,630,366</u>	

See accompanying notes to financial statements

Houtzdale Municipal Authority
 STATEMENTS OF REVENUES, EXPENSES AND
 CHANGES IN RETAINED EARNINGS
 For the Years Ended December 31, 2003 and 2002

	<u>2003</u>	<u>2002</u>
OPERATING REVENUES		
Water Sales	\$ 2,002,801	\$ 1,874,139
Penalties Imposed	20,363	8,913
Other Operating Income	21,255	22,540
Total Operating Revenue	<u>2,044,419</u>	<u>1,905,592</u>
OPERATING EXPENSES		
Water System Salaries	242,677	237,524
Collection System Expense	1,758	1,384
Purification System Expense	32,904	53,902
Pumping System Expense	2,786	1,796
Distribution System Expense	30,866	32,395
Utilities and Telephone	113,279	105,452
General Property Expense	41,007	34,408
Administrative Salaries	91,171	88,381
Office Expense	10,019	14,831
Taxes:		
Social Security	25,539	24,932
Unemployment	2,349	1,848
Professional Services	34,777	39,266
Insurance	136,032	106,363
Pension	16,823	16,103
Vehicle Expense	10,107	8,210
Depreciation Expense	417,550	398,510
Miscellaneous Expense	5,227	5,268
Total Operating Expenses	<u>1,214,871</u>	<u>1,170,573</u>
INCOME FROM OPERATIONS	<u>829,548</u>	<u>735,019</u>
NON-OPERATING INCOME (EXPENSE)		
Interest on Investments	134,651	163,913
Tax Refunds	0	968
Gain on Sale of Equipment	0	14,944
Interest Expense	(149,441)	(162,374)
Amortization of Note Issuance Costs	(7,879)	(7,878)
Net Timber Sales	25,000	65,185
Total Non-Operating Income (Expense) - Net	<u>2,331</u>	<u>74,758</u>
NET INCOME	<u>831,879</u>	<u>809,777</u>
RETAINED EARNINGS - Beginning	<u>6,342,263</u>	<u>5,532,486</u>
RETAINED EARNINGS - Ending	<u>\$ 7,174,142</u>	<u>\$ 6,342,263</u>

See accompanying notes to financial statements

Houtzdale Municipal Authority
 STATEMENTS OF CASH FLOWS
 For the Years Ended December 31, 2003 and 2002

	2003	2002
CASH FLOWS FROM OPERATING ACTIVITIES		
Cash Received from Customers	\$ 2,004,115	\$ 1,901,908
Cash Received from Other Sources	47,321	88,280
Cash Payments to Suppliers	(474,399)	(471,880)
Cash Payments to Employees	(331,926)	(324,229)
Net Cash Provided by Operating Activities	<u>1,245,111</u>	<u>1,194,079</u>
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES		
Contributions in Aid of Construction	0	39,466
Capital Contribution from Prison	179,258	169,097
Proceeds from Sale of Equipment	0	38,000
Principal Paid on Loans	(471,879)	(474,754)
Interest Paid on Loans	(150,922)	(164,502)
Acquisition and Construction of Fixed Assets	(353,694)	(529,118)
Net Cash Used in Capital and Related Financing Activities	<u>(797,237)</u>	<u>(921,811)</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest Received	<u>136,298</u>	<u>165,467</u>
NET INCREASE IN CASH AND CASH EQUIVALENTS	584,172	437,735
CASH AND CASH EQUIVALENTS - BEGINNING OF YEAR	<u>2,419,289</u>	<u>1,981,554</u>
CASH AND CASH EQUIVALENTS - END OF YEAR	<u>\$ 3,003,461</u>	<u>\$ 2,419,289</u>
RECONCILIATION OF INCOME FROM OPERATIONS TO NET CASH PROVIDED BY OPERATING ACTIVITIES		
Income from Operations	\$ 829,548	\$ 735,019
Depreciation	417,550	398,510
Tax Refunds	0	968
Net Timber Sales	25,000	65,185
(Accrue) Decrease in Accounts Receivable - Consumer	14,586	4,159
(Accrue) Decrease in Accounts Receivable - Prison	(36,379)	15,553
(Accrue) Decrease in Accounts Receivable - Other	1,066	(413)
(Accrue) Decrease in Estimated Unbilled Water Service	2,744	(856)
(Accrue) Decrease in Material and Supplies Inventory	(2,253)	(1,949)
(Accrue) Decrease in Prepaid Insurance	(9,793)	(23,616)
Increase (Decrease) in Accounts Payable - Trade	345	(298)
Increase (Decrease) in Payroll Taxes Payable	627	14
Increase (Decrease) in Accrued Compensated Absences	2,070	1,803
Net Cash Provided by Operating Activities	<u>\$ 1,245,111</u>	<u>\$ 1,194,079</u>

See accompanying notes to financial statements

Houtzdale Municipal Authority
NOTES TO FINANCIAL STATEMENTS
As of December 31, 2003 and 2002

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Reporting Entity – Houtzdale Municipal Authority was organized under the Municipality Authorities Act of 1945, PL382, as amended, pursuant to an ordinance of the Borough of Houtzdale, PA. The Authority operates and maintains a water supply works system which services Houtzdale Borough and surrounding areas.

The financial statements of the Authority conform to generally accepted accounting principles applicable to state and local governments. Generally accepted accounting principles for local governments include those principles prescribed by the Governmental Accounting Standards Board (GASB), the American Institute of Certified Public Accountants in the publication entitled Audits of State and Local Governmental Units and by the Financial Accounting Standards Board (when applicable). The more significant accounting policies of the Authority are described below.

Financial Reporting Entity – The financial statements of the Authority pertain solely to the water supply works and distribution systems. The criteria for including organizations as component units within a reporting entity, as set forth in the Government Accounting Standards Board (GASB) Statement No. 14 *Defining the Financial Reporting Entity* include whether:

- the organization is legally separate (can sue and be sued in their own name)
- the Authority holds the corporate powers of the organization
- the Authority appoints a voting majority of the organization's board
- the Authority is able to impose its will on the organization
- the organization has the potential to impose a financial benefit/burden on the Authority
- there is fiscal dependency by the organization on the Authority

Based on the aforementioned criteria, there were no other units to be included in the Authority's financial reporting entity.

Basis of Accounting – The Authority accounts for its operations as an enterprise fund which operates similar to a business by rendering services to the general public on a fee basis. The Authority's financial statements are presented using the accrual basis of accounting, which recognizes revenues when earned and expenses when the related liabilities are incurred.

Use of Estimates - The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Accounts Receivable - The Authority grants credit to customers in the vicinity of the operating locations. The accounts receivable are considered fully collectible. Accordingly, no allowance for doubtful accounts is required. If accounts become uncollectible, they will be charged to operations when that determination is made.

Inventory – Materials and supplies are stated at the lower of cost or market value as determined by specific identification.

(Continued)

See accountants' report

Houtzdale Municipal Authority
 NOTES TO FINANCIAL STATEMENTS
As of December 31, 2003 and 2002

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Fixed Assets and Depreciation - Fixed assets are stated at cost. Costs of maintenance and repairs are expensed as incurred. Betterments and renewals are capitalized; fixed assets retired and their related accumulated depreciation are not removed from the accounts except for vehicles and minor equipment. Certain costs for line extension construction transferred to the Authority have been estimated using actual costs and the professional judgement of the engineers. Depreciation is computed using the straight-line method. The estimated asset lives range from five to twenty years for vehicles and equipment and forty-five years for the water supply and distribution systems.

Pension Plan - The Authority sponsors a simplified employee pension plan that covers all full time employees. Employees' elective contributions are permitted. The Authority contributes 7% of employees regular compensation. Payroll for the year ended December 31, 2003, totaled \$331,926 of which \$240,329 was covered under the plan. Employee contributions totaled \$12,015 and the employer contributions totaled \$16,823 for the year ended December 31, 2003.

Cash Equivalents - For purposes of reporting cash flows, cash and cash equivalents include money market accounts and any highly liquid debt instruments purchased with an original maturity of three months or less.

2. DEPOSITS AND INVESTMENTS

Pennsylvania statutes provide for investment of Governmental funds into certain authorized investment types including U.S. Treasury bills, other short-terms U.S. and Pennsylvania government obligations, and insured or collateralized time deposits and certificates of deposit. The statutes do not prescribe regulations related to demand deposits; however, they do allow the pooling of Governmental Funds for investment purposes.

The deposit and investment policy of the Authority adheres to state statutes and prudent business practice. Governmental Funds' amounts are either maintained in demand deposits, highly liquid money market funds, or certificates of deposit. These amounts are stated at cost, which approximates market. There were no deposit or investment transactions during the year that were in violation of either the state statutes or the policy of the Authority.

Deposits - At December 31, 2003, the deposits of the Authority can be categorized to indicate the level of risk assumed. Category 1 includes bank balances that are insured or collateralized with securities held by the Authority or its agent in the Authority's name. Category 2 includes bank balances collateralized with securities held by the pledging financial institution's trust department or agent in the Authority's name. Category 3 includes bank balances which are uncollateralized, including any bank balance that is collateralized with securities held by the pledging financial institution, or its trust department or agent, but not in the Authority's name.

	Carrying Amount	Bank Balance	Category 1	Category 3
GOVERNMENTAL FUNDS				
Cash	\$ 2,651,952	\$ 2,664,758	\$ 100,000	\$ 2,564,758
Certificate of Deposit	351,509	351,509	100,000	251,509
Total	\$ 3,003,461	\$ 3,016,267	\$ 200,000	\$ 2,816,267

See accountants' report

Houtzdale Municipal Authority
 NOTES TO FINANCIAL STATEMENTS
As of December 31, 2003 and 2002

3. WATER REVENUE AND OTHER FUNDS

The Loan Agreement dated January 7, 1997, authorizing the issuance of the Water Revenue Note - Series of 1997, established the following funds for the deposit and application of the revenues of the water system and proceeds received by the Authority:

Water Revenue Fund - All receipts and revenues from the water system, are to be deposited in the Water Revenue Fund. Money in the Water Revenue Fund is applied for purposes of paying all costs and expenses of operating and maintaining the water system, for paying administrative expenses and for paying the debt service on the Water Revenue Note and the PennVest Note.

Debt Service Reserve Fund - Concurrent with the issuance of the Water Revenue Note, \$292,688 was deposited into the Debt Service Reserve Fund. Money in the Debt Service Reserve Fund is to be applied toward the payment of principal and interest on the Water Revenue Note to the extent that money available in the Water Revenue Fund is deficient. If the amount on deposit in the Debt Service Reserve Fund is less than \$292,688, the Authority shall transfer money from the Water Revenue Fund to restore the deficiency over a period not to exceed two years. Earnings from the investments of funds in the Debt Service Reserve Fund are to be credited against the next debt service payment on the Water Revenue Note or transferred to the Water Revenue Fund. The Debt Service Reserve Fund consisted of a certificate of deposit with a balance of \$351,509 and \$345,017 at December 31, 2003 and 2002, respectively.

Construction Fund - Proceeds from the Water Revenue Note, the PennVest Note, other loans, grants and payments from any source for the acquisition and construction of the water system are to be deposited in the Construction Fund. Funds deposited in the Construction Fund are to be applied for payment of costs of acquisition and construction of the water system, subject to the provisions of Section 4.04 of the Loan Agreement.

4. PROPERTY AND EQUIPMENT

A summary of the changes in fixed assets for the year ended December 31, 2003 follows:

	<u>Balance Beginning</u>	<u>Additions</u>	<u>Retirements</u>	<u>Balance Ending</u>
Water System and Plant Equipment	\$ 16,631,766	\$ 210,608	\$ 0	\$ 16,842,374
Office Equipment	36,560	0	0	36,560
Trucks and Trailers	194,829	39,591	25,497	208,923
Construction in Progress	839,492	450,142	154,503	1,135,131
Total	\$ 17,702,647	\$ 700,341	\$ 180,000	\$ 18,222,988

A summary of property and equipment as of December 31, 2003 and 2002 follows:

	<u>2003</u>	<u>2002</u>
Water System and Plant Equipment	\$ 16,842,374	\$ 16,631,766
Office Equipment	36,560	36,560
Trucks and Trailers	208,923	194,829
Construction in Progress	1,135,131	839,492
Total Cost	18,222,988	17,702,647
Less: Accumulated Depreciation	(3,480,000)	(3,080,511)
Net Property and Equipment	\$ 14,742,988	\$ 14,622,136

Reference is made to note 8 for additional information pertaining to construction projects.

See accountants' report

Houtzdale Municipal Authority
NOTES TO FINANCIAL STATEMENTS
As of December 31, 2003 and 2002

5. CAPITALIZED INTEREST

The Authority capitalizes the interest cost on construction financing loans from the date of borrowing until the assets acquired with the borrowings are ready for their intended use. No interest costs were capitalized for the years ended December 31, 2003 and 2002.

6. COMPENSATED ABSENCES

The Authority accrues vacation leave and similar compensated absences based on past service in accordance with GASB Statement No. 16, Accounting for Compensated Absences.

The Authority's union contract provides for compensated vacation and sick leave. An employee shall be entitled to compensation for unused vacation days at their regular rate during the last pay period of the calendar year. Sick leave may accumulate up to a maximum of one hundred twenty (120) days with thirty percent (30%) of accumulated sick days to be paid an employee upon retirement. As of December 31, 2003 and 2002, the accrued liability for vacation and sick leave totaled \$23,587 and \$21,517, respectively.

7. LONG-TERM DEBT

<u>Notes Payable</u>	<u>2003</u>	<u>2002</u>
Pennsylvania Infrastructure Investment Authority Loan, terms as discussed further in this note.	\$ 3,988,865	\$ 4,280,744
Water Revenue Note – Series of 1997, terms as discussed further in this note.	<u>1,855,000</u>	<u>2,035,000</u>
	<u>5,843,865</u>	<u>6,315,744</u>
Less: Current Portion	<u>484,811</u>	<u>471,878</u>
Long-Term Debt	<u>\$ 5,359,054</u>	<u>\$ 5,843,866</u>

Maturities of the notes payable, including interest, for each of the next five years follows:

<u>Year</u>	<u>Total</u>	<u>Principal</u>	<u>Interest</u>
2004	\$ 622,763	\$ 484,811	\$ 137,952
2005	622,175	497,772	124,403
2006	626,037	515,763	110,274
2007	624,075	528,785	95,290
2008	621,563	541,837	79,726
2009-2013	2,534,302	2,371,045	163,257
2014-2016	916,713	903,852	12,861
	<u>\$ 6,567,628</u>	<u>\$ 5,843,865</u>	<u>\$ 723,763</u>

(Continued)

See accountants' report

Houtzdale Municipal Authority
NOTES TO FINANCIAL STATEMENTS
As of December 31, 2003 and 2002

7. LONG-TERM DEBT (CONTINUED)

Pennsylvania Infrastructure Investment Authority Loan - On January 12, 1995, the Authority entered into a \$6,172,562 loan agreement with the Pennsylvania Infrastructure Investment Authority for the acquisition and construction of a water filtration system. At December 31, 2003, borrowings outstanding under the agreement were \$3,988,865.

The loan provides for interest on the unpaid principal balance outstanding at a rate of 1% per annum. Effective February 2001 the loan was placed on final amortization which provides for principal and interest payments of \$27,779, with the final installment due September 1, 2016.

The loan is secured by all the revenues and receipts from the water system.

Water Revenue Note - Series of 1997 - The Authority issued its Water Revenue Note under and pursuant to the provisions of a loan agreement, dated January 7, 1997, with a local bank. The principal sum of \$2,910,000 provides permanent financing with respect to the water filtration system. Principal in the amount of \$40,000 to \$140,000 plus interest at a rate of 5.5% per annum are payable semiannually, on May 15 and November 15, with the final installment due November 15, 2012. At December 31, 2003, borrowings outstanding under the agreement were \$1,855,000.

The note is secured by all the revenues and receipts from the water systems, the debt service reserve fund and the construction fund.

8. CONSTRUCTION PROGRAMS AND FINANCIAL ARRANGEMENTS

Water System Improvements - The Authority is involved in the monitoring and drilling of production wells. The project feasibility study has been approved by the Department of Environmental Protection. The project is currently in the planning stage and costs totaling \$862,366 have been incurred as of December 31, 2003. Total project costs are not able to be estimated at this time.

The Authority is involved in a plant system upgrade. Total project costs are estimated at \$310,000 of which \$247,731 have been incurred as of December 31, 2003.

The Authority is involved in various other waterline extension and improvement projects. Total project costs are not able to be estimated at this time. The Authority has engineering costs totaling \$25,034 as of December 31, 2003.

9. LEASE AGREEMENT

On September 13, 1994, the Authority entered into a lease agreement with the Moshannon Valley School District to lease their water tower structure located Houtzdale, Pennsylvania. The Authority is required to pay a nominal rental fee in the amount of \$1 per year and 50% of the yearly tank maintenance contract on or before September 13 of each year. The annual maintenance contract is currently \$5,500 and future maintenance contracts are expected to be of similar terms and conditions. The lease will continue for a period of five years and will automatically renew for an additional five years unless terminated by either party.

See accountants' report

Houtzdale Municipal Authority
NOTES TO FINANCIAL STATEMENTS
As of December 31, 2003 and 2002

10. OPERATING LEASE

The Authority has a four year operating lease for computer equipment, which expires March 2004. The lease requires monthly payments of \$314. Rent expense for the years ended December 31, 2003 and 2002 totaled \$3,768.

11. WATER SERVICE AGREEMENT

In October 1996, the Authority entered into a 20 year water service agreement with the Commonwealth of Pennsylvania, Department of Corrections, to provide water supply services to the state correctional institution at Houtzdale, Pennsylvania. A monthly fee is to be paid by the Commonwealth to the Authority for water usage based on the estimated net annual operating and maintenance costs incurred by the Authority as defined in the agreement. On or before May 1 of each year the monthly fee is recomputed based on the actual net annual operating and maintenance costs of the Authority. The amount of any difference is adjusted over the remaining monthly payments in that year. The fee for water service for 2003 has been estimated at \$1,065,917, which is 53.2% of the average monthly water billing of the Authority.

The Commonwealth may conduct an audit at any time of the costs used in the calculation of the monthly fee. In the event mistakes and/or inaccuracies in the monthly fee are discovered, all previously paid fees will be appropriately adjusted.

In addition, the Commonwealth agreed to provide a capital contribution to the Authority to pay a portion of the water filtration project due to the increase in water supply required. The Authority financed the Commonwealth's share of the net costs of the project through the issuance of its Water Revenue Note - Series of 1997 in the amount of \$2,910,000. The \$2,910,000 was recorded as a capital contribution receivable and is payable by the Commonwealth in amounts equal to the debt service payable by the Authority on the Water Revenue Note. At December 31, 2003 and 2002, the capital contribution receivable from the Commonwealth totaled \$1,903,995 and \$2,083,253, respectively.

Reference is made to Note 7 for additional information pertaining to the Water Revenue Note.

12. CONTINGENT LIABILITIES

The Authority is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions; and natural disasters. These risks are covered by commercial insurance purchased from independent third parties. Settled claims from these risks have not exceeded commercial insurance coverage for the past three years. There were no significant reductions in insurance coverage in the prior year.

13. LITIGATION

Litigation involving the Pennsylvania Department of Environmental Protection operating permits and the Pennsylvania Fish and Boat Commission and the Pennsylvania Environmental Defense Foundation has been settled by a Consent Order and Agreement entered into August 3, 1999.

The Consent Order and Agreement requires the Authority to institute a comprehensive monitoring plan to determine the possible impact on stream flows and the surrounding water shed. If at any time it is determined there is an impact, the parties shall determine within six (6) months what remedial or other action, if any, shall be taken.

See accountants' report

Johnston, Nelson & Shimmel, LLP
Certified Public Accountants

**REPORT ON COMPLIANCE AND ON INTERNAL CONTROL OVER FINANCIAL
REPORTING BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED
IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

To the Board of Directors
Houtzdale Municipal Authority
Houtzdale, Pennsylvania

We have audited the financial statements of Houtzdale Municipal Authority as of and for the year ended December 31, 2003, and have issued our report thereon dated May 21, 2004. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Compliance

As part of obtaining reasonable assurance about whether Houtzdale Municipal Authority's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered Houtzdale Municipal Authority's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control over financial reporting. However, we noted certain matters involving the internal control over financial reporting and its operation that we consider to be reportable conditions. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control over financial reporting that, in our judgement, could adversely affect Houtzdale Municipal Authority's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statements. A reportable condition noted is the internal controls lack appropriate segregation of duties, due to the limited size of the Authority.

A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses. However, we believe the reportable condition described above is not a material weakness.

This report is intended solely for the information and use of the Board of Directors, management, others within the organization, and the Pennsylvania Department of Community and Economic Development and is not intended to be and should not be used by anyone other than these specified parties.

Clearfield, Pennsylvania
May 21, 2004

Johnston, Nelson & Shimmel LLP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED

0 12:16 DA 3 Oct 2004
NOV 02 2004

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITuate IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNees, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNees: ERIC AND BERNADETTE GILLILAND:

AFFIDAVIT IN SUPPORT OF CONDEMNOR'S MOTION TO ACQUIRE POSSESSION OF THE CONDEMNED PROPERTY AND IN FURTHER SUPPORT OF CONDEMNOR'S MOTION TO DISMISS CONDEMNees' PRELIMINARY OBJECTIONS

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CENTRE :

Personally appeared before me the undersigned, Donald D. Ross, Jr. who being duly sworn according to law deposes and states as follows:

1. I am Donald D. Ross, Jr. president of the Houtzdale Municipal Authority, a municipal body organized under the provisions of the Municipalities Act of June 19, 2001, P.L. 287, No. 22, 53 Pa. C.S.A. §5601 et. seq. ("The Act").

2. I have represented the Board as its Chairman for over ten (10) years and in that capacity approved the Resolution, Declaration of Taking, and the Bond without surety as well as all other documents coincident to the condemnation of the right of way over the Gilliland property from State Road 453 to the Moshannon Creek headwaters.

3. As the Chairman of the Board of Directors I was authorized by Resolution unanimously adopted by all Board members of the

Authority to execute the Bond and to pledge sufficient assets to offset the cost of acquiring the right of way specified in the Declaration of Taking and to provide assurances based upon the fixed assets of the Authority consisting of over \$18,000,000.00 and the liquid assets of the Authority of over \$2,500,000.00 respectively which stand as collateral and assurance for the payment of damages to which the Gillilands might be entitled as a result of this taking.

4. Based upon the information provided to the Authority by our accounting firm, it is my opinion and I do aver that the said Authority has fixed assets of over \$18,000,000.00 and liquid assets available in local banking institutions of \$2,500,000.00 to pledge as collateral for the acquisition of this right of way which has been appraised at no more than \$30,000.00 by a competent real estate agent qualified to present opinions as to the fair market value of such property in condemnation proceedings.

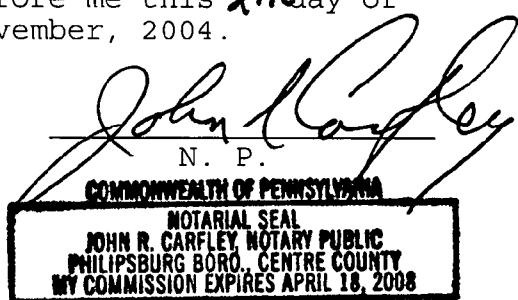
5. All of this information is set forth not only in the Resolution unanimously adopted by the Board but also in the open ended bond without surety which specifies that the assets of the Authority are pledged in order to protect the interest of the Condemnee during the course of this proceeding and to assure and provide assurances that the said Condemnee will receive all funds mandated under the Eminent Domain Code for the condemnation of their property under the circumstances of this case.

6. The Resolution signed by me and attested by the Authority's secretary, James M. McHugh, on August 31, 2004, specifically provides that any damages which may be awarded to any party in interest including the owner or owners of the said properties located within the area shall be paid out of funds of the Houtzdale Municipal Authority based upon an estimate of just compensation as provided by an appraisal for the right of way prepared for the Condemnor by a qualified real estate agent.

7. The Board of Directors of the Authority stands ready, willing and able to utilize the assets of the Authority to satisfy any and all debts which may be incurred as a result of the taking of the right of way crossing the Gilliland property in the area specified in the Declaration of Taking and supporting documentation.

Donald D. Ross

Sworn to and subscribed
before me this 2nd day of
November, 2004.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.
CIVIL ACTION - LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SERVICES,

*
* No. 04-1369-CD
*
*
*Eminent Domain
*Proceeding - In Rem

CONDEMNOR

FILED
NOV 03 2004
n/14451c
William A. Shaw
Notary/Clerk of Courts
N.C.C.

CERTIFICATE OF SERVICE

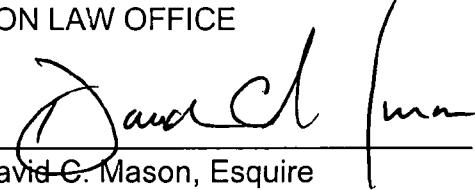
I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of an ORDER dated October 29, 2004, filed to the above captioned action, by placing the

same in the United States mail, postage prepaid and addressed as follows:

John R. Carfley, Esquire
P. O. Box 249
Philipsburg, PA 16866

DATED: *Nov 2, 2004*

MASON LAW OFFICE

By: 

David C. Mason, Esquire
Attorney for Condemnees

64

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

THE CONDEMNATION BY THE :
HOUTZDALE MUNICIPAL AUTHORITY :
OF A UTILITY AND ACCESS EASEMENT :
SIXTY (60') MORE OR LESS..... :
vs. : No. 04-1369-CD
ERIC O. GILLILAND and BERNADETTE :
GILLILAND, his wife :
:

ORDER

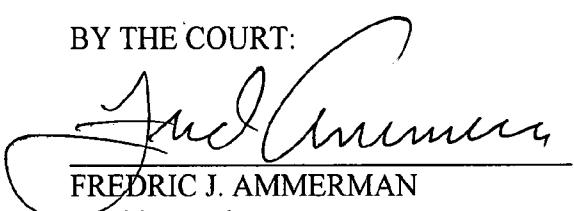
AND NOW, this 4th day of November, 2004, it is the ORDER of the Court that argument on Petition to Deposit Estimated Just Compensation, Preliminary Objections, Petition for Houtzdale Municipal Authority, Condemnor, for Writ of Possession Notwithstanding Pendency of Preliminary Objections and Motion to Correct Typographical Error in the Declaration of the Taking and the Resolution Filed are all now scheduled for Friday, November 12, 2004 at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA. One-half (1/2) day has been allotted for these matters.

FILED

6/11/2884
NOV 04 2004 8:04

William A. Shaw
Prothonotary/Clerk of Courts
ICC Attns: Carley, Mason
(CJA envelopes)

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE :
MUNICIPAL AUTHORITY, OF A UTILITY :
AND ACCESS EASEMENT SIXTY : NO. 2004-1369 CD
EASEMENT SIXTY (60') MORE OR LESS IN :
WIDTH . . . :
CONDEMNOR :
vs. : EMINENT DOMAIN PROCEEDINGS
ERIC O. GILLILAND and BERNADETTE :
GILLILAND, his wife, : IN REM
CONDEMNNEES : TYPE OF PLEADING: ANSWER
: IN OPPOSITION TO PETITION
: FOR WRIT OF POSSESSION
: :
: FILED ON BEHALF OF:
: CONDEMNNEES
: :
: ATTORNEYS FOR CONDEMNNEES:
: David C. Mason, Esquire
: Supreme Court ID #39180
: DAVID C. MASON LAW OFFICE
: P.O. Box 28
: Philipsburg, PA 16866
: (814) 342-2240
: :
: Susan J. Smith, Esquire
: Supreme Court ID #62531
: REAGER & ADLER, P.C.
: 2331 Market Street
: Camp Hill, PA 17011
: Telephone: (717) 763-1383
: :
: ATTORNEY FOR CONDEMNOR:
: John R. Carfley, Esquire
: Supreme Court ID #17621
: P. O. Box 249
: Philipsburg, PA 16866
: (814) 342-5581

FILED 4CC
18-46301 Amy Mason
NOV 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SERVICES,

CONDEMNOR

NO. 2004-1369 CD

Eminent Domain
Proceedings
In Rem

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND

ANSWER IN OPPOSITION
TO PETITION FOR WRIT OF POSSESSION
FILED BY HOUTZDALE MUNICIPAL AUTHORITY

AND NOW, come Eric and Bernadette Gilliland, Condemnees, by and through their attorneys David C. Mason, Esquire, and Reager & Adler, PC, and file this Answer in Opposition to the Petition for Writ of Possession Filed by Houtzdale Municipal Authority pursuant to Pa. R.C.P. 206.2 and 46 J.D.R.C.P. 206(h).

1. Admitted. By way of further answer, Condemnees' Preliminary Objections objected to the Declaration of Taking on the following grounds: (1) the Authority lacked authority under Title 55 to exercise the power of eminent domain; (2) the Authority's action in condemning the property was arbitrary, capricious, or actuated by bad faith, impermissible motive and for an improper purpose because there is no public necessity for the condemnation; (3) the Authority abused its discretion and acted in bad faith by condemning a greater amount of property than is reasonably necessary; and (4) the Authority failed to give security as required by 26 P.S. § 1-403.

2. Admitted.

3. Admitted in part, denied in part. It is admitted that Condemnor communicated a written offer of compensation for Condemnee's real estate in the amount of \$19,703.89. To the extent the averments of Paragraph 3 relate to the validity of such assessment, those averments are specifically denied. By way of further answer, the document attached to the Petition for a Writ of Possession ("Petition") as Exhibit "A" speaks for itself.

4. Admitted in part, denied in part. It is admitted that Condemnor communicated with Condemnee by letter dated October 18, 2004. To the extent the averments of Paragraph 4 plead the validity of the Authority's notice to vacate, those averments are specifically denied. By way of further answer, the document attached to the Petition as Exhibit "B" speaks for itself.

5. Admitted in part, denied in part. It is admitted that Condemnee has withheld and continues to withhold possession of the property as described in the Declaration of Taking, based upon Condemnee's Preliminary Objections and the objections to the Petition set forth herein. To the extent the averments in Paragraph 5 suggest that the offer made by Condemnor in the letter of October 8, 2004 was a "fair market value" offer, such averment is specifically denied.

6. Denied. By way of further answer, Condemnor is not entitled to a writ of possession prior to this Court's disposition of Condemnee's preliminary objections. Section 1-407(a) of the

Eminent Domain Code, 26 P.S. § 1-407(a) provides that this Court, upon issuing a rule to show cause “may issue a writ of possession conditioned upon payment to the condemnee or into court of such estimated just compensation and on such other terms as the court may direct” “unless preliminary objections warranting delay are pending.” 26 P.S. § 1-407(a) (emphasis supplied). Preliminary objections “warranting delay” are those that challenge the authority or right of the condemnor to take the property or the adequacy of the security posted by the condemnor. *West Whiteland Assocs. v. Commonwealth Dept. of Transp.*, 690 A.2d 1266, 1270 (Pa. Cmwlth. 1997), *appeal denied*, 550 Pa. 714, 705 A.2d 1313 (1997); *In re Conway*, 432 A.2d 276, 278 n.3 (Pa. Cmwlth. 1981). The Gillilands have filed both types of preliminary objections. *See Conway*, 432 A.2d at 277-78 (vacating writ of possession where condemnee filed preliminary objections to taking challenging adequacy of bond and on ground that, *inter alia*, condemnation was not for a public purpose and condemnor was acting in bad faith). It is improper, therefore, for this Court to issue a writ of possession where “preliminary objections warranting delay are pending.” *In re Condemnation Proceeding in Rem by the Redevelopment Auth. of Philadelphia*, 686 A.2d 453, 454-55 (Pa. Cmwlth. 1996); *Conway*, 432 A.2d at 278 n.3 (“the issuance of a writ of possession to the condemnor prior to the proper disposition of preliminary objections which challenge the validity of the condemnation would be constitutionally infirm.”).

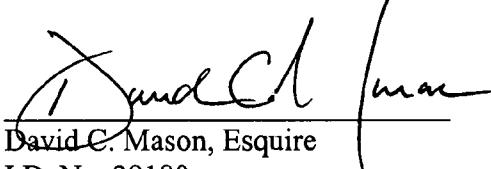
7. Denied. The response to Paragraph 6 is incorporated as if fully set forth herein.

WHEREFORE, the Authority's Petition for a Writ of Possession must be denied because the Gillilands have filed preliminary objections warranting delay by challenging the right and authority of the Authority to take the property at issue as well as the adequacy of the security posted by the Authority.

Respectfully submitted,

DATED: November 9, 2004

BY:


David C. Mason, Esquire
I.D. No. 39180
409 North Front Street
PO Box 28
Philipsburg, PA 16865

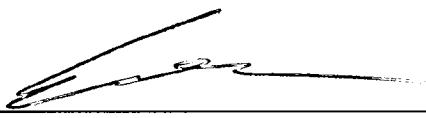
Susan J. Smith, Esquire
I.D. No. 62531
2331 Market Street
Camp Hill, PA 17011

Attorneys for Condemnees Eric and Bernadette Gilliland

VERIFICATION

I, ERIC GILLILAND, verify the averments of the foregoing document are true and correct to my personal knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Date: 8 Nov 04

By: 
Eric Gilliland

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a true and correct copy of the foregoing document was served on the following individuals via United States First Class Mail, postage prepaid as follows:

John R. Carfley, Esquire
222 Presqueisle Street
Philipsburg, PA 16866

Attorney for Condemnor

Dated: November 9, 2004

David C. Fuman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL :
AUTHORITY, OF A UTILITY AND ACCESS EASEMENT :
SIXTY (60') MORE OR LESS IN WIDTH FROM THE :
POINT OF BEGINNING FOR A DISTANCE OF 5149.76 :
FEET MORE OR LESS IN LENGTH TO THE TERMINUS :
OF THE EASEMENT OR A TOTAL OF 7.093 ACRES :
OVER, ACROSS, UPON AND THROUGH CERTAIN :
PROPERTY, SITUATE IN GULICH TOWNSHIP, :
CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO :
BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF :
CONSTRUCTING, EXPLORING, DRILLING AND :
EXPLOITATING THE SURFACE SOURCE, UNDERGROUND :
WATER RESOURCES AND THE INTAKE AT THE :
MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE :
OF CONSTRUCTING, MAINTAINING AND REPAIRING :
OF PRODUCTION WELLS, MONITORING WELLS, AND :
SURFACE SOURCES TOGETHER WITH THE NECESSARY :
WATER TRANSMISSION PIPELINE, ELECTRICAL :
POWERGRID AND OTHER FACILITIES INVOLVED IN :
THE UPGRADE AND RENOVATION OF HMA'S WATER :
SUPPLY, WATER DISTRIBUTION AND WATER :
TREATMENT SERVICES, :
CONDEMNOR :
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND :
NO. 2004-1369 CD
Eminent Domain
Proceedings
In Rem

ORDER

AND NOW, upon consideration of Condemnor's Petition for a Writ of Possession and
Condemnee's Answer in Opposition to the Petition for a Writ of Possession, it is hereby
ORDERED and DECREED that Condemnor's Petition is DENIED.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

FILED 5CC
NOV 10 2004 AMY
William A. Shaw
Prothonotary/Clerk of Courts

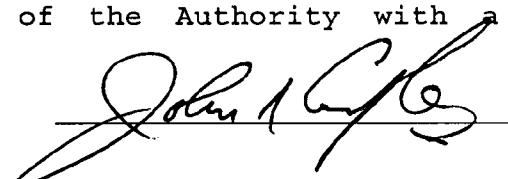
AFFIDAVIT IN SUPPORT OF CONDEMNOR'S
ANSWER TO PRELIMINARY OBJECTIONS

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CENTRE :

Personally appeared before me the undersigned, John R. Carfley, Esquire, who being duly sworn according to law deposes and states as follows:

1. I am an attorney duly licensed to practice law in the Commonwealth of Pennsylvania, Attorney Number 17621, and in that capacity have been retained to act as the solicitor for the Houtzdale Municipal Authority, a municipality corporation, organized under the laws of the Commonwealth of Pennsylvania with its principal office located in Houtzdale, Pennsylvania.

2. In my capacity as solicitor for the Houtzdale Municipal Authority (hereinafter HMA), I attest that on July 9, 2004, the said Authority executed the resolution affixed hereto as Exhibit A pledging sufficient collateral to act as security for the condemnation of a certain right of way crossing the lands of Eric and Bernadette Gilliland, Condemnees and that said action was taken at a regular monthly meeting of the Authority with a duly constituted quorum of the Board.



Sworn to and subscribed
before me this 10th day of
November, 2004.



N. P.
WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

R E S O L U T I O N

AUTHORIZING AND APPROPRIATING SUFFICIENT ASSETS OF THE AUTHORITY TO COLLATERALIZE THE SECURITY BOND PLEDGED BY THE BOARD IN THE ACQUISITION BY CONDEMNATION OF THE EASEMENT CROSSING THE LANDS OF THE CONDEMNNEES HEREIN NAMED.

WHEREAS, the Houtzdale Municipal Authority in order to enlarge, upgrade and renovate its water supply system, filed a Declaration of Taking supported by resolution, security bond and other documentation in order to acquire a right of way over land and properties including those areas specified in the Declaration of Taking which lands are currently owned by the Condemnees, Eric and Bernadette Gilliland; and

WHEREAS, the Authority was unable to agree with the Condemnees on the price or the amount of damages to be paid for the property rights; and

WHEREAS, the Houtzdale Municipal Authority, through its officers and solicitor were authorized to file a Declaration of Taking and such other documents including the entry of such bond as may be necessary or desirable to carry out the purpose of the resolution; and

WHEREAS, upon the institution of these proceedings it was affirmed that any damages which may be agreed upon or awarded to any party in interest including the owner or owners of said properties located within the area condemned would be paid out of the funds and assets of the Houtzdale Municipal Authority; and

WHEREAS, the bond filed by the Authority and pledged as collateral to the Condemnees is referred to as an open-ended bond without security and has resulted in preliminary objections being filed by the Condemnees who claim that the Authority has failed to pledge adequate security to protect the rights of the Condemnees; and

WHEREAS, the Board intends to set aside and pledge sufficient assets in order to collateralize this taking; and



WHEREAS, the said Authority has additional collateralization as a result of a contractual arrangement with SCI Houtzdale whereby the cost of any capital improvement including the condemnation of properties for the purpose of improving, enlarging and enhancing the water supply would be reimbursed by the Commonwealth of Pennsylvania, up to Forty (40%) percent of the capital improvements as specified; and

WHEREAS, the Authority has the further right to increase rates in order to secure additional funds for use in the enlargement and improvement of this system and for the capital improvements undertaken by the Authority.

NOW THEREFORE BE IT RESOLVED, That the Houtzdale Municipal Authority, in accordance with the authority conferred by law, does authorize its corporate officers to pledge from its fixed and/or liquid assets sufficient funds to serve as bond and/or collateral to pay for any damages which may be incurred as a result of the taking of the right of way as specified in this proceeding and in support of said resolution states as follows:

RESOLVED, that the Authority has fixed assets of over \$18,000,000.00 as confirmed by its Certified Public Accountants in their most current financial statement.

RESOLVED, That the Authority has over \$2,500,000.00 in liquid assets disbursed throughout various lending institutions in Clearfield County which fact is likewise verified by the Certified Public Accountants in their most recent financial statement which is included in the Affidavit prepared and filed by Brent Thomas, C.P.A. as part of these proceedings.

RESOLVED, That the Board of Directors of the Houtzdale Municipal Authority and its appropriate officers having been authorized to file a Declaration of Taking and such other documents in support thereof to finalize a condemnation of certain property rights now intend to confirm such bond and collateralization as may be necessary or desirable to carry out the purposes of their resolution including posting and pledging as collateral sufficient liquid assets to the extent necessary to carry out the purposes of this proceeding.

RESOLVED, that the institution of this proceeding and any damages which may be agreed upon or awarded to any party in interest including the owner or owners of said property acquired through the right of Eminent Domain shall be paid out of the funds of the Houtzdale Municipal Authority either pledged for this purpose or as otherwise provided as collateral by way of those assets defined in the financial statement of the said Municipal Authority.

HOUTZDALE MUNICIPAL AUTHORITY

BY Donald J. Rosenthal

ATTEST:

James M. McHugh

Dated: November 9, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

THE CONDEMNATION BY THE HOUTZDALE :
MUNICIPAL AUTHORITY, OF A UTILITY :
AND ACCESS EASEMENT SIXTY : NO. 2004-1369 CD
EASEMENT SIXTY (60') MORE OR LESS IN :
WIDTH . . .
CONDEMNOR :
vs. : EMINENT DOMAIN PROCEEDINGS
ERIC O. GILLILAND and BERNADETTE : IN REM
GILLILAND, his wife, :
CONDEMNEES. : TYPE OF PLEADING:
: RESPONSE TO RULE TO SHOW
: CAUSE WHY ESTIMATED JUST
: COMPENSATION SHOULD NOT BE
: DEPOSITED
: FILED ON BEHALF OF:
: CONDEMNEES
: ATTORNEYS FOR CONDEMNEES:
: David C. Mason, Esquire
: Supreme Court ID #39180
: DAVID C. MASON LAW OFFICE
: P.O. Box 28
: Philipsburg, PA 16866
: (814) 342-2240
: Susan J. Smith, Esquire
: Supreme Court ID #62531
: REAGER & ADLER, P.C.
: 2331 Market Street
: Camp Hill, PA 17011
: (717) 763-1383
: ATTORNEY FOR CONDEMNOR:
: John R. Carfley, Esquire
: Supreme Court ID #17621
: P. O. Box 249
: Philipsburg, PA 16866
: (814) 342-5581

FILED (1)

NOV 12 2004
William A. Shaw
Prothonotary/Clerk of Courts
3 Court to Army

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL :
AUTHORITY, OF A UTILITY AND ACCESS EASEMENT :
SIXTY (60') MORE OR LESS IN WIDTH FROM THE :
POINT OF BEGINNING FOR A DISTANCE OF 5149.76 :
FEET MORE OR LESS IN LENGTH TO THE TERMINUS :
OF THE EASEMENT OR A TOTAL OF 7.093 ACRES :
OVER, ACROSS, UPON AND THROUGH CERTAIN :
PROPERTY, SITUATE IN GULICH TOWNSHIP, :
CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO :
BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF :
CONSTRUCTING, EXPLORING, DRILLING AND :
EXPLOITATING THE SURFACE SOURCE, UNDERGROUND :
WATER RESOURCES AND THE INTAKE AT THE :
MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE :
OF CONSTRUCTING, MAINTAINING AND REPAIRING :
OF PRODUCTION WELLS, MONITORING WELLS, AND :
SURFACE SOURCES TOGETHER WITH THE NECESSARY :
WATER TRANSMISSION PIPELINE, ELECTRICAL :
POWERGRID AND OTHER FACILITIES INVOLVED IN :
THE UPGRADE AND RENOVATION OF HMA'S WATER :
SUPPLY, WATER DISTRIBUTION AND WATER :
TREATMENT SERVICES, :
CONDEMNOR :
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND :

NO. 2004-1369 CD

Eminent Domain
Proceedings
In Rem

CONDEMNNEES' RESPONSE TO RULE TO SHOW CAUSE
WHY ESTIMATED JUST COMPENSATION SHOULD NOT BE GRANTED

AND NOW, come Eric and Bernadette Gilliland, Condemnees, and file this Response to Rule To Show Cause Why Estimated Just Compensation Should Not Be Granted, and in support state as follows:

I. BACKGROUND

On September 1, 2004, the Houtzdale Municipal Authority (“Authority”) filed a Declaration of Taking of certain property owned by John and Bernadette Gilliland (“Gillilands”).

On October 8, 2004, the Gillilands filed preliminary objections to the Declaration of Taking pursuant to the Eminent Domain Code, Act of June 22, 1964, P.L. 84, *as amended*, 26 P.S. § 1-406. Subsequently, on October 22, 2004, the Authority filed a Petition to Deposit Estimated Just Compensation (“Petition to Deposit”), accompanied by a proposed order directing Authority to pay the amount estimated by the Authority into Court and held in an interest bearing account until further order directing payment of said amount. On that same date, Authority filed a Petition for Writ of Possession Notwithstanding the Pendency of the Condemnee’s Preliminary Objections.

This Court issued a Rule to Show Cause Why Estimated Just Compensation Should Not be Deposited, with the Rule returnable on November 18, 2004 by hearing (“Deposit Rule to Show Cause”). By subsequent Order of the Court issued November 4, 2004, the hearing on the Deposit Rule to Show Cause was advanced to November 12, 2004. The November 4, 2004 Order also scheduled hearing on the Authority’s Writ of Possession and the Gillilands’ Preliminary Objections on November 12, 2004.

II. RESPONSE

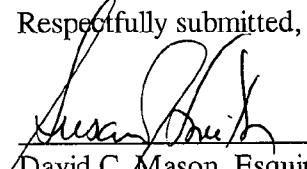
As permitted by the Eminent Domain Code, the Gillilands raised and filed proper Preliminary Objections to the Declaration of Taking. As more fully set forth in the Gillilands’ Memorandum in Opposition to Authority’s Petition for Writ of Possession, which Memorandum is incorporated herein as if fully set forth, the Court may not issue a writ of possession until the Court rules on the Gillilands’ Preliminary Objections. If the Court should issue a writ of possession, Section 1-407(a) of the Eminent Domain Code entitles Authority to entry and possession of the Gillilands’ property only upon payment of the estimated just compensation. However, Section 1-407(c) of the Eminent Domain Code provides that any compensation paid by Authority under Section 1-407(a) is only a payment *pro tanto* of the just compensation to be

fully determined without prejudice to the rights of the Gillilands. The Gillilands have not and do not waive their rights under Section 1-407(c) to proceed with a determination of just compensation.

Dated: November 12, 2004

BY:

Respectfully submitted,



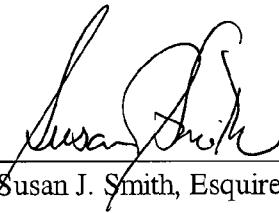
David C. Mason, Esquire
Attorney I.D. No. 39180
409 North Front Street
PO Box 28
Philipsburg, PA 16866

Susan J. Smith, Esquire
Attorney I.D. No. 62531
2331 Market Street
Camp Hill, Pa 17011

Attorneys for Condemnees Eric and
Bernadette Gilliland

VERIFICATION

I, **Susan J. Smith, Esquire**, being duly sworn according to law, depose and state that I am the attorney for the **Condemnees, Eric O. Gilliland and Bernadette Gilliland**, and I make this verification on her behalf and that said Defendant is unable to make this verification on her own behalf within the time allotted for filing of this pleading and the facts set forth in the foregoing pleading are true and correct to the best of counsel's knowledge, information and belief.

By: 

Susan J. Smith, Esquire

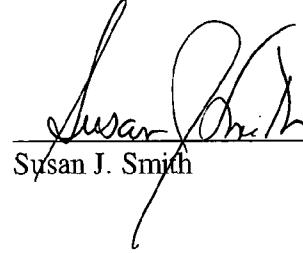
CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a true and correct copy of the foregoing document was served on the following individuals via hand delivery:

John R. Carfley, Esquire
222 Presqueisle Street
Philipsburg, PA 16866

Attorney for Condemnor

Dated: November 12, 2004



Susan J. Smith

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL :
AUTHORITY, OF A UTILITY AND ACCESS EASEMENT :
SIXTY (60') MORE OR LESS IN WIDTH FROM THE :
POINT OF BEGINNING FOR A DISTANCE OF 5149.76 :
FEET MORE OR LESS IN LENGTH TO THE TERMINUS :
OF THE EASEMENT OR A TOTAL OF 7.093 ACRES :
OVER, ACROSS, UPON AND THROUGH CERTAIN :
PROPERTY, SITUATE IN GULICH TOWNSHIP, :
CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO :
BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF :
CONSTRUCTING, EXPLORING, DRILLING AND : NO. 2004-
1369 CD
EXPLOITATING THE SURFACE SOURCE, UNDERGROUND :
WATER RESOURCES AND THE INTAKE AT THE :
MOSHANNOCK CREEK HEADWATERS, FOR THE PURPOSE : Eminent
Domain
OF CONSTRUCTING, MAINTAINING AND REPAIRING : Proceedings
OF PRODUCTION WELLS, MONITORING WELLS, AND : In Rem
SURFACE SOURCES TOGETHER WITH THE NECESSARY :
WATER TRANSMISSION PIPELINE, ELECTRICAL :
POWERGRID AND OTHER FACILITIES INVOLVED IN :
THE UPGRADE AND RENOVATION OF HMA'S WATER :
SUPPLY, WATER DISTRIBUTION AND WATER :
TREATMENT SERVICES, :
CONDEMNOR :
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND :

ORDER

AND NOW, upon consideration of Condemnee's Petition to Supplement
Preliminary Objections filed by Condemnee, it is hereby ORDERED and DECREED that
Condemnee's Petition is GRANTED.

BY THE COURT:

J.

BY: DAVID C. MASON, ESQUIRE

409 North Front Street
PO Box 28
Philipsburg, PA 16866
Telephone: (814) 342-2240
Facsimile (814) 342-5318
Email: dmason@masonlawoffice.com

REAGER & ADLER, P.C.

BY: SUSAN J. SMITH, ESQUIRE
Attorney I.D. No. 62531
2331 Market Street
Camp Hill, PA 17011
Telephone: (717) 763-1383
Facsimile: (717) 730-7366
Email: SSmith@ReagerAdlerPC.com

Attorneys for Condemnees

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL	:	
AUTHORITY, OF A UTILITY AND ACCESS EASEMENT	:	
SIXTY (60') MORE OR LESS IN WIDTH FROM THE	:	
POINT OF BEGINNING FOR A DISTANCE OF 5149.76	:	
FEET MORE OR LESS IN LENGTH TO THE TERMINUS	:	
OF THE EASEMENT OR A TOTAL OF 7.093 ACRES	:	
OVER, ACROSS, UPON AND THROUGH CERTAIN	:	
PROPERTY, SITUATE IN GULICH TOWNSHIP,	:	
CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO	:	
BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF	:	
CONSTRUCTING, EXPLORING, DRILLING AND	:	NO. 2004-1369 CD
EXPLOITATING THE SURFACE SOURCE, UNDERGROUND	:	
WATER RESOURCES AND THE INTAKE AT THE	:	
MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE	:	Eminent Domain
OF CONSTRUCTING, MAINTAINING AND REPAIRING	:	Proceedings

FILED

NOV 12 2004

Offices

William A. Shaw

Prothonotary/Clerk of Courts

2 CENTS TO MAIL
+ 2 ADDITIONAL

OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SERVICES, : In Rem
CONDEMNOR :
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND :

NOTICE TO PLEAD

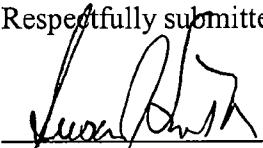
To: Houtzdale Municipal Authority, Condemnor
c/o John R. Carfley, Esquire
222 Presqueisle Street
Philipsburg, PA 16866

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED PETITION WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Dated: October 8, 2004

BY:

Respectfully submitted,



Susan J. Smith, Esquire
Attorney I.D. No. 62531
2331 Market Street
Camp Hill, Pa 17011

David C. Mason, Esquire
409 North Front Street
PO Box 28
Philipsburg, PA 16866

Attorneys for Condemnees Eric and Bernadette Gilliland

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

THE CONDEMNATION BY THE HOUTZDALE :
MUNICIPAL AUTHORITY, OF A UTILITY :
AND ACCESS EASEMENT SIXTY : NO. 2004-1369 CD
EASEMENT SIXTY (60') MORE OR LESS IN :
WIDTH . . . :
CONDEMNOR :
vs. : EMINENT DOMAIN PROCEEDINGS
: IN REM
ERIC O. GILLILAND and BERNADETTE :
GILLILAND, his wife, :
CONDEMNNEES : TYPE OF PLEADING: PETITION TO
: AMEND PRELIMINARY
: OBJECTIONS FILED BY
: CONDEMNEE
: FILED ON BEHALF OF:
: CONDEMNNEES
: ATTORNEYS FOR CONDEMNNEES:
: David C. Mason, Esquire
: Supreme Court ID #39180
: DAVID C. MASON LAW OFFICE
: P.O. Box 28
: Philipsburg, PA 16866
: (814) 342-2240
: Susan J. Smith, Esquire
: Supreme Court ID #62531
: REAGER & ADLER, P.C.
: 2331 Market Street
: Camp Hill, PA 17011
: Telephone: (717) 763-1383
: ATTORNEY FOR CONDEMNOR:
: John R. Carfley, Esquire
: Supreme Court ID #17621
: P. O. Box 249
: Philipsburg, PA 16866
: (814) 342-5581

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SERVICES,

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND

NO. 2004-1369 CD

Eminent Domain
Proceedings
In Rem

**PETITION TO AMEND PRELIMINARY
OBJECTIONS FILED BY CONDEMNNEES**

AND NOW, come Eric and Bernadette Gilliland, Condemnees, by and through their attorneys David C. Mason, Esquire, and Reager & Adler, PC, and file this Petition to Amend Preliminary Objections Filed by Condemnees, pursuant to Pa. R.C.P. 1028 and 1033.

1. On October 8, 2004, the Gillilands filed Preliminary Objections pursuant to Section 402 of the Eminent Domain Code, 26 P.S. § 1-402, challenging the Declaration of

Taking of the Houtzdale Municipal Authority (“Authority”) filed in this matter against the property of Condemnees (“Property”).

2. The Declaration of Taking, as filed by the Authority, describes the title to be condemned by the Authority as a “right-of-way *and/or* easement” in the Property (emphasis supplied).
3. The description of the title to be acquired in the Property does not comply with Section 1-402(b)(6) of the Eminent Domain Code. Section 1-402(b)(6) requires that a declaration of taking include “a statement of the nature of the title acquired.” 26 P.S. § 1-402(b)(6).
4. The Authority cannot acquire an unspecified interest in the Property, or alternative interests in the Property. To do so would place an immediate cloud on the title and create a dispute as to the nature and extent of the Authority and the Condemnees’ rights in the Gillilands’ property.
5. The title to be acquired by the Declaration of Taking and companion request for Writ of Possession is a legal issue of paramount concern.
6. Pa. R.C.P. 1033 permits a party, by leave of court, to amend a pleading.
7. Amendments to preliminary objections are permitted before preliminary objections, as originally filed, are heard and decided by the court because such procedures effectuate the purpose of Pa. R.C.P. 1028(b) that all preliminary objections be considered by the court at one time. *Bowman v. Meadow Ridge, Inc.*, 615 A.2d 755 (Pa. Super. 1992).
8. The Gillilands respectfully request that leave be granted to permit them to amend their preliminary objections to include the following ground: “The Declaration of Taking fails to comply with 26 P.S. § 1-402(b)(6).”
9. In support of this Petition, attached are: (i) Additional Preliminary Objection, adding Preliminary Objection No. 5 and (ii) Brief in Support of the additional preliminary objection.

WHEREFORE, the Gilillands respectfully request that this Court grant leave to amend the Preliminary Objections.

Respectfully submitted,

DATED: November 12, 2004

BY:

David C. Mason, Esquire
I.D. No. 39180
409 North Front Street
PO Box 28
Philipsburg, PA 16866

Susan J. Smith, Esquire
I.D. No. 62531
2331 Market Street
Camp Hill, PA 17011

Attorneys for Condemnees Eric and
Bernadette Gilliland

SURFACE SOURCES TOGETHER WITH THE NECESSARY :
WATER TRANSMISSION PIPELINE, ELECTRICAL :
POWERGRID AND OTHER FACILITIES INVOLVED IN :
THE UPGRADE AND RENOVATION OF HMA'S WATER :
SUPPLY, WATER DISTRIBUTION AND WATER :
TREATMENT SERVICES, :
CONDEMNOR :
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND :

ADDITIONAL PRELIMINARY OBJECTION
TO THE DECLARATION OF TAKING
FILED BY HOUTZDALE MUNICIPAL AUTHORITY

AND NOW, comes Eric and Bernadette Gilliland, Condemnees, by and through their attorneys David C. Mason, Esquire, and Reager & Adler, PC, and files an additional Preliminary Objection pursuant to 26 P.S. Section 1-406 to Houtzdale Municipal Authority's Declaration of Taking and in support thereof aver the following:

1. Eric and Bernadette Gilliland ("Gillilands") are title owners of property located at 548 Hunt Club Drive, Ginter, Pennsylvania 16651 ("Gilliland Property").
2. The Gillilands own and operate a hunting preserve on the Gilliland Property, including, among others, such uses and activities as field dog trials, archery shoots, upland bird hunting, turkey hunting, deer hunting, dog training and clay target shooting ("Hunting Preserve"). The Gillilands use the Gilliland Property for such uses and activities year round.
3. The Gillilands access the Gilliland Property by private drives that traverse the Gilliland Property and intersect with State Road 153 ("Gilliland Access").
4. Houtzdale Municipal Authority ("Authority") is a municipal authority organized under the Pennsylvania Municipal Authorities Act and operating in Clearfield County, Pennsylvania.

5. On September 1, 2004, Houtzdale Municipal Authority filed a Declaration of Taking in part for vehicular access over the Gilliland Property as described in the Declaration of Taking. In relevant part, the Declaration describes the title to be taken as a “right-of-way and/or easement.”

6. The vehicular access sought by the Declaration of Taking includes the area presently occupied by the Gilliland Access, which is used by the Gillilands to access and traverse the Gilliland Property.

7. Hunting Preserve activities take place around and across the vehicular access sought by the Declaration of Taking.

8. Pursuant to 26 P.S. Section 1-406, Condemnees object to and hereby challenge the Declaration of Taking for the reasons that follow:

PRELIMINARY OBJECTION NO. 5

9. Section 1-402(b)(6) of the Eminent Domain Code requires that the declaration of taking include “a statement of the nature of the title acquired, if any.” 26 P.S. Section 10402(b)(6).

10. The Declaration, as filed by the Authority, describes the title in the property to be acquired in the alternative as “right of way and/or easement.”

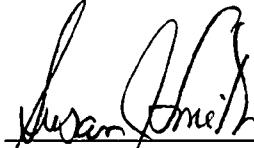
11. The statement of the interest to be acquired in the alternative fails to clearly and specifically state the nature of the title to be acquired as required by Section 10402(b)(6) and gives immediate rise to a dispute as to the nature and extent of the Gillilands’ and the Authority’s interests in the property.

12. Pursuant to 26 P.S. Section 1-406(a)(3), the Gillilands object to the Declaration on the grounds that it fails to comply with 26 P.S. Section 1-402(b)(6).

WHEREFORE, the Condemnees respectfully request This Honorable Court to enter an order:

- (i) sustaining their Preliminary Objections;
- (ii) terminating the condemnation action;
- (iii) revesting title to the condemned property in the Gillilands; and
- (iv) granting damages and such other relief as the Court deems just and proper.

Respectfully submitted,

BY: 

Susan J. Smith
Susan J. Smith, Esquire
I.D. No. 62531
2331 Market Street
Camp Hill, PA 17011

David C. Mason, Esquire
I.D. No. 39180
409 North Front Street
PO Box 28
Philipsburg, PA 16866

Attorneys for Condemnees,
Eric and Bernadette Gilliland

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

THE CONDEMNATION BY THE HOUTZDALE :
MUNICIPAL AUTHORITY, OF A UTILITY :
AND ACCESS EASEMENT SIXTY : NO. 2004-1369 CD
EASEMENT SIXTY (60') MORE OR LESS IN :
WIDTH ... :
CONDEMNOR :
vs. : EMINENT DOMAIN PROCEEDINGS
ERIC O. GILLILAND and BERNADETTE : IN REM
GILLILAND, his wife, :
CONDEMNNEES : TYPE OF PLEADING: BRIEF IN
: SUPPORT OF PRELIMINARY
: OBJECTIONS TO THE
: DECLARATION OF TAKING
: FILED ON BEHALF OF:
: CONDEMNNEES
: ATTORNEYS FOR CONDEMNNEES:
: David C. Mason, Esquire
: Supreme Court ID #39180
: DAVID C. MASON LAW OFFICE
: P.O. Box 28
: Philipsburg, PA 16866
: (814) 342-2240
: Susan J. Smith, Esquire
: Supreme Court ID #62531
: REAGER & ADLER, P.C.
: 2331 Market Street
: Camp Hill, PA 17011
: Telephone: (717) 763-1383
: ATTORNEY FOR CONDEMNOR:
: John R. Carfley, Esquire
: Supreme Court ID #17621
: P. O. Box 249
: Philipsburg, PA 16866
: (814) 342-5581

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL
AUTHORITY, OF A UTILITY AND ACCESS EASEMENT
SIXTY (60') MORE OR LESS IN WIDTH FROM THE
POINT OF BEGINNING FOR A DISTANCE OF 5149.76
FEET MORE OR LESS IN LENGTH TO THE TERMINUS
OF THE EASEMENT OR A TOTAL OF 7.093 ACRES
OVER, ACROSS, UPON AND THROUGH CERTAIN
PROPERTY, SITUATE IN GULICH TOWNSHIP,
CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO
BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF
CONSTRUCTING, EXPLORING, DRILLING AND
EXPLOITATING THE SURFACE SOURCE, UNDERGROUND
WATER RESOURCES AND THE INTAKE AT THE
MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE
OF CONSTRUCTING, MAINTAINING AND REPAIRING
OF PRODUCTION WELLS, MONITORING WELLS, AND
SURFACE SOURCES TOGETHER WITH THE NECESSARY
WATER TRANSMISSION PIPELINE, ELECTRICAL
POWERGRID AND OTHER FACILITIES INVOLVED IN
THE UPGRADE AND RENOVATION OF HMA'S WATER
SUPPLY, WATER DISTRIBUTION AND WATER
TREATMENT SERVICES,

CONDEMNOR

NO. 2004-1369 CD

Eminent Domain
Proceedings
In Rem

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND

**BRIEF IN SUPPORT OF ADDITIONAL PRELIMINARY OBJECTION
TO THE DECLARATION OF TAKING
FILED BY HOUTZDALE MUNICIPAL AUTHORITY**

I. **HISTORY OF THE CASE.**

This matter concerns the Declaration of Taking filed by the Houtzdale Municipal Authority (“Authority”) against Eric and Bernadette Gilliland (“Gillilands”) on September 1, 2004, in which the Authority condemned a utility and vehicular access (“Access”) over certain property owned by the Gillilands at 548 Hunt Club Drive, Ginter, Pennsylvania 16651 (“Gilliland Property”). A true and correct copy of the Notice of Condemnation and Declaration of Taking are attached as **Appendix A** hereto.

The Gillilands own and operate a hunting preserve on the Gilliland Property, including, among others, such uses and activities as field dog trials, archery shoots, upland bird hunting, turkey hunting, deer hunting, dog training and clay target shooting (“Hunting Preserve”). The Gillilands use the Gilliland Property for such uses and activities year round. The Gillilands access the Gilliland Property by private drives that traverse the Gilliland Property and intersect with State Road 153 (“Gilliland Access”). The Access traverses these private drives and the area of the Hunting Preserve.

The Authority is a municipal authority organized under the Pennsylvania Municipal Authorities Act and operating in Clearfield County, Pennsylvania. The Authority owns 325± acres, more or less, of property that abuts Moshannon Creek and that has 2,500± linear feet of road frontage on State Road 453.

On November 12, 2004, the Gillilands filed a Petition to Supplement the Preliminary Objections to the Declaration of Taking filed October 8, 2004, pursuant to § 406 of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, *as amended*, 26 P.S. § 1-406. The Petition included the proposed No. 5 Preliminary Objection.

II. STATEMENT OF QUESTIONS INVOLVED

- A. In describing the title to be acquired in the Gillilands’ property in the Declaration of Taking in the alternative as a “right-of-way and/or easement,” did the Authority fail to comply with 26 P.S. § 1-402(b)(6).

SUGGESTED ANSWER: YES

III. ARGUMENT.

A. Standard of Review.

This Court’s review of the Authority’s Declaration of Taking is limited to determining whether the Authority is guilty of fraud, bad faith, or has committed an abuse of discretion.

B. The Authority Failed to Comply with 26 P.S. § 1-402(b)(6).

Section 1-402(b)(6) of the Eminent Domain Code requires that a declaration of taking include “a statement of the nature of the title acquired, if any.” 26 P.S. Section 1-402(b)(6). The title that passes to the condemning authority is that title as stated in the declaration of taking.

Nicoletti v. Allegheny County Airport Auth., 841 A.2d 156 (Pa. Cmwlth. 2004).

In this action, the Authority filed a Declaration of Taking that described the title to be acquired in the Gillilands’ property in the alternative as “right-of-way and/or easement.” Such description is neither clear nor specific enough to satisfy Section 1- 402(b)(6). It violates the mandate that the exercise of eminent domain be strictly construed because necessarily in derogation of a private property rights. *Condemnation of 110 Washington Street*, 767 A.2d 1145 (Pa. Cmwlth. 2001).

Of paramount concern is the legal effect of permitting the exercise of eminent domain where the title to be acquired is described in an imprecise manner. Stating the title to be acquired in the alternative gives immediate rise to a cloud on the title and a dispute as to the nature and extent of the Gillilands’ and the Authority’s rights in the Property. The dispute is particularly acute where the property to be acquired is an existing roadway owned, maintained and used by the Gillilands for access to and traversing of their property, and where Hunting Preserve activities take place around and across the existing roadway.

As a result, the Gillilands’ preliminary objection should be sustained and this matter dismissed.

IV. CONCLUSION.

The Gillilands' Preliminary Objections should be sustained and the Declaration of Taking vacated because the Authority has abused its discretion by failing to adequately describe the title to be acquired as required by 26 P.S. Section 1-402(b)(6).

Respectfully submitted,

Dated: November 12, 2004

David C. Mason, Esquire
Attorney I.D. No. 39180
409 North Front Street
PO Box 28
Philipsburg, PA 16866

Susan J. Smith, Esquire
Attorney I.D. No. 62531
2331 Market Street
Camp Hill, Pa 17011

Attorneys for Condemnees Eric and
Bernadette Gilliland

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SERVICES,

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND

NO. 2004-1369 CD

Eminent Domain
Proceedings
In Rem

ORDER

AND NOW, upon consideration of Condemnees' Preliminary Objection to the Declaration of Taking filed by Houtzdale Municipal Authority, it is hereby ORDERED and DECREED that Condemnees' Preliminary Objection is sustained; the condemnation action is terminated; title to the condemned property is revested in the Condemnees; and damages and such other relief as this Court deems just and proper is GRANTED.

BY THE COURT:

J.

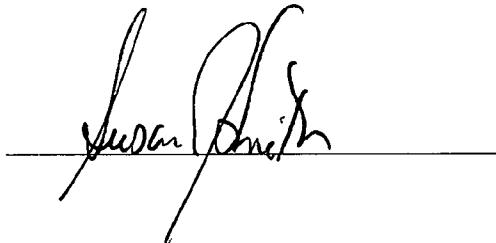
CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a true and correct copy of the foregoing document was served on the following individuals via hand delivery:

John R. Carfley, Esquire
222 Presqueisle Street
Philipsburg, PA 16866

Attorney for Condemnor

Dated: November 12, 2004

A handwritten signature in black ink, appearing to read "Susan Smith", is written over a horizontal line. The signature is fluid and cursive, with "Susan" on the left and "Smith" on the right.

CA
FILED
09:38 AM
NOV 16 2004
William A. Shaw
Prothonotary/Clerk of Courts
cc Atlys Carley
Mason
S. Smith
ECK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONDEMNATION BY HOUTZDALE : :

MUNICIPAL AUTHORITY RE: ERIC : NO. 04-1369-CD

And BERNADETTE GILLILAND : :

O R D E R

NOW, this 12th day of November, 2004, following argument and/or testimony into the above-captioned matter, it is the ORDER of this Court that counsel for Condemnor submit, within ten (10) days from date hereof, an affidavit or request that he make available for purposes of deposition the party from the Commonwealth, Department of Corrections, who is authorized to verify that they are, in fact, paying 40 percent of these proceedings.

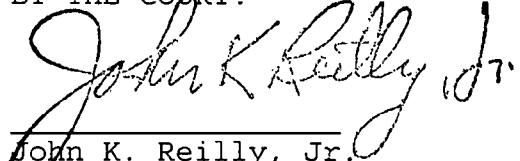
In addition, the oral motion be and is hereby granted to the extent that any reference to a prior existing easement or right-of-way in the name of the Condemnor across lands of the Condemnee shall not be permitted at trial except as it may bear on the ultimate question of compensation.

Further, the amendment to Preliminary Objections be and is hereby granted and the same is sustained to the extent that, should the Condemnor be successful, they will be prohibited from entering or otherwise interfering with the Condemnee's coequal right to use the condemned roadway.

Finally, it is the further directive of this Court

that Condemnor is permitted access for purposes of testing and similar activities but not for construction until further disposition, and shall give Condemnee as much advance notice as possible of the same.

BY THE COURT:



John K. Reilly, Jr.
Senior Judge
Specially Presiding

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

: NO. 2004-1369-CD

: Eminent Domain

: Proceeding-In Rem

: Document filed:

: Affidavit

: Filed on behalf of:

: Condemnor

: Attorney-Condemnor

: John R. Carfley

: P. O. Box 249

: Philipsburg, Pa.

Document filed: Affidavit of Patrick Ward and Donald Ross, Jr.
in Support of Condemnor's Motion to Dismiss
Condemnees' Preliminary Objections

604
FILED 5cc
12:55 PM NOV 19 2004 Atty Carfley

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITuate IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNees, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR
CONDEMNees: ERIC AND BERNADETTE GILLILAND:

AFFIDAVIT IN SUPPORT OF CONDEMNOR'S MOTION TO DISMISS
CONDEMNee'S PRELIMINARY OBJECITONS

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF CENTRE :

Personally appeared before me the undersigned, Patrick Ward, and Donald Ross, Jr., who being duly sworn according to law deposes and states as follows:

1. I am Patrick Ward, President of Unitec Consulting Engineers.

2. I am a civil engineer by profession and in that capacity was hired by the Houtzdale Municipal Authority as the consulting engineer to deal with various projects including the Moshannon Creek project.

3. I am Donald Ross, Jr. an adult individual who presently resides in Houtzdale, Clearfield County, Pennsylvania.

4. I, Donald Ross, Jr. was appointed to the Board of

Directors of the Houtzdale Municipal Authority and have served as Chairman of the Board since 1996.

5. Affiants attest that in their respective capacities as consultant to the Authority and Chairman of the Board of Directors of the Authority entered into negotiations with the Commonwealth of Pennsylvania, Department of Corrections, pertaining to a contractual arrangement dealing with the allocation of water to the State Correctional Institutional at Houtzdale, Pennsylvania.

6. These negotiations took place in conjunction with the expansion of the water treatment facilities in the Moshannon Valley and the development of the surface source and wellfield in Mountain Branch.

7. Said negotiations resulted in a contractual agreement with the Commonwealth of Pennsylvania, Department of Corrections which specified the terms and conditions under which the Authority would provide water to SCI Houtzdale and the provisions under which SCI Houtzdale would compensate the Authority for this water service. A true and correct copy of the signature page of the said agreement entered into between the Houtzdale Municipal Authority and the Commonwealth of Pennsylvania, Department of Corrections is attached hereto as Exhibit A as per the Court Order dated November 12, 2004. This signature page bears the signature of Donald Ross, Chairman of the Board of Directors of HMA which is herein affirmed to be his true and correct signature.

8. As part of the terms and conditions of the agreement the Commonwealth of Pennsylvania, Department of Corrections agreed to take part in and partially compensate HMA for any capital improvements which HMA undertook over a period of twenty (20) years.

9. The amount of compensation payable by the Commonwealth of Pennsylvania to HMA was based upon the amount of water allocated to and supplied by HMA to SCI Houtzdale which amount is verified in each calendar year and over said period has averaged forty (40%) of the cost of any improvements undertaken by HMA.

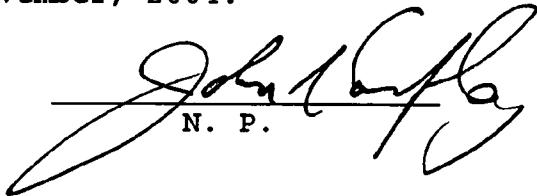
10. The capital improvements which are contemplated by this contract include the development of additional water sources including the Moshannon Creek for which the Commonwealth of Pennsylvania would provide forty (40%) percent of the funds required to acquire lands, rights of way or other ownership interest in order to expand the Moshannon Creek project.

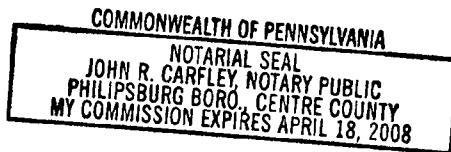
11. The said prison agreement and the entire contractual arrangement between HMA and SCI Houtzdale was introduced at the hearing on Friday, November 12, 2004, for purposes of confirming the additional security which HMA could pledge to offset the value

of the condemned property interest and to further affirm that an entity with taxing capability to wit: the Commonwealth of Pennsylvania was contractually bound to account for almost one-half of the fair market value of any condemned capital acquisitions.

Patrick J. Ward
Donald D. Rosh

Sworn to and subscribed
before me this 18th day of
November, 2004.


John R. Carfley
N. P.



IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have subscribed their names to this instrument on the dates indicated.

ATTEST:

HOUTZDALE MUNICIPAL AUTHORITY

Mark Howard By: Donald A. Ross 6 JUNE 96
Chairman Date

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

Lin T. Bernard 7/25/96
Agency Head/Designee Date

Approved

Comptroller

Office of the Budget

Walt Stott 10/7/96 Debra Chernoff 10/7/96
Date Date

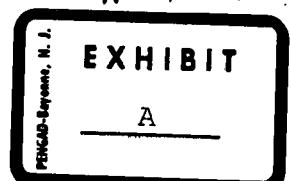
Approved as to Form and Legality

Randall N. Seuss 8/3/96
Office of Chief Counsel Date

Bill Sun 8/23/96
Office of General Counsel Date

John F. Hall
Office of Attorney General

FED ID 25-6012126
001-011-103-91-1-4400-24000-340 8 534,660
97 ~ 228534,660
98 ~ 8534,660
99 ~ 1534,660
00 ~ 8534,660



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

NO. 2004-1369-CD
Eminent Domain
Proceeding-In Rem
Document filed:
Affidavit
Filed on behalf of:
Condemnor
Attorney-Condemnor
John R. Carfley
P. O. Box 249
Philipsburg, Pa.

Document filed: Affidavit of Patrick Ward in Support of Condemnor's Motion to Acquire Possession of the Condemned Premises and in Support of its Motion to Dismiss Condemnees' Preliminary Objections

z6K
FILED *5 CC*
10/19/04 *Att'y Carfley*
NOV 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

AFFIDAVIT IN SUPPORT OF CONDEMNOR'S MOTION TO ACQUIRE POSSESSION
OF THE CONDEMNED PREMISES AND IN SUPPORT OF ITS
MOTION TO DISMISS CONDEMNNEES' PRELIMINARY OBJECTIONS

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CENTRE :

Personally appeared before me the undersigned, Patrick Ward, who being duly sworn according to law deposes and states as follows:

1. I am Patrick Ward, President of Unitec Consulting Engineers.

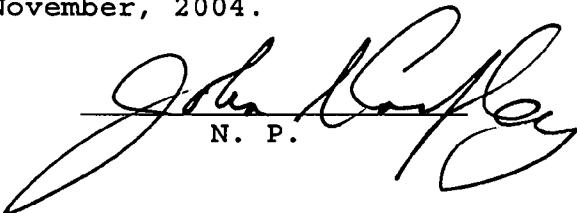
2. I am a civil engineer by profession and in that capacity was hired by the Houtzdale Municipal Authority as the consulting engineer to deal with various projects including the Moshannon Creek project.

3. In association with that project my firm was asked to complete a feasibility study dealing with the construction of an alternate roadway to provide access from State Road 453 to the Houtzdale Municipal Authority lands which lie adjacent to lands of Eric and Bernadette Gilliland and include the Moshannon Creek surface source, headwaters and wellfield.

4. The feasibility study which was concluded in June and July of 2004 estimated that the cost of completing this alternative roadway was in excess of \$350,000.00 as specified in the report attached hereto as Exhibit A.

5. The attached report is the study referred to in the testimony presented before the court at the hearing conducted on Friday, November 12, 2004.

Sworn to and subscribed
before me this 18th day of
November, 2004.

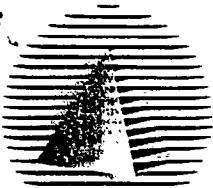


N. P.



COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
JOHN R. CARFLEY, NOTARY PUBLIC
PHILIPSBURG BORO., CENTRE COUNTY
MY COMMISSION EXPIRES APRIL 18, 2008



Uni-Tec Consulting Engineers
INCORPORATED

July 13, 2004
File No. 0181-006-000

John Carfley
222 Presqueisle Street
Philipsburg, PA 16866

RE: Moshannon Creek Well Field Alternate Access Evaluation

Dear Mr. Carfley:

This letter report constitutes our evaluation of the feasibility of an alternative vehicular access to the Houtzdale Municipal Authority (herein after HMA) Moshannon Creek well field and stream intake.

The existing vehicular access to the HMA Moshannon Creek supply sources and land is via a road that crosses the lands of Gilliland. The Gilliland's would like HMA to stop using the vehicular access that crosses their property. HMA has agreed to examine an alternative access location, to evaluate the technical feasibility and the cost of developing the alternative access, and to determine if the alternative access is a meritorious vehicular access sufficient to serve the needs of HMA.

HMA, the Gilliland's, and their respective representatives have engaged in some dialog about potential alternate access locations. Various alternatives were discussed in general terms. It was decided, for the purpose of this analysis that only one of the alternatives would be evaluated in detail. The alternative selected for detailed evaluation was the only one that might reasonably replace the function of the existing vehicular access.

The alternative vehicular access to be evaluated is described as follows:

The alternative vehicular access would intersect Route 453 approximately 1.3 miles southeast of the Village of Viola. The road would then travel cross country generally north entirely on HMA lands where it would intersect the existing vehicular access road on HMA lands.

The alternative vehicular access would be approximately 4,400 feet of new road construction.

The vehicular access alternative would be constructed as follows:

1. Existing unimproved lands would be cleared and grubbed.
2. The earth base of the access road would be shaped to accommodate vehicles and also shaped to accommodate water drainage.
3. The vehicular access would be graveled per Table 1 and would be 20' wide.
4. Drainage pipes and storm water control devices would be installed were necessary.



An evaluation was made of required road grades needed to traverse the terrain from the alternative access entry point on Route 453 to a point of intersection with the existing access road located on the Southwestern edge of HMA lands near where it leaves the land of the Gilliland's.

The first part of the analysis indicated that a maximum slope of 8% would be required. This maximum slope is adequate and reasonable to accommodate the type of vehicles that would be using this road.

We have concluded that a sufficient access could be constructed along the alternative access route. In reaching this conclusion we have determined that this access is technically feasible, again meaning that it can be done in a way in which vehicles needing to use the access can reasonably negotiate the route. See the attached plan and profile map showing the routing and profile of the access road.

The second part of the analysis was to evaluate the cost of designing, permitting, and constructing this access. The cost analysis assumes that the access will be constructed by HMA in accordance with the State and Federal laws governing municipal authority construction activities. A detailed construction cost analysis is included as Table 1 to this report.

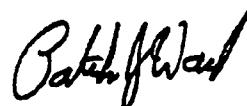
The third part of this analysis to evaluate the long term cost of using the alternate access route. In evaluating the long term cost it was assumed that maintenance of this road will be the same as the maintenance cost of existing road across the Gilliland property. Therefore road maintenance costs were not included in the analysis. However the alternate route is a longer route into The HMA facilities and therefore requires more man hours and equipment usage to reach the HMA well and surface intake facilities. There is a cost associated with this required additional travel distance and that cost is evaluated in detail in Table 2. The annualized cost of using the alternative access is converted to a present worth and added to the cost of designing permitting and constructing the existing road to obtain a total cost of the project.

The project total estimate probable cost is the sum of the values determined in Tables 1 & 2.

Table 1	\$310,000.00
Table 2	<u>\$75,735.00</u>
Total Estimated Cost	\$385,735.00

The cost of constructing the alternate access is to be compared to the cost of acquiring the existing access. That cost comparison would establish the criteria needed to determine if pursuing the alternative access is a financially prudent undertaking by HMA.

Sincerely,
UNI-TEC CONSULTING ENGINEERS, INC



Patrick J. Ward, P.E.
President

PJW/var

cc: John Fudrow, Manager - Houtzdale Municipal Authority
Jeffrey R. Garrigan, P.E. - Uni-Tec Consulting Engineers, Inc.

TABLE 1

MOSHANNON CREEK WATER SOURCES ALTERNATIVE ACCESS EVALUATION					
Estimate of Probable Cost					
CONSTRUCTION		ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE
ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED TOTAL	
1	MOBILIZATION	1	Lump Sum	\$ 5,000.00	\$ 5,000.00
2	CLEAR AND GRUB	12,222	SY	\$ 0.15	\$ 1,833.30
3	CUT AND FILL	4200	CY	\$ 12.00	\$ 50,400.00
4	1 FOOT THICKNESS NO. 4 STONE	4400	LF	\$ 20.00	\$ 88,000.00
5	6" THICKNESS 2A STONE	4400	LF	\$ 10.00	\$ 44,000.00
6	E&S CONTROLS	1	Lump Sum	\$ 5,000.00	\$ 5,000.00
7	12" DRAIN PIPE	200	LF	\$ 18.00	\$ 3,600.00
8	PRE-CAST CATCH BASIN	6	EACH	\$ 2,000.00	\$ 12,000.00
9	DRAINAGE SWALES 3 FOOT WIDE WITH GEOTEXTILE and NO. 4 STONE	3000	SY	\$ 5.00	\$ 15,000.00
10	ENTRANCE GATE	1	Lump Sum	\$ 1,000.00	\$ 1,000.00
11	RIP RAP APRON	3	EACH	\$ 800.00	\$ 2,400.00
	SUBTOTAL				\$228,233.30
	CONSTRUCTION CONTINGENCY (10%)				\$ 22,823.33
	SUBTOTAL CONSTRUCTION & CONTINGENCY				\$251,056.63
	NON CONSTRUCTION COSTS (20%)				\$ 50,211.33
	ESTIMATED TOTAL PROBABLE COST (rounded)				\$310,000.00

TABLE 2

ITEM NO.	PRESENT WORTH OF ADDITIONAL TRAVEL DISTANCE USING THE ALTERNATIVE ACCESS					
1	Additional driving distance round trip is 3.5 miles					
2	One round trip per day is 7 miles per day					
3	360 days per year is 2,520 extra miles per year					
4	Additional travel time per round trip is 14 minutes					
5	360 trips per year is .84 hours per year per staff. Two staff per trip is 168 hours per year.					
6	Travel cost is \$0.38/mile or \$958/year.					
7	Labor cost is (\$24x1.4) or \$33.60/hour or \$5,645 per year.					
8	Total additional annualized cost using the new route is \$6,603/year					
9	The Present worth of this annualized cost is \$75,735					

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

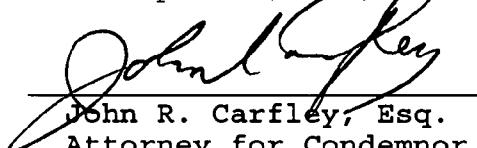
CONDEMNOR
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the Affidavit of Patrick Ward and Donald Ross, Jr. in Support of Condemnor's Motion to Dismiss Condemnees' Preliminary Objections and the Affidavit of Patrick Ward in Support of Condemnor's Motion to Acquire Possession of the Condemned Premises and in Support of its Motion to Dismiss Condemnee's Preliminary Objections filed in the above matter by placing the same in the United States Mail, regular service to the following attorneys and parties of record by first class U.S. mail, postage prepaid on November 19, 2004:

David L. Mason, Esq.
P. O. Box 28
Philipsburg, Pa., 16866

Susan J. Smith, Esq.
REAGER & ADLER, P.C.
2331 Market Street
Camp Hill, Pa., 17011


John R. Carfley, Esq.
Attorney for Condemnor
P. O. Box 249
Philipsburg, Pa., 16866

66

FILED NO
01/15/05
NOV 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

: NO. 2004-1369-CD
: Eminent Domain
: Proceeding-In Rem
: Document filed:
: ANSWER
:
: Filed on behalf of:
: Condemnor
:
: Attorney-Condemnor
: John R. Carfley
: P. O. Box 249
: Philipsburg, Pa.

Document filed: CONDEMNOR'S ANSWER TO CONDEMNNEES' ADDITIONAL PRELIMINARY OBJECTIONS

EGK
FILED *ace*
12-5484 NOV 19 2004 Atty Carfley

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

CONDEMNOR'S ANSWER TO CONDEMNNEES' ADDITIONAL PRELIMINARY OBJECTIONS

AND NOW comes the Condemnor, the Houtzdale Municipal Authority, which by and through its attorney, John R. Carfley, Esquire, files this Answer to the Additional Preliminary Objection filed to the above referenced Declaration of Taking and in support thereof avers as follows:

1. Admitted that Gillilands currently hold legal title to certain property through which the condemned right of way passes.
2. Denied. On the contrary it is averred that after reasonable investigation, Condemnor is without knowledge sufficient to form a belief as to the truth of the averment set forth herein but insofar as the averments contained in said paragraph are

relevant to this proceeding, proof thereof is demanded at time of trial.

3. While the Gillilands may access the Gilliland property by a roadway that traverses the Gilliland property and intersects with State Road 153 ("Gilliland Access") the right of way which is the subject of this condemnation is that right of way consisting of 5149.76 feet in length and 60 feet in width as specified in the Declaration of Taking the contents of which are incorporated herein by reference as fully as though set forth at length.

4. Admitted.

5. It is admitted that on September 1, 2004, Condemnor filed a Declaration of Taking in order to acquire a vehicular access over the roadway described in the Declaration of Taking. It is further specified that the Declaration of Taking located the right of way and/or easement which was to be acquired but this right of way was also for purposes of constructing electrical and water transmission facilities over, across, under and through the said area consistent with the needs and requirements of the Condemnor.

6. It is admitted that the right of way sought in the Declaration of Taking filed by the Condemnor may include portions of the Gilliland access roadway. Insofar as those facts are relevant or that Condemnee contests the extent of the right of way condemned or the location of the right of way on the maps herein provided, proof thereof is demanded at time of trial.

7. Denied. On the contrary it is averred that after reasonable investigation, Condemnor is without knowledge sufficient to form a belief as to the truth of the averment set forth therein

and insofar as relevant, proof thereof is demanded at time of trial.

8. Denied. On the contrary it is averred that Paragraph 8 of Condemnees' Preliminary Objections states a conclusion of law as to which no response is required.

PRELIMINARY OBJECTION NO. 5

9. To the extent that Section 1-402(b)(6) of the Eminent Domain Code contains a statement requiring that the nature of the title acquired, if any, be specified, it is averred that the Condemnor has complied with this requirement by describing the right of way condemned by metes and bounds and by various maps and other documents attached to the instruments filed in this proceeding.

10. It is admitted that the Declaration of Taking filed by the Condemnor describes the property to be acquired in the alternative as a right of way and/or easement. By way of further answer it is averred that the definitions of a right of way and/or easement as set forth in Black's Law Dictionary are synonymous and would include the acquisition of a vehicular right of way and a utility right of way as the situation warrants. By way of further answer it is averred that throughout the hearing on Friday, November 12, 2004, questions were posed by the Condemnor, the Condemnees, and the Court concerning the extent of the title sought to be acquired by the Condemnor; it is averred that the court and the Condemnees were assured that the title to be acquired was a right of way and not a fee simple acquisition and that the

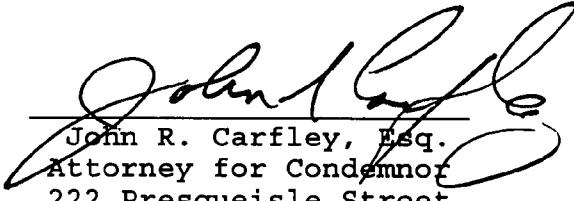
Condemnor intended to utilize the right of way and/or easement concurrently with the Gillilands who would retain ownership over the said right of way which interest could revert to the Condemnees should the Condemnor cease to exercise its rights in and to the right of way and/or cease to function as an authority or otherwise abandon the project. This finding is further confirmed by the court's order of November 12, 2004, specifically in Paragraph three (3) thereof (a copy of said order is attached hereto as Exhibit A).

11. It is denied that the statement of the interest to be acquired fails to clearly and specifically state the nature of the title to be acquired since the Condemnor has specified that the title to be acquired is a right of way and/or easement which confirms that the interest acquired is less than a fee simple title ownership which recognizes concurrent ownership and use of the right of way by the Condemnor and Condemnees subject to the right of reversion in the Condemnees upon abandonment of the use of the said right of way by the Condemnor. By way of further answer it is averred that the questioning by the court during the hearing confirmed that the title to be acquired was not title in fee simple but rather a conditional ownership; as a result this preliminary objection should be dismissed.

12. It is denied that Condemnor's Declaration of Taking fails to comply with 26 P.S. Section 1-402(b)(6) and insofar as relevant proof thereof is demanded at time of trial.

WHEREFORE, Condemnor respectfully requests that this Honorable Court enter an Order dismissing Condemnees' Preliminary Objections, permit Condemnor to continue its condemnation proceeding through a

Board of View, to acquire ownership rights vesting conditional title to the condemned property in the Condemnor and directing a Board of View to determine damages and such other relief as is just and proper in this matter.



John R. Carfley, Esq.
Attorney for Condemnor
222 Presqueisle Street
Philipsburg, Pa., 16866

Dated: November 18, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONDEMNATION BY HOUTZDALE :

MUNICIPAL AUTHORITY RE: ERIC : NO. 04-1369-CD

And BERNADETTE GILLILAND :

O R D E R

NOW, this 12th day of November, 2004, following argument and/or testimony into the above-captioned matter, it is the ORDER of this Court that counsel for Condemnor submit, within ten (10) days from date hereof, an affidavit or request that he make available for purposes of deposition the party from the Commonwealth, Department of Corrections, who is authorized to verify that they are, in fact, paying 40 percent of these proceedings.

In addition, the oral motion be and is hereby granted to the extent that any reference to a prior existing easement or right-of-way in the name of the Condemnor across lands of the Condemnee shall not be permitted at trial except as it may bear on the ultimate question of compensation.

Further, the amendment to Preliminary Objections be and is hereby granted and the same is sustained to the extent that, should the Condemnor be successful, they will be prohibited from entering or otherwise interfering with the Condemnee's coequal right to use the condemned roadway.

Finally, it is the further directive of this Court

that Condemnor is permitted access for purposes of testing and similar activities but not for construction until further disposition, and shall give Condemnee as much advance notice as possible of the same.

BY THE COURT:

/s/ JOHN K. REILLY, JR.

John K. Reilly, Jr.
Senior Judge
Specially Presiding

I hereby certify this to be a true
and correct copy of the original
document filed in this office.

NOV 16 2004

Attest:

John K. Reilly
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR : NO. 2004-1369-CD
CONDEMNNEES : Eminent Domain
: Proceeding-In Rem

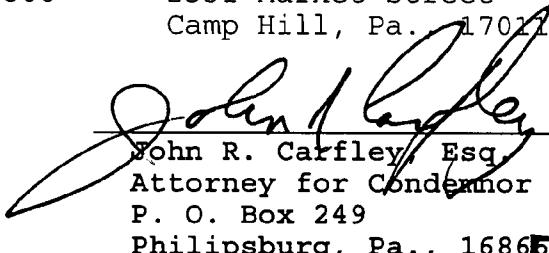
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the within Condemnor's Answer to Condemnees' Additional Preliminary Objections filed in the above matter by placing the same in the United States Mail, regular service to the following attorneys and parties of record by first class U.S. mail, postage prepaid on November 19, 2004:

David L. Mason, Esq.
P. O. Box 28
Philipsburg, Pa., 16866

Susan J. Smith, Esq.
REAGER & ADLER, P.C.
2331 Market Street
Camp Hill, Pa. 17011


John R. Carfley, Esq.
Attorney for Condemnor
P. O. Box 249
Philipsburg, Pa., 16866

FILED 10:54 AM NOV 19 2004
EGK
cc

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

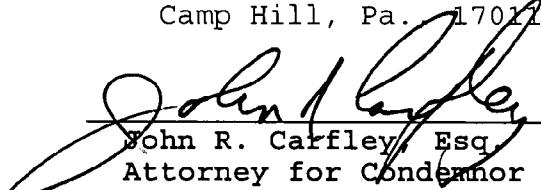
CONDEMNOR
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the within Condemnor's Answer to Condemnees' Additional Preliminary Objections filed in the above matter by placing the same in the United States Mail, regular service to the following attorneys and parties of record by first class U.S. mail, postage prepaid on November 19, 2004:

David L. Mason, Esq.
P. O. Box 28
Philipsburg, Pa., 16866

Susan J. Smith, Esq.
REAGER & ADLER, P.C.
2331 Market Street
Camp Hill, Pa. 17011


John R. Carfley, Esq.
Attorney for Condemnor
P. O. Box 249
Philipsburg, Pa., 16866

EGK
10:54 AM
NOV 19 2004
FILED No CC
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

NO. 2004-1369-CD
Eminent Domain
Proceeding-In Rem
Document filed:
ANSWER
Filed on behalf of:
Condemnor
John R. Carfley
P. O. Box 249
Philipsburg, Pa.

Document filed: CONDEMNOR'S ANSWER TO CONDEMNNEES' PETITION TO AMEND PRELIMINARY OBJECTIONS

EGK
FILED 2cc
12:52 PM Att'y Carfley
NOV 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

CONDEMNOR'S ANSWER TO CONDEMNNEES' PETITION TO AMEND PRELIMINARY OBJECTIONS

AND NOW comes the Condemnor, the Houtzdale Municipal Authority, which by and through its attorney, John R. Carfley, Esquire, files this Answer to Condemnees' Petition and in support thereof avers as follows:

1. It is admitted that preliminary objections were filed by the Condemnees on October 8, 2004.
2. It is admitted that the Declaration of Taking filed by the Condemnor in some parts of the document refers to the title to be acquired in the alternative as a right of way and/or easement. Since Black's Law Dictionary ascribes synonymous meanings to the two phrases and since Condemnor, during the testimony elicited at

the hearing on Friday, November 12, 2004, specifically confirmed the conditional, concurrent right to be acquired by the Condemnor in the roadway it is inconceivable that Condemnee could misconstrue Condemnor's intent.

3. It is specifically denied that the description of the title to be acquired does not comply with Section 1-402(b)(6) of the Eminent Domain Code and insofar as relevant proof of that averment is demanded at time of hearing.

4. It is denied that the Condemnor is attempting to acquire an unspecified interest in the property or an alternative interest in the property. The statements contained in the documents filed of record as verified by the testimony presented at the hearing specify that the interest to be acquired is a right of way to be used concurrently with the Condemnees and does not constitute a taking of a fee simple title.

5. It is admitted that the right of way which the Condemnor intends to acquire by Declaration of Taking and in its request for Writ of Possession is of paramount concern to the Condemnor.

6. Pa. R.C.P. 1033 is a Rule of Civil Procedure which speaks for itself and is subject to interpretation by this court. Insofar as the provisions of that Rule apply to this proceeding, proof thereof is demanded at time of hearing.

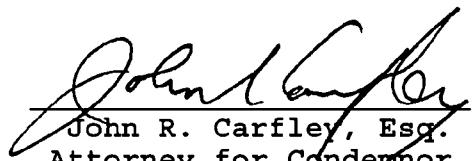
7. It is denied that amendments to preliminary objections or any other pleading are permitted when the filing of the preliminary objections or such pleading is done at a time when the filing will prejudice the opposing party or the court in its determination of the matters presented. By way of further answer it is averred that

the Court in its questioning from the bench at the hearing on November 12, 2004, elicited information from the Condemnor which confirmed the type of ownership interest sought by the Condemnor and as a result the preliminary objection should be dismissed as part of this proceeding.

8. Denied. The Gillilands' right to amend their preliminary objection should be rejected based on the averments set forth throughout this answer and most importantly based upon the Court's questioning with respect to the conditional type of ownership interest to be acquired by the Condemnor under the Declaration of Taking filed.

9. Denied. On the contrary it is averred that after reasonable investigation, Condemnor is without knowledge sufficient to form a belief as to the truth of this averment and/or the veracity of the averment set forth therein and insofar as relevant, proof thereof is demanded at time of trial.

WHEREFORE, Condemnor requests this Honorable Court to deny Condemnees' right to amend their Preliminary Objections or to otherwise alter the content of the documents presented to the Court prior to the hearing scheduled and conducted on November 12, 2004.



John R. Carfley, Esq.
Attorney for Condemnor
222 Presqueisle Street
Philipsburg, Pa., 16866
(814) 342-5581

Dated: November 18, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITuate IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

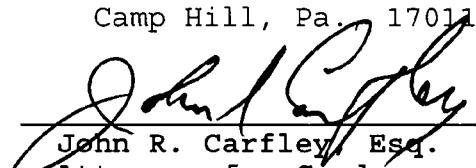
CONDEMNOR
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the within Condemnor's Answer to Condemnees' Petition to Amend Preliminary Objections filed in the above matter by placing the same in the United States Mail, regular service to the following attorneys and parties of record by first class U.S. mail, postage prepaid on November 19, 2004:

David L. Mason, Esq.
P. O. Box 28
Philipsburg, Pa., 16866

Susan J. Smith, Esq.
REAGER & ADLER, P.C.
2331 Market Street
Camp Hill, Pa. 17011


John R. Carfley, Esq.
Attorney for Condemnor
P. O. Box 249
Philipsburg, Pa., 16866

00K
FILED NO CC
12:52 PM
NOV 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

CA

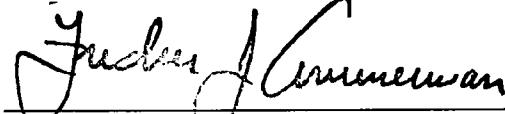
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

THE CONDEMNATION BY THE :
HOUTZDALE MUNICIPAL AUTHORITY :
OF A UTILITY AND ACCESS EASEMENT :
SIXTY (60') MORE OR LESS..... :
vs. : No. 04-1369-CD
ERIC O. GILLILAND and BERNADETTE :
GILLILAND, his wife :
:

ORDER

AND NOW, this 17th day of December, 2004, it is the ORDER of the Court that argument on Preliminary Objections is scheduled for Wednesday, December 22, 2004 at 2:30 P.M. before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding. Please report to the Court Administrator's Office. You will be directed from there where this argument will take place.

BY THE COURT:


FREDRIC J. AMMERMAN

President Judge

64 FILED ^{ICC}
01/10/2005 ^{Attn:}
DEC 20 2004 ^{Carley}
Williarn A. Shaw ^{Mason}
Prothonotary/Clerk of Court (A envelopes)

FILED ^{6P}
01/11/05 BY Atty
FEB 03 2005 Carfley
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONDEMNATION BY HOUTZDALE MUNICIPAL :
AUTHORITY, RE: ERIC GILLILAND and : No. 04-1369-CD
BERNADERTTE GILLILAND :

ORDER

AND NOW, this 3rd day of February, 2005, upon consideration of the Condemnee's Preliminary Objections, Condemnor's Answers thereto and all supporting affidavits, and after hearing and argument thereon and in further consideration of the Legal Memorandum filed by the Condemnor and Condemnee, the Court is satisfied that the Condemnor has presented sufficient evidence to substantiate Condemnor's claim to condemn the property right as stated in its Declaration of Taking and Condemnor's further ability to post sufficient security for the taking of that property right as contemplated in this proceeding, it is the Order of this Court that the Preliminary Objections filed by the Condemnee relating to the sufficiency of the security available to the Condemnor, are hereby dismissed as are all other Preliminary Objections which were previously dealt with by this Court in its Order of December 22, 2004, the provisions of which are incorporated herein by reference as fully as though set forth at length.

It is the further Order of this Court that the Condemnor's Motion for Writ of Possession is hereby granted. The Condemnor, upon the tender and/or posting of the security specified in its Motion, in the amount of \$19,703.89, shall be entitled to

possessory right to the right of way and/or easement so condemned and as specified under Section 407 of the Eminent Domain Code, as amended, 26 Pa. C.S.A., Section 1-407, et seq.

By the Court,

A handwritten signature in black ink, appearing to read "Robert J. Coughlin", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized 'R' at the beginning.

(2)
FILED ^{1CC}
01/13/05 Atty:
6K DEC 29 2004 Carlley
William A. Shaw Mason
Prothonotary/Clerk of Courts S. Smith

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONDEMNATION BY HOUTZDALE :

MUNICIPAL AUTHORITY RE: ERIC : NO. 04-1369-CD

and BERNADETTE GILLILAND :

O R D E R

NOW this 22nd day of December, 2004, upon consideration of Preliminary Objections filed on behalf of Condemnees above-named and argument and briefs thereon, it is the ORDER of this Court as follows:

1. Preliminary Objection raising the issue of the enforceability of a stipulation or contract between the Condemnors and Condemnees shall be and is hereby dismissed as being more appropriately addressed to another captioned proceeding.

2. Preliminary Objection questioning the nature of the title sought to be taken by Condemnors shall be and is hereby sustained to the extent that the highest title to be awarded to Condemnors should they be successful in this proceeding shall be that of an easement.

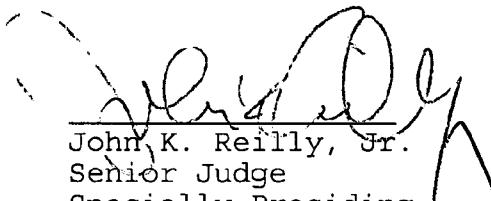
It is the further Order of this Court that Condemnor shall provide to co-counsel for Condemnee a copy of the contract between Condemnor and the Commonwealth of Pennsylvania Department of Corrections. It is the further Order of this Court that said co-counsel shall not publish any portion thereof

to any other party or individual.

3. Preliminary Objection alleging Condemnors' seeking to condemn more land than is actually necessary shall be and is hereby granted to the extent that any land of the Condemnees taken for purposes of an electric power line shall require the Condemnor to pay therefor, together with any economic loss suffered as a result thereof.

4. Preliminary Objection alleging arbitrary and capricious conduct on the part of the Condemnor for not considering other possible access to their premises shall be and is hereby dismissed.

BY THE COURT:



John K. Reilly, Jr.
Senior Judge
Specially Presiding

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

November 18, 2004

Judge John K. Reilly
Courthouse
Clearfield, Pa., 16830

RE: Houtzdale Municipal Authority
vs. Eric Gilliland et. ux.
No. 2003-1895-CD

Dear Judge Reilly:

I hate to engage in argument outside the courtroom and without regard to local rules and practices. I also don't wish to communicate ex parte with the court, however, Mr. Mason has apparently seen fit to initiate the process so in order to respond to the content of his letter of November 18, 2004, this appears to be the only way to protect my client's interest.

With that matter out of the way, I would next direct the court's attention to Pages 1-8 of the hearing transcript which is enclosed herewith for your reference. The court in that exchange ordered HMA to produce an affidavit dealing with the contract entered into with the Commonwealth of Pennsylvania, Department of Corrections. I have completed and filed the affidavit but I am still reluctant to release the entire contract document without prior approval of the Commonwealth. I am in the process of attempting to clear this matter with SCI Houtzdale and if they have no objection I will produce the contract. However, I hesitate to prematurely release it and perhaps jeopardize an ongoing relationship which we have with the Commonwealth Department of Corrections when I don't think the Condemnee really needs this document to decide whether the Authority sufficiently collateralized to acquire a dirt road.

I would like the Court to note that HMA's expert has placed total market value of the right of way at approximately \$20,000.00 - \$30,000.00. The collateral available to the Authority as affirmed by the Affidavit of Brent Thomas, the C.P.A. is two and a half million dollars in liquid assets and \$18,000,000.00 in fixed assets. Moreover the Authority has the ability to raise rates to collect additional funds should the right of way be valued in excess of that determined by our expert.

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

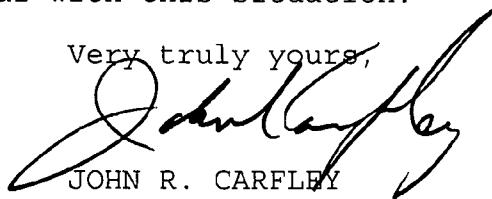
(2)

The Court will further note that Ms. Smith, in the text of the transcript provided, agreed at the outset to withdraw the preliminary objection on security so for Mr. Mason to now argue that Condemnees are prejudiced in their ability to brief that issue is entirely without merit.

I would also appreciate some effort on behalf of counsel to designate one individual who will act as lead counsel so that I know who I am dealing with on these various matters. More importantly my client needs to have this information so that it can provide notice to the proper parties of the need to access the condemned properties until such time as the matters are finally concluded by the court. As an example, I am enclosing a letter which I received from Dave Mason indicating that my client's right to access the right of way for purposes of securing ingress to the Moshannon Creek Watershed would be granted but subject to a veiled threat of economic damages. The same day another letter from Ms. Smith was sent directly to Unitec containing her concerns about the amount of notice provided. She then attempts to set artificial limitations on the Authority's use of the right of way when the court clearly indicated that access was to be made available so long as work did not directly effect the right of way. I can assure the court that the access we required on November 19 was simply as a means to cross the Gilliland property to secure access to the HMA landholdings and that notice was provided in as many ways, ie: fax, E-mail and direct contact as we were able to provide based on our own investigation.

Please advise as to how the court would like to proceed with this issue. I am prepared to appear at any convenient time for the court and argue the matter if you believe that is the most appropriate way to deal with this situation.

Very truly yours,



JOHN R. CARFLEY

JRC:sm
Encls.

CC: David A. Mason, Esq. (Letter only)
Susan J. Smith, Esq. (Letter only)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

MEMORANDUM IN SUPPORT OF CONDEMNOR'S MOTION TO DISMISS THE CONDEMNNEES' PRELIMINARY OBJECTIONS AND TO GRANT CONDEMNOR ACCESS TO THE RIGHT OF WAY DESCRIBED IN THE DECLARATION OF TAKING FILED TO THE ABOVE TERM AND NUMBER

I. FACTS

This matter concerns a Declaration of Taking filed by the Houtzdale Municipal Authority (hereinafter the Condemnor) against Eric and Bernadette Gilliland (hereinafter Condemnee) on September 1, 2004. Condemnor is a municipal authority organized under the Municipal Authorities Act which relies upon said Act as its enabling authority to permit the said Condemnor to seek and secure inter alia utility and vehicular easements pursuant to the

RECEIVED

NOV 02 2004

COURT ADMINISTRATOR'S
OFFICE

NO. 2004-1369-CD

Eminent Domain
Proceedings
In Rem

Municipal Authorities Act, 53 Pa. C.S.A. Section 5601 et. seq. and the Eminent Domain Code, 26 P.S. Section 1-201 et. seq.

Prior to its filing of this Declaration of Taking on September 1, 2004, the Authority had engaged in civil litigation with the named Condemnees which civil litigation was filed to Number 03-1895-CD. This litigation was terminated by Court Order based upon a stipulation agreed to by the parties providing for the use of the right of way crossing the Gilliland property for a period up to and including August 31, 2004, provided that the Condemnor's would undertake an engineering study to determine the feasibility of constructing an alternate roadway from State Road 453 across property owned by the Houtzdale Municipal Authority to serve as an alternative access road to the Moshannon Creek Watershed. The Stipulation is attached to Condemnees' Brief as Appendix D. The Stipulation clearly permits the Authority to initiate and conclude a study based upon the economic and design feasibility of constructing a road in the area suggested by the Condemnee but does not result in a commitment to that solution if it is unfeasible in the opinion of the Condemnor. Paragraph 7 of the Stipulation rather permits the Condemnor to exercise its discretion with respect to the area of construction and, in fact, Condemnor retains the right to exercise its prerogative with respect to locating and constructing the roadway which will provide access to the wellfield and surface source at Moshannon Creek. Paragraph 7 of the Stipulation clearly invests the Condemnor with final decision making authority on this issue. In that regard, Paragraph 7 states

as follows:

"Nothing herein previously stated shall prohibit HMA in the event that negotiations shall fail, from instituting a condemnation proceeding under the appropriate statute."

The Authority did undertake a study, in good faith through its consulting engineers, to consider the prospect of constructing an alternate roadway as suggested by the Condemnee but eventually determined that the overall cost of the roadway would exceed \$380,000.00 and therefore was not economically feasible especially since other factors would need to be considered such as state, federal and local permitting requirements and the need to maintain the site in an environmentally pristene condition given the environmental concerns of DEP, the Pennsylvania Fish & Boat Commission and the Susquehanna River Basin Commission as well as the Pennsylvania Environmental Defense Foundation which had previously engaged in extensive efforts to block HMA in its efforts to utilize the Mountain Branch expansion project as a means of acquiring additional water resources utilizing the Oley standards established by our Appellate Courts. In addition to these concerns and the other economic concerns which could arise in the relocation of the roadway, one must also be aware that time was of the essence with respect to the initiation and the completion of the Moshannon Creek project so time was, therefore, also a consideration in undertaking construction of the right of way project. Moreover, the Condemnor was advised by the electrical contractor that said utility had made a determination on the location of the electric utility easement which was consistent with

the existing vehicular right of way in the location described in Condemnor's Declaration of Taking so that it would be necessary for the Condemnor to acquire the vehicular easement for use by the electrical subcontractor even if an alternate roadway were constructed across the Condemnor's own property. This fact was brought to the attention of the Condemnees at the time of the stipulation/settlement and was acknowledged in Paragraph 8 of the Stipulation which read as follows:

"For the purposes of this agreement the Gillilands acknowledge that the installation of GPU facilities along the roadway closest to the proposed pipeline previously referenced in Paragraph 2 is not of major concern, however, they would prefer that it be installed underground."

Of immediate concern in this proceeding is the fact that the Condemnor has not had access to the vehicular roadway which permits it to access its own property at the Moshannon Creek since August 31, 2004, when the Condemnee unilaterally closed the existing gate, removed the Condemnor's lock from the gate and replaced the lock with a lock of their own thus prohibiting the Condemnor from accessing the right of way and, in effect, prohibiting it from accessing its own property or its water resources in the Moshannon Creek Area.

Condemnees were advised of the economic hardship the movement of the roadway would entail and the objective evidence which dictated against proceeding along such an alternate route. These factors were communicated by letter of counsel dated the 19th day of July, 2004. Counsel for the Condemnee was approached in a reasonable fashion and was asked to enter into good faith

negotiations for the acquisition of a right of way in the area under consideration failing which the Authority would be forced to exercise its power of eminent domain in order to advance the public health, welfare and safety. Unfortunately no efforts to resolve the impasse were initiated or responded to by the Condemnees.

Thirty (30) days after the filing of the Declaration of Taking Condemnees, through their counsel, filed Preliminary Objections raising, in effect, four arguments which they claim warrant setting aside the Condemnor's Declaration of Taking. These questions are outlined in Condemnees' Brief and consist of the following:

- " A. Does Title 55 of the Pennsylvania Statutes fail to provide the Authority with authority to exercise the power of eminent domain?
- B. Was the Authority's action in condemning the property arbitrary, capricious, or actuated by bad faith, impermissible motive and for an improper purpose?
- C. Has the Authority abused its discretion and acted in bad faith by condemning a greater amount of property than is reasonably necessary?
- D. Has the Authority failed to give security as required by 26 P.S. §1-403?"

II. ARGUMENT

The court's attention is directed to settled law which states that preliminary objections to declarations of taking are limited to those matters which contest the Condemnor's power and right to condemn, the sufficiency of the security, and any other procedures followed by the Condemnor as well as the contents of the declaration of taking. The Court must also be mindful that in rendering its decision the court must recognize that there is a presumption that municipal officers will properly act for the public good. The limitation on preliminary objections is clearly

and concisely set forth in Section 406(a), 26 Pa. §1-406(a) which provides in pertinent part as follows:

"Preliminary objections shall be limited to and shall be the exclusive method of challenging (1) the power and right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated (2) the sufficiency of the security; (3) any other procedure followed by the condemnor; or (4) the declaration of taking. Failure to raise these matters by preliminary objections shall constitute a waiver thereof."

Notwithstanding the Condemnee's challenge to the Declaration of Taking by way of Preliminary Objections, Section 407 of the Eminent Domain Code provides that after appropriate notice, the Court "may issue a writ of possession upon payment to the Condemnee of such estimated just compensation." Moreover the just compensation is that estimated by the Condemnor. Possession in these circumstances is generally granted by the Court where the Preliminary Objections are specious and lack substantive merit.

26 P.S. 1-406(a)-6 and 1-407.

A. In the principal case as in the case of In Re: Condemnation of Real Estate by the Borough of Ashland 851 A.2d 992 (2004), the condemnees are asking the court to set aside the declaration of taking based upon matters which are clearly outside the realm of matters enumerated by the Legislature as grounds for setting aside a Declaration of Taking. In the Borough of Ashland the property owners alleged that the Borough knew that the owners planned to build on its property and that the Borough had other options to the taking of owners' property, that the Borough's attitude towards the owners soured prior to condemnation and that the owners were not

able to open lines of communications with the Borough.

In this case Condemnees argue that the Condemnor entered into a stipulation which compelled the Condemnor to construct an alternate roadway over and across property owned by the Condemnor in order to avoid using the existing right of way as a means of accessing the Moshannon Creek watershed. Condemnor, on the other hand, views the stipulation as one which only required the Condemnor to complete a study on the feasibility of approaching the watershed by an alternate route and nothing more. The Court can readily observe that not only is the existing right of way the more expedient way to reach the Moshannon Creek from existing Route 453, but the stipulation cited by the Condemnees was simply an agreement by the parties to study the feasibility of constructing an alternate roadway. If the initial feasibility study proved this solution to be economically, environmentally and strategically justified the alternate roadway would have been considered. However, the stipulation clearly states in Paragraph 7 that the Condemnor retained the specific right to engage in a condemnation proceeding should the alternative route prove to be unfeasible or incapable of completion.

The condemnor has cited any number of reasons which should convince any reasonable person that the construction of an alternate roadway is not the most feasible manner of proceeding in this instance. Not only would the construction take a good deal of time to complete but it would also cost an estimated \$385,000.00 without even considering the potential environmental considerations

such as wetlands, acid mine drainage, pyrite deposits similar to those encountered in the I-99 corridor or any other factors which may be brought to the attention of the condemnor by DEP, the Pa. Fish & Boat Commission and/or the Susquehanna River Basin Commission. The existing roadway has been in existence for over eighty years and, in effect, is grandfathered in its usage and could in no way engender the problems or objections which might be encountered by the relocation of the roadway. Moreover, Penelec which will be constructing the electrical grid and has the final say as to the location of the electrical easement has insisted that the electrical grid be constructed along the existing roadway crossing the Gilliland's property. Since the electrical subcontractor has the final say on the location of the easement, Condemnor must abide by that decision and secure a right of way for the electrical provider notwithstanding the manner in which the vehicular easement is chosen to access the property and the Moshannon Creek Watershed.

Condemnor would therefore argue that Condemnee's preliminary objection dealing with the proposed agreement/stipulation fails for two reasons: number one, the grounds cited by the condemnee is not one which may be properly raised by preliminary objection under Section 406 of the Act since the preliminary objections available to a complaining party are clearly and concisely set forth in Section 406(a), 26 Pa. §1-406(a) and, are thus limited and may not be expanded upon according to statutory law and the cases interpreting the statute. Secondly, the stipulation entered into

by the Condemnor and Condemnee clearly established only a basis by which the parties could undertake studies on the relocation of the vehicular right of way but it in no way bound the Condemnor to relocate the right of way if the Condemnor chose for any reason to exercise its power of condemnation and locate the right of way in its current position.

B. Condemnee further alleges that the Authority's action in condemning the property is arbitrary, capricious and actuated by bad faith, impermissible motive and for an improper purpose. Cited in conjunction with this ground for setting aside the declaration of taking is a similar allegation that the Authority has abused its discretion and acted in bad faith by condemning a greater amount of property than is reasonably necessary. The Court should first be made aware of the fact that any condemnee alleging fraud, collusion, bad faith or abuse of power or discretion on the part of the condemnor has a heavy burden and must overcome the presumption that the condemnor has acted properly. In short, the Condemnee must overcome the presumption that the municipal officers acted properly and for the public good. In fact, the Commonwealth Court and all of the courts of the Commonwealth give deference to the judgment of municipal officials in the exercise of their discretion in eminent domain matters and will disturb these decisions only where the condemnee can offer prove of fraud, collusion, bad faith or an abuse of power or discretion. In Re: School District of Pittsburgh 430 Pa. 566, 244 A.2d 42 (1968), Appeal of Waite 163

Cmwth. 283, 641 A.2d 25 (1994), Position for allowance of appeal 539 Pa. 657, 651 A.2d 543 (1994). The Court in Borough of Ashland succinctly stated this authority as follows:

"Our authority to review the exercise of the power of Eminent Domain is limited and is exercised by judicial respect for the doctrine of the separation of powers of government as the Supreme Court enunciated this principal in Weber v. Philadelphia 437 Pa. 179, 183, 262 A.2d 297 (1970)".

It was in that Supreme Court case that the court stated that it first presumed that municipal officers properly act for the public good and that courts will not sit in review of the municipal actions involving discussion in the absence of proof of fraud, collusion, bad faith or arbitrary action including an abuse of discretion.

Moreover in exercising its judicial review, the courts, absent proof of fraud, collusion, bad faith or abuse of power do not inquire as to the wisdom of municipal action and judicial discretion should not be substituted for administrative discretion.

While the Condemnee seeks to convince this court that the Condemnor acted arbitrary they cite no concrete examples of how the Condemnor acted in any way to condemn more property than that deemed necessary for the Condemnor to complete its legislatively mandated duty of securing a right of way to access its land and the water which customers of the Authority require. The fact of the matter is that the vehicular right of way has been in existence for over eighty (80) years and constitutes the most economical and expedient manner of accessing the watershed from the main highway

without engaging in extensive planning and construction of an alternative roadway which may be subject to unknown environmental problems coincident with its relocation.

C. Condemnee would further argue that the Condemnor does not have authority to condemn property on the basis of the statute cited. Condemnor has clearly cited as its enabling authority the Municipal Authorities Act, Act of June 19, 2001, P.L. 287, No. 22, and in fact states that the Houtzdale Municipal Authority was organized under the authority of that Act and/or its predecessor. Unfortunately in citing this Act, the Condemnor committed a typographical error and cited 55 Pa. C.S.A. §5601 et. seq. (The Act) rather than 53 Pa. C.S.A. a typographical error which the Condemnee seized upon to delay the proceedings initiated by the Authority in good faith. In the Declaration of taking the condemnor likewise stated accurately that the condemnor acted under the Eminent Domain Code, Act of June 22, 1964 P.L. 84 as amended, Article 4, Section 402 (26 P.S. 1-402 et. seq.) Clearly the citation of 55 Pa. C.S.A. was inaccurate since the text in 55 Purdons is set forth as 55 P.S. not 55 Pa. C.S.A. and deals with Navigation and not Municipal Authorities which is clearly the text intended to be cited by the Condemnor. The Condemnor has, in fact, filed a Motion with the Court to permit the Condemnor to correct the typographical error in the citation of the text which motion is before this court for determination. The worst case scenario which could occur at this time would be to require the Authority/

Condemnor to file an amended declaration of taking in which Condemnor would cite 53 Pa. C.S.A. 5601 et. seq. as the Act under which the Condemnor secures its enabling authority to engage in acts of condemnation under the Eminent Domain Code. The actions undertaken by the Condemnees are clearly designed only to cause delay in finalizing the acquisition of the existing right of way in that Condemnor has made a valid offer to escrow the fair market value for the right of way as determined by Condemnor's expert.

D. Finally, Condemnee would argue that the Condemnor does not have sufficient financial resources from which to provide security to the Condemnee for the acquisition of this right of way. Condemnor has stated that its expert has valued the right of way at approximately \$20,000.00 and has filed a petition with the court to post as a cash bond approximately \$20,000.00 which the condemnee may either accept pro tanto or permit it to be deposited with the prothonotary pending the outcome of the board of view which will be selected and convened upon court order. Condemnor, in following the normal procedures has posted an open ended bond pledging the assets of the Authority to satisfy any debt created in favor of the Condemnee. Condemnor has also secured and filed an affidavit in support of its Declaration of Taking from its accounting firm which incorporates a financial report outlining fixed assets of over \$18,000,000.00 available to Condemnor and liquid assets available in local banking institutions and readily subject to liquidation of over \$2,500,000.00. These accounts are subject to liquidation at

the request of the officers of the Condemnor should the need arise. The Condemnor has likewise submitted an affidavit executed by the Chairman of the Board of Directors of the Houtzdale Municipal Authority pledging sufficient liquid assets from these accounts to support the open ended bond should those assets be required in order to protect the rights of the Condemnee.

Condemnees argument that the Condemnor lacks sufficient assets to protect the condemnees in the event of a condemnation of its property are specious, without legal or factual basis and designed only to delay the outcome of this proceeding.

III. CONCLUSION

For all of the foregoing reasons Condemnor requests that the Condemnees' preliminary objections be dismissed and that possession of the property be granted to the Condemnor subject to Condemnees' rights to retain the sums paid into escrow by the Condemnor pro tanto and/or to move for the appointment of a board of view to determine the damages sustained by the Condemnees as a result of this lawful taking.



John R. Carfley, Esq.
Attorney for Condemnor
222 Presqueisle Street
Philipsburg, Pa., 16866
(814) 342-5581

Dated: November 2, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

THE CONDEMNATION BY THE HOUTZDALE :
MUNICIPAL AUTHORITY, OF A UTILITY :
AND ACCESS EASEMENT SIXTY : NO. 2004-1369 CD
EASEMENT SIXTY (60') MORE OR LESS IN :
WIDTH ... :
CONDEMNOR :
vs. : EMINENT DOMAIN PROCEEDINGS
ERIC O. GILLILAND and BERNADETTE :
GILLILAND, his wife, :
CONDEMNEES : TYPE OF PLEADING: BRIEF IN
: SUPPORT OF PRELIMINARY
: OBJECTIONS TO THE
: DECLARATION OF TAKING
: FILED ON BEHALF OF:
: CONDEMNEES
: ATTORNEYS FOR CONDEMNEES:
: David C. Mason, Esquire
: Supreme Court ID #39180
: DAVID C. MASON LAW OFFICE
: P.O. Box 28
: 409 N. Front Street
: Philipsburg, PA 16866
: (814) 342-2240
RECEIVED : Susan J. Smith, Esquire
: Supreme Court ID #62531
: REAGER & ADLER, P.C.
: 2331 Market Street
: Camp Hill, PA 17011
: Telephone: (717) 763-1383
OCT 28 2004 : ATTORNEY FOR CONDEMNOR:
: John R. Carley, Esquire
: Supreme Court ID #17621
: P. O. Box 249
: 222 Presqueisle Street
: Philipsburg, PA 16866
: (814) 342-5581
COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SERVICES.

NO. 2004-1369 CD

Eminent Domain Proceedings In Rem

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS
TO THE DECLARATION OF TAKING
FILED BY HOUTZDALE MUNICIPAL AUTHORITY

I. HISTORY OF THE CASE.

This matter concerns the Declaration of Taking filed by the Houtzdale Municipal Authority (“Authority”) against Eric and Bernadette Gilliland (“Gillilands”) on September 1, 2004, in which the Authority condemned a utility and vehicular easement (“Taking Easement”) over certain property owned by the Gillilands at 548 Hunt Club Drive, Ginter, Pennsylvania 16651 (“Gilliland Property”). A true and correct copy of the Notice of Condemnation and Declaration of Taking are attached as **Appendix A** hereto.

The Gillilands own and operate a hunting preserve on the Gilliland Property, including, among others, such uses and activities as field dog trials, archery shoots, upland bird hunting, turkey hunting, deer hunting, dog training and clay target shooting (“Hunting Preserve”). The Gillilands use the Gilliland Property for such uses and activities year round. The Gillilands access the Gilliland Property by private drives that traverse the Gilliland Property and intersect with State Road 153 (“Gilliland Access”). The Taking Easement traverses these private drives and the area of the Hunting Preserve.

The Authority is a municipal authority organized under the Pennsylvania Municipal Authorities Act and operating in Clearfield County, Pennsylvania. The Authority owns 325± acres, more or less, of property that abuts Moshannon Creek and that has 2,500± linear feet of road frontage on State Road 453. In June, 2004, the Authority entered into a Stipulation with the Gillilands in the matter of *Houtzdale Municipal Authority v. Eric O. Gilliland and Bernadette Gilliland*, Docket No. 03-1895-CD, Court of Common Pleas of Clearfield County (“Stipulation”), under which the Authority agreed in good faith to site and construct an access, at Gillilands’ cost and expense, from State Road 453 across the Authority Property to serve as the Authority’s access for the purpose described in the Declaration of Taking (“State Road 453 Access”). A true and correct copy of the Stipulation is attached hereto as **Appendix B**. The Authority did not construct the State Road 453 Access, but instead filed the Declaration of Taking at issue in this matter. On October 8, 2004, the Gillilands filed Preliminary Objections to the Declaration of Taking pursuant to § 406 of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, *as amended*, 26 P.S. § 1-406.

II. STATEMENT OF QUESTIONS INVOLVED

- A. Does Title 55 of the Pennsylvania Statutes fail to provide the Authority with authority to exercise the power of eminent domain?

SUGGESTED ANSWER: YES

B. Was the Authority's action in condemning the property arbitrary, capricious, or actuated by bad faith, impermissible motive and for an improper purpose?

SUGGESTED ANSWER: YES

C. Has the Authority abused its discretion and acted in bad faith by condemning a greater amount of property than is reasonably necessary?

SUGGESTED ANSWER: YES

D. Has the Authority failed to give security as required by 26 P.S. § 1-403?

SUGGESTED ANSWER: YES

III. ARGUMENT.

A. Standard of Review.

This Court's review of the Authority's Declaration of Taking is limited to determining whether the Authority is guilty of fraud, bad faith, or has committed an abuse of discretion. *In re Condemnation of Legislative Route 62214*, 425 Pa. 349, 353, 229 A.2d 1, 3 (1967); *PennDOT v. Montgomery Twp.*, 655 A.2d 1086, 1088 n.2 (Pa. Cmwlth. 1995), appeal denied, 542 Pa. 651, 666 A.2d 1059 (1995). The Gillilands, as condemnees, bear the burden of proof on these issues, which they acknowledge is a heavy one. *Legislative Route 62214*, 425 Pa. at 353, 229 A.2d at 3. However, as demonstrated below, the Authority has acted in bad faith and committed an abuse of discretion because it has acted without authority to condemn, condemned the Gilliland Property for a reason other than a public purpose, condemned a greater amount of property than reasonably necessary, and failed to post adequate security.

B. Title 55 of the Pennsylvania Statutes Fails to Provide the Authority with Authority to Exercise the Power of Eminent Domain.

In the Notice of Condemnation, the Authority identified its authority for condemning the property as pursuant to Title 55 of the Pennsylvania Statutes. Title 55, concerning navigation,¹

¹ Title 55, for example, includes provisions for the Navigation Commission for the Delaware River, *see 55 P.S. § 1 et seq.*, regulates wharves, docks and harbors, *see 55 P.S. § 301 et seq.*, and provides for Port Authorities, *see 55 P.S. § 551 et seq.*

does not provide any authority for the Authority to exercise eminent domain powers. As a result, the Declaration of Taking should be vacated and the condemnation proceedings terminated because the Authority acted without the power or right to condemn the Gilliland Property. *Winger v. Aires*, 371 Pa. 242, 244, 89 A.2d 521, 522 (1952) (“[C]ondemnation may not take place at all without authority of law.”).

C. The Authority’s Action in Condemning the Property was Arbitrary, Capricious, or Actuated by Bad Faith, Impermissible Motive and For an Improper Purpose.

Property may be condemned only for a public purpose. Legislative Route 62214, 425 Pa. at 353, 229 A.2d at 3. The power of eminent domain may not be employed for the purpose of devoting the property to the private use of another. *Redevelopment Auth. of Erie v. Owners in Interest*, 274 A.2d 244, 251 (Pa. Cmwlth. 1971). Although the condemning authority may cite a public purpose in the Declaration of Taking, this recitation is not conclusive, and must be reviewed by the Court to determine its validity. *Jacobs v. Clearview Water Supply Co.*, 220 Pa. 388, 393, 69 A. 870, 872 (1908).

In the Declaration of Taking, the Authority cited the following alleged public purpose:

3. The purpose of the condemnation is to provide a utility and vehicular access easement in order to insure access to the watershed and to expand the ground water system and the surface source of the Authority known as the Moshannon Creek Watershed and to specifically enlarge, upgrade and renovate the water acquisition, water treatment, and water distribution system already approved for use in that locale and throughout the area of operations of the condemnor in the Moshannon Valley.
4. The further purpose of the Condemnation is to acquire a right of way in, over, across and through the existing property of Eric and Bernadette Gilliland (the “Condemnee”), such Condemnee’s property being located in Gulich Township, Clearfield County, Pennsylvania, having an address of 548 Hunt Club Drive, Ginter, Pennsylvania, and being more particularly described in that

certain Deed dated April 30, 2001, and recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Instrument Number 200105981, (the “Subject Property”), for access to place utilities, with the further right to construct, repair, and maintain the accessway for purposes of ingress, egress, and regress for its water pipeline and other facilities including electrical transmission lines as the width of the right of way permits and to further construct, lay, maintain, and service the transmission pipeline and other support facilities so as to permit the efficient transmittal of water from the watershed throughout the system of distribution.... .

See Appedix A at 4-5.

The asserted public purpose is specious or merely incidental to the taking because there is no purpose (public or otherwise) for the Authority to condemn the Gilliland Property. The exercise of eminent domain power “has its foundation in the imperative law of *necessity*, which alone justifies and limits its exercise. For this reason it has been uniformly held that the power can only be invoked when public exigency or necessity requires the exercise of the sovereign right.” *Jacobs*, 220 Pa. at 393, 69 A. at 871-72 (emphasis supplied). As previously noted, the Authority and the Gillilands entered into a Stipulation on June 9, 2004 in which the Authority agreed in good faith to construct the State Road 453 Access from State Road 453 across Authority property. The State Road 453 Access, to be constructed at the Gillilands cost and expense, is *identical* in purpose to the Taking Easement. Both the State Road 453 Access and the Taking Easement would provide the Authority with access to its property for purposes of developing and maintaining its water system. Although the Authority previously agreed by the Stipulation to construct the State Road 453 Access, it has made no reasonable or good faith effort to do so. Instead, the Authority now seeks to avoid its obligations under the Stipulation, and in doing so unlawfully create a justification for the Taking Easement where there is no need for it otherwise. The Authority’s actions demonstrate that it is exercising its eminent domain powers arbitrarily, in bad faith and for a purpose other than the public good. *See Redevelopment Auth. of Erie*, 274 A.2d at 247 (exercise of eminent domain power in bad faith implies a tainted motive of interest).

D. The Authority Abused its Discretion and Acted in Bad Faith by Condemning a Greater Amount of Property than is Reasonably Necessary.

The power of eminent domain may not be used to condemn “a greater amount of property than is reasonably required for the contemplated purpose.”” *Montgomery Twp.*, 655 A.2d at 1089 (quoting *In re Waite*, 641 A.2d 25, 28-29 (Pa. Cmwlth. 1994). *See also Winger*, 371 Pa. 242, 89 A.2d 521 (school district without authority to condemn 55 acre farm for school when 10 acres was reasonably necessary to accommodate school and appurtenant facilities). A condemnation action that seeks a greater amount of property than is reasonably required amounts to an abuse of discretion and will be vacated. *Winger*, 371 Pa. at 247, 89 A.2d at 523; *Montgomery Twp.*, 655 A.2d at 1091.

As shown *infra*, there is no need for the Taking Easement. Therefore, *a fortiori*, the Authority has attempted to take an excessive amount of property over and above what is required for their alleged public purpose.² As a result, the Authority has acted in bad faith and abused its discretion.

E. The Authority Failed to Give Security as Required by 26 P.S. § 1-403.

Section 403 of the Eminent Domain Code, 26 P.S. § 1-403, requires security to be posted by a condemnor. Because the Authority does not have taxing power, *see* 26 P.S. § 1-403(b), the Authority was required to post a bond with the Commonwealth “for the use of the owner or owners of the property condemned, the condition of which shall be that the condemnor shall pay such damages as shall be determined by law.” 26 P.S. § 1-403(a). Pursuant to 26 P.S. § 1-403(c), this Court may require the Authority to give such a bond and security as this Court deems proper “if it shall appear to the court that the bond...of the condemnor is not sufficient security.” 26 P.S. § 1-403(c).

² Moreover, the taking is excessive because it will diminish the value of the Gilliland Property by inhibiting the beneficial use as a hunting preserve. With unrestricted access to the easement, the presence of Authority vehicles and personnel will materially interfere with the use of the property for hunting, field dog trials and shooting activities. The current uses of the property would necessarily be severely curtailed in order to preserve the safety of Authority personnel who may be on the Gilliland property within the taking easement at any time.

In this action, the Authority filed an open ended bond without surety. Such a bond is insufficient security without the Authority's assurance that it has funds available to pay any damages to which the Gillilands are entitled. As a result, the Gillilands' preliminary objection should be sustained and either this matter dismissed or a hearing held to determine whether the Authority has the financial ability to support the bond and what adequate security is to be posted by the Authority.

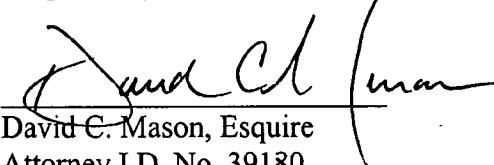
IV. CONCLUSION.

The Gillilands' Preliminary Objections should be sustained and the Declaration of Taking vacated because the Authority has abused its discretion and acted in bad faith by attempting to condemn the Gilliland Property without authority, for a reason other than a public purpose, condemned a greater amount of property than reasonably necessary, and failed to post adequate security.

Dated: October 28, 2004

BY:

Respectfully submitted,


David C. Mason, Esquire
Attorney I.D. No. 39180
409 North Front Street
PO Box 28
Philipsburg, PA 16866

Susan J. Smith, Esquire
Attorney I.D. No. 62531
2331 Market Street
Camp Hill, Pa 17011

Attorneys for Condemnees Eric and
Bernadette Gilliland

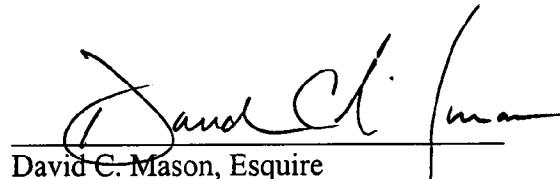
CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a true and correct copy of the
Condemnees' Brief in Support of Preliminary Objections to the Declaration of Taking was
served on the following individual(s) via United States First Class Mail, postage prepaid as
follows:

John R. Carfley, Esquire
P.O. Box 249
222 Presqueisle Street
Philipsburg, PA 16866

Attorney for Condemnor

Dated: October 28, 2004



David C. Mason, Esquire

Attorney for Condemnees
Mason Law Office
P.O. Box 28
409 N. Front Street
Philipsburg, PA 16866
(814) 342-2509



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

NO. 2004- 1369CD

Eminent Domain
Proceedings
In Rem

9-8-04

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

NOTICE OF CONDEMNATION

TO: Eric and Bernadette Gilliland
548 Hunt Club Drive
Ginter, Pa., 16651

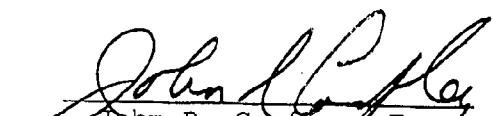
In accordance with Sections 5607(d)(15) and 5615(a) of the Municipal Authorities Act, Act of June 19, 2001, P.L. 287, No. 22, 55 Pa. C.S.A. §§5601 et. seq. and Section 1-405 of the Eminent Domain Code of 1964, 26 P.S. §1-405, Notice is hereby given by Houtzdale Municipal Authority, (the "Authority") having an address of 561 Kirk Street, P. O. Box 97, Houtzdale, Pennsylvania, that:

1. A declaration of taking, a copy of which is attached as Exhibit "A" and incorporated herein, was filed on September 1, 2004, in the Court of Common Pleas of Clearfield County,

Pennsylvania to the above term and number.

2. The Declaration of Taking was filed by the Authority to condemn the right-of-way and/or easement more particularly described in that document. The purpose of this condemnation is for vehicular access throughout the site to the Moshannon Creek and other lands of the Condemnor in order to facilitate the construction, exploration, drilling and exploitation of production wells and the surface source and intake at the Moshannon Creek Headwaters and for other purposes involved in the upgrading and renovation of its water system and its system of treatment, all as is more particularly described in the Declaration of Taking. Identification of the right-of-way and/or easement being condemned appears on the map and legal description attached as Exhibits to the Declaration of Taking and the other documents filed of record.

3. If you wish to challenge the power or right of Houtzdale Municipal Authority to appropriate the condemned property, the sufficiency of the security, the procedure followed by the Authority, or the declaration of taking, you are required to file preliminary objections within 30 days after being served with this notice.



John R. Carrley, Esq.
Attorney for Condemnor
222 Presqueisle Street
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

Dated: September 1, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOCK CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR

NO. 2004-1364-CP

Eminent Domain
Proceeding-In Rem

PROPERTY CONSIDERED TO BE A RIGHT
AND EASEMENT AND OF THE ORIGINAL
SITUATION AND IN THIS ORDER

SEP 31 2004

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

Attest:

Common Seal

DECLARATION OF TAKING

The Houtzdale Municipal Authority does hereby file this Declaration of Taking, based on the provisions of Article IV, Section 402, of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. 1-402, as amended, and respectfully declares that:

1. The condemnor is the Houtzdale Municipal Authority, a Pennsylvania Municipal Authority, duly organized under the authority of the Municipal Authorities Act, Act of June 19, 2001, P.L. 287, No. 22 with its principal office located at 561 Kirk Street, P. O. Box 97, Houtzdale, Pennsylvania, 16651.

2. The interest in the property hereinafter described is hereby condemned as a right-of-way and/or easement for the purposes of constructing, maintaining and repairing of a utility and access

right of way and/or easement to allow for the development of a water transmission pipeline and other facilities for improvement of the water supply, water distribution and water treatment system pursuant to the Municipal Authorities Act of June 19, 2001, P.L. 287, No. 22, 55 Pa. C.S.A. §5601 et. seq. (the "Act"), specifically sections 5607(d)(15) and 5615(a) of the Act, and the Eminent Domain Code, Act of June 22, 1964, P.L. 84, as amended, Article IV, Section 402 (26 P.S. 1-402 et. seq.). The within condemnation has been authorized by Resolution adopted the 31st day of August, 2004 by the said condemnor. A copy of said resolution and accompanying exhibits is attached hereto and made a part hereof as Exhibit A. The original may be examined at the address of the condemnor.

3. The purpose of the condemnation is to provide a utility and vehicular access easement in order to insure access to the watershed and to expand the ground water system and the surface source of the Authority known as the Moshannon Creek Watershed and to specifically enlarge, upgrade and renovate the water acquisition, water treatment, and water distribution system already approved for use in that locale and throughout the area of operations of the condemnor in the Moshannon Valley.

4. The further purpose of the Condemnation is to acquire a right of way in, over, across and through the existing property of Eric and Bernadette Gilliland (the "Condemnee"), such Condemnee's property being located in Gulich Township, Clearfield County, Pennsylvania, having an address of 548 Hunt Club Drive, Ginter, Pennsylvania, and being more particularly described in that certain Deed dated April 30, 2001, and recorded in the Office of the

Recorder of Deeds of Clearfield County, Pennsylvania, in Instrument Number 200105981, (the "Subject Property"), for access and to place utilities, with the further right to construct, repair, and maintain the accessway for purposes of ingress, egress, and regress for its water pipeline and other facilities including electrical transmission lines as the width of the right of way permits and to further construct, lay, maintain, and service the transmission pipeline and other support facilities so as to permit the efficient transmittal of water from the watershed throughout the system of distribution (collectively, and specifically including the rights listed below, the "Right-of-Way." These rights shall include but shall not be limited to:

(a) A permanent right-of-way for purposes of this Declaration of Taking and/or easement together with the free and uninterrupted use, liberty and privilege of and passage in, over and through the Subject Property as depicted in an area which has been determined by the Authority and is set forth on the map and legal description attached to the Resolution as Exhibit 1 and 2.

(b) The said Right-of-Way shall not exceed sixty (60') feet in width, as Condemnees legal title shall so permit, or at a distance from and utilizing as a guide the existing roadway to permit the Condemnor to expand the road on either side of the said existing roadway, for a transmission pipeline and to provide additional access for the three phase power system demanded by GPU, the electrical subcontractor for the Condemnor; provided however, that said width is sufficient to accommodate these requirements failing which additional action may be warranted, all of which will

be fully depicted on the Condemnor's maps as they are drafted subject to the access roadway as herein depicted and described. Together with the right of free ingress, egress and regress to and for the said Condemnor, its successors and assigns, its tenants and undertenants, occupiers, or possessors of the said Condemnor's Right-of-Way, the said Right-of-Way to be used for vehicular access and for the purposes of constructing, maintaining and repairing of a water transmission pipeline and other facilities that the Condemnor shall within its sole discretion deem appropriate including but not limited to pressure reducing valves, shut offs, blow off valves, pump stations, electrical services and other related facilities. The specific description of the area to be acquired by the Condemnor as depicted on the map attached hereto and by a survey description establishing metes and bounds likewise attached hereto consists of a right of way not to exceed sixty (60') feet in width as Condemnees' legal title shall so permit subject to the same terms and conditions as are more fully set forth herein at length. Said 60 foot right of way shall likewise be established as 30 foot equi-distant where possible from the center line of the existing roadway but up to sixty feet from the main roadway as mandated by topography, terrain or other such man made or natural obstructions.

(c) The right of grading, conditioning, and installing drainage facilities, and seeding the soil of the Right-of-Way, and the removal of all obstructions from the Right-of-Way which may constitute a hindrance to the establishment and maintenance of Condemnor's facilities.

(d) The right to make alterations upon the Right-of-Way which alterations, fixtures, additions, structures or facilities so placed in or upon, or attached to the said Right-of-Way shall be and remain the property of the Condemnor, and may be removed upon the date of expiration or termination of this use, or within ninety (90) days thereafter, by or on behalf of the Condemnor, or its grantees, or purchasers of said alterations, fixtures, additions, structures, or facilities.

5. A description of the Right-of-Way over, across, upon and through the Subject Property sufficient for its identification is set forth on the attached map and legal description. On the same day as this declaration of taking is being filed with the prothonotary, plans showing the right-of-way and/or easement condemned are being lodged for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, in accordance with Section 404 of the Eminent Domain Code, 26 P. S. §1-404 and pursuant to the plan attached hereto and to be filed with the Prothonotary as part of these proceedings.

6. The Condemnor, in conjunction with this proceeding, also makes claim to an existing right of way believed to be comprised of a gravel roadway approximately 20' in width by 5149.76' in length traversing in part the same area specified herein for the Right-of-Way by virtue of previous actions by the Authority's predecessor in title which actions occurred in or about the period of time commencing in 1910 and terminating in the mid 1930's, as evidenced by the ancient documents maintained as part of the business records of the Condemnor specifying said action in the Moshannon Creek

Watershed and being formalized by the issuance of a water allocation permit to the Condemnor's predecessor in interest by the predecessor to the Commonwealth of Pennsylvania, Department of Environmental Protection, which records appear and are maintained in the business offices of the Condemnor and are available for inspection upon request.

7. The nature of the title acquired in and to the property is a right-of-way and/or an easement over, across, upon and through the Subject Property described in the exhibits attached hereto.

8. A plan showing the condemned Right-of-Way may also be inspected at the office of the condemnor which is located at 561 Kirk Street, Houtzdale, Pennsylvania.

9. The condemnor files with this Declaration of Taking an open ended bond without surety pursuant to Section 403(a) of the Eminent Domain Code 26 P.S. §1-403(a). Just compensation is made or secured by the filing of said bond. A copy of the bond is attached hereto as Exhibit C and stands as collateral for the reasonable value of the right-of-way as established by a real estate appraisal in the amount of \$29,500.00 as prepared by a real estate agent qualified to perform valuations in condemnation proceedings.

HOUTZDALE MUNICIPAL AUTHORITY

BY Donald D. Ross

ATTEST:

James M. McElroy

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Donald D Ross

Dated: August 31, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :
Plaintiff

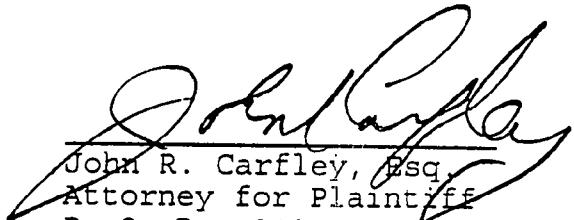
vs. : No. 2003-1895-CD

ERIC O. GILLILAND and BERNADETTE :
GILLILAND, his wife,
Defendants :

PRAECIPE

TO THE PROTHONOTARY:

PLEASE enter the attached agreement between counsel to be filed along with the Court's Order of June 9, 2004, in partial disposition of the above matter and as an interim settlement thereto.

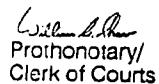

John R. Carfley, Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581

Dated: June 17, 2004

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JUN 17 2004

Attest.


Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HOUTZDALE MUNICIPAL AUTHORITY :

VS. : NO. 03-1895-CD

ERIC O. GILLILAND and :

BERNADETTE GILLILAND :

O R D E R

NOW this 9th day of June, 2004, the Court hereby confirms that the Plaintiff has withdrawn its complaint, without prejudice.

BY THE COURT:

/s/ Fredric J. Ammerman

President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JUN 09 2004

Attest.

le. A. C.
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HOUTZDALE MUNICIPAL AUTHORITY : :

VS. : NO. 03-1895-CD

ERIC O. GILLILAND and : :

BERNADETTE GILLILAND : :

STIPULATION

1. Eric O. Gilliland and Bernadette Gilliland will agree to grant to HMA and its contractors, agents and consultants the right to travel over, across and through the Gilliland land for purposes consistent with water company business, including the monitoring and development of the Moshannon Creek Watershed surface, intake and well sources.

The roadway, for access purposes, will be located closest to the existing pipeline. The right of access shall be until August 31, 2004. Access by HMA to its well field and surface source through any other existing roads located on the Gillilands' property shall be only after consultation with the Gillilands and with their expressed approval.

2. HMA agrees to repair any damage on the roadway on the Gilliland land occasioned as a result of previous timbering activities, as well as anticipated use by heavier vehicles.

3. HMA and the Gillilands, including Eric Gilliland and Bernadette Gilliland, agree that the gate situate near the

ingress to their property shall be secured by one lock, with keys to be provided only to HMA personnel and the aforementioned Gillilands.

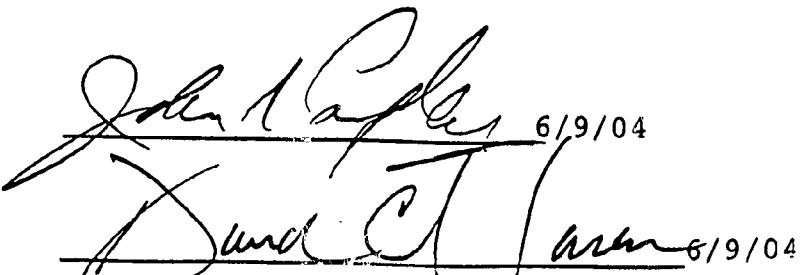
4. HMA and the Gillilands shall meet as often as necessary through the end of June 2004 to determine the standards for the proposed roadway and general location of the proposed roadway and a preliminary estimate of costs for construction.

5. Subsequent to the conclusion of June 2004, the HMA's engineers will design and obtain any necessary permits to allow the road to be constructed. Construction should proceed expeditiously, if this proves to be feasible.

6. HMA shall make every effort to complete the construction of the roadway by August 31, 204, if feasible.

7. Nothing herein previously stated shall prohibit HMA in the event that negotiations shall fail, from instituting a condemnation proceeding under the appropriate statute.

8. For the purposes of this agreement, the Gillilands acknowledge that the installation of GPU facilities along the roadway closest to the proposed pipeline previously referenced in Paragraph 2 is not of major concern; however, they would prefer that it be installed underground.



John Taylor 6/9/04
David C. T. Warren 6/9/04

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY FEET (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEEMNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS,

CONDEMNOR

CONDEEMNEES: ERIC AND BERNADETTE GILLILAND

RECEIVED

NOV 19 2004

COURT ADMINISTRATOR'S
OFFICE

**CONDEMNOR'S SUPPLEMENTAL BRIEF FILED FOLLOWING
ARGUMENT ON CONDEEMNEE'S PRELIMINARY OBJECTIONS**

AND NOW COMES, the Plaintiff, Houtzdale Municipal Authority, who by and through its counsel, John R. Carfley, Esquire, and Peter J. Carfley, Esquire, file the foregoing Supplemental Brief in Opposition to Condemnee's Preliminary Objections, and in support thereof avers as follows:

I. FACTUAL STATEMENT OF THE CASE

At some time during the later stages of December 2003, the Houtzdale Municipal Authority (hereafter "HMA") initiated litigation against Eric and Bernadette Gilliland

(hereafter “Gillilands”), after the Gillilands refused to allow HMA employees and agents access to a dirt road right-of-way that ran across the Gilliland property to HMA’s well field, despite HMA’s use of the roadway for numerous years prior to the Gillilands’ acquisition of the interceding. Following several evidentiary hearings and arguments, the parties entered into a stipulation that provided HMA with use of the right-of-way through August 31st, 2004, provided HMA would undertake an engineering study to determine the feasibility of constructing an alternative access roadway from State Route 453 to the HMA property containing the well field. The stipulation, while authorizing the feasibility study and setting a timetable for the report, at no time sets forth a commitment on the part of either party to undertake such an operation. Furthermore, nowhere within the stipulation is mention made as to whom would ultimately fund the building of the alternative route should the study deem it to be a viable alternative. Rather, the stipulation specifically allows the Authority to exercise its discretion with respect to the undertaking of this project and states that “nothing herein previously stated shall prohibit HMA in the event that negotiations shall fail from instituting a condemnation proceeding.” Clearly, the stipulation was not intended to bind either of parties to a project whose price and specifics had not yet been determined.

Upon completion of the engineer’s feasibility study, HMA made the decision that building an alternative route was not a viable option. This choice was made based on the estimated cost of the project being in excess of \$380,000, the steep terrain involved, the federal, state and local permitting requirements and the essence of time in the completion of the HMA’s watershed project that would potentially be disrupted waiting for a roadway to be built. In addition, the Authority was advised by the electrical contractor that the location of their necessary electric utility easement was consistent with the existing right-of-way and would have to be acquired regardless of whether an alternative route was built.

Based on this decision, HMA filed a Declaration of Taking on September 1st, 2004, against the property of the Gillilands seeking a sixty-foot utility and access easement over the Gilliland land. Counsel for the Gillilands subsequently filed Preliminary Objections seeking to set aside HMA’s Declaration of Taking. Both parties briefed the objections raised by the Condemnees. Argument and an evidentiary hearing were held on November

12th and this brief is provided to supplement the Authority's earlier brief and address those issues raised during the argument.

II. ARGUMENT

Under Pennsylvania law, within thirty (30) days after being served with a notice of condemnation, the condemnee may file preliminary objections to the declaration of taking. Preliminary objections shall be limited to and shall be the exclusive method of challenging (1) the power or right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated; (2) the sufficiency of the security; (3) any other procedure followed by the condemnor; or (4) the declaration of taking. 26 P.S. § 1-406(a).

In the case at bar, following the institution of HMA's Declaration of Taking, the Gillilands filed Preliminary Objections on October 8th, 2004, that raised the following questions:

- (A) Does Title 55 of the Pennsylvania Statutes fail to provide the Authority with authority to exercise the power of eminent domain?
- (B) Was the Authority's action in condemning the property arbitrary, capricious or actuated by bad faith, impermissible motive and for an improper purpose?
- (C) Has the Authority abused its discretion and acted in bad faith by condemning a greater amount of the property than is reasonably necessary?
- (D) Has the authority failed to give security as required by 26 P.S. § 1-403?

There is a strong presumption that the municipality has acted properly in condemning a property and the burden is heavy on one attempting to show an abuse of discretion. Appeal of Heim, 617 A.2d 74, 151 Pa.Cmwth. 438 (1992), appeal denied 629 A.2d 1385, 535 Pa. 625.

Objection A: Title 55 fails to provide necessary authority to condemn.

In the Declaration of Taking filed by the Authority, despite citing on several occasions the Municipal Authorities Act as its enabling authority to condemn the necessary

property, reference was erroneously made to 55 Pa.C.S.A. § 5601 et. seq. rather than Title 53. Although obviously nothing more than a typographical error, the Gillilands included this as one of their objections to the taking. Prior to argument, the Authority subsequently filed a Motion with the Court to permit the Condemnor to correct the error within the declaration. At argument on the preliminary objections, the Gillilands through their counsel withdrew this objection based on the motion filed by the Authority to correct the inaccurate statutory citation. The Court in its Order noted the willingness of the Gillilands to withdraw said objection and dismissed it. As such, this objection no longer needs to be addressed by the Authority or this Honorable Court.

✓ **Objection B: The Authority's condemnation was arbitrary, capricious or was actuated by bad faith, impermissible motive or for an improper purpose.**

The Gillilands second preliminary objection to the Declaration of Taking is a very general statement that the Authority acted arbitrarily or capriciously in its condemnation. As previously noted, the burden is heavy on one attempting to show an abuse of discretion by a municipality in its decision to condemn property and its decision to the extent of the taking. Pidstawska v. South Whitehall Tp., 380 A.2d 1322, 33 Pa.Cmwth. 162 (1977). Furthermore, there is a strong presumption that the municipality has acted properly in its decision to condemn property and its decision as to the extent of the taking. Id.

In the case at bar, despite a lengthy evidentiary hearing that included several witnesses involved in the planning of the HMA watershed project, the Condemnees were not able to support their claim that the condemnation was done in an arbitrary or capricious manner or in bad faith. Eric Gilliland testified that the area of land being condemned would bi-sect his property and potentially cause safety concerns that might hamper his private hunting business, but at no time did his testimony establish that the Authority randomly or callously choose the property it seeks to condemn. Moreover, what the Condemnees will not concede is the fact that the roadway has been in use for well over fifty (50) years and the road has always bisected the tract of land now owned by the Gillilands.

In this case, the Gillilands base their entire claim that the Authority acted arbitrarily and capriciously on the fact that in the stipulation entered into following the earlier civil litigation between the parties, the Authority agreed to conduct a feasibility study exploring the possibility of constructing an alternative route to its property and well field and that discussions would take place between the parties to explore the option of building an alternative route and who would front the costs. The study as required under the terms of the stipulation was completed and a summary of the report written by HMA's project engineer Pat Ward was forwarded to counsel for the Gillilands in mid-July. Within the report, Mr. Ward concluded that a roadway built from scratch over the alternative route would cost approximately \$380,000 to complete. In addition, the written correspondence sent in mid-July to David Mason from HMA's solicitor, stated the Authority's position that the alternative roadway was not a feasible alternative because of the cost, the less navigable terrain and the time necessary to complete such a project. Based on this reasoned decision, the Authority determined that condemning the existing roadway that has been used by the Authority since the 1920's would be the more reasonable cost effective alternative.

At the hearing, Eric Gilliland testified that he received the aforementioned correspondence yet never instructed his counsel to organize a meeting to discuss the project. He also stated that he was aware that the Authority might condemn the roadway but never bothered to initiate discussions with HMA to set forth what amount if any he would be willing to contribute to the construction of the new access road. Rather, his testimony only established that he believed the price in Mr. Ward's report was excessive and he would not be willing to pay that amount. Further, Mr. Gilliland never set forth an amount he was willing to advance to the project and never bothered seeking a differing opinion that would rebut Mr. Ward's contention that the roadway's cost would be in excess of \$380,000.

Courts must give deference to the judgment of municipal officials in the exercise of their discretion in eminent domain matters and will disturb these decisions only where the condemnee can offer proof of fraud, collusion, bad faith or an abuse of power or discretion. In re: School District of Pittsburgh, 244 A.2d 42, 430 Pa. 566 (1968). Applying this standard, it cannot be said that the Authority acted in bad faith or in an

arbitrary or capricious manner when they fulfilled all of their pre-existing obligations and made an informed decision to proceed with condemnation. It should be noted that the stipulation specifically sets forth the Authority's right to proceed in condemnation should the alternate roadway project not be feasible. HMA's decision to condemn the existing roadway, that they have used for many years, was based upon sound judgment after considering financial issues and additional issues of practicality including the easy accessibility and lack of steep terrain on the existing road, the time constraints on the watershed project and the need to condemn the existing roadway anyway to allow the electric power lines and the water transmission main to be installed. Given all of these concerns, the Authority's choice to condemn the existing right-of-way is proper and the Gillilands' have failed to establish the necessary misconduct to sustain their preliminary objection.

Objection C: The Authority abused its discretion and acted in bad faith by condemning a greater amount of property than reasonably necessary.

The Gillilands' next preliminary objection is similar to the previous one in its allegation of bad faith on behalf of the Authority, but in this case raises the contention that more property was condemned than necessary. Once again reiterating the standard to be applied by the Court, the burden is heavy on one attempting to show an abuse of discretion by a municipality in its decision to condemn property and its decision as to the extent of the taking. Pidstawska, Supra.

In the present case, the Authority, in conjunction with its supervising project engineer, Pat Ward, determined that the existing roadway that ranges from 12-20 feet in width would have to be expanded in width to accommodate the larger vehicles needed to develop the electrical power lines as well as the construction of the water line from the well field over and across the lands of HMA and the Gillilands. Based on these factors and the requirements of Penelec, Mr. Ward determined that a sixty (60') foot right-of-way would be necessary to provide a roadway wide enough to allow access to the larger vehicles and still provide additional ground away from the roadway to set power lines. This determination was based on the needs and concerns of the Authority and the requirements of the various utility companies involved.

The Condemnees have not provided any evidence, much less enough to carry their burden, that the decision to condemn the sixty (60') foot right-of-way is excessive and done in bad faith. As is clearly pointed out in the previous objection, the Gillilands do not wish to have the Authority use the roadway in any manner regardless of the width of the right-of-way. The contention that their hunting operation would be affected by the condemnation is not based on the width of the land condemned and is improperly brought in preliminary objections, when it is, in fact, an issue for damages.

Because the Authority has established a rational basis for the amount of land being condemned and the Gillilands have failed to show an excessive taking based on bad faith, their objection must be dismissed.

Objection D: The Authority has failed to give the required security.

The Gillilands final Preliminary Objection deals with the Authority's alleged lack of sufficient financial resources from which to provide security to the Condemnees as required under the Eminent Domain Code. At the argument prior to the evidentiary hearing, counsel for the Gillilands agreed to withdraw this objection pending the receipt of an affidavit of Brent Thomas, CPA for the Authority setting forth its financial resources. Attorney Mason agreed at the time of argument that would be sufficient and agreed to withdraw that objection pertaining to posting of the security bond.

In addition, testimony was provided by Pat Ward setting forth the terms of the contract between HMA and the Pennsylvania Department of Corrections, by which the Commonwealth provides approximately 40% of the money needed for all capital expenditures undertaken by the Authority. HMA also retains the rights to adjust rates for its customers and could easily increase rates should additional capital be necessary to compensate the landowner in the taking. Clearly, the Authority has ample assets to compensate the Condemnees. As agreed to by their counsel, the said objection should be dismissed.

Additional Preliminary Objections filed on November 12th, 2004, the day of argument and evidentiary hearing.

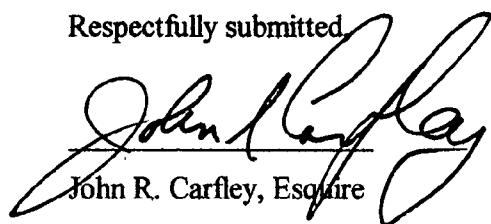
Prior to the argument and evidentiary hearing, counsel for the Gillilands supplemented their original Preliminary Objections with additional objections to the Declaration of Taking. These objections were filed on the morning of the scheduled argument and received by counsel for the Authority by facsimile copy a mere three hours prior to argument. Without even addressing the merits, the Court should dismiss said objections as untimely and in violation of the established procedures set forth in the Pennsylvania Eminent Domain Code.

Under 26 P.S. § 1-406(c), all preliminary objections shall be raised at one time and in one pleading. Additionally, preliminary objections to the declaration of taking must be filed within thirty days of being served. 26 P.S. § 1-406(a). In the case at bar, the Declaration of Taking was filed on September 1st, 2004. The Condemnees original set of preliminary objections were filed October 8th, 2004. However, as noted, the supplemental objections were not filed until November 12th, more than a month after the original objections were filed. This filing violates the rules and procedures of eminent domain in two respects. First, as required by the rules all objections were not brought in one pleading as set forth in 1-406(c). Secondly, the objections were not brought within thirty days of service of the declaration of taking, but rather a full six weeks after the objections were due. The Gillilands filing of additional objections, on the morning of the scheduled argument, amounts to nothing more than an ambush. While there is limited authority for allowing a party to amend their preliminary objections, each time the Commonwealth Court has allowed such amendment, it has been made within the thirty-day statutory period for filing objections. In this case, the supplemental objections were not completed until after the period had run and consist of a veiled attempt by the Condemnees to further delay the eventual taking. As such, this Court should dismiss all of the additional preliminary objections filed by the Gillilands on November 12th, outside of the statutory window.

III. CONCLUSION

Based on the foregoing arguments and legal authority, the Condemnors Houtzdale Municipal Authority request that this Honorable Court dismiss Condemnees Preliminary Objections with prejudice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John R. Carfley".

John R. Carfley, Esquire

Dated: November 19, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNOON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SERVICES,

CONDEMNOR

NO. 2004-1369 CD

Eminent Domain
Proceedings
In Rem

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS
TO THE DECLARATION OF TAKING
FILED BY HOUTZDALE MUNICIPAL AUTHORITY

I. HISTORY OF THE CASE

This matter concerns the Declaration of Taking filed by the Houtzdale Municipal Authority (“Authority”) against Eric and Bernadette Gilliland (“Gillilands”) on September 1, 2004, over certain property owned by the Gillilands at 548 Hunt Club Drive, Ginter, Pennsylvania 16651 (“Gilliland Property”).

The Gillilands own and operate a hunting preserve on the Gilliland Property, including, among others, such uses and activities as field dog trials, archery shoots, upland bird hunting,

turkey hunting, deer hunting, dog training and clay target shooting (“Hunting Preserve”). The Gillilands use the Gilliland Property for such uses and activities year round. The Gillilands access the Gilliland Property by a private drive that traverses the Gilliland Property and intersects with State Road 153 (“Gilliland Access”).

The Authority is a municipal authority organized under the Pennsylvania Municipal Authorities Act and operating in Clearfield County, Pennsylvania. The Authority owns 325± acres, more or less, of property that abuts Moshannon Creek (“Authority Property”). The Authority Property has 2,500± linear feet of road frontage on State Road 453.

In June, 2004, the Authority entered into a Stipulation with the Gillilands in the matter of *Houtzdale Municipal Authority v. Eric O. Gilliland and Bernadette Gilliland*, Docket No. 03-1895-CD, Court of Common Pleas of Clearfield County (“Stipulation”), an action in which the Authority claimed legal access over the Gilliland Property. Under the Stipulation, the Authority agreed in good faith to site and construct an access, at Gillilands cost and expense, from State Road 453 across the Authority Property to serve as the Authority’s access for the purpose described in the Declaration of Taking (“State Road 453 Access”).

The Authority did not construct the State Road 453 Access, but instead filed the Declaration of Taking at issue in this matter. The Declaration of Taking condemns the Gilliland Access.

On October 8, 2004, the Gillilands filed Preliminary Objections to the Declaration of Taking pursuant to § 406 of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, *as amended*, 26 P.S. § 1-406. On November 12, 2004, the Gillilands filed a Petition to Supplement the Preliminary Objections to the Declaration of Taking filed October 8, 2004, pursuant to § 406 of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, *as amended*, 26 P.S. § 1-406. The Petition included a proposed No. 5 Preliminary Objection.

This Court held a hearing on the Preliminary Objections and the Petition to Supplement on November 12, 2004.

Four preliminary matters were raised at the outset of the hearing on the Preliminary Objections.

(i) Nature of Title Taken

Section 1-402(b)(6) of the Eminent Domain Code requires that a declaration of taking include “a statement of the nature of the title acquired, if any.” 26 P.S. Section 1-402(b)(6). The title that passes to the condemning authority is that title as stated in the declaration of taking. *Nicoletti v. Allegheny County Airport Auth.*, 841 A.2d 156 (Pa. Cmwlth. 2004).

In this action, the Authority filed a Declaration of Taking that described the title to be acquired in the Gillilands’ property in the alternative as “right-of-way and/or easement.” Such description is neither clear nor specific enough to satisfy Section 1- 402(b)(6). It violates the mandate that the exercise of eminent domain be strictly construed because necessarily in derogation of a private property rights. *Condemnation of 110 Washington Street*, 767 A.2d 1145 (Pa. Cmwlth. 2001). Stating the title to be acquired in the alternative gives immediate rise to a cloud on the title and a dispute as to the nature and extent of the Gillilands’ and the Authority’s rights in the Property. The dispute is particularly acute where the property to be acquired is an existing roadway owned, maintained and used by the Gillilands for access to and traversing of their property, and where Hunting Preserve activities take place around and across the existing roadway.

In response to this issue, counsel for the Authority represented to the Court that it was the Authority’s intent to condemn the Gilliland Access in easement, and not in fee. Tr. at 12. Counsel for the Authority further represented that the Authority was not seeking exclusive use of the Gillilands’ Access. Tr. at 13. Accepting that representation, the Court granted the Motion to Supplement the Preliminary Objections and sustained Preliminary Objection No. 5, and ordered

that neither party may interfere with each other's coequal rights to use the Gilliland Access. Tr. at 12-15.

(ii) Insufficiency of Security

In Preliminary Objection No. 4, the Gillilands challenged the sufficiency of the financial security as described in the Declaration of Taking. The Authority subsequently filed affidavits describing the Authority's financial wherewithal. The Gillilands expressed a willingness to withdraw the preliminary objection assuming that the Authority offered a sponsoring witness on the record. In response, counsel for the Authority represented that the Pennsylvania Department of Corrections is contractually obligated to pay 40% of the project, including the damages and costs related to the Taking Easement. Counsel also referenced, but did not produce to opposing counsel or the Court, the alleged contract with the Department of Corrections. Upon objection to that unsubstantiated representation, the Court ordered the Authority, within ten days of the date of hearing, to submit an affidavit supporting counsel's representations and to make available for purposes of deposition, an authorized party from the Department of Corrections to verify that it is paying 40% of the damages and costs at issue.

The Authority has since distributed an affidavit of its Engineer, Pat Ward. The Authority has not identified the representative party of the Department of Corrections to be deposed. The Authority has not provided a copy of the alleged contract with the Department of Corrections.

The Gillilands reserve the right to supplement the record and to file a supplemental brief on this issue.

(iii) Prior Legal Claim to Access

The Gillilands orally offered preliminary objection to the Authority's stated claim in Paragraph 6 of the Declaration of Taking and Exhibit A to the Declaration of Taking of a legal right to access across the Gilliland Property. The Court granted the motion to orally supplement the preliminary objection and sustained the preliminary objection "to the extent that any reference to a prior existing easement or . . . right of way in the name of the Condemnor across

lands of the Condemnee shall. . . not be permitted for trial except as it may bear on the ultimate question of compensation.” Tr. at 11.

(iv) Motion to Correct Typographic Error

The Gillilands filed a preliminary objection (Preliminary Objection No. 1) to the statutory reference for the Authority’s exercise of eminent domain powers. The Authority filed a Motion seeking to correct an alleged typographical error. Counsel for the Gillilands represented that the Gillilands do not object to the Motion and stipulated to a withdrawal of Preliminary Objection No. 1 upon grant of the Motion.

At the conclusion of the hearing, the Authority requested the immediate right to access the Gilliland Property for access to the Authority property. The Court granted the request for the limited purpose of testing, stating “I’m going to allow [the Authority] to get in there for purposes of testing, things of that nature, but not construction, anything of that nature is out.” Tr. at 108-109. At the request of the Gillilands, the Court directed that the Authority provide “as much advance notice as you can” to the Gillilands directly of the need to enter the Gilliland Property so that the Gillilands have opportunity to make appropriate arrangements to control hunting activities to ensure safety. Tr. at 109-10.

II. STATEMENT OF QUESTIONS INVOLVED

A. Was the Authority’s action in condemning the property arbitrary, capricious, or actuated by bad faith, impermissible motive and for an improper purpose?

SUGGESTED ANSWER: YES

B. Has the Authority abused its discretion and acted in bad faith by condemning a greater amount of property than is reasonably necessary?

SUGGESTED ANSWER: YES

III. ARGUMENT

A. Standard of Review

This Court's review of the Authority's Declaration of Taking is limited to determining whether the Authority is guilty of fraud, bad faith, or has committed an abuse of discretion. *In re Condemnation of Legislative Route 62214*, 425 Pa. 349, 353, 229 A.2d 1, 3 (1967); *PennDOT v. Montgomery Twp.*, 655 A.2d 1086, 1088 n.2 (Pa. Cmwlth. 1995), *appeal denied*, 542 Pa. 651, 666 A.2d 1059 (1995). The Gillilands, as condemnees, bear the burden of proof on these issues, which they acknowledge is a heavy one. *Legislative Route 62214*, 425 Pa. at 353, 229 A.2d at 3. However, as demonstrated below, the Authority has acted in bad faith and committed an abuse of discretion because it has condemned the Gilliland Property for a reason other than a public purpose and condemned a greater amount of property than reasonably necessary.

B. The Authority's Action in Condemning the Property was Arbitrary, Capricious, or Actuated by Bad Faith, Impermissible Motive and For an Improper Purpose.

Property may be condemned only for a public purpose. *Legislative Route 62214*, 425 Pa. at 353, 229 A.2d at 3. The power of eminent domain may not be employed for the purpose of devoting the property to the private use of another. *Redevelopment Auth. of Erie v. Owners in Interest*, 274 A.2d 244, 251 (Pa. Cmwlth. 1971). Although the condemning authority may cite a public purpose in the Declaration of Taking, this recitation is not conclusive, and must be reviewed by the Court to determine its validity. *Jacobs v. Clearview Water Supply Co.*, 220 Pa. 388, 393, 69 A. 870, 872 (1908).

1. The alleged public purpose is uncertain.

The alleged public purpose is uncertain because the Notice of Condemnation and Declaration of Taking filed by the Authority are not consistent.

In the Notice of Taking, the Authority stated the public purpose for which it was exercising eminent domain as follows:

The purpose of this condemnation is for *vehicular access* throughout the site to the Moshannon Creek and other lands of the

Condemnor in order to facilitate the construction, exploration, drilling and exploitation of production wells and the surface source and intake at the Moshannon Creek Headwaters and for other purposes involved in the upgrading and renovation of its water system and its system of treatment.

Notice of Taking, Paragraph 2 (emphasis added). However, in the Declaration of Taking, the Authority expands the alleged public purpose to include much more than access:

3. The purpose of the condemnation is to provide a *utility and vehicular access* easement in order to insure access to the watershed and to expand the ground water system and the surface source of the Authority known as the Moshannon Creek Watershed and to specifically enlarge, upgrade and renovate the water acquisition, water treatment, and water distribution system already approved for use in that locale and throughout the area of operations of the condemnor in the Moshannon Valley.
4. The further purpose of the Condemnation is to acquire a right of way in, over, across and through the existing property of Eric and Bernadette Gilliland (the "Condemnee"), such Condemnee's property being located in Gulich Township, Clearfield County, Pennsylvania, having an address of 548 Hunt Club Drive, Ginter, Pennsylvania, and being more particularly described in that certain Deed dated April 30, 2001, and recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Instrument Number 200105981, (the "Subject Property"), for access to place utilities, with the further right to construct, repair, and maintain the accessway for purposes of ingress, egress, and regress for its water pipeline and *other facilities including electrical transmission lines* as the width of the right of way permits and to further construct, lay, maintain, and service the transmission pipeline and other support facilities so as to permit the efficient transmittal of water from the watershed throughout the system of distribution....

(b) The said Right-of-Way shall not exceed sixty (60') feet in width . . . to permit the Condemnor to expand the road on either side of the said existing roadway, for a *transmission pipeline and to provide additional access for the three phase power system demanded by GPU, the electrical subcontractor . . .*

(emphasis added).

The public purpose for which eminent domain is exercised must be particularly stated, and for the protection of the rights of all parties to the action should leave no room for doubt or conjecture. The Authority failed to properly state the public purpose and the Declaration of Taking should be vacated.

2. As a provider of water services, the Authority may not exercise powers of eminent domain to secure right-of-way for an electric transmission facility.

As acknowledged by the Authority's Manager, the Authority is authorized to provide water service only. Tr. at 98. And, as conceded by the Manager, the Authority is without authority to acquire property for the purpose of placement, use, operation and maintenance of an electric distribution facility. Tr. at 98. As described in the Authority's pleadings and confirmed by the Authority's Engineer, the need and location of the electric distribution line was determined by the *electric public utility* as necessary for *its* service grid.¹ While the electric public utility prefers and requested that the Authority engage in arm-length negotiations to secure sufficient right of way for this purpose, the electric public utility alone has the power to exercise eminent domain to secure the right-of-way for its facilities.²

To the extent the Taking Easement condemned by the Authority includes an area for the placement of the electric distribution line to be owned and maintained by the electric public utility, the Authority seeks to exercise its power of eminent domain for an improper purpose. The Declaration of Taking for such purpose should be vacated.

¹ There is no technical requirement that the placement of the electric distribution line, the placement of the Authority's water distribution line and the access by the Authority to its well fields be coterminous in location.

² At no time have the Gillilands objected to the placement of the electric distribution line (and access thereto) by the electric public utility, upon payment of reasonable compensation for the same.

3. The Authority's exercise of the power of eminent domain is excessive and, therefore, not necessary.

The exercise of eminent domain power "has its foundation in the imperative law of *necessity*, which alone justifies and limits its exercise. For this reason it has been uniformly held that the power can only be invoked when public exigency or necessity requires the exercise of the sovereign right." *Jacobs*, 220 Pa. at 393, 69 A. at 871-72 (emphasis supplied).

The Authority condemned the Gilliland Access for access to the Authority's well field. The asserted public purpose is specious or merely incidental to the taking because there is no purpose (public or otherwise) for the Authority to condemn the Gilliland Access.

On June 9, 2004, the Authority and the Gillilands entered into a Stipulation in which the Authority agreed in good faith to construct the State Road 453 Access across Authority property. The Stipulation specifically outlines the process for negotiating the State Road 453 Access, as follows:

4. HMA and the Gillilands shall meet as often as necessary through the end of June 2004 to determine the standards for the proposed roadway and general location of the proposed roadway and a preliminary estimate of costs for construction.

5. Subsequent to the conclusion of June 2004, the HMA's engineers will design and obtain any necessary permits to allow the road to be constructed. Construction should proceed expeditiously, if this proves to be feasible.

6. HMA shall make every effort to complete the construction of the roadway by August 31, 2004, if feasible.

The State Road 453 Access, to be constructed at the Gillilands cost and expense, is *identical* in purpose to the Taking Easement. Both the State Road 453 Access and the Taking Easement would provide the Authority with access to its property for purposes of developing and maintaining its water system.

Although the Authority previously agreed by the Stipulation to construct the State Road 453 Access, it has made no reasonable or good faith effort to do so. The Gillilands agreed to pay

for the State Road 453 Access if reasonable, and therefore it was their prerogative to determine whether the Access would be feasible and reasonable. However, the Authority did not communicate any information regarding the feasibility or economics of the Access to the Gillilands, but unilaterally decided that it would not be constructed. At no time during the three month period contemplated by the Stipulation did the Authority contact the Gillilands to discuss siting and cost issues. Tr. at 25–26, 55-56. And, as revealed by the Engineer, the Authority had entered into the Stipulation with full knowledge that at least one month earlier the Authority had directed its Engineer to conduct a feasibility evaluation of the State Road 453 Access. Tr. at 52 –55. More disturbing, although the feasibility evaluation was completed on July 13, 2004, the Authority did not release the feasibility evaluation to the Gillilands during the Stipulation Period, instead making it known for the first time at the November 12, 2004 hearing.

The Authority's lack of good faith is further demonstrated by the feasibility evaluation itself. First, while the Authority relies on the feasibility evaluation as the basis for its abandonment of the State Road 453 Access, the Authority admits that it did not perform a comparative feasibility evaluation of the Gilliland Access. Second, the feasibility evaluation itself is incredible. As described by the Authority's Engineer, the feasibility evaluation is based on an access that has a 20 foot travelway constructed with a gravel base of 12 inches and top of 6 inches. Tr. at 80-82. In stark contrast, this same Engineer opined that no improvements needed to be made to the Gilliland Access for the Authority to use it as an equivalent means to access the Authority's well field. Tr. at 82-83. This opinion was offered notwithstanding the fact that the Gilliland Access is a dirt-based travelway riddled with potholes and damaged by the Authority's prior use of it (with the Gillilands' express permission) by logging trucks removing timber from the Authority's property. Moreover, in stark contrast to the 20 foot travelway the Authority's engineer opined is the minimum necessary to accommodate the Authority's stated

public purpose, the Gilliland Access has a defined travelway that varies in width from 8 to 15 feet. Tr. at 60-63, 104-05. And, this variable and reduced travelway has historically accommodate the Authority's vehicular traffic, ranging from pick-up trucks to tractor trailers. Tr. at 62. Finally and most incredibly, the feasibility study estimates a cost of \$75,735.00 for travel expense compensating for the distance between the Gilliland Access to Route 153 and the State Road 453 Access³ traveled one time a day, a cost factor the Engineer conceded he had never before incorporated into a road construction cost estimate. Tr. at 79.

The testimony of the Authority's Engineer reveals that the Authority neither entered into the Stipulation in good faith nor had any intention of performing under the terms of the Stipulation in good faith. Instead, the Authority now seeks to avoid its obligations under the Stipulation, and in doing so unlawfully create a justification for the Taking Easement where there is no need for it otherwise. The Authority's actions demonstrate that it is exercising its eminent domain powers arbitrarily, in bad faith and for a purpose other than the public good. *See Redevelopment Auth. of Erie*, 274 A.2d at 247 (exercise of eminent domain power in bad faith implies a tainted motive of interest).

C. The Authority Abused its Discretion and Acted in Bad Faith by Condemning a Greater Amount of Property than is Reasonably Necessary.

The power of eminent domain may not be used to condemn "a greater amount of property than is reasonably required for the contemplated purpose." *Montgomery Twp.*, 655 A.2d at 1089 (quoting *In re Waite*, 641 A.2d 25, 28-29 (Pa. Cmwlth. 1994). *See also Winger*, 371 Pa. 242, 89 A.2d 521 (school district without authority to condemn 55 acre farm for school when 10 acres was reasonably necessary to accommodate school and appurtenant facilities). A

³ While the Engineer stated under oath that this distance, for purposes of calculating the expense, was 7 miles, the distance as measured on the scaled map accompanying the Declaration of Taking is approximately 2 miles. Tr. at 104.

condemnation action that seeks a greater amount of property than is reasonably required amounts to an abuse of discretion and will be vacated. *Winger*, 371 Pa. at 247, 89 A.2d at 523; *Montgomery Twp.*, 655 A.2d at 1091.

As shown *infra*, there is no need for the Taking Easement; the Authority with improper motive and in bad faith failed to develop the State Road 453 Access. Therefore, *a fortiori*, the Authority has attempted to take an excessive amount of property over and above what is required for their alleged public purpose.

Even if the Court concludes that there is a need generally for the Taking Easement, the Authority is seeking to condemn more property than is necessary.

First, as more fully discussed earlier, the condemnation of land for the placement and construction of electric facilities is not necessary for the Authority to advance its public purpose as a water service provider.

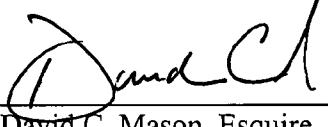
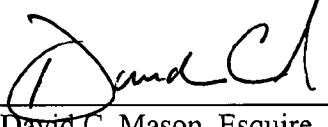
Second, as revealed by the Authority, the Authority seeks access for construction vehicles for initial construction activities associated with the water distribution line and well field. Construction is a temporary activity and the exercise of eminent domain beyond the period of time needed for this activity is unnecessary. The Authority's Declaration of Taking fails to acknowledge the temporary condition and is excessive.

Third, the Authority seeks access to its water distribution line and well field for purposes of operation and maintenance. The Authority admitted that such activities are limited in nature. Using the Authority's feasibility evaluation as a benchmark, access would be required at most once a day. Given that the Gilliland property is used for a hunting preserve and in light of the Court's directive that a party's use of the property may not unreasonably interfere with the other's rights, unrestricted access across the Gilliland property while persons are engaged in hunting activities around, on and across the Gilliland Access without demonstrated need for such unrestricted access is unnecessary and excessive.

IV. CONCLUSION

The Gillilands' Preliminary Objections should be sustained and the Declaration of Taking vacated because the Authority has abused its discretion and acted in bad faith by attempting to condemn the Gilliland Property for a reason other than a public purpose and has condemned a greater amount of property than reasonably necessary.

Dated: November 19, 2004

Respectfully submitted,

BY: 
David C. Mason, Esquire
Attorney I.D. No. 39180
409 North Front Street
PO Box 28
Philipsburg, PA 16866

Susan J. Smith, Esquire
Attorney I.D. No. 62531
2331 Market Street
Camp Hill, Pa 17011

Attorneys for Condemnees Eric and
Bernadette Gilliland

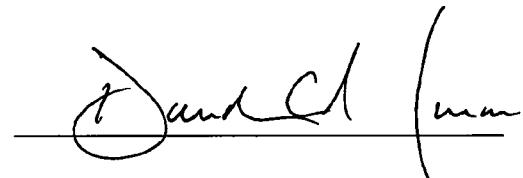
CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a true and correct copy of the foregoing document was served on the following individuals via United States First Class Mail, postage prepaid as follows:

John R. Carfley, Esquire
222 Presqueisle Street
Philipsburg, PA 16866

Attorney for Condemnor

Dated: November 19, 2004



A handwritten signature in black ink, appearing to read "John R. Carfley", is written over a horizontal line. To the right of the signature, the word "mm" is written in parentheses, likely indicating a initials or a mark.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

ROUGH
DRAFT

CIVIL DIVISION

CONDEMNATION BY HOUTZDALE :

MUNICIPAL AUTHORITY, RE: : NO. 04-1369-CD

ERIC and BERNADETTE GILLILAND :

TRANSCRIPT OF PROCEEDINGS

HELD BEFORE THE HONORABLE

JOHN K. REILLY, JR., SENIOR JUDGE, SPECIALLY PRESIDING

on Friday, November 12, 2004

A P P E A R A N C E S:

FOR THE CONDEMNOR:

JOHN R. CARFLEY, ESQUIRE

FOR THE CONDEMNEE:

DAVID C. MASON, ESQUIRE
and
SUSAN J. SMITH, ESQUIRE

Reported by: Cathy Warrick Provost, RMR

Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO WITNESSES

BY THE

DIRECT: CROSS: REDIRECT: RECROSS: COURT:

ERIC O. GILLILAND	16	27	39	43	--
PATRICK WARD	46	65	76	93	--
JOHN FUDROW	95	99	--	--	--
ERIC GILLILAND	103	105	--	--	--

INDEX TO EXHIBITS

IDENTIFIED: ADMITTED:

CONDEMNOR EXHIBITS:

1 - resolution	9	--
2 - letter	34	--

1 -- PROCEEDINGS --

2 THE COURT: All right, counsel. What pleading do
3 you wish to commence with?

4 ATTORNEY MASON: I thought we were here on
5 preliminary objection.

6 ATTORNEY CARFLEY: Well, I think that would be the
7 appropriate way to go, Your Honor. I have a number of motions
8 filed. But I think the preliminary objections might be
9 basically a condition precedent to anything I might be able to
10 file, so I suppose we would want to proceed in that manner.

11 THE COURT: Fine.

12 ATTORNEY CARFLEY: Initially.

13 ATTORNEY SMITH: If I could interject my two
14 thoughts, Your Honor, I believe that there were motions filed
15 to which we were willing to withdraw. As a result of those, we
16 were willing to withdraw two of the preliminary objections.

17 The first is, there was a motion for petition to
18 correct a typographical error in the declaration of taking that
19 relates to our first preliminary objection. We have no
20 objection to that motion to the extent the declaration would
21 probably pled, so we withdraw it and you may grant that motion.

22 THE COURT: All right.

23 ATTORNEY SMITH: The second item is a rule to show
24 cause. Actually, what we received was documentation from the
25 authority regarding their financial wherewithal. It related to

1 our second objection.

2 THE COURT: That's posting security?

3 ATTORNEY SMITH: Yes. And so, based on the
4 information that has been presented, we would be willing to --
5 no. 4, willing to withdraw that preliminary objection.

6 I'm assuming, though, that counsel for the
7 authority will put on the record the sponsoring witness for
8 that particular affidavit as to the financial wherewithal of
9 the authority. So it's conditioned on that, Your Honor.

10 ATTORNEY CARFLEY: Your Honor, I do not have Herb
11 Thomas, who is the CPA from the accounting firm, here today.
12 We do have a financial statement that was attached to the
13 affidavit. I could probably go down the street and try to find
14 him, or I could represent that these are exact financial
15 records through another -- through the manager of the
16 authority, depending on what counsel wants to do.

17 I certainly would be willing to represent to the
18 Court as counsel for this organization that they do, in fact,
19 those assets, that they have the power to raise their rates
20 and, finally, that 40 percent of this project would be paid for
21 by the Commonwealth of Pennsylvania, Department of Corrections,
22 through a contract, which means that the Commonwealth of
23 Pennsylvania would be on the hook for the 40 percent, and
24 certainly they have the power of taxation.

25 ATTORNEY SMITH: All of that is new information for

1 us and not of record, and, of course, it doesn't even appear in
2 the pleading, so I am not sure what we are to do with that.

3 ATTORNEY CARFLEY: Part of it would be by the
4 affidavit of Mr. Thomas. And the affidavit -- I filed an
5 affidavit yesterday stating that the Court file a resolution on
6 Tuesday evening citing all of that information, Ms. Smith, that
7 we do have the right to raise rates and we do have this
8 contract.

9 ATTORNEY MASON: Excuse me. Your Honor, I think
10 Ms. Smith is referring specifically to the statement by
11 Mr. Carfley that the Commonwealth has agreed to foot 40 percent
12 of the bill for the project contemplated by Houtzdale Municipal
13 Authority. I don't recall seeing that in any of the
14 affidavits.

15 THE COURT: All right. You've heard the statement
16 of Mr. Carfley. How do you want to proceed? Do you want him
17 to file an affidavit to that effect? Do you want him to call
18 his whatever, CPA or whatever, or how do you want to proceed on
19 this issue?

20 ATTORNEY MASON: Your Honor, Ms. Smith had
21 indicated to you that we're not really prepared to respond to
22 Mr. Carfley's assertion that the Commonwealth's agreed to pay
23 40 percent of the project cost because we didn't know that
24 coming in.

25 I think we are willing to stipulate that we'll

1 withdraw the preliminary objections with regard to the]
2 insufficiency of the bond.] And, if I might have a moment. [And]
3 that the affidavit would be sufficient.] We don't need to go
4 get the CPA to do that.

5 But to the extent any offer of proof is being
6 advanced the Commonwealth's going to pay 40 percent of these
7 project costs, we would like some live testimony on that.

8 THE COURT: Whom?

9 ATTORNEY MASON: Whoever is asserting that fact.

10 THE COURT: Mr. Carfley, I guess I'm asking you,
11 who would be authorized to testify to that?

12 ATTORNEY CARFLEY: I think Mr. Ward, as the civil
13 engineer. We do have a copy of the contract with the
14 Commonwealth here today.

15 THE COURT: And does it state therein that the
16 Commonwealth is going to be responsible for 40 percent of the
17 costs?

18 ATTORNEY CARFLEY: They have agreed to a percentage
19 of any capital improvement, including any expansion of the
20 water projects and, yes, it would be in the contract itself.

21 THE COURT: Has the contract been executed?

22 ATTORNEY CARFLEY: Contract was executed probably
23 eight years ago, Your Honor.

24 ATTORNEY SMITH: Your Honor, I have to question
25 what that contract relates to. I understand that it may apply

1 to the waterworks itself, the well field and other --

2 THE COURT: What I'm going to do is direct,
3 Mr. Carfley, that you submit, within ten days, an affidavit to
4 all that you have stated and that you make available for
5 purposes of deposition an authorized party from the
6 Commonwealth -- what is it, what agency is it?

7 ATTORNEY CARFLEY: Department of Corrections, Your
8 Honor.

9 THE COURT: Department of Corrections, who is
10 authorized to verify that they are, in effect, paying 40
11 percent of the proceedings here. Satisfactory?

12 ATTORNEY SMITH: Your Honor, I just would ask for
13 an opportunity to respond that we conclude that it does not.

14 THE COURT: We will not be ruling on that
15 preliminary objection until they receive that information and
16 deposition.

17 ATTORNEY CARFLEY: Your Honor, could I just note
18 for the record, however, that on November 10th I filed an
19 affidavit and filed and served a copy on Mr. Mason wherein I
20 stated that the board of the Houtzdale Municipal Authority had
21 passed a resolution and, as part of that resolution, they
22 pointed out that there had been a contractual relationship with
23 the Department of Corrections and that they had agreed to pay
24 up-front 40 percent of the capital improvements. But if that's
25 an issue, Your Honor, certainly I'm prepared to offer a witness

1 to that effect.

2 THE COURT: What -- the order will stand. Within
3 ten days. You do that. When we've concluded here, you can
4 speak with them. If they're willing to accept something less
5 than that, that's fine, I have no objection to that.

6 ATTORNEY CARFLEY: Okay. Thank you, Your Honor.

7 THE COURT: Where do we go now?

8 ATTORNEY SMITH: My third preliminary matter, Your
9 Honor, is in two claims that have been made by the authority in
10 this case. They have asserted a claim, an underlying claim, to
11 the area that's being condemned by the documents.

12 And I would suggest to Your Honor that those be
13 stricken. They're not properly -- that claim is not properly
14 before you in a condemnation action such as a preliminary
15 objection.

16 THE COURT: Now, you lost me on that one. I don't
17 recall seeing that in these pleadings.

18 ATTORNEY SMITH: Your Honor, it appears twice. It
19 appears first in paragraph 6 of the declaration itself in which
20 the Condemnor states that they may, in this proceeding, also
21 make a claim to an existing right of way believed to be
22 comprised of, and they go on to describe that. I believe that
23 that is outside your jurisdiction in a condemnation matter.

24 THE COURT: Okay. Let me hear Mr. Carfley's
25 response.

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

November 17, 2004

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

David Mason, Esq.
P. O. Box 28
Philipsburg, Pa., 16866

RE: HMA v. Gilliland
No. 03-1895-CD

Dear Dave:

I received and reviewed your fax letter of November 17, 2004. I am including a draft of the affidavit and attached feasibility report which I will be filing after I secure Pat Ward's signature on the affidavit.

With respect to the prison document I am enclosing a copy of the affidavit which Pat Ward and Don Ross will be signing which verifies under oath the contractual provisions of the contract with SCI Houtzdale and the Commonwealth of Pennsylvania. This document has been and continues to be one which is sensitive in nature and I do not feel comfortable releasing that document without some prior approval by the Commonwealth of Pennsylvania which I have not been able to obtain.

The relevance of that document in the proceeding was to further enhance the security being provided your client for the condemnation of a right of way. The collateral which we have already pledged meets all requirements under the Eminent Domain Code and as a result I do not believe that this document should necessarily be released.

If I receive clearance from the Commonwealth I will be more than happy to turn this over to you. In the meantime you may wish to issue a subpoena duces tecum which would then clear the way for us to turn over the document pursuant to court order.

Please feel free to call me if you wish to discuss this matter in any further detail.

Very truly yours,

JOHN R. CARFLEY

JRC:sm

Encls.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS

CONDEMNOR
CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

AFFIDAVIT IN SUPPORT OF CONDEMNOR'S MOTION TO ACQUIRE POSSESSION
OF THE CONDEMNED PREMISES AND IN SUPPORT OF ITS
MOTION TO DISMISS CONDEMNNEES' PRELIMINARY OBJECTIONS

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CENTRE :

Personally appeared before me the undersigned, Patrick Ward, who being duly sworn according to law deposes and states as follows:

1. I am Patrick Ward, President of Unitec Consulting Engineers.

2. I am a civil engineer by profession and in that capacity was hired by the Houtzdale Municipal Authority as the consulting engineer to deal with various projects including the Moshannon Creek project.

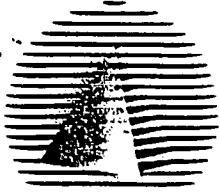
3. In association with that project my firm was asked to complete a feasibility study dealing with the construction of an alternate roadway to provide access from State Road 453 to the Houtzdale Municipal Authority lands which lie adjacent to lands of Eric and Bernadette Gilliland and include the Moshannon Creek surface source, headwaters and wellfield.

4. The feasibility study which was concluded in June and July of 2004 estimated that the cost of completing this alternative roadway was in excess of \$350,000.00 as specified in the report attached hereto as Exhibit A.

5. The attached report is the study referred to in the testimony presented before the court at the hearing conducted on Friday, November 12, 2004.

Sworn to and subscribed
before me this day of
November, 2004.

N. P.



Uni-Tec Consulting Engineers
INCORPORATED

July 13, 2004
File No. 0181-006-000

John Carfley
222 Presqueisle Street
Philipsburg, PA 16866

RE: Moshannon Creek Well Field Alternate Access Evaluation

Dear Mr. Carfley:

This letter report constitutes our evaluation of the feasibility of an alternative vehicular access to the Houtzdale Municipal Authority (herein after HMA) Moshannon Creek well field and stream intake.

The existing vehicular access to the HMA Moshannon Creek supply sources and land is via a road that crosses the lands of Gilliland. The Gilliland's would like HMA to stop using the vehicular access that crosses their property. HMA has agreed to examine an alternative access location, to evaluate the technical feasibility and the cost of developing the alternative access, and to determine if the alternative access is a meritorious vehicular access sufficient to serve the needs of HMA.

HMA, the Gilliland's, and their respective representatives have engaged in some dialog about potential alternate access locations. Various alternatives were discussed in general terms. It was decided, for the purpose of this analysis that only one of the alternatives would be evaluated in detail. The alternative selected for detailed evaluation was the only one that might reasonably replace the function of the existing vehicular access.

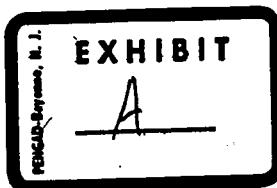
The alternative vehicular access to be evaluated is described as follows:

The alternative vehicular access would intersect Route 453 approximately 1.3 miles southeast of the Village of Viola. The road would then travel cross country generally north entirely on HMA lands where it would intersect the existing vehicular access road on HMA lands.

The alternative vehicular access would be approximately 4,400 feet of new road construction.

The vehicular access alternative would be constructed as follows:

1. Existing unimproved lands would be cleared and grubbed.
2. The earth base of the access road would be shaped to accommodate vehicles and also shaped to accommodate water drainage.
3. The vehicular access would be graveled per Table 1 and would be 20' wide.
4. Drainage pipes and storm water control devices would be installed were necessary.



An evaluation was made of required road grades needed to traverse the terrain from the alternative access entry point on Route 453 to a point of intersection with the existing access road located on the Southwestern edge of HMA lands near where it leaves the land of the Gilliland's.

The first part of the analysis indicated that a maximum slope of 8% would be required. This maximum slope is adequate and reasonable to accommodate the type of vehicles that would be using this road.

We have concluded that a sufficient access could be constructed along the alternative access route. In reaching this conclusion we have determined that this access is technically feasible, again meaning that it can be done in a way in which vehicles needing to use the access can reasonably negotiate the route. See the attached plan and profile map showing the routing and profile of the access road.

The second part of the analysis was to evaluate the cost of designing, permitting, and constructing this access. The cost analysis assumes that the access will be constructed by HMA in accordance with the State and Federal laws governing municipal authority construction activities. A detailed construction cost analysis is included as Table 1 to this report.

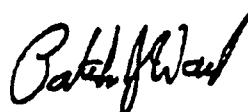
The third part of this analysis to evaluate the long term cost of using the alternate access route. In evaluating the long term cost it was assumed that maintenance of this road will be the same as the maintenance cost of existing road across the Gilliland property. Therefore road maintenance costs were not included in the analysis. However the alternate route is a longer route into The HMA facilities and therefore requires more man hours and equipment usage to reach the HMA well and surface intake facilities. There is a cost associated with this required additional travel distance and that cost is evaluated in detail in Table 2. The annualized cost of using the alternative access is converted to a present worth and added to the cost of designing permitting and constructing the existing road to obtain a total cost of the project.

The project total estimate probable cost is the sum of the values determined in Tables 1 & 2.

Table 1	\$310,000.00
Table 2	<u>\$75,735.00</u>
Total Estimated Cost	\$385,735.00

The cost of constructing the alternate access is to be compared to the cost of acquiring the existing access. That cost comparison would establish the criteria needed to determine if pursuing the alternative access is a financially prudent undertaking by HMA.

Sincerely,
UNI-TEC CONSULTING ENGINEERS, INC



Patrick J. Ward, P.E.
President

PJW/var

cc: John Fudrow, Manager - Houtzdale Municipal Authority
Jeffrey R. Garrigan, P.E. - Uni-Tec Consulting Engineers, Inc.

TABLE 1

MOSHANNON CREEK WATER SOURCES ALTERNATIVE ACCESS EVALUATION					
Estimate of Probable Cost					
CONSTRUCTION		ITEM	DESCRIPTION	ESTIMATED	UNIT
NO.				QUANTITY	UNIT
1	MOBILIZATION			1	Lump Sum
2	CLEAR AND GRUB			12,222	SY
3	CUT AND FILL			4200	CY
4	1 FOOT THICKNESS NO. 4 STONE			4400	LF
5	6" THICKNESS 2A STONE			4400	LF
6	E&S CONTROLS			1	Lump Sum
7	12" DRAIN PIPE			200	LF
8	PRE-CAST CATCH BASIN			6	EACH
9	DRAINAGE SWALES 3 FOOT WIDE		WITH GEOTEXTILE and NO. 4 STONE	3000	SY
10	ENTRANCE GATE			1	Lump Sum
11	RIP RAP APRON			3	EACH
SUBTOTAL					\$228,233.30
CONSTRUCTION CONTINGENCY (10%)					\$ 22,823.33
SUBTOTAL CONSTRUCTION & CONTINGENCY					\$251,056.63
NON CONSTRUCTION COSTS (20%)					\$ 50,211.33
ESTIMATED TOTAL PROBABLE COST (rounded)					\$310,000.00

TABLE 2

ITEM NO.	PRESENT WORTH OF ADDITIONAL TRAVEL DISTANCE USING THE ALTERNATIVE ACCESS
1	Additional driving distance round trip is 3.5 miles
2	One round trip per day is 7 miles per day
3	360 days per year is 2,520 extra miles per year
4	Additional travel time per round trip is 14 minutes
5	360 trips per year is 84 hours per year per staff. Two staff per trip is 168 hours per year.
6	Travel cost is \$0.38/mile or \$958/year.
7	Labor cost is (\$24x1.4) or \$33.60/hour or \$5,645 per year.
8	Total additional annualized cost using the new route is \$6,603/year
9	The Present worth of this annualized cost is \$75,735

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION BY THE HOUTZDALE MUNICIPAL AUTHORITY, OF A UTILITY AND ACCESS EASEMENT SIXTY (60') MORE OR LESS IN WIDTH FROM THE POINT OF BEGINNING FOR A DISTANCE OF 5149.76 FEET MORE OR LESS IN LENGTH TO THE TERMINUS OF THE EASEMENT OR A TOTAL OF 7.093 ACRES, OVER, ACROSS, UPON AND THROUGH CERTAIN PROPERTY, SITUATE IN GULICH TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA, REPUTED TO BE OWNED BY THE CONDEMNNEES, FOR PURPOSES OF CONSTRUCTING, EXPLORING, DRILLING AND EXPLOITATING THE SURFACE SOURCE, UNDERGROUND WATER RESOURCES AND THE INTAKE AT THE MOSHANNON CREEK HEADWATERS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING OF PRODUCTION WELLS, MONITORING WELLS, AND SURFACE SOURCES TOGETHER WITH THE NECESSARY WATER TRANSMISSION PIPELINE, ELECTRICAL POWERGRID AND OTHER FACILITIES INVOLVED IN THE UPGRADE AND RENOVATION OF HMA'S WATER SUPPLY, WATER DISTRIBUTION AND WATER TREATMENT SYSTEMS : NO. 2004-1369-CD : Eminent Domain Proceeding-In Rem

CONDEMNOR

CONDEMNNEES: ERIC AND BERNADETTE GILLILAND:

AFFIDAVIT IN SUPPORT OF CONDEMNOR'S MOTION TO DISMISS CONDEMNEE'S PRELIMINARY OBJECTIONS

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF CENTRE :

Personally appeared before me the undersigned, Patrick Ward, and Donald Ross, Jr., who being duly sworn according to law deposes and states as follows:

1. I am Patrick Ward, President of Unitec Consulting Engineers.

2. I am a civil engineer by profession and in that capacity was hired by the Houtzdale Municipal Authority as the consulting engineer to deal with various projects including the Moshannon Creek project.

3. I am Donald Ross, Jr. an adult individual who presently resides in Houtzdale, Clearfield County, Pennsylvania.

4. I, Donald Ross, Jr. was appointed to the Board of

Directors of the Houtzdale Municipal Authority and have served as Chairman of the Board since 199 .

5. Affiants attest that in their respective capacities as consultant to the Authority and Chairman of the Board of Directors of the Authority entered into negotiations with the Commonwealth of Pennsylvania, Department of Corrections, pertaining to a contractual arrangement dealing with the allocation of water to the State Correctional Institutional at Houtzdale, Pennsylvania.

6. These negotiations took place in conjunction with the expansion of the water treatment facilities in the Moshannon Valley and the development of the surface source and wellfield in Mountain Branch.

7. Said negotiations resulted in a contractual agreement with the Commonwealth of Pennsylvania, Department of Corrections which specified the terms and conditions under which the Authority would provide water to SCI Houtzdale and the provisions under which SCI Houtzdale would compensate the Authority for this water service. A true and correct copy of the agreement entered into between the Houtzdale Municipal Authority and the Commonwealth of Pennsylvania, Department of Corrections is attached hereto as Exhibit A and bears the signature of Donald Ross as the Chairman of the Board of Directors of the Houtzdale Municipal Authority which is affirmed to be his true and correct signature.

8. As part of the terms and conditions of the agreement the Commonwealth of Pennsylvania, Department of Corrections agreed to take part in and partially compensate HMA for any capital improvements which HMA undertook over a period of twenty (20) years.

9. The amount of compensation payable by the Commonwealth of Pennsylvania to HMA was based upon the amount of water allocated to and supplied by HMA to SCI Houtzdale which amount is verified in each calendar year to be no less than forty (40%) of the cost of any improvements undertaken by HMA.

10. The capital improvements which are contemplated by this contract include the development of additional water sources including the Moshannon Creek for which the Commonwealth of Pennsylvania would provide forty (40%) percent of the funds required to acquire lands, rights of way or other ownership interest in order to expand the Moshannon Creek project.

11. The said prison agreement and the entire contractual arrangement between HMA and SCI Houtzdale was introduced at the hearing on Friday, November 12, 2004, for purposes of confirming the additional security which HMA could pledge to offset the value

of the condemned property interest and to further affirm that an entity with taxing capability to wit: the Commonwealth of Pennsylvania was contractually bound to account for almost one-half of the fair market value of any condemned capital acquisitions.

Sworn to and subscribed
before me this day of
November, 2004.

N. P.



Uni-Tec Consulting Engineers

INCORPORATED

2007 Cato Avenue
State College, PA 16801
p: 814.238.8223
f: 814.238.7808
w: uni-tec.com
e: info@uni-tec.com

FAX TRANSMITTAL

TO:	Eric & Bernadette Gilliland; David Mason, Esq.; Susan Smith, Esq.
COMPANY:	
FAX #:	342-5318; (717) 730-7366
FROM:	Michele A. Klopf
DATE:	November 18, 2004
RE:	Access to Gilliland right-of-way
OUR FILE #:	0181-006-203
PAGES:	1, including this cover sheet
COMMENTS:	Please note that engineers from Uni-Tec Consulting Engineers, Inc., accompanied by Houtzdale Municipal Authority personnel, will require access to the Authority's well field area through the Gilliland right-of-way from 9:00 am to 4:00 pm tomorrow, Friday, November 19 th . Should you have any questions or comments, please do not hesitate to contact me.
CC:	John R. Carfley, Esq.

CONFIDENTIALITY NOTICE: This teletype transmission may contain information belonging to the sender which is legally privileged, confidential, and exempt from disclosure. This information is intended only for use by the individual or entity named above. If you are not the intended recipient, or the employee of the intended recipient, or the agent responsible for delivering this message, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this teletype in error, please contact us by telephone to arrange for the return of the original document to us.
K:WAKFREQUENTLY USED DOCUMENTS\FAXTMPSC.DOC

DAVID C. MASON*Attorney at Law*

409 NORTH FRONT STREET
P.O. Box 28
PHILIPSBURG, PENNSYLVANIA 16866
(814) 342-2240
FAX (814) 342-5318

November 18, 2004

John Carfley, Esquire
Attorney at Law
P.O. Box 249
222 Presqueisle Street
Philipsburg, PA 16866

Via Fax: 342-1127
Original by Regular Mail

In RE: HMA v. Gilliland

Dear John:

I received the enclosed fax transmittal.

Your intended travel between 9:00am and 4:00pm may well entail the cancellation of prearranged hunts on this property, which will necessitate increasing the actual, out of pocket expenses for the Gillilands. This will of course be an element of our damages.

If the engineers wish to modify the time of their intrusion on the Gilliland property, please advise.

Very truly yours,

MASON LAW OFFICE



David C. Mason

DCM/kb

Enclosure

cc: Susan Smith, Esquire (via fax: 717-730-7366)
Mr. and Mrs. Eric Gilliland (via fax: 378-8381)

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

November 18, 2004

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

David Mason, Esq.
P. O. Box 28
Philipsburg, Pa., 16866

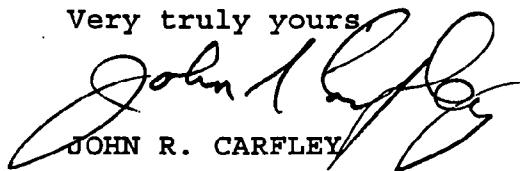
RE: HMA v. Gilliland
No. 03-1895-CD

Dear Dave:

I received your letter of November 18, 2004, wherein you acknowledged the Authority's request for access to the existing right of way. Be advised that the actual travel on the right of way will be only on an as needed basis and would surely not interfere with any prearranged hunts. If your clients intend to cancel anything previously scheduled, they do so at their own risk and after proper notice that the travel by these individuals would in no way interfere with your client's concurrent access to the right of way.

I see this as a blatant attempt to engineer a measure of damages which is clearly inappropriate and designed to further delay the progress of the Authority in this community project.

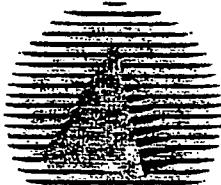
Very truly yours,



JOHN R. CARFLEY

JRC:sm

CC: HMA
Unitec



Uni-Tec Consulting Engineers
INCORPORATED

2007 Cato Avenue
State College, PA 16801
p: 814.238.8223
f: 814.238.7808
w: uni-tec.com
e: info@uni-tec.com

FAX TRANSMITTAL

TO:	John R. Carfley, Esq.
COMPANY:	
FAX #:	342-1172
FROM:	Michele A. Klopf
DATE:	November 18, 2004
RE:	Access to Gilliland right-of-way
OUR FILE #:	0012-045-203
PAGES:	3, including this cover sheet
COMMENTS:	<p>Attorney Carfley</p> <p>Please see the attached fax I just received from Attorney Susan Smith. I believe Jeff Garrigan is going to contact you directly before I respond to her request for more information.</p>
CC:	

Michele

CONFIDENTIALITY NOTICE: This teletype transmission may contain information belonging to the sender which is legally privileged, confidential, and exempt from disclosure. This information is intended only for use by the individual or entity named above. If you are not the intended recipient, or the employee of the intended recipient, or the agent responsible for delivering this message, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this teletype in error, please contact us by telephone to arrange for the return of the original document to us.
K-MARK FREQUENTLY USED DOCUMENTS\FAXTEMPSC.DOC

11/18/2004 12:03 FAX 717 730 7366

REAGER & ADLER

4001

REAGER & ADLER, PC
ATTORNEYS AND COUNSELORS AT LAW

2331 Market Street
Camp Hill, PA 17011
Telephone: (717) 763-1383
Facsimile: (717) 730-7366

Theodore A. Adler
David W. Reager
Charles E. Zaleski
Linus E. Fenicle
Debra Denison Cantor
Thomas O. Williams
Susan J. Smith

Susan H. Confair
Joanne Harrison Clough
Thomas J. Rozman
Tiffany M. Cartwright
Peter R. Wilson

FACSIMILE COVER SHEET

To: Michele Klopf	From: Susan J. Smith
Fax No: 814-238-7808	Date: November 18, 2004
Original <input checked="" type="checkbox"/> will / <input type="checkbox"/> will not follow by electronic mail.	Page(s), including fax coversheet: 2
Message: RE: Gilliland Property Access	

11/18/2004 12:03 FAX 717 730 7366

REAGER & ADLER

4002

Dear Ms. Klopf,

I received written notice of an intent to enter the Gilllands' property for access to the Authority's well field. I received the notice by facsimile only. I am aware that Attorney Mason received the written request by facsimile and electronic mail (my correct e-mail address is: ssmith@reageradlerpc.com). However, no notice was given to the Gilllands directly, as is required by the Court's order. I note an apparent intent to do so by facsimile, but the Gilllands' facsimile number does not appear on the notice I received. The Gilllands' facsimile number is 814-378-8381.

The notice fails to generally describe the activities that Uni-Tec and the Authority seek to engage in on Friday. Please provide that information immediately.

In light of the short notice and scheduled commercial activities, the Gilllands cannot accommodate your request for open and unrestricted access across their property on Friday, November 19 from 9 - 4.

However, the Gilllands can reasonably and safely accommodate your request for access across their properties while in commercial use during the following times: 9-10:00 am., 12-1:00 pm and 3-4:00 pm. Additionally, the Gilllands will be available by telephone (814-378-8380) throughout the day in the event an unavoidable need arises to cross their property outside of these times.

Please call Dee at (717) 763-1383 if you encounter any problems in the transmission of this fax.

The information contained in this facsimile is transmitted by an attorney. It is privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If this communication has been received in error, please immediately notify us by telephone, collect if necessary, and return the original message to us at the above address via the U.S. Postal Service (we will reimburse postage). Thank you.