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BILL OF COMPLAINT.

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The bill of complaint of The New York and New Jersey Water Company and the New Jersey Suburban Water Company, corporations of the State of New Jersey, respectfully shows:

1. The New York and New Jersey Water Company is a corporation duly authorized and existing under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey entitled "An Act Concerning Corporations," approved April 7, 1875, and the several acts supplementary thereto and amendatory thereof. The certificate of incorporation was duly filed with the Secretary of State of the State of New Jersey on the 19th day of April, 1895. The objects and purposes for which the said company were formed are in the said certificate of incorporation stated to be as follows:

> "The acquisition from either surface or subterranean sources of water and the storage, sale and delivery of the same; the acquisition, construction, operation and sale of water works and reservoirs, wells, pipe lines, and all other property, real and personal appertaining to the collection, sale and distribution of water; the constructing, maintaining and operating (except in towns and cities in which water works are established and owned by the corporate authorities) works for the special purpose of supplying water for the extinguishing of fires in wells, factories, manufacturing establishments and other buildings; the damming of rivers and

streams, including the storage and transportation and sale of water and water power and privileges with the right to take rivulets, race-ways and lands and erect and maintain dams, reservoirs, race-ways, mills, manufactories and other erections, and to lease, mortgage, sell and convey the same or any part thereof; the making, purchasing and selling of manufactured articles and also of acquiring and disposing of rights to make and use the same and also to purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of any other corporation created under the laws of this or any other state, and to exercise while owners of said stock all the rights, powers and privileges, including the right to vote thereon, which natural persons, being the owners of said stock, might, could, or would exercise and to purchase, hold, sell, transfer, mortgage, pledge and otherwise dispose of any securities or evidences of debt created by any other corporation or corporations, of this or any other state, in the same manner and to the same extent as natural persons, being the owner thereof might, could or would do."

2. The New Jersey Suburban Water Company is also a corporation of the State of New Jersey, by virtue of "An Act Concerning Corporations," (Revision of 1896), and the several supplements thereto and acts amendatory thereof, whose certificate of incorporation was duly filed in the office of the Secretary of State of the State of New Jersey on the 22nd day of September, 1902. The purposes and object for which this company was formed are in its said certificate of incorporation stated to be as follows:

"The acquisition from either surface or subterranean sources of water, and the storage, sale and delivery of the same; the acquisition, construction, operation and sale of water works and reservoirs, wells, pipe lines

and all other property, real and personal, appertaining to the collection, sale and distribution of water; the damming of rivers and streams, including the storage and transportation and sale of water and water power and privileges with the right to take rivulets, race-ways and lands, and erect and maintain dams, reservoirs, race-ways, mills, manufactories and other erections, and to lease, mortgage, sell and convey the same or any part thereof; the making, purchasing and selling of manufactured articles and also of acquiring and disposing of rights to make and use the same, and also to purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of any other corporation or corporations created under the law of this or any other State, and to exercise, while owners of said stock, all the rights, powers and privileges, including the right to vote thereon, which natural persons being the owners of said stock might, could or would exercise and to purchase, hold, sell, transfer, mortgage, pledge or otherwise dispose of any securities or evidences of debt created by any other State, in the same manner and to the same corporation or corporations, of this or any other State, in the same manner and to the same extent as natural persons, being the owners thereof, might, could or would do; to borrow money and make and issue promissory notes, bonds and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise; to carry on any other business (whether manufacturing or otherwise) which may seem to the company capable of being conveniently carried on in connection with the above, or calculated directly or indirectly to enhance the value of the company's property or rights."

3. On or about the 29th day of June, 1895, a contract was made and entered into between the East Jersey Water Company, a corporation organized and then existing under and pursuant to the provisions of "An Act Concerning Corporations," approved April 7, 1875, and the several acts supplementary thereto and amendatory thereof, and the Township of Kearny, located in Hudson County, in the State of New Jersey, wherein and whereby the said last mentioned company undertook and agreed to furnish and deliver, and the said Township agreed to take and pay for, as stipulated in the contract, all the water necessary and convenient for the purpose of domestic use, for the extinguishment of fires, and for all other lawful uses and purposes in the Township as may be necessary and convenient.

4. On or about the 1st day of July, 1903, the said East Jersey Water Company, by its certain deed of assignment of that date, for a valuable consideration, assigned, transferred and conveyed and set over unto the New Jersey Suburban Water Company and The New York and New Jersey Water Company, the right and privilege in said contract contained, to obtain and supply to the said Township of Kearny water for the term in said contract named, and the right to receive from the Township payment therefor, in accordance with the terms of said contract; and the said New Jersey Suburban Water Company and The New York and New Jersey Water Company did, in said deed of assignment, severally covenant and agree to and with the said East Jersey Water Company that they will carry out and fulfill the terms of the said contract for the supply of water to the said Township, and will

indemnify and hold harmless the said Township as fully as the East Jersey Water Company is by the terms of the said contract bounded.

5. By virtue of these instruments, the said The New York and New Jersey Water Company and the New Jersey Suburban Water Company became obligated to furnish the Township of Kearny with an ample and sufficient supply of pure and wholesome water, and for that purpose, at great expense, the said companies did thereafter lay and construct a water main from a point in Kearny avenue, in the Township of Kearny, opposite Belleville, through the entire length of the Township of Kearny and to the northerly line of what is now the Town of Harrison and the easterly line of the Borough of East Newark, through which pipe the New Jersey Suburban Water Company has been and is still delivering water for public and private purposes to the Town of Kearny, which in the meantime has been incorporated out of the territory formerly constituting the Township of Kearny, the Town of Harrison and the Borough of East Newark, by virtue of the contract hereinabove mentioned, between the said Township and the East Jersey Water Company, assigned to The New York and New Jersey Water Company and New Jersey Suburban Water Company, as hereinabove set out, and two several contracts with the Town of Harrison and the Borough of East Newark, hereinafter referred to.

6. On the 1st day of July, 1903, contemporaneous with the making of the assignment above referred to, the said East Jersey Water Company made and entered into a contract with the New Jersey Suburban Water Company and The New York and New Jersey Water Company, a true

copy of which is hereunto annexed marked Schedule A, and made a part of this bill of complaint, wherein and whereby the said New Jersey Suburban Water Company and The New York and New Jersey Water Company undertook and agreed to take all their supply of water for uses and purposes in Hudson County, New Jersey, or in Staten Island, New York, from the East Jersey Water Company at the corner of Kearny avenue and Belleville Turnpike Road, in the Township of Kearny, which the East Jersey Water Company agreed to supply. The said contract contained the following clause:

> "SECOND—The water which is to be supplied to the Township of Kearny under said contract of June Twenty-ninth, Eighteen Hundred and Ninety-five, is to be received by the parties of the second and third parts through the gates and meter now established at the point aforesaid for the supply of Kearny, Harrison and East Newark; and the parties of the second and third parts agree to pay for all water passing through said gates and meter at said point, whether consumed by the Township of Kearny and its inhabitants, or otherwise, at the price of sixty dollars per million gallons, payable half yearly, for the amount passing through the meter until the parties of the second and third parts or either of them shall, by some contract with Kearny, Harrison or East Newark, agree to modify the price of ninety dollars per million (which is now being paid by those municipalities to Jersey City for their water) to some other price, after the making of which modification the price to be paid under this contract to the East Jersey Water Company for the water thereafter supplied to such municipality shall be thirty dollars per million gallons, plus one-half of all that shall be received from each municipality respectively in excess of said thirty

> dollars per million gallons, such settlements and payments to be made quarterly or semi-annually, according to the manner of payment of each municipality, the ascertainment of which amounts and settlements to be made in the same manner as provided in existing contracts between the East Jersey Water Company and the New York and New Jersey Water Company."

7. On the 16th day of August, 1904, the Boards of Directors of The New York and New Jersey Water Company and the New Jersey Suburban Water Company (hereinafter, for convenience, called the Water Companies) passed resolutions accepting and adopting the terms of a resolution adopted by the Common Council of the Town of Kearny on the 15th day of August, 1904, wherein and whereby the said Town did ratify, confirm and approve of the contract made on the 29th day of June, 1895, between the East Jersey Water Company and the Board of Township Committee of the Township of Kearny, certain other contracts supplemental thereto, and the assignment thereof to the said Water Companies, and did extend the term of the said contract for a period of ten years. In consideration of such extension, the Water Companies did therein agree to reduce the price for the delivery of water to the said Town of Kearny from ninety dollars ($90.00) to eight-two dollars and fifty cents ($82.50) per million gallons. Authority was likewise, in the said resolution of the Town of Kearny, bestowed upon the said Water Companies to lay and construct the water main from the main of the New York and New Jersey Water Company in Belleville Turnpike, southerly in Kearny avenue to the line of Harrison.

8. By virtue of these contracts, the Water Companies, or one of them, have been and still are supplying the Town of Kearny with all water for public and private purposes that it requires, at the rate of eighty-two dollars and fifty cents ($82.50) per million gallons. Although the contract aforementioned between the Town of Kearny and the Water Companies expired by limitation on the twenty-ninth of December, 1920, the Water Companies have continued to furnish water at the same rate, and the Town of Kearny has paid, in whole or in part, therefor. The amount so supplied to the said Town of Kearny amounts to upwards of three and a quarter million gallons per day.

9. On or about the 15th day of September, 1903, an agreement was duly made and entered into between the New Jersey Suburban Water Company and the Town of Harrison for the period in said contract specified, with an option to the Town to extend the contract for a second period of ten years, wherein and whereby the company agreed to deliver and the Town agreed to receive an adequate supply of water for the inhabitants of the said Town, for the purposes of domestic use, the extinguishment of fires, and all other lawful uses and purposes, the water to be delivered at the junction of Shearman avenue and Fourth street in the Town of Harrison, at the price of eighty-two dollars and fifty cents ($82.50) per million gallons. Pursuant to this contract, and the extension thereof therein specified, the said New Jersey Suburban Water Company has delivered daily a large quantity of water to the Town of Harrison for the uses of that municipality, as specified in the said contract. The said contract was, on or about the

5th day of August, 1924, duly extended for a further period of fifteen years, having fourteen years yet to run, and the said New Jersey Suburban Water Company is thereby obligated to deliver and the said Town of Harrison is entitled to receive a daily supply of water for its municipal and other purposes, amounting to upwards of two and a quarter million gallons a day.

10. The territory within the boundaries of the Borough of East Newark was formerly a part of the Township of Kearny. On or about the 31st day of August, 1906, a contract was duly made and entered into between the New Jersey Suburban Water Company and the Borough of East Newark, wherein and whereby the said company agreed to furnish to the said Borough an entire and adequate supply of pure and wholesome water in quantities sufficient for the purposes of domestic use and the use of the Borough for the extinguishment of fires and all other uses and purposes for which the said Borough may require or desire to have water, at the price of eighty-two dollars and fifty cents ($82.50) a million gallons, for the term of five years. Although the said contract has, by its terms, expired, water has been daily delivered to the said Borough, in accordance with the requirements of said expired contract, and the same has been received and to some extent paid for by the said Borough authorities, at the rate of eighty-two dollars and fifty cents ($82.50) a million gallons. The said Borough is entirely dependent upon said supply for water used or required by it and its inhabitants. The supply furnished to the said Borough at the present time is upwards of one-quarter million gallons per day.

11. By virtue of the provisions of the contracts hereinabove referred to and of the rates paid or agreed to be paid to the said water companies, or either of them, the sum which the said companies were and are obligated to pay to the East Jersey Water Company for water supplied to them, or either of them, is thirty dollars ($30.00) per million gallons plus one-half of all that shall be received from each municipality, respectively, in excess of said thirty dollars ($30.00), which has amounted to, under the contracts existing, fifty-six dollars and twenty-five cents ($56.25).

12. A suit in the Court of Chancery of New Jersey was commenced in or about the year 1907 against the East Jersey Water Company by the City of Paterson, claiming to be a riparian owner of lands bordering on the Passaic River, and seeking to enjoin the East Jersey Water Company from abstracting water at Little Falls on the Passaic River, at a point above the City of Paterson, for the purposes of supplying water to the Water Companies, and other customers that the East Jersey Water Company had theretofore supplied. The said suit was bitterly contested by the East Jersey Water Company, but such proceedings were had therein that shortly after the 14th day of May, 1908, a final decree was entered therein, the force and effect of which was to declare that the abstraction of the water from the Passaic River at Little Falls by East Jersey Water Company in the amounts necessary to fulfill its contracts with the Water Companies and other consumers was illegal, and should be enjoined. An appeal was duly taken from said decree to the Court of Errors and Appeals, and that Court, on or about the 14th

of November, 1910, affirmed the decree of the Court of Chancery, for the reasons given by the Honorable John R. Emery, the Vice-Chancellor who decided the case in this Court. The force and effect of this litigation was to render illegal the large abstractions of water by the East Jersey Water Company at Little Falls, as against the lower proprietors on the Passaic River. The result was the passage of resolutions by the Town of Kearny, the Town of Harrison and the Borough of East Newark, as well as the other municipalities that were enjoying and using water from the Passaic River, all determining to condemn the rights of the lower riparian proprietors on the Passaic River, and to acquire the right to divert sufficient water to carry into effect the contracts which the said municipalities had with the said Water Companies, or either of them. The resolution of the Town of Kearny was passed at a meeting of the Council held on or about the 26th of October, 1910, and resolved to acquire by condemnation the right to divert an average daily amount of two and three-tenths million gallons of water per day in each year, at Little Falls in the Passaic River, the same being necessary for the purposes of the contract between the Town of Kearny and the said Water Companies. The resolution of the Town of Harrison was passed by the Common Council of the said Town at a meeting held on or about the 8th of October, 1910, and directed the agent of said town, if possible, to procure by agreement with the riparian owners the price of the right to divert, and if no such agreement could be made that the Town should then proceed to condemn the right to divert an average daily amount of two million gallons per day in each year, at Little Falls in the Passaic River, the same being

necessary for the purposes of the contract between the Town of Harrison and the New Jersey Suburban Water Company. The resolution of the Borough of East Newark was adopted by the Borough Council and approved by the Mayor on or about the 8th of March, 1911, wherein and whereby the said Borough did determine to acquire the right of diversion of an average daily amount of six hundred thousand gallons of water a day in each year, at Little Falls in the Passaic River, the same being necessary for the purposes of its contract with the New Jersey Suburban Water Company, and that in the absence of an agreement with the lower proprietors for the price to be paid for such right of diversion, condemnation proceedings were authorized.

13. Litigation followed in the Supreme Court and the Court of Errors and Appeals with reference to the right of the said municipalities, and others that passed similar resolutions, to pursue said condemnation proceedings, but such right was ultimately sustained. What steps have further been taken thereunder the complainants are, from lack of information, unable to state.

14. In view of the said and other decisions of the courts denying the right of the East Jersey Water Company to abstract water from the Passaic River, for the purpose of fulfilling its contracts with the Water Companies and other parties, as against the lower proprietors on said stream, three new contracts were made and entered into under date of May 18, 1911, between the East Jersey Water Company, The New York and New Jersey Water Company and the New Jersey Suburban Water Company similar in most respects and applying respectively to the contracts between the said Water Companies, or

either of them, and the said Towns of Kearny and Harrison, and the Borough of East Newark. A true copy of one of the said contracts is hereunto annexed, marked Schedule B, and made a part of this bill of complaint.

15. After reciting the fact that the East Jersey Water Company is causing pumping to be done for the water companies, or either of them, for their purposes, namely, the supplying of water to the Town of Kearny, the Town of Harrison and the Borough of East Newark; the fact that water has been obtained for more than ten years last past from the Passaic River at Little Falls; the fact that said municipalities have explicitly designated and indicated the said source of supply as the source from which they are to take the water for their uses, and have determined to commence, and have already commenced condemnation proceedings against certain riparian owners to take said waters in aid of certain municipalities; the fact that the East Jersey Water Company possesses water-power at Little Falls and has obtained the right of diversion as against owners of other water-powers below Little Falls, so that its consent to the diversion is necessary; and the further fact that in express terms it renounced all claim thereafter to sell water; it was in each of said agreements expressly provided that the supply so to be pumped to the respective Towns of Kearny and Harrison, and the Borough of East Newark shall be taken by the said water companies or either of them from the Passaic River at Little Falls, and shall be continued during the period of the contract between the said water companies and the said municipalities, or either of them, and said agreements further expressly provided:

"The party of the first part (East Jersey Water Company) being made the agent and employee of the party of the second part to use its water power, mains and riparian and other facilities to accomplish the diversion which is authorized by said municipal contracts, and to receive per million gallons for the water so delivered through its mains into the mains of the party of the second part the prices prescribed in its contracts as compensation, not for water sold but for services as agent, and for the use of its appliances, water power, mains and property in accomplishing the municipal supply of said town, which the party of the first part hereby agrees to use and provide for that purpose, and also agrees to pay all the costs, expenses and awards incident to the condemnation of the water rights for and on behalf of the said town, which water rights are referred to in the said resolutions authorizing the condemnation therefor for the purposes of said water supply; and that said water rights shall thereupon be and become the property of the said Town of Harrison and used for the water supply by the party of the second part."

16. Since the 18th day of May, 1911, the contractual relations between the complainants and the East Jersey Water Company, arising out of and by virtue of the contract dated July 1, 1903 (hereinabove referred to and being Schedule A annexed to this bill), became modified by the provisions of the contracts of May 18, 1911, known as the pumping contracts, and the relations between the said East Jersey Water Company and the complainants have, ever since that time, been controlled and defined by the terms thereof. Such relations are private contractual relations existing between the complainants and the East Jersey Water Company in which no other person or corporation is interested.

17. On or about the 30th day of October, 1923, by virtue of certain articles of merger and consolidation made and entered into between the East Jersey Water Company and other companies therein named, the East Jersey Water Company became merged and consolidated into the Passaic Consolidated Water Company, and, by virtue of said act of merger, the Passaic Consolidated Water Company became charged with all duties, liabilities and obligations of the said East Jersey Water Company. Since such merger, the pumping required to be done by the agreement of May 18, 1911, between the East Jersey Water Company and the complainants has continued to be done by the Passaic Consolidated Water Company.

18. On or about the 17th day of May, 1925, the Passaic Consolidated Water Company wrote to the New Jersey Suburban Water Company and The New York and New Jersey Water Company a letter claiming that they were in arrears to the Passaic Consolidated Water Company in a large amount of money for services rendered by it pursuant to the contracts hereinabove referred to. Such alleged arrearage was based upon a claim of right on the part of the Passaic Consolidated Water Company, the defendant herein, to charge the Water Companies at a higher rate for services performed by it to the Water Companies, by virtue of the contracts hereinabove referred to, than is provided for in the said contracts. The said letter further stated that unless the said alleged arrearage was paid to the defendant on or before the 18th of June, 1925, "We shall thereupon turn off the water and thereafter cease to supply water to you." Correspondence ensued between the complain-

ants and the defendant, in which the complainants denied the right of the defendant to exact higher rates for the services rendered by it to the complainants under said contracts, and protested against the threat to turn off the water. The defendant, by a letter dated June 1, 1925, maintained its position with reference to the right to charge in excess of the contract rates, but extended the time of the threatened cut-off of the water supply until the 1st day of July, 1925. Letters containing similar threats were sent by the defendant to the Towns of Kearny and Harrison and the Borough of East Newark, with the result that each of said municipalities, in due course, and before the 1st of July, secured restraining orders from this Honorable Court, preventing such threatened turning off of the water, which restraining orders have since been converted into preliminary injunctions.

19. The complainants are informed and believe that the basis of the defendant's claim that it is entitled to charge the complainants a rate higher than is provided for in the said contract of July 1, 1903, is that, in some proceeding instituted by the East Jersey Water Company and other companies before the Board of Public Utility Commissioners of this State, to which proceeding neither of the complainants was a party, and by which neither of them is bound, the said East Jersey Water Company was by said Board of Public Utility Commissioners declared to be entitled to charge for water supplied by it to the New Jersey Suburban Water Company the sum of Seventy-eight Dollars ($78.00) per million gallons of water. The complainants charge that said declaration or finding of said Board of Public Utility Commissioners, if made, was and is void, illegal and of no effect against them, or either of

them. Not only was no notice, as required by the rules of said Board, served by it upon the complainants, or either of them, but the relation arising and existing between the complainants and the defendant respectively, by virtue of the contracts hereinabove referred to, is such that the Board of Public Utility Commissioners is powerless and unable to modify or affect the same. The rights of the parties complainant and defendant, arising out of and existing by virtue of said contract, are purely private rights in which the public has no concern, and over which the said Board of Public Utility Commissioners can have and did have no jurisdiction whatever, and that any attempt on the part of the said Board, by virtue of its authority, would be an impairment of the contractual rights of the complainants, and would violate the provisions both of the Constitution of the State of New Jersey and of the United States, and more particularly the Fourteenth Amendment of the Constitution of the United States. The authority vested in said Board by the Act of the Legislature of the State of New Jersey creating it, does not extend to and include the right to vary or set aside private contracts between private individuals or corporations, and the complainants charge if such authority does exist by virtue of such legislation then said Act of the Legislature, so far as it undertakes to include such authority, violates the provisions of the State and Federal Constitution in that it would impair the obligation of contracts existing between the said companies.

20. The complainants show that the continuance by the defendant of its obligations under said contracts on the terms and in the manner therein provided are of the greatest importance

to the complainants. Upon the faith of such contracts, the complainants, or one of them, have entered into contracts, expended large sums of money in the laying and maintenance of pipes, and in other ways they have so acted in reliance and dependence upon the validity of said contracts as to have them abrogated or modified without the consent of the complainants would result in irreparable harm and injury to them.

The complainants therefore pray:

1. That the defendant, Passaic Consolidated Water Company, may without oath, an answer under oath being hereby waived, full, true and perfect answer make to all and singular the premises.

2. That by the decree of this Court it may be ordered and directed specifically to perform the contracts heretofore made by the East Jersey Water Company and the complainants, or either of them, and more particularly the contracts of July 1, 1903, and May 18, 1911, hereinabove referred to, at the rate, and in the manner provided in said contracts, and such other contracts as exist and bear upon the mutual relations of the parties; the obligation of which was assumed by the defendant upon the completion, merger and consolidation with the East Jersey Water Company.

3. That the defendant, by its officers, agents and servants, be enjoined and restrained from carrying out its threat to turn off the water pumped for and supplied to the complainants by virtue of said contracts.

3. That the defendant may be adjudged and decreed to further pump and supply water to the

complainants, or either of them, pursuant to the terms of the said contracts, at the rates therein named and in the manner required thereby.

4. That the complainants may have other equitable relief.

5. That writs of subpoena and injunction may issue, in accordance with the practice of the Court.

McCARTER & ENGLISH,
Solicitors for Complainants.

Schedule A.

THIS AGREEMENT made the first day of July, Nineteen hundred and three, between East Jersey Water Company, a corporation of the State of New Jersey, party of the first part; New Jersey Suburban Water Company, a corporation of said State, party of the second part; and New York and New Jersey Water Company, a corporation of said State, party of the third part.

WHEREAS the East Jersey Water Company and the Kearny Water Company have this day assigned to the New Jersey Suburban Water Company and the New York and New Jersey Water Company the right to supply water to the Township of Kearny under the terms of the contract between the East Jersey Water Company and said Township, dated June Twenty-ninth, Eighteen Hundred and Ninety-Five, and to receive the monies accruing and to accrue under said contract, as by reference thereto will more fully appear.

NOW, THIS INDENTURE WITNESSETH:

That in consideration of said assignment and of the mutual covenants herein contained, it is hereby agreed between the parties hereto as follows:

FIRST: The New Jersey Suburban Water Company and the New York and New Jersey Water Company shall take all their supply of water required for all their present and future uses and purposes in Hudson County, New Jersey, or in Staten Island, New York, from the East Jersey Water Company at the corner of Kearny avenue and Belleville Turnpike Road, in the Township of Kearny, Hudson County, New Jersey, which the East Jersey Water Company agrees to supply accordingly at the prices and under the terms of the contracts already existing between the East Jersey Water Company and the New York and New Jersey Water Company, except as follows:

SECOND: The water which is to be supplied to the Township of Kearny under said contract of June Twenty-Ninth, Eighteen Hundred and Ninety-Five, is to be received by the parties of the second and third parts through the gates and meter now established at the point aforesaid for the supply of Kearny, Harrison and East Newark; and the parties of the second and third parts agree to pay for all water passing through said gates and meter at said point, whether consumed by the Township of Kearny and its inhabitants, or otherwise, at the price of sixty dollars per million gallons, payable half yearly, for the amount passing through the meter until the parties of the second and third parts or

either of them shall, by some contract with Kearny, Harrison or East Newark, agree to modify the price of ninety dollars per million (which is now being paid by those municipalities to Jersey City for their water) to some other price, after the making of which modification the price to be paid under this contract to the East Jersey Water Company for the water thereafter supplied to such municipality shall be thirty dollars per million gallons, plus one-half of all that shall be received from each municipality respectively in excess of said thirty dollars per million gallons, such settlements and payments to be made quarterly or semi-annually, according to the manner of payment of each municipality, the ascertainment of which amounts and settlements to be made in the same manner as provided in existing contracts between the East Jersey Water Company and the New York and New Jersey Water Company.

THIRD: IT IS FURTHER AGREED that this contract shall not disturb nor in any wise alter the existing contracts heretofore made between the East Jersey Water Company and the New York and New Jersey Water Company, except as hereinabove expressed.

IN TESTIMONY WHEREOF, the parties to these presents have caused their respective common seals to be herewith affixed and duly attested and these presents to be signed and delivered by their appropriate executive officers, the day and year first above mentioned.

EAST JERSEY WATER COMPANY,

(Seal) By EDMUND LEB. GARDINER,
Vice-President.

Attest:
ALBERT P. FISHER,
Secretary.

NEW YORK AND NEW JERSEY WATER COMPANY,
(Seal) By T. A. BEALL,
President.

Attest:
JOSEPH H. BEALL,
Secretary.

NEW JERSEY SUBURBAN WATER COMPANY,
(Seal) By T. A. BEALL,
President.

Attest:
J. WILLIAM GRIFFIN,
Secretary.

Schedule B.

CONTRACT MAY 18, 1911, EAST JERSEY WATER COMPANY WITH NEW YORK AND NEW JERSEY WATER COMPANY AND NEW JERSEY SUBURBAN WATER COMPANY.

THIS AGREEMENT made this eighteenth day of May, one thousand nine hundred and eleven, between The East Jersey Water Company, party of the first part, and The New York and New Jersey Water Company, and The New Jersey Suburban Water Company, parties of the second part, WITNESSETH:

WHEREAS, The East Jersey Water Company is causing pumping to be done for the parties of the second part of water for their purposes, to wit, the providing of a supply of water to the

Town of Kearny under written contracts between the parties hereto, which contracts do not specify the source from which water shall be taken; and

WHEREAS, The water has in fact been obtained for more than ten years last past from the Passaic River at Little Falls and is now being obtained from that source; and

WHEREAS, The Town of Kearny by resolution of its Council passed on October 26, 1910, copy whereof is hereto appended and made part hereof, has explicitly designated and indicated the aforesaid source of supply as the source from which it is to take the water for its uses, and has determined to commence and has already commenced condemnation proceedings against certain riparian owners to take said waters in aid of the said parties of the second part, who have contracted to supply it therewith by contract dated August 15, 1904, to which reference is hereby made; and

WHEREAS, The taking of water at that point requires the acquirement, by agreement or condemnation, of the right against the riparian owners on the Passaic River below that point, and the East Jersey Water Company possesses the water power at Little Falls and has obtained the right of diversion as against the owners of the other water powers below Little Falls, so that its consent to the diversion as against the owners of the other water advised that the parties of the second part by virtue of their municipal contracts with the Town of Kearny possess such rights of diversion as against the State for the use and benefit of said Town of Kearny;

NOW, THEREFORE, it is hereby agreed that the supply of water so to be pumped to the parties

of the second part shall be taken by the parties of the second part under the authority which they are advised was conferred on them by virtue of their municipal contracts with the Town of Kearny, charters and otherwise, from the Passaic River at Little Falls aforesaid, which source is hereby designated for such supply, and the supply shall be continued therefrom during the period of the said contract of August 14, 1905, with the Town of Kearny—the party of the first part being made the agent and the employee of the parties of the second part to use its water power, mains and riparian and other facilities to accomplish the diversion which is authorized by said municipal contracts and to receive per million gallons for the water so delivered through its main into the mains of the parties of the second part the prices prescribed in its contracts as compensation, not for water sold but for services as agent, and for the use of its appliances, water power, mains and property in accomplishing the municipal supply which the party of the first part hereby agrees to use and provide for that purpose; and also agrees to pay all the costs, expenses and awards incident to the condemnation of the water rights for and on behalf of the said Town of Kearny, which water rights are referred to in the said resolutions authorizing the condemnation thereof for the purpose of such water supply of the Town of Kearny, and that said water rights shall thereupon be and become the property of said Town of Kearny and used for its water supply by the parties of the second part.

Nothing herein contained shall release the party of the first part from its present contract obligations to furnish to the parties of the second

part a supply of water sufficient to fulfill the requirements of the existing contract between the parties hereto for the supply of the Town of Kearny from some available source, or from any other obligation or liability to the parties of the second part now existing thereunder or otherwise.

In witness whereof, the parties hereto have caused their common seals to be hereto affixed and these presents to be duly signed and delivered the day and year first above written.

THE EAST JERSEY WATER COMPANY,
By Edmund LeB. Gardiner,
Vice-President.

(l. s.) Attest:
Albert P. Fisher,
Secretary.

THE NEW YORK AND NEW JERSEY WATER COMPANY,
By T. A. Beall,
President.

(l. s.) Attest:
W. N. Leonard,
Asst. Secretary.

THE NEW JERSEY SUBURBAN WATER COMPANY,
By T. A. Beall,
President.

(l. s.) Attest:
W. N. Leonard,
Secretary.

Answer.

ANSWER.

IN CHANCERY OF NEW JERSEY.

Between

THE NEW YORK AND NEW JERSEY WATER COMPANY and NEW JERSEY SUBURBAN WATER COMPANY, corporations,

Complainants,

and

PASSAIC CONSOLIDATED WATER COMPANY, a corporation,

Defendant.

On Bill, etc.

Answer.

The answer of defendant Passaic Consolidated Water Company.

The defendant answering the bill of complaint says that:

1. It admits the allegations of paragraph 1 of said bill of complaint but prays leave to refer to the certificate of incorporation of the New York and New Jersey Water Company, or to a duly certified copy thereof, for the contents thereof.

2. It admits the allegations of paragraph 2 of said bill of complaint but prays leave to refer to the certificate of incorporation of New Jersey Suburban Water Company, or to a duly certified copy thereof, for the contents thereof.

3. It admits that on or about the 29th day of June, 1895, a contract was made and entered into between the East Jersey Water Company

Answer.

in paragraph 3 of said bill of complaint mentioned and the Township of Kearny therein mentioned as in said paragraph is stated, but prays leave to refer to said contract for the contents thereof.

4. It admits that on or about the 1st day of July, 1903, the said East Jersey Water Company assigned its rights and privileges under said contract to New Jersey Suburban Water Company and the New York and New Jersey Water Company (hereinafter referred to as "complainants"), but prays leave to refer to said assignment for the contents thereof.

5. It admits the allegations of paragraph 5 of said bill of complaint, save it says that it has no knowledge or information sufficient to form a belief as to the expense incurred in the laying and constructing of the water main in said paragraph mentioned or as to the terms under which New Jersey Suburban Water Company has been and is now supplying water to the Towns of Kearny and Harrison and the Borough of East Newark, and save that it denies that all of the water now supplied to the Town of Kearny is supplied by the complainants or either thereof.

6. It admits that on or about the 1st day of July, 1903, the East Jersey Water Company made and entered into a contract with complainants, of which contract a substantially true copy is attached to the bill of complaint as Schedule A, but prays leave to refer to the original of said contract for the contents thereof.

7. It admits the allegations of paragraph 7 of said bill of complaint but prays leave to refer to the resolution referred to therein as adopted

by the Common Council of the Town of Kearny on the 15th day of August, 1904, for the contents thereof.

8. It denies the allegations of paragraph 8 of said bill of complaint, save that it says that it has no information or knowledge sufficient to form a belief as to the amount of water now being supplied by complainants, or one of them, to the Town of Kearny. It admits, however, that a large part of the water supplied to said Town for public and private purposes has been and now is supplied by complainants. It is credibly informed and believes and therefore alleges that for all of the water so supplied since January 1, 1923, complainants have charged the Town of Kearny at the rate of $104.25 per million gallons and that the said Town has paid for some of said water at such rate.

9. It admits that on or about the 15th day of September, 1903, New Jersey Suburban Water Company entered into a contract with the Town of Harrison of the character mentioned in paragraph 9 of said bill of complaint, but prays leave to refer to said contract for the contents thereof. It has no knowledge or information sufficient to form a belief as to any extension of said contract which may have been made or as to whether any such extension is still in force, or as to the amount of water which New Jersey Suburban Water Company is now obligated to deliver and the said Town of Harrison is now entitled to receive under any such contract or extension thereof, or as to the amount of water now being supplied by complainants, or either thereof, to the said Town of Harrison. It is credibly informed and believes and therefore alleges that for all of

the water delivered by the complainants, or either thereof, to the Town of Harrison since January 1, 1923, they or it have charged the said Town at the rate of $104.25 per million gallons.

10. It admits that the territory within the boundaries of the Borough of East Newark was formerly a part of the Township of Kearny and that on or about the 31st day of August, 1906, the New Jersey Suburban Water Company and the Borough of East Newark entered into a contract of the character referred to in paragraph 10 of said bill of complaint, but prays leave to refer to said contract for the contents thereof. It is credibly informed and believes that for all of the water delivered by complainants, or either of them, to the Borough of East Newark since January 1, 1923, the complainants, or one thereof, have charged the said Borough at the rate of $104.25 per million gallons, and that the said Borough has paid for some or all of said water at such rate. It has no knowledge or information sufficient to form a belief as to the amount of water now being supplied to the said Borough of East Newark by complainants, or either thereof.

11. It admits that for the water delivered by the East Jersey Water Company to complainants prior to January 1, 1923, and supplied by them, or either of them, to the said Towns of Kearny and Harrison or the said Borough of East Newark the East Jersey Water Company was entitled to receive $56.25 per million gallons, and that for such water complainants were obligated to pay the said East Jersey Water Company at such rate. It denies that since January 1, 1923, complainants, or either thereof, have been entitled to receive any water from the said

East Jersey Water Company or from the defendant at said rate of $56.25 per million gallons, or at any rate other than $78 per million gallons. It says that such latter rate is the one which the said East Jersey Water Company and the defendant respectively have been entitled to and required to charge for all water delivered to complainants, or either of them since such date. Except as admitted herein, defendant denies each and every allegation of paragraph 11 of said bill of complaint.

12. Answering paragraphs 12 and 13 of said bill it says that it refers to the records in the suits or other proceedings in said paragraphs mentioned as to the nature of said proceedings and the result thereof.

13. Answering paragraphs 14 and 15 of said bill it admits the making of the contracts therein mentioned but as to the contents thereof prays leave to refer to said contracts.

14. It denies the allegations of paragraph 16 of said bill of complaint.

15. It admits paragraph 17 of said bill of complaint, save that it says that the rate the East Jersey Water Company and the defendant have been entitled and required to charge for all water delivered by either of them to the complainants since January 1, 1923, has been $78 per million gallons.

16. Answering paragraph 18 of said bill of complaint the defendant says as follows: It attaches hereto and makes a part hereof as schedules 1, 2 and 3, true copies of the notices which it sent to the complainants under date of May 7, 1925, and June 1, 1925, and of the only reply that

it ever received to its said notice of May 7, 1925. It has received no reply to its said notice of June 1, 1925. The only letters which it sent to the Towns of Kearny and Harrison and the Borough of East Newark were letters enclosing copies of its said notices to the complainants of May 7, 1925, and June 1, 1925. It says that the arrearages mentioned in said notices are due to it for water delivered by said East Jersey Water Company or by it to the complainants under rates prescribed for such service by the decision of the Board of Public Utility Commissioners of the State of New Jersey rendered on March 27, 1923, hereinafter referred to. It admits that in suits instituted in this Honorable Court by the Town of Kearny, the Town of Harrison and the Borough of East Newark respectively, shortly prior to July 1, 1925, as a result of said notices and letter sent by it, it has been restrained from turning off the water to the complainants herein pending the determination of such suits or the further order of the Court therein. It further says that the preliminary injunctions mentioned in said paragraphs as obtained in this Court in said several suits instituted by the Towns of Kearny and Harrison and the Borough of East Newark respectively were made upon certain terms and conditions stated therein and it prays leave to refer to each of said orders for the contents thereof. Except as admitted herein it denies each and every allegation of said paragraph.

17. Answering paragraph 19 of said bill of complaint, it says as follows: For all water delivered by the East Jersey Water Company to complainants between January 1, 1923, and October 31, 1923, when said company was merged

and consolidated into the defendant, the said East Jersey Water Company was entitled and required to charge the rate of $78 per million gallons. For all water delivered by the defendant to the complainants since October 31, 1923, it was and is entitled and required to charge the same rate. The basis for such charge is the decision of the Board of Public Utility Commissioners of the State of New Jersey rendered on March 27, 1923, in the proceedings hereinafter mentioned, which said decision as hereinafter appears was thereafter duly sustained and affirmed by the judgments of the New Jersey Supreme Court and the New Jersey Court of Errors and Appeals. Under said decision the defendant is entitled and required to charge said rate for all water which it may deliver to the complainants, or either thereof, so long as said decision remains in force and effect. Except as admitted herein, the defendant denies each and every allegation of paragraph 19.

18. It denies each and every allegation of paragraph 20 of said bill of complaint.

19. Defendant is ready and willing to deliver to complainants all of the water the complainants, or either of them, may need for the supplying of water to the Towns of Kearny and Harrison and the Borough of East Newark upon being paid for such service the rate fixed by the Board of Public Utility Commissioners of the State of New Jersey in and by said decision.

Further answering the said bill of complaint, the defendant says as follows:

20. Defendant was incorporated on or about October 30, 1923, by the merger and consolidation into it of the Acquackanonk Water Company, Passaic Water Company, Montclair Water Company, Kearny Water Company and East Jersey Water Company. Upon such merger and consolidation all and singular the rights, privileges, powers and franchises of said other companies and all of the property of each of them and all debts due to each of them on whatever account became vested in the defendant.

21. On February 1, 1922, and for a long time prior thereto and until such merger and consolidation each of said five last-mentioned companies owned, operated, managed and controlled within the State of New Jersey a water system, plant or equipment for public use under privileges granted to it by the State of New Jersey, and was then a public utility of the State of New Jersey as defined by Chapter 195 of the Laws of 1911 of the said State entitled "An Act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers," and the acts amendatory thereof and supplemental thereto. On February 1, 1922, and for a long time prior thereto the said East Jersey Water Company was engaged in delivering water in its wholesale service to the City of Bayonne, the Borough of Totowa, the Town of Bloomfield, the Borough of Nutley, the Little Falls Water Company and the complainants. On said date and for a long time prior thereto the complainants were engaged in supplying the water so delivered to them by the said East Jersey Water Company to the Towns of Harrison and Kearny and the Borough of East Newark, in the County of Hudson, and The Clark Thread Company, a corporation having a large mill or mills in the said Borough of East Newark. On or about February 1, 1922, the

said Acquackanonk Water Company, Passaic Water Company, Montclair Water Company, Kearny Water Company and East Jersey Water Company joined in filing amendments of rate schedules dated February 1, 1922, with the said Board of Public Utility Commissioners pursuant to the provisions of the said Chapter 195 of the Laws of 1911 and the acts amendatory thereof and supplemental thereto.

22. On or about February 9, 1922, the said East Jersey Water Company notified complainants of the filing of its said amendments of its schedules of rates. Thereafter and on or about February 15, 1922, the said Board made an order for a hearing to be held on March 29, 1922, on said amendments to rate schedules and on or about February 16, 1922, caused a copy of said order to be mailed to the Mayor, Clerk or Attorney of each of the municipalities in or to which the Acquackanonk Water Company, Passaic Water Company, Montclair Water Company, Kearny Water Company or East Jersey Water Company or the complainants, or either of them, were delivering water, including the said Towns of Kearny and Harrison and the said Borough of East Newark. Between February 4 and February 25, 1922, the said East Jersey Water Company caused a notice of the filing of the said amendments of rate schedules to be published in several newspapers then in general circulation in each of the municipalities in or to which it or the complainants supplied water, including the said Towns of Harrison and Kearny and the Borough of East Newark, and also the City of Bayonne, in which last-mentioned city the principal office of each of the complainants was then located. At or about the same time a similar

notice was published by the said Acquackanonk Water Company, Passaic Water Company, Montclair Water Company or Kearny Water Company in one or more newspapers then in general circulation in each of the municipalities in or to which it furnished water.

23. Said hearing was begun on March 29, 1922, and continued from time to time thereafter until March 14, 1923. The said Towns of Kearny and Harrison and the Borough of East Newark each appeared and was represented in said hearing by counsel.

24. During the continuance of said hearing and on September 1, 1922, said Acquackanonk Water Company, Passaic Water Company, Montclair Water Company, Kearny Water Company and East Jersey Water Company caused a further notice of the pendency of said hearing to be served upon the Mayor, Clerk or Attorney of each of the municipalities to or in which any thereof was then furnishing water, including the said Towns of Kearny and Harrison and the said Borough of East Newark. Between September 22 and September 29, 1922, the said five last-mentioned companies also caused a copy of said notice to be published in one or more newspapers then in general circulation in each of said municipalities, including the said Towns of Kearny and Harrison, and the said Borough of East Newark, and also the City of Bayonne, in which last-mentioned municipality the principal office of each of the complainants was then located.

25. The said hearings were concluded on March 14, 1923, and on March 27, 1923, the said

Board rendered its decision in said proceedings. In and by said decision the said Board found and determined that

" * * * * * * * * * * * * * *

"(3) The companies as a group are entitled to an increase in gross revenue.

"(4) The rates heretofore charged by the various companies now taking part in this proceeding do not properly reflect the respective costs of service in the different parts of the territory and to the different classes of service and are therefore unjust and unreasonable and unduly discriminatory.

"(5) The schedules filed and proposed for adoption by the companies are likewise unjust and unreasonable.

"(6) The petitioners may therefore file schedules as given below, to become effective January 1, 1923, in accordance with the stipulation entered into by the companies before this Board.

SCHEDULE OF RATES

East Jersey Water Company:

Wholesale service to municipalities of Totowa, Bloomfield, Nutley and Bayonne and to the Little Falls Water Company and to the New Jersey Suburban Water Company and any other comparable wholesale customers $78 per million gallons. * * *"

The defendant prays leave to refer to the said decision and the proceedings of the said Board in which the same was rendered.

26. The institution of said proceedings and the hearings therein were matters of public importance and of general knowledge in each of the municipalities affected thereby, including the said Towns of Kearny and Harrison and the

Borough of East Newark. Frequent notices with regard thereto appeared from time to time in newspaper circulating in the said municipalities and the rendering of said decision was widely and similarly published. On March 29, 1923, said East Jersey Water Company notified the complainants of the rendering of such decision and shortly thereafter sent them, at their request, a copy thereof.

27. The complainants and each thereof had actual notice and knowledge of the institution of the said proceedings before the said Board of Public Utility Commissioners and of the proceedings had therein during the continuance thereof, and of the proceedings to review the same in the New Jersey Supreme Court and the New Jersey Court of Errors and Appeals had as hereinafter mentioned.

28. Neither of the complainants appealed from the said decision or instituted any proceedings to review the same. The said Acquackanonk Water Company, Passaic Water Company, Montclair Water Company, Kearny Water Company, East Jersey Water Company, the City of Bayonne and the Town of Montclair, however, each promptly sued out a writ of certiorari to the New Jersey Supreme Court under and pursuant to which all of the said proceedings before the said Board and its said decision of March 27, 1923, were certified to and reviewed by said Court. On December 18, 1923, the said Court entered a judgment in such certiorari proceedings by which it in all things affirmed the said decision. From the said judgment the prosecutor of each of said writs of certiorari thereupon appealed to the New Jersey Court of Errors and Appeals which after hearing and con-

sidering the said appeals and each of them by its judgment dated May 31, 1924, ordered that the said judgment of the New Jersey Supreme Court be in all things affirmed. Said decision and each of said judgments still remains wholly unreversed and unaltered and in full force and effect. By reason thereof the said wholesale rate of $78 per million gallons has been established as and for the lawful and legal rate which the said East Jersey Water Company was warranted in charging and required to charge the complainants and others to whom it delivered water in its wholesale service for all water delivered by it to any of them from January 1, 1923, to October 30, 1923, and is also the lawful and legal rate which the defendant is warranted in charging and required to charge the complainants and all others to whom it delivers water in its wholesale service for all water delivered since October 30, 1923, and which this defendant will be warranted in charging and required to charge the complainants and said other customers for all water which it may hereafter deliver until such time as said rate may be lawfully changed.

29. After the said Board rendered its decision of March 27, 1923, the said East Jersey Water Company rendered a bill to the complainants for the water delivered by it to them during the quarter ended March 31, 1923, at the rate of $78 per million gallons. Said bill was rendered on May 23, 1923, and stated on its face that such rate was "the rate fixed by the New Jersey State Board of Public Utility Commissioners in its decision dated March 27, 1923." Thereafter the said East Jersey Water Company under dates of July 2, 1923, and October 2,

1923, respectively, also rendered similar bills at the said rate to the complainants for the quarters ended respectively June 30 and September 30, 1923. Under date of January 2, 1924, and at the end of each quarter since then the defendant has rendered the complainants bills for the water delivered during each quarter at the same rate.

30. Ever since September 6, 1918, the complainants have been engaged in supplying the said Towns of Kearny and Harrison, the Borough of East Newark and The Clark Thread Company all of the water furnished them by the said East Jersey Water Company or the defendant. For several years prior to January 1, 1923, the price charged by the complainants to each of their said customers for the water so supplied to it was $82.50 per million gallons, and by reason thereof under the contracts then existing between the complainants and the East Jersey Water Company, said company received from complainants $56.25 per million gallons for the water delivered to them by it and furnished by them to each of their said customers. Following the rendering of the said rate decision the complainants notified each of their said customers thereof and also notified each of them that by reason of said decision complainants were required to increase their rate and that for all water supplied by them from and after January 1, 1923, they had increased their rate to $104.25 per million gallons, such increase being $21.75 over said previous rate of $82.50. Ever since then the bills rendered by the complainants to each of their said customers for water delivered on and after January 1, 1923, has been at the

said increased rate of $104.25 per million gallons, such increase representing the additional cost of $21.75 per million gallons to the complainants for the water delivered to them by the said East Jersey Water Company or the defendant since January 1, 1923, at the rate of $78 per million gallons so as aforesaid established instead of at the rate of $56.25 per million gallons theretofore in force between the defendant and the complainants. From time to time since January 1, 1923, the respective customers of the complainants or of either of them have paid them or it for some of the water supplied to such customers since said date at the rate of $104.25 per million gallons.

31. From time to time following the rendering of said quarterly bills by the said East Jersey Water Company and the defendant at the said rate of $78 per million gallons for the water delivered by them respectively to the complainants since January 1, 1923, the complainants made payments to the said East Jersey Water Company and to the defendant on account of said bills. Such payments were, however, much less than the amount of said bills by reason whereof the said East Jersey Water Company and the defendant from time to time sought to secure payment of the balance of said bills. In connection with the making of such payments and of the said attempts to secure further payments the complainants stated to the East Jersey Water Company and the defendant that the reason they did not pay the balance due on the said bills was that they would be without money so to do until they received payment from their customers at

the increased rate at which they had in turn charged them for the water supplied them respectively since January 1, 1923.

32. At the said rate of $78 per million gallons so established for the water so delivered to the complainants on and after January 1, 1923, and after crediting all payments heretofore made on the bills therefor so as aforesaid rendered to the complainants, there still remained past due and owing from them to the defendant on June 1, 1925, the sum of $184,178.47, exclusive of interest amounting to the additional sum of $13,194.27, or a total of $197,372.74. From April 1 to June 30, 1925, inclusive, the defendant has delivered to the complainants additional water for which at said rate there was due on July 11, 1925, the further sum of $40,575.60. On June 6, 1925, the complainants paid to the defendant the sum of $39,750.08 on account of their said indebtedness of $184,178.47, and the complainants are now indebted to the defendant on account of the water delivered to them by said East Jersey Water Company and the defendant prior to July 1, 1925, in the sum of $185,003.99, exclusive of interest amounting on July 11, 1925, to the sum of $14,-094.31, or a total of $199,098.30.

33. At the rate of $56.25 per million gallons, which, in their bill of complaint the complainants allege is the only rate at which they are obligated to pay for the water delivered to them by the said East Jersey Water Company and the defendant, the complainants on June 6, 1925, would have been indebted to the defendant for the water aforesaid in the sum of $40,050.02, exclusive of interest amounting to $1,828.71. Upon the basis of such last mentioned rate, and after taking into account the payment made as aforesaid on June

6, 1925, and the water delivered between April 1, 1925, and June 30, 1925, inclusive, the complainants on July 11, 1925, were and still are at such lesser rate indebted to the defendant in the sum of $69,311.27. The defendant says that there is no warrant for any claim on the part of the complainants that the said $56.25 rate or any rate other than the said $78 rate is the lawful rate they are required to pay for the water delivered to them by the said East Jersey Water Company or the defendant since January 1, 1923, or that may be so hereafter delivered unless and until the said lawful rate of $78 shall be changed.

34. The defendant has from time to time demanded payment of the sums remaining due to it from the complainants for the water so delivered to them since January 1, 1923, at the said rate of $78 per million gallons, but the complainants have refused and still refuse to make such payment. The defendant has also requested the complainants to pay to it without prejudice the sum due from them to it at the said rate of $56.25 per million gallons, being the rate which the complainants contend in this suit that they are required to pay for said water. The complainants, however, have refused and still refuse to pay the same or any part thereof.

Further answering the said bill of complaint the defendant says as follows:

35. The complainants and each of them was at the time of entering into any contract upon which they or either of them may rely in this suit a Public Utility of the State of New Jersey as defined by Chapter 195 of the Laws of New Jersey of 1911 and has ever since been such and

each thereof is subject to the provisions of said act and the acts amendatory thereof and supplemental thereto.

36. As a result of said decision of the said Board of Public Utility Commissioners dated March 27, 1923, and the said judgments of the New Jersey Supreme Court and New Jersey Court of Errors and Appeals upholding said decision, the contracts relied upon by the complainants in this suit as entitling them to receive water from the said East Jersey Water Company or the defendant since January 1, 1923, at a rate or rates less than $78 per million gallons, are of no force or effect, and the defendant is entitled and required to charge the complainants for all water delivered to the complainants since January 1, 1923, the said rate of $78 per million gallons.

37. The complainants had due notice and knowledge of the filing by the Acquackanonk Water Company, Passaic Water Company, Montclair Water Company, Kearny Water Company and East Jersey Water Company of the amendments to their rate schedules with the said Board of Public Utility Commissioners on or about February 1, 1922, and of the subsequent proceedings with respect thereto before the said Board of Public Utility Commissioners resulting in its said decision of March 27, 1923. The complainants had an opportunity to raise the issues sought to be raised by their bill of complaint herein in the said proceedings before the Board of Public Utility Commissioners but refused and neglected so to do. After the said decision of the said Board was rendered on March 27, 1923, the complainants had an opportunity to review the same

by certiorari under the terms and provisions of the statute in such case made and provided, but refused and neglected so to do. The complainants are and each of them is barred from questioning the correctness of the said decision of the said Board of Public Utility Commissioners and the reasonableness and legality of the said rate of $78 per million gallons fixed and determined by the said Board of Public Utility Commissioners as aforesaid.

38. Neither of the complainants is entitled to the relief prayed for in their bill of complaint, or any thereof, nor has this Honorable Court any power or jurisdiction to entertain this suit or to grant such relief or any thereof.

This defendant submits that said bill of complaint should be dismissed.

LINDABURY, DEPUE & FAULKS,
Solicitors of Defendant.

Schedule 1.

May 7, 1925.

The New Jersey Suburban Water Company and New York and New Jersey Water Company.

Gentlemen:

The time has arrived when we can no longer permit your overdue indebtedness to our company to increase. We have received no payment whatever from you since September 24, 1924. The amount then paid was only $25,000 on account of a sum then overdue amounting with interest to more than $97,000.

As of April 11, 1925, the arrearages for water supplied by our company to your companies between January 1, 1923, and March 31, 1925, inclusive, aggregated without interest $184,178.47, and with interest to $195,828.56. During April we supplied an additional 167.4 million gallons of water at the price of $13,057.20. While this last mentioned amount is not yet due it increases the amount due or to become due for water supplied prior to May 1st to nearly $209,000.

In the last talk we had with Mr. Earl in regard to these arrearages he in effect stated that we could not expect to receive any further substantial amount from your companies for some time to come. In the absence of further payments your indebtedness to us by the end of the present year would under existing conditions apparently amount to considerably more than $300,000. This we cannot permit.

We therefore notify you that unless by Monday, June 8, 1925, we have a definite and satisfactory assurance that as from and after that date you will promptly pay for the water thereafter furnished you at the rate of $78 per million gallons until such time as said rate may be legally changed, we shall thereupon turn off the water and thereafter cease to supply water to you.

Knowing that you sell some or all of the water we supply to you to the Towns of Kearny and Harrison, the Borough of East Newark and the Clark Thread Company, we are sending each of them a copy of this notice.

This notice of our proposed action is given at this early date so that your companies and their customers may be fully advised thereof in time

to protect the public interest. It is entirely independent of our right of action to recover the arrearages mentioned. Your refusal to make any arrangements for their payment leaves no course open to us other than to institute suit against you for the recovery of such arrearages and this we intend to do in the near future.

Yours truly,

PASSAIC CONSOLIDATED WATER COMPANY,

By (Signed) JOHN H. COOK,
President.

Schedule 2.

PASSAIC CONSOLIDATED WATER COMPANY.

General Office: 158 Ellison Street
Paterson, N. J.

Edmund LeB. Gardner, Chairman of the Board

Wm. R. Edwards, Genl. Supt.

Telephone: Sherwood 2424.

John H. Cook, President
A. W. Cuddeback, Vice-Prest. & Treas.

June 1st, 1925.

Walter W. Corrigan, Sec. & Asst. Treas.
The New Jersey Suburban Water Company and New York and New Jersey Water Company.

Gentlemen:

Referring to the letter we wrote and delivered to you on May 7th, 1925, and the reply thereto sent us under date of May 18th, 1925, written on a letterhead of New Jersey Suburban Water Company and signed "C. A. Dana, President," we desire to advise you as follows:

While Mr. Dana's letter says "that the statements which you set forth in your letter as to the amounts due from this company to your company are not correct" it entirely fails to indicate any basis for such claim unless it be by the reference to the contract made between us in 1903. We are not only confident that our letter of May 7th, 1925, correctly states the amounts due from you but that it is both our right and obligation to cease furnishing water to you in view of your refusal to pay therefor at the rate established by the Board of Public Utility Commissioners and upheld by the courts. If your claim as to the incorrectness of our statement as to the amounts due is based upon anything other than the contract to which your letter refers, we shall be glad to have you point this out and confer with you in regard to any of the arrearage figures as to which there may be any dispute.

As to the statement in Mr. Dana's letter that certain of the customers named in our letter to you of May 7th, 1925, "have either paid in full for the water furnished them or are planning to pay in full in the manner provided by law," we need hardly point out to you that this is no warrant for your refusal to pay us for the water furnished you at the rate of $78 per million gallons so established.

Your reply to our letter leaves us no course open except to turn off the water. We have, however, determined to postpone doing so until Wednesday, July 1st, 1925. Unless prior to that time we have a definite and satisfactory assurance from you that as from and after that date you will promptly pay for the water thereafter furnished you at the rate of $78 per million gal-

lons until such time as said rate may be legally changed, we shall then turn off the water and thereafter cease to supply water to you. We are sending a copy of this letter to the Towns of Kearny and Harrison, the Borough of East Newark and The Clark Thread Company.

Yours very truly,

PASSAIC CONSOLIDATED
WATER COMPANY,
By (Sgd) JOHN H. COOK,
President.

Schedule 3.

NEW JERSEY SUBURBAN WATER
COMPANY
55 Liberty Street,
New York.

May 18, 1925.

John H. Cook, Esq., President,
Passaic Consolidated Water Co.,
Paterson, N. J.

Dear Sir:

We are in receipt of your letter of May 7th, stating that you plan to discontinue the service of water on and after June 8th, 1925, and we desire to bring to your attention the fact that this will create great hardship and cause serious inconvenience to the towns using this water. In view of the fact that the statements which you set forth in your letter as to the amounts due from this Company to your Company are not correct, and further in view of the fact that certain of the customers named in your letter have either paid in full for the water furnished them

or are planning to pay in full in the proper manner provided by law, we recommend that you reconsider taking such drastic action. If you persist in your determination to shut off the water from the consumers which we are supplying in the West Hudson towns, and suits for damages result, by reason of fires or other losses over which we have no control, we will hold you responsible for the full amount of such damages and costs.

In the fourth paragraph of your letter you ask that we give you a definite and satisfactory assurance that from and after June 8th, 1925, we will "pay promptly for the water thereafter furnished at the rate of $78.00 per million gallons until such time as said rate may be legally changed." You, in effect, ask that we relinquish the rights guaranteed to us by the contract of 1903. This, we decline to do.

Yours very truly,

(Signed) C. A. DANA,
President.

REPLICATION.

The complainants join issue on the answer of the defendant.

McCARTER & ENGLISH,
Solicitors of Complainants.

IN CHANCERY OF NEW JERSEY.

Between

NEW YORK & NEW JERSEY WATER COMPANY and NEW JERSEY SUBURBAN WATER COMPANY, corporations,
Complainants,

and

PASSAIC CONSOLIDATED WATER COMPANY,
Defendant.

On Bill, &c.
Testimony.

Transcript of the testimony and proceedings taken in the above-stated cause, on final hearing at the Chancery Chambers in Jersey City, on Thursday, April 29, 1926, at 10 o'clock in the forenoon, before his Honor John Bentley, Vice-Chancellor.

Appearances:

Messrs. McCarter & English, solicitors, by Robert H. McCarter, Esq., of counsel, for the complainants.

Messrs. Lindabury, Depue & Faulks, solicitors, by Frederic J. Faulks, Esq., of counsel, and John W. Bishop, Jr., Esq., for the defendant.

Arthur R. Bailey, official shorthand reporter, 75 Montgomery street, Jersey City.

Mr. McCarter: I offer in evidence in this case the following exhibits:

1. The charter of the New York & New Jersey Water Company.

(Admitted and marked Exhibit P. 1.)

2. The charter of the New Jersey Suburban Water Company.

(Admitted and marked Exhibit P. 2.)

Mr. McCarter: Now, there is attached to the bill of complaint, your Honor, copy of the contract of July 1, 1903, which is, by the answer, conceded to have been made, and reference is made to the original contract. I have not been able to get the original contract; if the other side have their copy I would be glad to offer that; otherwise I would offer this document.

Mr. Faulks: We have no objection.

(The same is marked Exhibit P. 3.)

Mr. Faulks: While we have no objection to his offering a copy instead of the original, still I would like to object to the admission in evidence of these contracts. They are not material, relevant or competent.

The Court: I overrule the objection, for the reason that I can deal with the matter when I come to determine the case.

Mr. McCarter: I would like to now offer in evidence the contract of the East Jersey Water Company with the Town of Kearny. I have a printed copy of it in these certiorari proceedings—

Mr. Faulks: We will consent to your using that.

(The same is marked Exhibit P. 4.)

Mr. McCarter: Also the supplemental contract thereto, made the 14th of February, 1896, between the East Jersey Water Company and the Township of Kearny.

(Admitted and marked Exhibit P. 5.)

6. Another supplemental contract between the same parties, made on the 14th of June, 1898.

(Admitted and marked Exhibit P. 6.)

7. Also assignment of the Kearny contract by the East Jersey Water Company to the New Jersey Suburban Water Company and the New York & New Jersey Water Company.

(Admitted and marked Exhibit P. 7.)

8. Also contract between the East Jersey Water Company and New York & New Jersey Water Company, dated May 29, 1902, copy of which is annexed to the bill of complaint in the Bayonne case.

(The same is admitted and marked Exhibit P. 8.)

9. Original contract between the Town of Kearny and the New York & New Jersey Water Company and the New Jersey Suburban Water Company, dated August 16, 1904.

(Admitted and marked Exhibit P. 9.)

10. Also contract between the Town of Harrison and the New Jersey Suburban Water Company, dated September 15, 1903.

(Admitted and marked Exhibit P. 10.)

11. Also contract between the New Jersey Suburban Water Company and the Borough of East Newark, dated August 31, 1906.

(Admitted and marked Exhibit P. 11.)

12. Also contract between the New Jersey Suburban Water Company and the Clark Thread Company, dated March 20, 1906, as extended by correspondence thereto annexed.

(The same is admitted and marked Exhibit P. 12.)

13. Also extension of the Harrison contract of June 24, 1908.

(Admitted and marked Exhibit P. 13.)

CHARLES T. KAVANAGH, sworn on behalf of the complainants, testified as follows:

Direct examination by Mr. McCarter.

Q Mr. Kavanagh, are you connected with the New York & New Jersey Water Company and the New Jersey Suburban Water Company? A Yes, sir.

Q In what capacity? A Superintendent.

Q How long have you been connected with it? A Since about 1903 or '4.

Q How much water, roughly speaking, is supplied by either of these companies to the Town of Kearny? A The exact figures today I am not familiar with.

Q But approximately. A Something over 2,000,000 gallons.

Q A day? A Yes, sir.

Q To the Town of Harrison? A About that.

Q To the Borough of East Newark? A Not more than three or four hundred thousand gallons.

Q How much does the Clark Thread Company use under their contract? A I wouldn't be able to answer that; I would have to ascertain that.

Q Now, previous to the sale to Bayonne--when did that take place, by the way? A September 6, 1918.

Q What contracts passed to Bayonne of private consumers along the line to Bayonne that either of these companies have? A Well, there was quite a number in the meadows. There was the Riverside Steel Casting Company, the Foundation Company—

Q If it is a question of recollection, here is a memorandum (handing paper to the witness). A (Referring to paper handed him.) R. E. Baker, William Butler, John Baylis, William Champion, Detweiler & Street Fireworks Mfg. Co., N. J. Drummond & Co.

Mr. Faulks: Do you want all those names?
The Court: You can say how many.

A Well, there are twenty-seven.

Q How many? A Twenty-seven.

Q They all passed over with the Bayonne transfer? A Yes.

Q And they were all contracts between the one or the other of the complainants here and the several parties for the supply of water to the factories or mills on the meadows? A Yes, sir.

Q Now, the situation at East Newark at present is exactly what? A You mean with relation—

Q What is the present arrangement between the complainant companies and East Newark? A That we are supplying the Borough of East Newark on a per diem basis; no contract.

Mr. McCarter: I will say to your Honor that a contract was offered to the authorities of East Newark and the mayor declined to sign it.

Q That contract provided for what length of time? A Your question was what was the condition in East Newark.

Q I mean Harrison. A Their contract continued to, I think, 1929, and it was an extension of a contract for a further period of fifteen years from the date of the extension.

Q Has that contract been signed by the mayor? A Not to my knowledge.

Q Have proceedings been taken in the Supreme Court directing him to sign it? A Yes, sir.

Mr. McCarter: Now, your Honor, we have this situation with reference to the Town of Harrison: After the Town of Harrison, through its legislative department, agreed to the contract Mr. Kavanagh has referred to, the mayor declined to sign the contract, whereupon, upon a writ of mandamus, it was allowed at the September term of the New Jersey Supreme Court, 1924, and the opinion is reported in New Jersey Suburban Water Co. *v.* Reardon, 127 Atlantic 926. I have mentioned the Borough of East Newark, but it should be the Town of Harrison.

Q How does the Clark Thread Company get its water? A It receives its water from the pipe line of the New Jersey Suburban Water Company, where their line is tapped into ours at a point which is directly under the Kearny avenue bridge, over the Erie Railroad cut.

Q And from that point on it is a private line? A Private line.

Q To the thread works? A To the Clark Thread Works.

Q About how long is that private line? A I would say, roughly, 2,000 feet.

Q Owned by whom? A By the Clark Thread Works.

Q And running where? A From our line westerly through the right of way of the Erie Railroad, across to the corner of Grant avenue in Kearny, and thence into the property of the Clark Thread Company.

Q What is the size of that pipe? A Ten-inch.

Q The Clark Thread Company are makers of spool cotton? A Yes, sir; cotton thread, I think.

Q Do you know how the quantity of water they take compares with the quantity supplied the Borough of East Newark? A My recollection is that it is greater. I know it is greater, but just what I don't know.

Q Now, these other private consumers that you have referred to as twenty-odd in number, how are they supplied—how were they supplied? A Well, they were supplied—just now I don't know how they were supplied. They were supplied directly from our mains at various points.

Q Well, how did the water reach the factories of the respective consumers from the main? A Through lines that were built by the New York & New Jersey Water Company or the New Jersey Suburban Water Company, or both, as the case may be, through streets and through private property.

Cross examination by Mr. Faulks.

Q Mr. Kavanagh, where does the New York & New Jersey Water Company and the New Jersey Suburban Water Company receive the water that is delivered by the Passaic Consolidated Water Company? A At the corner of Kearny avenue and Belleville Turnpike, in Kearny.

Q And how does the water then proceed from that point in the delivery of it to the customers of the New York & New Jersey Water Company and the New Jersey Suburban Water Company? A You mean the method of delivery, Mr. Faulks?

Q Yes. What mains have the New York & New Jersey Water Company and the New Jersey Suburban Water Company in Kearny? A Thirty-inch steel main, running south along the east side of Kearny avenue, and thence into Harrison.

Q That is, you receive all of the water from the Passaic Consolidated Water Company at the corner, or practically at the corner, of Belleville Turnpike and Kearny avenue? A Yes, sir.

Q Now, then, you have a main that begins at that point and runs through Kearny avenue to the Harrison line? A Across into Harrison, yes.

Q And it runs through Kearny as far as the Harrison line? A Yes.

Q And where did you say that line is maintained in Kearny avenue? A On the east side of Kearny avenue.

Q East, within the avenue or without the avenue? A Within the roadway of the avenue.

Q That is a thirty-inch main? A Yes, sir.

Q Now, how long is that main—the portion of it, I mean, that lies between Belleville Turnpike and the Harrison line? A You might say approximately two miles.

Q And for that entire distance it was constructed in, and has ever since been maintained in, Kearny avenue? A Yes, sir.

Q Was that line there when you first went there? A Just being built.

Q Now, after that line reaches the Harrison line where does it go? A Well, it crosses the railroad cut and then into 4th street, Harrison, which is a continuation of Kearny avenue, to a point which would be the northerly line of Hill street, in Harrison.

Q And, as constructed, it has ever since been maintained in 4th street, Harrison? A Yes.

Q Is that also a thirty-inch main? A Yes.

Q Now, the main that supplies the Clark Thread Company leaves this thirty-inch main in the railroad cut of the Erie Railroad? A Yes, sir.

Q At, or practically at, the division line between Kearny and Harrison, does it not? A Well, I don't know exactly where the dividing line is at that point. It is on the Harrison side of the railroad cut.

Q And then runs along the railroad company's property, and so on into the Clark Thread Company's property? A Yes, sir.

Q Now, weren't there some changes made last year in the line that you have spoken of as being constructed and maintained in Kearny avenue, in the Town of Kearny, and in 4th street, in the Town of Harrison? A Changes made by our company?

Q Yes. A I wouldn't call it "changes." We made additions, in that we laid two fourteen-inch lines under the railroad rather than over it, as a further source of supply and safeguard for Harrison and East Newark and the Clark Thread mill.

Q Those additional lines are laid and maintained in both Kearny and Harrison? A One in each town, yes.

Q And in Harrison they are in 4th street, and in Kearny they are in Kearny avenue? A Kearny avenue, yes.

Q Now, prior to the sale to Bayonne did your company also have any other main in Harrison? A Yes.

Q And where was that laid and maintained? A We had two mains: One of them ran in a generally easterly direction through and under the Belleville Turnpike to the foot of the hill, and then still in a further easterly direction under the Belleville Turnpike, and later on almost in a southerly direction to Bayonne.

Q What was the size of that main? A Thirty-inch steel, all of them.

Q That was laid in Belleville Turnpike? A I wouldn't be absolutely positive that it was in the turnpike. The turnpike was an old road at that time, but it was along the line of the turnpike, yes, sir.

Q For what distance does it extend along the Belleville Turnpike? A My guess would be that it would be two and one-half or three miles.

Q And that was sold to Bayonne, the sale taking place in September, 1918? A Yes, sir.

Q And it was from that line running from Kearny to Bayonne that these twenty-odd private consumers were furnished by your company

prior to the sale to Bayonne? A From the two lines. There were two lines down there.

Q From those lines these private consumers were furnished? A Yes, sir.

Q Since then by whom have they been supplied with water? A Well, I don't know; I assume by Bayonne. I have nothing more to do with it.

Re-direct examination by Mr. McCarter.

Q Mr. Kavanagh, your answer was rather indefinite. Do you know where the boundary of the Belleville Turnpike is? A You mean the boundary of the roadway?

The Court: Or the side line.

A Only as indicated by the curb.

Q Are you clear that it was at the corner of Kearny avenue and the Belleville Turnpike and down the hill to the meadow level—the property or pipes that were formerly owned by the companies and which were later sold to Bayonne were on the highway? A I would say that they were on the highway; yes, sir.

Q To what extent? A Well, to a point that would be just to the east of Schuyler avenue in Kearny.

Q East of Schuyler avenue in Kearny? A Yes, and then away from the road into private property.

Q How far east from the corner of Kearny avenue and Belleville Turnpike to Schuyler avenue? A I would say three-quarters of a mile, in round figures.

Q What was the length of the remaining main that went through private property?

Mr. Faulks: I object to that as immaterial.

The Court: I will allow it.

A I would think that the balance of the distance from there to where it left Belleville Turnpike would be another mile and a half.

Mr. McCarter: I offer in evidence the record in the suit of the City of Paterson against the East Jersey Water Company, which I asked to be sent here, but which has not arrived. I have the final decree, and I offer that to your Honor now and, of course, I will supplement it by a formal offer of the entire record.

The Court: I understood Mr. Faulks to say sometime back that he wouldn't make any objection to secondary evidence.

Mr. Faulks: No, I don't object to his putting in the printed book instead of the original record, but I want to object to the record itself.

Mr. McCarter: Then I offer the final decree itself on page 162.

Mr. Faulks: I object to the receipt in evidence of this decree on the ground that it is immaterial, irrelevant and incompetent to any proceedings or issue involved in this suit. I don't see how it possibly could be. If your Honor wants to consider the matter now—

The Court: No, I think that perhaps we will save time if I overrule your objection and deal with it later on.

WILLIAM B. ROSS, sworn on behalf of the complainants, testified as follows:

Direct examination by Mr. McCarter.

Q You are in what position in the Town of Kearny? A Town clerk of the Town of Kearny.

Q And have you produced the records of the town? A I have the resolution adopted in the Common Council of Kearny October 26, 1910, authorizing the condemnation proceedings to be taken. I have brought also the minute books, in accordance with your subpoena, of 1910, 1911, 1912 and 1913.

Q Well, refer to the minute books of 1910 and produce a resolution dated October 26, 1910. A It is here, beginning on page 479.

Mr. McCarter: I offer in evidence that resolution, found at page 110 of this book, and ask that a copy of it be marked rather than the original.

(The same is marked Exhibit P. 15.)

Mr. Faulks: I do want to object to this going in evidence upon the same ground that I based my last objection on: It has nothing to do with the issues in this case.

Q Have you with you a contract dated May 18, 1911, between the East Jersey Water Company and the New York & New Jersey Water Company and the New Jersey Suburban Water Company? A No, sir.

Q You wouldn't have that in your possession A No.

Mr. McCarter: I offer a copy of that contract.

Mr. Faulks: I object on the same ground.

The Court: Same ruling.

(The same is marked Exhibit P. 16.)

Q Do you know, Mr. Ross, whether condemnation proceedings were taken by the Town of Kearny, pursuant to the resolution which has been offered in evidence? A I do not.

Cross examination by Mr. Bishop.

Mr. Bishop: While Mr. Ross is on the stand—he is also under our subpoena—we would like to put in one or two formal matters.

Mr. McCarter: All right.

Q Mr. Ross, have you the minute-book here covering entries in December, 1895, in Book 1, page 534? A No, I have not.

Mr. Bishop: What I want to offer is the resolution printed on page 561 of the Bayonne case.

Mr. McCarter: You can put it in here, as long as he hasn't got it.

Q Have you volume 15? A Yes, sir.

Q Turn to page 47. A I have it.

Q That is the resolution of August 15, 1904? A Yes, sir.

Mr. Bishop: I offer in evidence resolution of the Town of Kearny, adopted August 15, 1904, the original of which is in this minute-book, and I ask to have the copy marked.

(Admitted and marked Exhibit D. 1.)

Q Have you vol. 26, p. 260? A Yes.

Q Does that show a resolution granting permission to the New Jersey Suburban Water Company? A Yes, sir.

Q The water company referred to here is the New Jersey Suburban Water Company, is it not, in this resolution? A Yes, sir.

Mr. Bishop: I offer in evidence resolution of the Town of Kearny, adopted September 23, 1925, and the witness has stated that the water company referred to therein is the New Jersey Suburban Water Company. This resolution granting supplemental pipe under the Erie Railroad.

(The same is marked Exhibit D. 2.)

JAMES A. DEGNAN, sworn on behalf of the complainants, testified as follows:

Direct examination by Mr. McCarter.

Q What position do you hold in East Newark? A Tax collector and treasurer.

Q Subpoena was served on you to produce certain papers; have you brought with you a resolution of the authorities of East Newark, authorizing the condemnation of certain property, adopted at a meeting of the Common Council held in March, 1911? A No, sir.

Q What have you brought with you? A Just brought along the bills and a letter from the water company on the increased rate.

Mr. McCarter: I guess that is not our subpoena.

Q (By the Court.) Were you served with two subpoenas? A Yes, sir.

Mr. McCarter: Perhaps I can save time by referring to copies. I offer in evidence a copy of the resolution adopted March 8, 1911,

authorizing condemnation proceedings on the part of East Newark, found on page 128 of this book.

The Court: This will be admitted subject to your objection formerly made, Mr. Faulks.

(The same is marked Exhibit P. 16½.)

Mr. McCarter: I now offer in evidence copy of the pumping contract, so called, with reference to East Newark, dated the 18th of May, 1911, and found on page 129 of this book.

The Court: Admitted subject to the same objection.

(The same is marked Exhibit P. 17.)

Cross examination by Mr. Bishop.

Mr. Bishop: While Mr. Degnan is on the stand I think we will save time if we put in what we want to use from him now.

Mr. Faulks: Mr. Dana suggests what might be a time-saving device in regard to these bills. Some of the papers that Mr. Degnan has produced are bills rendered by the complainants after January 1, 1923. Mr. Dana, the president of the water company, says that he has copies of all the bills rendered to various municipalities during that period, and suggests putting them all in together. Now, if there will not be any formal objection, I think we had better pursue that course.

Q I show you a letter, dated July 9, 1923, from the New Jersey Suburban Water Company to the Mayor and Council of the Borough of East

Newark, and ask you if that is a letter taken from the files of the Borough of East Newark, received by it? A Yes, sir.

Mr. Bishop: I offer that letter in evidence.

The Court: What is that letter?

Mr. Bishop: It is a letter in which the New Jersey Suburban Water Company agrees to pay, according to this decision, the increased rate to the town.

(Admitted and marked Exhibit D. 3.)

FRANCIS J. McDONALD, sworn on behalf of the complainants, testified as follows:

Direct examination by Mr. McCarter.

Mr. McCarter: I offer in evidence copy of the resolution of the Town of Harrison authorizing condemnation.

(Admitted and marked Exhibit P. 18.)

Also copy of the so-called pumping contract with reference to the Town of Harrison, dated May 18, 1911, and found on page 123.

(Admitted and marked Exhibit P. 19.)

Mr. McCarter: I don't think we will need Mr. McDonald.

Mr. Bishop: (Addressing the witness.) Let's see what you have.

Cross examination by Mr. Bishop.

Q Have you here the original minutes of the Council of the Town of Harrison? A Yes, sir.

Q Showing a resolution adopted on July 15, 1924? A Yes, sir.

Mr. Bishop: I offer that resolution in evidence and ask that a copy be marked. It is a resolution authorizing the execution of a new contract.

(The same is marked Exhibit D. 4.)

Q Have you the minutes covering September 1, 1925? A Yes, sir.

Q Those minutes show a resolution adopted September 1, 1925, authorizing the New Jersey Suburban Water Company to construct an additional pipe, do they? A For carrying water into Harrison, yes.

Mr. Bishop: I offer that resolution in evidence, and ask that a copy of it be marked.

(The same is marked Exhibit D. 5.)

Q I show you a letter from the New Jersey Suburban Water Company to the Hon. William F. Kenney, Chairman of the Water Committee, of the Town of Harrison, dated February 28, 1924, and ask you if that—if that is a letter received by the Chairman of the Water Committee and taken from the files of the town? A Yes, sir.

Mr. Bishop: I offer that in evidence.

(Admitted and marked Exhibit D. 6.)

Mr. Bishop: I also offer in evidence copy of a letter from the New Jersey Suburban Water Company to the Mayor and Common Council of the Town of Harrison, dated July 3, 1923.

(Admitted and marked Exhibit D. 7.)

Mr. Bishop: That is the same as the one put in for East Newark.

Q Now, I show you a letter from F. C. Earl, Treasurer, to Mr. Kenney, Chairman of the Water Committee, dated May 26, 1924; is that an original letter received by the Chairman of the Water Committee and taken from the town records? A Yes, sir.

Mr. Bishop: I offer that letter in evidence.
(Admitted and marked Exhibit D. 8.)

Q Now, I show you a further letter, signed by F. C. Earl, Treasurer, on the letter-head of the New Jersey Suburban Water Company, directed to Mr. Kenney, and dated June 26, 1924, and ask you if that is a letter received by the Chairman of the Water Committee? A Yes, sir.

Mr. Bishop: I offer that in evidence.
(Admitted and marked Exhibit D. 9.)

Q Now, I show you a further letter, signed by F. C. Earl, Treasurer, to Mr. Kenney, written on the letter-head of the New Jersey Suburban Water Company, dated April 10, 1924; is that likewise an original letter taken from the files of the town? A Yes, sir.

Mr. Bishop: I offer that in evidence.
(Admitted and marked Exhibit D. 10.)

Mr. McCarter: Now, I offer in evidence a letter from the Passaic Consolidated Water Company by John H. Cook, Treasurer, to the New Jersey Suburban Water Company and the New York & New Jersey Water Company, dated May 7, 1925.
(Admitted and marked Exhibit P. 20.)

Mr. McCarter: I also offer in evidence the record so far as it has gone in the three Chancery suits, showing the issuance of restraint there against the Passaic Consolidated Water Company and whatever else the record discloses. They may be offered now, I take it. I specifically want it in the Town of Kearny and East Newark against the same defendant, and the Town of Harrison against the same defendant.

I also offer in evidence the certiorari proceedings. It contains a great many of the contracts already in evidence. I offer so much as either side wishes to make use of.
(Admitted and marked Exhibit P. 21.)

JOHN H. COOK, sworn on behalf of the complainants, testified as follows:

Direct examination by Mr. McCarter.

Q Mr. Cook, how long have you been connected with either the Passaic Consolidated Water Company or its preceding companies, the East Jersey Water Company? A Well, I had to do with the measurement of water as delivered by some of the original companies since about 1900.

Q There has been offered in evidence here resolutions of the Town of Kearny, Borough of East Newark, and Town of Harrison, authorizing condemnation proceedings for the purpose of acquiring the rights of the proprietors below Little Falls; you are familiar with the fact that those condemnation proceedings were taken? A They were not taken, as I remember it.

Q Not taken? A No, not on the part of Harrison, or East Newark, or Kearny either.

Q What was done? A The Town of Kearny broached certain corporations whose property was to be condemned and made an agreement with these corporations in respect to the diversion, and paid them a certain sum of money for the right to divert a certain quantity of water up to a certain date, which is a matter of record, but they weren't parties in the condemnation proceedings at all.

Q Which municipalities do you refer to? A Why, Kearny was the municipality that made the agreement and paid a sum of money, and neither Harrison nor East Newark ever appeared in the condemnation proceedings.

Q Well, Harrison acquired the rights by voluntary purchase? A No, sir.

Q I mean Kearny. A Yes, sir; up to a certain date, which is some years ago.

Q When was this? A Why, I can't say about the date, really, when these condemnation proceedings were brought, but they were brought and an award was made.

Q Now, I haven't asked you about that; I have asked you a specific question, when were the condemnation proceedings commenced? A I don't remember the date.

Q About? A Well, I woulld have to look it up; I don't recall the date.

Q Was it as early as May 18, 1911? A Oh, it was much later than that.

Q Are you referring to the proceedings that were taken for condemnation that were put in evidence, or are you referring to some recent diversion before the Water Board? A No, I am referring to the condemnation proceedings which were brought against the Wiedmann Silk Dyeing Company and the National Silk Dyeing Company.

Q And who brought that? A The Acquackanonk Water Company and the East Jersey Water Company. I believe they were the parties named in the condemnation proceedings. I believe that the East Jersey had no condemnation proceedings at all. The suit that was brought was brought against the Acquackanonk and the Jersey Water Supply Company and the City of Newark, as I recall it now.

Q Now, you have spoken of certain condemnation proceedings; you know perfectly well that those condemnation proceedings weren't in the name of any of the water companies, because none of them had power to condemn? A One of them was in the name of a water company.

Q Which one? A The Acquackanonk.

Q What I am referring to are condemnations that were commenced pursuant to the resolutions that have been offered in evidence? A There weren't any.

Q Well, Kearny purchased out and out? A I believe so; yes, sir.

Q What did Harrison and East Newark do? A Nothing.

Q Are you sure about that? A Only so far as I have heard these resolutions here. They were never brought in court, as I recall it.

Q You don't know whether they commenced proceedings or not? A They weren't named in any litigation.

Q Well, weren't they in litigation with somebody else, Mr. Cook? I am asking you now if you know, of your own knowledge, whether or not East Newark and Harrison commenced the proceedings that the resolution authorized them to commence, or were they purchased out and out? A Well, I can't say that I do know that.

Q Now, have you been referring to the time of 1920 or earlier than that? A Why, I would say it was about that.

Q About 1920? A Yes, about that. I don't recall that date.

Q Now, I wasn't asking you anything about that, Mr. Cook, and you must have known I was asking you way back in 1911 and 1912, at the time that the Wiedmann Silk people and the other people sold to Bayonne and sold to Kearny. A Oh well, that wasn't back in 1911, because Bayonne didn't purchase the works until 1918.

Q You insist upon arguing with me. What proceedings were taken, to which you have alluded, by these companies; before what board? A Why, they were, in the first place—

Q Before what board, please? A Before a court.

Q You are referring now to 1920? A I am referring to the proceedings which were brought before, first, the Condemnation Commissioners, and, afterwards, before a court in New Jersey.

Q In about 1920? A I should think it was about that time.

Q For the purpose of acquiring water rights? A Yes, sir; for the diversion of water.

Q At Little Falls? A Yes, sir.

Q And who were the parties to that proceeding? A As I said before, the Acquackanonk Water Company and the City of Newark, and the Mayor and Council of Jersey City.

Q That wasn't, of course, the thing I referred to at all; I am referring to matters that transpired in pursuance to the resolution of 1911 that has been offered in evidence here, and I ask you

if you know anything about that? A I don't know anything about such a proceeding. So far as I know, there never were any.

Q Well, that's all.

No cross examination.

Mr. McCarter: I would refer your Honor to the proceedings in those condemnation proceedings. I have asked the clerk to examine the files to see if he cannot find reference to them. The books are full of reports of cases.

Mr. Faulks: I may say that I have made a thorough investigation myself and I haven't been able to find any such proceedings were ever instituted.

Mr. McCarter: Well, I guess you haven't looked in the reports. They are reported, certioraries taken and all that.

Mr. Faulks: It may be, Mr. McCarter; I simply say I have not been able to find them and I have looked rather diligently.

CHARLES T. KAVANAGH, recalled on behalf of the complainants, testified as follows:

Direct examination by Mr. McCarter.

Q Have you ascertained how much water was delivered to the Clark Thread Works? A Yes, sir.

Q How much does it amount to?

Mr. Faulks: I object, as irrelevant, incompetent and immaterial.

The Court: Objection overruled.

A About 500,000 gallons a day.

Q That is a little more than is delivered to East Newark? A Yes, sir; about 200,000 a day more.

No cross examination.

THE DEFENSE.

Mr. Faulks: If your Honor please, on behalf of the defendant I offer in evidence charters of the following named companies:

Passaic Water Company, Acquackanonk Water Company, Kearny Water Company, Montclair Water Company, and East Jersey Water Company.

Those charters were offered and received in evidence in the Bayonne injunction suit and will be found in the appeal record in that suit, at pages 499 to 558.

Mr. McCarter: What is the object of it, Mr. Faulks?

Mr. Faulks: The relevancy is this: That those companies have, since the Bayonne Rate Case and the East Jersey Rate Case have been consolidated and merged into the defendant. Some of it at least has been held a public utility and they are the companies to whom the rates allowed in the Bayonne Rate Case were allowed. Of course, it is important for the Court to know whether the parties to the contracts in evidence here are public utilities or not.

Mr. McCarter: Well, I don't object to the charter of the East Jersey and of course the courts have held that there was a time when this was made a public utility, but I

don't see what these other companies have to do with this case. We have no concern with it, whether they became parties to this merger. If we were concerned in any way with any of them of course I wouldn't object to it; but it does seem to me that there is no possible relevancy between the charters of some of these constitutent companies of the Passaic Consolidated Water Company and the parties here whose merger is sought in this case, and, therefore, I object to it.

The Court: I will overrule the objection, for the reason that I think it does tend to prove whether or not the defendant is a public utility or is composed of entities that have been previously determined to be public utilities, and I think that has a strong bearing upon that particular action by the defendant in this case.

Mr. Faulks: I offer next the charter of the Passaic Consolidated Water Company, which is the consolidation agreement of the companies just referred to, and will be found printed at page 564 of the record in the Bayonne injunction suit.

The Court: Any objection to that, Mr. McCarter?

Mr. McCarter: Not the slightest, no, sir.

Mr. Faulks: I offer next in evidence an ordinance passed by the Township of Kearny on December 10, 1895, granting permission to the New York & New Jersey Water Company, its successors and assigns, to lay water pipe in the Township of Kearny, at the junction of Kearny avenue and Belleville Turnpike and easterly along the said Turnpike.

The same was received in evidence in the Bayonne injunction suit and appears at page 561 of the appeal record in that suit.

(Marked Exhibit D. 11.)

Mr. Faulks: I offer, next, the rate schedules, filed by the East Jersey Water Company and other companies now merged into the Passaic Consolidated Water Company, with the Board of Public Utility Commissioners on or about February 1, 1922. They were Exhibits 12 and 13 in the Bayonne suit and are found on pages 487 and 493 of the record in that suit.

Mr. McCarter: I make the same point about that. I can't see how the rate schedules filed by other companies is important; and why lumber up the record with the fact that a dozen other companies than our companies filed separate rates for other municipalities.

The Court: I suppose that is offered for the same reason that you made the last offer, that is to say, to show the character of these companies as public utilities.

Mr. Faulks: That is one very good reason. Another is the one that we went into at great length in the Bayonne suit, that these companies are all one and the $78 rate was allowed to all, and if these complainants have water at $56.25 while all our wholesale customers pay $78, either we are going to lose that money or they are going to have to pay more than $78.

(Admitted and marked D. 12 and D. 13.)

Mr. Faulks: I offer, next, a notice signed by the East Jersey Water Company of any change in the rate schedule, signed by the

East Jersey Water Company, dated February 1, 1922, appearing at page 494 of the record in the Bayonne injunction suit.

(Admitted and marked Exhibit D. 14.)

Mr. Faulks: I offer notice of change in rate schedules, signed by the East Jersey Water Company, dated February 1, 1922, and addressed to the New York & New Jersey Water Company and the New Jersey Suburban Water Company, printed at page 235 of the record in the Bayonne suit.

(Admitted and marked Exhibit D. 15.)

Mr. McCarter: To whom was the other one addressed?

Mr. Faulks: It wasn't addressed to anyone, simply a notice of change of rate schedule.

Mr. McCarter: Then, in view of the fact that there was a notice similar to the one that is just offered addressed to us what is the use of putting in a duplicate that seems to be addressed to nobody.

Mr. Faulks: We propose to show that that was published very extensively.

Mr. McCarter: All right.

Mr. Faulks: I offer, next, a further notice, or a letter from the East Jersey Water Company to the New York & New Jersey Water Company, dated February 9, 1922, enclosing copies of the notices. This letter will be found on page 236 of the record in the Bayonne suit.

(Admitted and marked Exhibit D. 16.)

Mr. Faulks: I offer the rule for judgment in the Supreme Court, entered July 24,

1922, in the suit of the Acquackanonk Water Company, East Jersey Water Company and others, proctors, against the Board of Public Utility Commissioners, which is a decision of the Supreme Court holding the East Jersey Water Company to be a public utility. There are 22 pages.

(Admitted and marked Exhibit D. 17.)

Mr. Faulks: I offer the rule of affirmance of such last-mentioned judgment, entered in the Court of Errors and Appeals, where the case was captioned "East Jersey Water Company, respondent, *v.* Board of Public Utility Commissioners," the date of the endorsement being February 7, 1923. This rule of affirmance occurs on page 624 of the record in the Bayonne suit.

(Admitted and marked Exhibit D. 18.)

Mr. Faulks: I offer the decision rendered by the Board of Public Utility Commissioners on or about March 27, 1923, in the so-called East Jersey Water Rate case, which will be found in the record in the Bayonne suit, beginning at page 651.

(Admitted and marked Exhibit D. 19.)

Mr: Faulks: I offer in evidence the rule for affirmance of such decision, entered in the Supreme Court on the 18th day of December, 1923, in the suit of the Acquackanonk Water Company, East Jersey Water Company and others against the Board of Public Utility Commissioners, appearing at page 626 of the Bayonne record.

Mr. McCarter: I at this time enter my objection to that affimance by the Court of

Errors and Appeals. I assume your Honor will let it in, but that is my objection.

The Court: Your objection is noted.

(The same is marked Exhibit D. 20.)

Mr. Faulks: I offer the rule of affirmance and the remittitur to affirm such judgment of the Supreme Court, entered in the Court of Errors and Appeals on June 2, 1924, the title being "The City of Bayonne, appellant *v.* Board of Public Utility Commissioners," which rule appears at pages 627 and 628 of the record in the Bayonne suit.

The Court: Subject to the same objection.

(The same is marked Exhibit D. 21.)

Mr. Faulks: At this time I call your Honor's attention on the record to the opinion of the Supreme Court and the Court of Errors and Appeals in which these various rules are referred to.

The Court: Why put that in here?

Mr. Faulks: Simply for your Honor's convenience, calling attention to it, that's all.

Mr. McCarter: A brief would be filed, I should think.

The Court: Oh, yes.

Mr. Faulks: I offer in evidence the order of the Board of Public Utility Commissioners, in the matter of the proposed increase of rates by the East Jersey Water Company, dated February 5, 1922, and found on page 698 of the record in the Bayonne suit.

The Court: The report of the Utility Commission?

Mr. Faulks: No, it is the setting down of this rate case for hearing.

The Court: Of course, that will be subject to the same objection.

(The same is marked Exhibit D. 22.)

(MISS) MARY SHANNON, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Faulks.

Q Miss Shannon, you are employed in the office of the Board of Public Utility Commissioners, are you not? A Yes.

Q Did you, on February 16, 1922, mail copy of an order of the Board of Public Utility Commissioners made on February 15, 1922, ordering the order to be held and suspending the rates of certain companies, to anybody? A Yes, I did.

Q Will you state to whom you mailed copies of that order? A I sent it to the mayor of Clifton, N. J., to the mayor of East Newark, N. J., to the mayor of Glen Ridge, N. J., to the mayor of Harrison, N. J., to the mayor of Jersey City, to the mayor of Kearny, to the mayor of Little Falls, to the mayor of Montclair, to the mayor of Passaic, to the mayor of Prospect Park Borough, to the mayor of Totowa, to the mayor of West Paterson, to the mayor of East Orange, to Mr. W. S. Ward, clerk of the Board of Chosen Freeholders of Essex County, Newark, N. J., A. O. Miller, Esq., city attorney, Passaic; Albert P. Fisher, secretary of the Passaic Water Company, Acquackanonk Water Company, Montclair Water Company and East Jersey Water Company, 158 Ellison street, Paterson, N. J.; to Edward F. Merrey, city counsel, Paterson; A. A. Melniker, city attorney, Bayonne; William P. Hurley, attorney for the Town of Nutley; Edwin F. Peck, attorney for the Town of Bloomfield.

Q This order marked Exhibit D. 22 is the order you refer to? A Yes, that is it.

Cross examination by Mr. McCarter.

Q Do you know how you happened to make those mailings? A Why, I took them to the post office.

Q You don't understand me: How you happened to mail those documents? A Why did I?

Q Yes. A Why, it was my duty at that time, as clerk in the office of the Board of Utility Commissioners.

Q Was it pursuant to the provisions of Rule 3 of the Utility Board which I show you?

Mr. Faulks: I object to that. Miss Shannon can't prove the rule of the Board.

The Court: Well, she is being cross examined about why she sent these notices and she said it was under her duty. I overrule the objection.

A Yes, the first part of it.

Q Do you recognize those as being a copy of the rules of the Utility Board? A Yes.

Mr. McCarter: I would either like to offer it fully in evidence or have it marked for identification.

Q (By the Court.) Are those the rules as they were in February, 1922? A They are the rules that we are still using.

Q I say, were they in force in 1922? A Yes.

New Jersey State Library

The Court: They may be marked.

(The same are marked Exhibit P. 22.)

RECESS UNTIL 2 P. M.

AFTERNOON SESSION.

WILLIAM L. BEVAN, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Faulks.

Q Mr. Bevan, are you connected with the Board of Public Utility Commissioners of the State of New Jersey? A Yes, sir.

Q And are located at which office? A Newark, N. J.

Q Have you produced here, from the records of the Board, the annual report filed with the Board by either the New York & New Jersey Water Company or the New Jersey Suburban Water Company? A I have files of both companies.

Q Will you produce, please, first, the file of the New York & New Jersey Water Company?

The Court: I assume that all this line of examination is subject to your objection?

Mr. McCarter: Yes.

Q You have now produced seven annual reports to the Board of Public Utility Commissioners of the State of New Jersey, made by the New York & New Jersey Water Company for the following respective years: 1912, 1913, 1914, 1915, 1916, 1917 and 1918, have you not? A I have.

Mr. Faulks: I offer those in evidence.

(Admitted and marked Exhibit D. 23, to and including D. 29.)

Q Have you also produced the annual reports filed by the New Jersey Suburban Water Company with the Board of Utility Commissioners? A I have.

Mr. Faulks: I also offer these in evidence, consisting of fourteen reports, covering the years from 1912 to 1925, respectively.

(Admitted and marked Exhibits D. 30 to and including D. 43.)

Cross examination by Mr. McCarter.

Q Mr. Bevan, do you know whether or not those reports that you have produced and which have been offered in evidence, were filed pursuant to any direction, notice or order from the Board of Public Utility Commissioners to the two companies? A Well, not of my specific knowledge. All water companies which come under the Public Utility Act file reports with the Commission.

Q Does not the act provide notice first to file with the Commission? A Not that I know of. I have the act here if you wish to look at it.

Q Just refer to the section and find out about it. A It is on page 8 in "Annual Reports." It says: "To furnish annually a detailed report of the finances and operations, in such form and containing such matters as the Board may from time to time by order prescribe."

Q Well now, look at section 17; that is subdivision e of section 17, isn't it? A Yes.

Q Section 17 says: "The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein

described," and then section e is what you have already read. What I am asking is, whether you know that any authority or direction was given to the two companies to file their report? A No, I do not, personally.

Q That is all.

Examination by the Court.

Q Just a minute, Mr. Bevan. I understand you to say that every public utility is obliged by law to file a report? A Yes. That isn't in the law; this is the law that I am reading from.

Q Then you base your opinion upon what Mr. McCarter has just read to you, subdivision e of section 17? A No, no; he specifically asked me if I knew that the Board had asked the two companies to furnish reports, and I said I didn't know, but that I knew that all public utility concerns were required to furnish a report.

Q Where is the requirement that every public utility concern shall file their annual report? A Page 8, section 17, subdivision e.

Q That is the one that Mr. McCarter read to you? A Yes.

JAMES O'NEILL, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Faulks.

Q Mr. O'Neill, are you connected with the office of the Clerk of Hudson County, New Jersey? A Yes, sir.

Q At our request have you produced the record in that court in the suit of the New York &

New Jersey Water Company and the New Jersey Suburban Water Company against the Mayor and Council of the Town of Kearny? A Yes, sir.

Mr. Faulks: I offer in evidence, if your Honor please, from that record the pleadings in that suit, consisting of the complaint filed therein by the complainant in this suit, the answer and counter-claim filed by the mayor and council of the Town of Kearny, and the reply to answer and answer to counter-claim filed by the complainants in this suit. That is the only portion of the record that I offer because the rest consists merely of notice of argument and matters of that kind.

The Court: Is this an action for difference between the old rate and the new rate?

Mr. Faulks: This is an action brought by the complainants in this suit against the Town of Kearny and, as I understand it, is an action of the kind that your Honor has just mentioned. Paragraph 4, for instance, of the second count, says this:

That in the early part of 1923, the plaintiffs—

The complainants here.

—served notice upon the defendants, that in view of an application having been made by the East Jersey Water Company unto the Public Utility Commission for an increase in the rate to be charged for the sale of water notwithstanding existing agreements, and the decision rendered thereon by the Public Utility Commission of the State of New Jersey, fixing $78 per million gallons as the rate which the plaintiffs would be obliged to pay unto the said East Jersey Water Company

from the 1st day of January, 1923, instead of the sum of $56.25 per million gallons previously paid by the plaintiffs unto the said East Jersey Water Company, under written contracts which have not yet expired, it would be necessary for and that the plaintiffs increase its rate unto the defendants from $82.50 to $104.25 per million gallons, beginning with January 1, 1923.

And paragraph 5 says:

That the defendants continued to take its supply of water from the plaintiffs at the new rate fixed by the plaintiffs of $104.25 per million gallons, and are still taking its supply of water from the plaintiffs at the new rate fixed.

I ask leave to substitute these copies.

Mr. McCarter: I may be wrong. I don't think I am wrong if it is equity pleading, and I think I am right in it being a law pleading. There is a distinction between the complaint in a bill of complaint and an answer, with reference to its being an admission and binding upon the party making it, in this respect: The complaint isn't sworn to, and in ninety-nine times out of 100 does not reach the eye of the complainant. The answer is ordinarily sworn to and the defendant is bound by the admissions in the answer. I don't understand the rule of law to be that where there is a complaint verified by a lawyer the facts alleged are to be taken as against the party on whose behalf it is filed, on the theory of an admission.

Secondly, I object to it because the offer is not accompanied with proof of judgment and action taken, on the theory on which it

is offered. Nothing ever happened except the mere filing of the complaint—a paper; and the mere fact that the company were individuals so as to be bound, or had a written letter in which they recognized as against somebody else the fact that they would have to pay the East Jersey Water Company, wouldn't be binding, wouldn't estop them. It would be a mere loose declaration that would have no effect at all. And on either of these grounds I object to the introduction of this record.

The Court: The first ground would somewhat astonish me and I would pay no attention to it if it were not for my respect for your learning and your fairness to the Court; but I do think that what a man's lawyer says, as his agent so to speak, and admits against his client's interest any document, be it a bill or answer or a complaint at law, is an admission against interests, and I assume it is upon that theory that it is introduced. And as to your second objection, I don't understand that it operates adversely when filing a pleading it has to be filed when it had gone to final judgment. I overrule the objections.

(The same is marked Exhibit D. 44.)

Cross examination by Mr. McCarter.

Q Mr. O'Neill, will you give us the dates of the filing of the complaint and answer and reply? A Yes, sir. It looks like the 31st, that blue stamp of ours.

Q (By the Court.) December 31, 1924, I think. A That's right; that's the return day of the complaint.

Q Now, as to the answer? A January 10, 1925; and the replication bears filing mark of January 15, 1925.

Mr. Faulks: If your Honor please, I offer in evidence a letter, on the letterhead of the New Jersey Suburban Water Company addressed to John H. Cook, President Passaic Consolidated Water Company, under date of May 18, 1925, and signed "C. A. Dana, President." This is in reply to a letter sent by the defendant to the complainant under date of May 7, 1925, already in evidence.

(Admitted and marked Exhibit D. 45.)

I also offer a letter addressed to the New Jersey Suburban Water Company and the New York & New Jersey Water Company, by the Passaic Consolidated Water Company, under date of June 1, 1925, which is a reply to Exhibit D. 45.)

(Admitted and marked Exhibit D. 46.)

I next offer, if your Honor please, the rate schedules filed by the East Jersey Water Company and its allied companies with the Board of Public Utility Commissioners on March 31, 1923, pursuant to a decision of the Board fixing, among other things, the $78 rate. They were offered in evidence in the Bayonne suit and will be found at pages 596 and 609 of the record in that suit.

The Court: They, of course, will be subject to your former objection.

(Admitted and marked Exhibit D. 47.)

Mr. McCarter: Mr. Faulks, aren't you going to put in a reply to the letter you last put in?

Mr. Faulks: I have put in all the correspondence so far.

Mr. McCarter: There is a reply of June 17th (handing paper to counsel). If you don't want to offer it we will offer it.

Mr. Faulks: I will offer it.

(The same is marked Exhibit D. 48.)

The Court: Exhibit D. 48 is a letter of June 17th to Mr. Cook, President of the Passaic Consolidated Water Company, from the New Jersey Suburban Water Company.

Mr. Faulks: If your Honor please, by consent of counsel and in order to save time, we will next put on the record in the form of a stipulation a statement by counsel of the publications that were made of the notice of February 1, 1922, and also a further notice that the rate proceedings was published in 1922 and served upon counsel.

Mr. McCarter: Of course, we claim that publication in the newspaper is of no avail. Subject to that, we have no objection to that method of proof.

Mr. Faulks: The first mentioned notice is already in evidence as Exhibit D. 14. This notice was published in the Newark Evening News, a newspaper of general circulation published in Newark, New Jersey, February 4, 11 and 18, 1922. In the Newark Star-Eagle, another Newark, N. J., newspaper, on February 10, 11, 14 and 16, 1922. In the Jersey Journal, well known to your Honor as a Jersey City paper, on February 10, 11, 15 and 16, 1922;

In the Bayonne News & Review on February 10, 11, 13 and 14, 1922;

In the Bayonne Times on February 16, 17, 18 and 20, 1922, the last two papers being published in Bayonne, N. J.

In the Nutley Sun on February 11, 18 and 19, 1922; and

In the Observer, published in Kearny, N. J., on February 18 and 25, 1922.

A similar notice, first having been signed by the East Jersey Water Company and a second one by the Acquackanonk Water Company, was published in the Clifton Times on February 9 and 16, 1922, and in the Passaic Daily Herald on February 9, 10, 13 and 14, 1922; in the Passaic Daily News on February 10, 11, 13 and 15, 1922.

The Passaic Water Company caused a similar notice, signed, to be published in the following newspapers: Paterson Call, on February 10, 11, 18 and 19, 1922; Press-Guardian on February 9, 10, 15 and 16.

The Montclair Water Company caused a similar notice to be published in the Montclair Herald on February 10, 1922; and in the Montclair Times on February 11 and 18, 1922.

In September, 1922, these five water companies caused a notice to be further published. This notice was dated September 20, 1922, and reads as follows:

NOTICE OF REHEARING.

Notice is hereby given that there is pending before the Board of Public Utility Commissioners of the State of New Jersey, a hearing on schedule of rates of the undersigned companies; that the next hearing has

been set for October 25, 1922, at the Kinney Building, Newark, N. J., at 10:45 A. M. At that time evidence will be offered supporting the schedule of rates for the East Jersey district.

Acquackanonk Water Company, East Jersey Water Company, Kearny Water Company, Montclair Water Company, Passaic Water Company.

This notice was published in the following papers and on the following days:

In the Passaic Daily Herald September 22, 1922.

In the Newark Star-Eagle on the same date.

In the Jersey Journal on the same date.

In the Bayonne News & Review on the same date.

Paterson Evening News on the same date.

Paterson Call, published by the Call Printing & Publishing Company, and on the same date.

In the Passaic Daily News on the same date.

It was published on September 28th in the Clifton Times;

On the 29th in the Montclair Herald, and

On the 22d in the Bayonne Times;

On the 23rd in the Paterson Press-Guardian;

On the 22nd in the Newark Evening News;

On the 23rd in the Montclair Times;

On the 23rd in the Observer published in Kearny; and on the same date in the Nutley Sun.

Mr. Faulks: I presume there will be no question and you will admit that these newspapers were published and in general circulation in the communities and at the times stated?

Mr. McCarter: Yes.

Mr. Faulks: This last mentioned notice, the one of September 20, 1922, was also served on the Mayor or other principal officer of the following named municipalities:

On or about September 23rd, the City of Bayonne, Town of Bloomfield, City of Clifton, Borough of East Newark, Essex County, Borough of Glen Ridge, Town of Harrison, City of Jersey City, Town of Kearny, Little Falls, Montclair, Nutley, Passaic, Paterson, Prospect Park Borough, Totowa Borough, West Orange and West Paterson; service upon Little Falls, West Orange and West Paterson being by registered mail, the others being in person delivered by hand.

I now offer in evidence a letter addressed by the East Jersey Water Company to Mr. Charles A. Dana, President of the New Jersey Suburban Water Company and the New York & New Jersey Water Company, dated March 29, 1923.

(Admitted and marked Exhibit D. 49.)

Also a letter from Mr. W. W. Corrigan, Secretary East Jersey Water Company to Mr. Charles A. Dana, President, dated April 4, 1923.

(Admitted and marked Exhibit D. 50.)

You admit, do you not, that you received a copy of the decision about that time? You don't question that you received that letter, do you?

Mr. McCarter: I don't know. I don't remember it.

Mr. Faulks: Well, I will have to prove it, then.

The Court: Well, it is in now; that is, it is marked. You now want it stricken out until proved?

Mr. McCarter: No, I think your Honor is mistaken. What is in the record is statement of Mr. Gardiner's secretary that they are having a finding printed and when it is printed they will send us copy, and Mr. Faulks wanted to know whether I would admit that we did receive a copy, and we have no recollection of that.

Mr. Faulks: I next offer from John H. Cook a letter to Charles A. Dana, dated June 21, 1923.

(Admitted and marked Exhibit D. 51.)

I also offer a reply to that letter from C. A. Dana, dated June 29, 1923.

(Admitted and marked Exhibit D. 52.)

I offer next a letter of July 2, 1923, from Mr. Cook to Mr. Dana.

(Admitted and marked Exhibit D. 53.)

I offer the reply to that letter from Mr. Dana to Mr. Cook, dated July 16, 1923.

(Admitted and marked Exhibit D. 54.)

In that correspondence I find I have omitted one letter which I want to offer, being a letter from Mr. Corrigan to Mr. Dana, dated April 10, 1923.

(Admitted and marked Exhibit D. 55.)

I understand that there is already in as Exhibit D. 3, a letter addressed by the New Jersey Suburban Water Company to the

Mayor and Common Council of the Borough of East Newark, under date of July 9, 1923; and also a letter of the same date addressed to the Mayor and Common Council of the Town of Harrison. In addition, I offer a similar letter addressed to the Mayor and Council of Kearny.

(Admitted and marked Exhibit D. 56.)

I will now call Mr. Dana.

CHARLES A. DANA, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Faulks.

Q Mr. Dana, are you an officer of the New York & New Jersey Water Company and the New Jersey Suburban Water Company? A Yes, sir; President.

Q How long have you held that office? A Ten years and upwards.

Q Are you also connected, in any official capacity, with the New Jersey Suburban Water Company? A President.

Q How long? A Either as president or vice-president ten years.

Q Where is the principal office of each of those companies in the State of New Jersey? A 15 West 8th street, Bayonne, N. J.

Q And has the office been located there in the case of each of those companies for ten years or so? A Yes, sir.

Q Before the time of the hearing of the rate decision? A Yes.

Q I think you have been subpoenaed to produce bills received by the water companies from the East Jersey Water Company and the Passaic Consolidated Water Company, for all water delivered since January 1, 1923; have you those bills? A Yes.

Q Will you produce them, please? A (Witness leaves the stand and produces several papers.)

Mr. Faulks: I offer in evidence the bills produced by the witness, being, in each case, a bill of either the East Jersey Water Company or its successor, the Passaic Consolidated Water Company, to the New York & New Jersey Water Company and the New Jersey Suburban Water Company, the first one being dated May 23, 1923, and the others being dated quarterly thereafter from July 2, 1923, on, to April 1, 1926. I will substitute copies and ask to have them marked.

Mr. McCarter: We think that the bills, insofar as they are drawn by the defendant, of course, were drawn and served since the filing of this bill and are, therefore, irrelevant and can't have any effect on their condition.

The Court: I would say that that is so.

Mr. Faulks: I don't think that that is so, sir. If there is any change in the form of the bills in each case the same rate, the same form as they have been rendered over a long period of time previously, makes it proper for us to show that we billed these companies promptly and constantly at the statutory rate and that they received those bills without objection, without comment, over all that time down to the date of the hearing. There has been no change in the practice, and I take it that a court of equity deals

with the situation up to the time of the hearing. Of course, we can't antedate ourselves by changing the form of the bill.

The Court: Still, I think that those bills sent after the filing of the bill of complaint are irrelevant and I will sustain the objection.

Mr. Faulks: Well, then, I take it your Honor will admit those bills to July 2, 1925?

The Court: Yes.

(The same are marked as one exhibit, Exhibit D. 57.)

Q Mr. Dana, your company, or your companies, never questioned that they received from either the East Jersey Water Company or the Passaic Consolidated Water Company the amount of water shown as delivered by these companies?

Mr. McCarter: I don't think that that is the way to prove it. Mr. Earl is an officer of this company, and Mr. Van Buskirk has shown connection with the company. I don't think that the fact that they never claimed they didn't get all that they were billed for is proof of it at all.

The Court: There is no counter-claim here, is there? I don't see why you undertake to prove that.

Mr. McCarter: I don't, either. I told Mr. Faulks the other day that the question of the amount delivered was of no moment in any case. If he wants to prove the receipt by us of those bills, of course, they can go in; but whether they served us with 10,000,000,000 gallons or 500,000, I don't think is material in this controversy.

The Court: I sustain the objection.

Q Mr. Dana, you have been also subpoenaed to produce the bills rendered by complainants to the Towns of Kearny, Harrison and East Newark; have you done so? A Yes (handing papers to counsel).

Q I show you this batch of bills which you have produced and ask you if they are bills rendered by the New Jersey Suburban Water Company and the New York & New Jersey Water Company to the Town of Kearny, for the water delivered by them to that town between January 1, 1920, and March 31, 1926. A They are carbon copies, except the pencil notes that may be put on them for the purpose of counting at the foot of the bill.

Q For instance, there is indicated in pencil on bill dated June 30, 1923? A Yes.

Q With the exception of such notes these are correct? A Yes.

Mr. Faulks: With the exception of such notes which have been stricken out, I offer these bills in evidence. These are the Kearny bills.

(Admitted and marked Exhibit D. 58.)

Q You have also produced, have you not, Mr. Dana, a similar group of bills for the same period, for water delivered by the New Jersey Suburban Water Company to the Town of Harrison? A Yes.

Mr. Faulks: I offer those in evidence.

(Admitted and marked Exhibit D. 59.)

Q And the same is true with regard to this last batch of bills, rendered by the New Jersey Suburban Water Company to the Borough of East Newark? A Yes, except so far as there may be some notes at the foot of some of them.

Q Wherever there is a note with reference to the East Jersey's portion that was not on the bill sent? A Yes.

Mr. Faulks: Except for such notes, I offer this batch of bills in evidence.

(Admitted and marked Exhibit D. 60.)

Q At the same time as the East Jersey Water Company, or its successor, the Passaic Consolidated Water Company, submitted bills to your company, did it also furnish it with a statement of the daily meter readings? A It furnished me with a blue print copy of this statement.

Q Well, this is a blue print copy that you have in your hand, is it not? A Yes, I see a blue print copy of this; whether that is a correct statement of the readings I can't say.

Mr. Faulks: I ask to have that marked for identification.

(The same is marked D. 61 for identification.)

Cross examination by Mr. McCarter.

Q Mr. Dana, Mr. Faulks asked you where the office of these two companies was and you replied by giving some number and some street in Bayonne; who is in charge of that office? A The registered agent, under the law of the State of New Jersey, has been DeWitt Van Buskirk, and I think he or his son is still the registered agent.

Q That is the statutory office? A Yes; and I think Mr. Earl, as treasurer, also has an office in the same premises.

Q Your office is where? A My personal office is 55 Liberty street, New York.

Q And are the books and documents of the company kept at this statutory office? A Yes, sir. The records are kept there and the corporate seal of the company is kept at this statutory office.

Q What do you mean by "corporate"? A Stock register and minute books and various books of record, and the report that is filed by the company is filed from that office, and I conduct certain other records at 55 Liberty street where they can have my more efficient supervision.

Q In New York? A In New York.

Q Correspondence has been offered, and I now ask you if you received from Mr. Gardiner, then president of the defendant company, a letter dated March 29, 1923, and you sent the reply attached thereto which I now hand you? A I did.

Mr. McCarter: I offer that in evidence.

(Admitted and marked P. 23.)

Mr. McCarter: Now I want to ask about those bills.

Q As to those bills which have been offered in evidence, rendered by one or the other of the complainant companies to the respective communities, Kearny, East Newark and Harrison; have those been paid, as rendered, by the towns?

Mr. Faulks: I object to that.

Mr. McCarter: The defense would be that they have been in fact paid, and I want to show it.

The Court: Is there any use wasting time over that?

Mr. Faulks: I don't know what it has to do with the case.

Mr. McCarter: Almost as much to do as offering the bills. I will go further.

Q Now, Mr. Dana, Mr. Faulks stated that never any objection was made to any of these bills that were rendered by the East Jersey Water Company or the Passaic Consolidated which have been offered in evidence—

Mr. Faulks: I beg pardon. I made no such statement. My question was, whether any question had been ever raised as to the amount of water shown by the statements.

Mr. McCarter: You quite plainly raised the point about not being bound by the bills.

Q Do you know whether any objection has been made by or on behalf of the New York & New Jersey Water Company and the New Jersey Suburban Water Company to these bills that have been rendered and put in evidence, since or at the time of the rendition?

Mr. Faulks: I object as immaterial.

The Court: To save time I will overrule the objection and permit it to be answered.

A I have always objected to the bills as rendered by the East Jersey Water Company for water purported to have been delivered in Belleville and Kearny avenue, and saying that our payments to the East Jersey had always been protected by the contract arrangement which was, that we were to pay them a proportion of the moneys that we received from the towns by the measurement by the towns' own meters and as set forth in the order of Vice-Chancellor Bentley and Vice-Chancellor Backes, in which we were to pay the proportion of moneys received from the towns on their own meters.

Re-direct examination by Mr. Faulks.

Q Now, let us see about that. When was the decision of Vice-Chancellor Backes and Vice-Chancellor Bentley to which you refer rendered?

The Court: The 13th of August was mine.

A In the case of the Town of Harrison it was filed August 3, 1925, and in the case of the Town of Kearny it was filed July 27th; and in the case of the Borough of East Newark, August 13th.

Q All 1925? A All 1925.

Q And your objections date from then? A No, upwards of ten years, practically ever since I became connected with the water company.

Q But I want to know what objection you made to these bills that were rendered between January, 1923, and July 1, 1925, at which later time the decision had not been rendered? A The same objection that I had made upwards for ten years and since January 1, 1923, that we were to pay the East Jersey the proportionate amount of moneys provided in the contracts, measured by meter readings of the towns supplied with water.

Q That is the only objection you ever made? A The only real objection was when Mr. Gardiner notified me in that letter that there was a rate of $78 that had been fixed by the opinion of the Board of Public Utility Commissioners, and I replied that I would like to look into the matter. If that be an objection in language then that was an objection.

Q Those are the only one? A Yes, substantially.

Mr. Faulks: You put in the record in the Harrison mandamus case?

Mr. McCarter: No, I couldn't find the papers, but they have turned up since. No, I didn't put them in; I will do so if you desire. I will put in the State of the Case in the mandamus suit of the New Jersey Suburban Water Company.

The Court: I am quite sure that was read into the record, even the citation 192 Atlantic.

Mr. McCarter: I think that report was offered in evidence, but I didn't physically offer the record.

(The same is marked Exhibit P. 24.)

JOHN H. COOK, recalled on behalf of the defendant, testified as follows:

Direct examination by Mr. Faulks.

Q It already appears, Mr. Cook, that you are connected with the defendant? What position do you hold? A I am President of the Passaic Consolidated Water Company.

Q Have you been so since the formation of that company in October, 1923? A I believe I have; yes, sir.

Q And prior to that, did you hold any executive position with each of the companies that were then consolidated into the Passaic Consolidated Water Company? A I did; generally as Vice-President.

Q Do you know, Mr. Cook, of your own knowledge, what the practice was with reference to the billing by the East Jersey Water Company to the New York & New Jersey Water Company and the New Jersey Suburban Water Company, or the furnishing of copies of bills by those companies to the East Jersey Water Company, prior to the decision in the East Jersey rate case?

Mr. McCarter: I object, on the ground as immaterial.

Mr. Faulks: I want to show that under the old contracts they were required to and did furnish their customers with copies of all bills rendered; but that after the rate decision they ceased to do that.

The Court: I overrule the objection.

Q Will you tell the practice in regard to billing prior to the rate case? A Prior to the rate case, and for a good many years prior the bills were made out, and the measurement of water and the whole business was under my immediate direction. I was then called the hydraulic engineer of the company and I followed up from day to day and time to time the delivery of the water by the East Jersey Water Company and its successors—

Mr. McCarter: One moment, Mr. Cook. You are trying to get in here what has already been ruled out. Mr. Faulks is trying, your Honor, to prove what our practice was.

Mr. Faulks: My question was "prior to the rate case". Let me see if I can't simplify it.

Q Prior to the decision in the rate case, did these water companies render bills to the New York & New Jersey Water Company and the New Jersey Suburban Water Company? A They did not.

Q What did the New York & New Jersey Water Company and the New Jersey Suburban Water Company do in the way of paying for water delivered and in determining the amounts of water? A They sent us copies of bills which they had rendered towns which they had supplied with water and after they had collected their bills from these towns they sent us what they called our proportion out of the money that they had received in payment for the water that had been delivered.

Q That is, at the rate of $56.25 per million gallons where they had received $82.50? A That's the idea, but there is something more to be said about it.

Q Well, now, after the decision of the Public Utility Commissioners in the water rate case did they continue to send you copies of such bills? A They did not.

Q Have they ever sent you any since then? A They have not.

Q What have you done? A We have billed them for the total quantity of water delivered in each quarter in the pipe at the corner of Kearny avenue and Belleville Turnpike. We have sent them a bill for that quantity of water at the $78 rate ever since January 1, 1923.

Q Now, did you, during the time that the rate case was pending before the Public Utility Commissioners, have any talks with Mr. Dana? A I did.

Q With reference to the pendency of that proceeding? A I did.

Q What was said?

Mr. McCarter: I object as immaterial.

The Court: Is this for the purpose of showing knowledge upon the part of Mr. Dana?

Mr. Faulks: Yes, and knowledge of the pendency of it.

The Court: I will overrule the objection and deal with it when I decide the case.

Q Tell, briefly, all of the talk you had with Mr. Dana at that time. A Why, I confirmed some of these dates from my diary which I keep. I went to see Mr. Dana one day, I think it was in May, 1922, and I went to see him primarily to dun him for water bills that he owed us, or his company did, and we naturally talked about the rate case. That was a matter that Mr. Dana was interested in, apparently.

Mr. McCarter: I object to this.

The Court: Suppose you get down to what was said to each other.

A I told Mr. Dana I thought he ought to make an effort to get the rate allowed to him for his part in delivering water to those towns, and Mr. Dana seemed to be very much in doubt as to what he thought he ought to do—

Mr. McCarter: I object to that and move to have it stricken out.

The Court: Yes, it may be stricken out as a conclusion. (Addressing the witness): You may tell what you did.

A Mr. Dana said to me, he didn't know just where he stood. At a little later time I went to see Mr. Dana. That was, I think, the next year, somewhere along in May, and we again talked about the rate case, because at that time I think the rate case had been decided. And we dis-

cussed the matter, and he spoke about making an application to have a rate fixed for his companies, and asked me if I objected to having him employ our Mr. Wherry, who had been our counsel in the rate case, to advise him in respect to a rate case that he might bring, and I told him we had no objection; it was a matter of indifference to us what Mr. Dana got beyond the $78. Now, in brief, that is the conversation.

Q Later on, after you began sending Mr. Dana's company bills at the $78 rate did you have any further talks with him on this subject? A I talked with him and talked with Mr. Earl also in respect to that.

Q With Mr. Dana? A Well, both Mr. Dana and Mr. Earl.

Q I am only asking you about Mr. Dana. A Mr. Dana said practically what he said before.

Mr. McCarter: I object.

Q State the substance of what he said. A The substance of what he said was, that he didn't know where he stood in respect to the matter; that there were questions that had arisen in respect to the legality of the thing and he didn't know just where he was at.

No cross examination.

COMPLAINANTS' REBUTTAL.

CHARLES A. DANA, recalled on behalf of the complainants, in rebuttal, testified as follows:

Direct examination by Mr. McCarter.

Q After the decision in the rate case, Mr. Cook says that he had a talk with you concerning the matter; do you recall the conversation to which he alludes? A Mr. Cook refreshes my

recollection of a matter that I had forgotten about, which was that when he did visit me and told me of the result of the rate case as affecting their water companies to which our company was not a party, I told him I was afraid that the result might be extended to our companies as they were not a party and, therefore, I asked him what counsel, experienced in Public Utility hearings they had employed and he told me Mr. Wherry who was a specialist in that matter, and I did as he indicates, visited Mr. Wherry on two or three visits, and asked him—

Mr. Faulks: No, no.

A Well, I had a conversation with him, the same as you would do with your client, in regard to the matter, but nothing further was done.

No cross examination.

Mr. McCarter: Complainants rest.

Mr. Faulks: I think we are through, except I would like to reserve the right to put in proof if desired as to the rate decision. Mr. Wherry, who was then counsel for the East Jersey Water Company sent to Mr. Dana a copy of the decision. I think they will find that to be the case, and if Mr. McCater does find it to be so and will admit it we will not need to put in any further proof.

MEMORANDUM OF VICE-CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

Between

THE NEW YORK & NEW JERSEY WATER CO. and NEW JERSEY SUBURBAN WATER COMPANY, corporations,

Complainants,

and

PASSAIC CONSOLIDATED WATER COMPANY,

Defendant.

(Not for print.)

On Bill, &c.

Memorandum.

February 17, 1927.

McCarter & English, solicitors, Robert H. McCarter, Esq., of counsel for the complainants.

Lindabury, Depue & Faulks, solicitors, Frederic J. Faulks, Esq., and John W. Bishop, Jr., Esq., of counsel for the defendant.

MEMORANDUM OF OPINION.

BENTLEY, *V.-C.*

On bill for injunction.

The complainants are corporations, organized under the General Corporation Act of 1896, engaged in business of purveying water to their customers, some of whom are municipalities and some private corporations. Many years ago they entered into a contract with the East Jersey Water Company (since merged into the defendant Passaic Consolidated Water Company), whereby the latter became bound to supply them

with a supply of water for re-sale to their customers. In consideration thereof, the complainants obligated themselves to pay to the East Jersey Water Company, for all water so taken, at the rate of $30 per million gallons as a flat rate, and, in addition thereto, one-half of the price in excess of $30 which might be charged each customer by the complainants.

In February, 1922, the East Jersey Water Company filed with the Board of Public Utility Commissioners a schedule of new rates, greatly in excess of the amounts which it had been charging the complainants. Such proceedings were thereupon had before the Board that a flat rate of $78 was fixed by the Utility Commission. This determination was confirmed by the Supreme Court and the Court of Errors and Appeals.

The complainants refusing the pay the defendant (which had then come into being) it, on or about June 1, 1925, caused a notice to be served upon the complainants threatening to turn off their supply of water unless they abided by the Utility Board's decision within a period of thirty days. Thereupon this bill was filed, upon the ground that the complainants had no notice of the filing of the amended rates and consequently that the determination of the State Board was of no binding effect upon them. A preliminary injunction was allowed and the matter was brought on for final hearing.

None of the questions dealt with in Bayonne *v.* Passaic Consolidated Water Company (98 N. J. Eq. 174) were raised in the present litigation. The sole question to be answered is, in the language of the brief filed on behalf of the complainants, "whether the two complainant companies

were bound by the finding of the Utility Board in the proceedings before mentioned, and hence required to pay to the defendant herein the rate fixed, or $78."

It is conceded by the defendant that no notice of the proceeding before the Utility Board was served upon the complainants in the manner required to bring a party defendant before an ordinary court of justice. Notices were mailed to a large number of public officers, such as the mayors and legal representatives of the municipalities having any interest in the subject, but none were sent to the complainants. In addition thereto, public notice was given by advertisements in a large number of the leading newspapers in the district served by the East Jersey Water Company and the other component companies that later became the defendant. I have not taken the trouble to verify the exact number of newspapers, but the advertisements must have appeared in from twelve to fifteen such publications and were, in most if not all, published several times. The position taken by the complainants is, that such constructive notice is not sufficient.

It must be borne in mind that the Board of Public Utility Commissioners was created in the public interest to meet a need that was fast becoming vital in importance. The Board can not, in reason, be expected, in the transaction of its multitudious affairs, to reach every last individual who may be affected by its ruling. It has said itself that it would be impracticable in most of the cases appearing before it, to give special notice to everyone to be affected.

Neither the act of the legislature creating the Utility Commission nor the rules adopted by that body pursuant to the act, describe how notice shall be given of proceedings before the Board. It is not like the Practice Act, for example, section 52 of which (3 C. S., 4067) provides that in personal actions commenced by summons a copy thereof shall be served on the defendant in person at least two days before its return, or left at his usual place of abode at least six days before the return day. This creates a statutory rule of procedure that may not be disregarded by any other state agency. For the reason already expressed, it would seem a dangerous thing to lay down the rule sought to be declared, namely, that the notice referred to in the act and rule, means notice upon everybody who will be affected by the decision. A different determination might be reached if there was any proof to indicate that either the Board of Utility Commissioners or this defendant (or its predecessors) had fraudulently attempted to steal a march on the innocent complainants. Can there be the slightest question in anyone's mind that the publication of the notice in this case came to the attention of the officers and agents of the complainants? Certainly, there can be none in the mind of any reasonable man, and especially in view of the letter about to be mentioned.

There was marked in evidence a letter, under date of February 9, 1922, mailed (immediately after the filing of the new rates) by the Vice-President of the East Jersey Water Company to the complainants, enclosing a notice of the filing of the amended rates. The position taken by the complainants is, that this is not the notice required by the act creating the Public Utility Commission. The act provides that hearings

shall be conducted in accordance with rules to be adopted by the Board, and the 3d rule adopted by the Board in 1922 was as follows:

> Notice of hearing will be given by the Secretary to parties to proceedings before the Board * * *

Taking this language at its face value, and assuming for the purpose of this discussion, that the complainants can not be bound by any proceeding and adjudication of which it did not have notice, how can it complain that the notice it received emanated, not from the Secretary of the Board but from the very utility that supplied it with water for sale to its customers? One can not, in this court, with knowledge of a fact, complain that notice was never served upon him, and therefore that he had taken no steps to assert or protect his right and expect assistance. Pom. Eq. Jurisp., sec. 592. The complainants knew the effect of the filing of the new rates by The East Jersey Water Company, and they knew that the proceedings before the Board would have an effect upon the public, and they must be assumed to have known then, and to know now, that any preferential rate in their respective favors would injuriously affect a large number of the public, and therefore, would be illegal. Under these circumstances, it would be ridiculous to say that they should be permitted to reap the benefits of their plan to sit by until a complicated proceeding had been consummated, and then put off the evil day by attempting to interpose between them and the effect of the order this very harsh and technical defense, although under the guise of an original bill.

The bill should be dismissed, but with the same provisions contained in the last paragraph of the opinion in the Bayonne case.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between

THE NEW YORK AND NEW JERSEY WATER COMPANY and NEW JERSEY SUBURBAN WATER COMPANY, corporations,

Complainants,

and

PASSAIC CONSOLIDATED WATER COMPANY, a corporation,

Defendant.

On Bill, etc.

Final Decree.

This cause coming on to be heard on the 29th and 30th days of April, 1926, at the Chancery Chambers in the City of Jersey City, in the presence of Robert H. McCarter, Esq., of counsel with the complainants, and Frederic J. Faulks, Esq., and John W. Bishop, Jr., Esq., of counsel with the defendant, and the pleadings having been read, and the proofs having been taken in open court, and the arguments of the respective counsel having been heard, and the Court having duly considered the said pleadings, proofs, and arguments and it appearing to the Court that the complainants are not entitled to the relief sought and prayed for by them in their bill of complaint:

IT IS, on this 18th day of April, 1927, by Edwin Robert Walker, Chancellor of the State of New Jersey,

Final Decree.

ORDERED, ADJUDGED and DECREED, that the complainants' bill be and the same is hereby dismissed, with costs.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a counsel fee of $2,500 be and the same is hereby allowed to the complainants to be included in the complainants' costs.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the complainants pay to the defendant, its costs of this suit to be taxed, including the said counsel fee of $2,500 and that execution issue therefor according to the practice of this Court.

E. R. WALKER,
C.

Respectfully advised,
JOHN BENTLEY,
V.-C.

Notice of Appeal.

NOTICE OF APPEAL.

Filed May 13, 1927.

IN CHANCERY OF NEW JERSEY.

Between	
THE NEW YORK AND NEW JERSEY WATER COMPANY and NEW JERSEY SUBURBAN WATER COMPANY, corporations, *Complainants,*	*On Bill, &c.* *Notice of Appeal.*
and	*Sat Below* JOHN BENTLEY, *V.-C.*
PASSAIC CONSOLIDATED WATER COMPANY, a corporation, *Defendant.*	

The complainants, The New York and New Jersey Water Company and New Jersey Suburban Water Company, corporations, hereby appeal from the final decree of the Chancellor, advised by Vice-Chancellor Bentley, in the above-entitled cause on April 18, 1927, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated May 12, 1927.

McCARTER & ENGLISH,
Solicitors for and of Counsel
with Complainants.

I conceive there is good cause for appeal in the above-entitled cause.

ROBERT H. McCARTER,
Of Counsel with Complainants.

PETITION OF APPEAL.

Filed May 13, 1927.

New Jersey Court of Errors and Appeals

Between	
THE NEW YORK AND NEW JERSEY WATER COMPANY and NEW JERSEY SUBURBAN WATER COMPANY, corporations, *Complainants-Appellants,*	*On Appeal from Chancery.*
and	*Petition of Appeal.*
PASSAIC CONSOLIDATED WATER COMPANY, a corporation, *Defendant-Respondent.*	

The petition of The New York and New Jersey Water Company and New Jersey Suburban Water Company, corporations, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, advised by Vice-Chancellor Bentley, on the 18th day of April, 1927, in that said decree recites and adjudges that your petitioners are not entitled to the relief therein prayed; and doth decree that your petitioners' said bill be dismissed with costs, including a counsel fee.

And your petitioners appeal from said decree and from every part thereof, on the ground that no such decree should have been entered, but

rather that petitioners should have been accorded the relief prayed for.

Your petitioners therefore pray that the said decree may be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

McCARTER & ENGLISH,
Solicitors for and of Counsel
with Appellants.

ROBERT H. MCCARTER,
Of Counsel.

A true copy.
JOSEPH B. FITZPATRICK,
Clerk.

Endorsed:

Filed May 13, 1927.
JOSEPH F. S. FITZPATRICK,
Clerk.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	
THE NEW YORK AND NEW JERSEY WATER COMPANY and NEW JERSEY SUBURBAN WATER COMPANY, corporations, *Complainants-Appellants,*	*On Appeal from Chancery.*
and	
PASSAIC CONSOLIDATED WATER COMPANY, a corporation, *Defendant-Respondent.*	*Answer to Petition of Appeal.*

The answer of the above-named respondent to the petition of appeal of the above-named appellants:

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a final decree was on the 18th day of April, 1927, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the

said final decree is agreeable to equity, and it prays that the same may be affirmed, with costs to be adjudged to this respondent.

LINDABURY, DEPUE & FAULKS,
Solicitors for and of Counsel
with Respondent.

FREDERIC J. FAULKS,
Of Counsel.

Service of the within answer to petition of appeal is hereby acknowledged this 23rd day of June, 1927.

McCARTER & ENGLISH,
Solicitors for and of Counsel
with Appellants.

EXHIBITS

Exhibit P. 1.

CERTIFICATE OF ORGANIZATION
of the
NEW YORK AND NEW JERSEY WATER COMPANY

This is to certify that we (Charles E. Clarke, Anson A. Gard, Edward Phillips, John W. Coburn and Philetus H. Marson) do hereby organize ourselves into a company under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey entitled an "Act Concerning corporation" approved April 7, 1875 and under the several acts supplementary thereto and amendatory thereof, for the purpose hereunder mentioned, and to that end we do by this certificate set forth

First: That the name we have assumed to designate such company and to be used in its business and dealings is

THE NEW YORK AND NEW JERSEY WATER COMPANY.

Second: That the places in this state and elsewhere where the business of said company is to be conducted are the Counties of Hudson, Morris, Essex, Bergen and Union in this State and the counties of New York, Kings, Queens, Westchester and Richmond in the State of New York and the objects for which this company shall be formed are:

The acquisition from either surface or subterranean sources of water and the storage, sale and delivery of the same; the acquisition, construction, operation and sale of water works and reservoirs, wells, pipe lines, and all other property, real and personal appertaining to the collection, sale and distribution of water; the constructing. maintaining and operating (except in towns and cities in which water works are established and owned by the corporate authorities) works for the special purpose of supplying water for the extinguishing of fires in wells, factories, manufacturing establishments and other buildings; the damming of rivers and streams, including the storage and transportation and sale of water and water power and privileges with the right to take revulets, race-ways and lands and erect and maintain/and take rivulets, race-ways and *and* lands and erect and maintain dams, reservoirs, race-ways, mills manufactories and other erections and to lease, mortgage, sell and convey the same or any part thereof; the making, purchasing and selling of manufactured articles and also of acquiring and disposing of rights to make and use the same and also to purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of any other corporation created under the laws of this or any other state, and to exercise while owners of said stock all the rights, powers and privileges, including the right to vote thereon, which natural persons, being the owners of said stock, might, could or would exercise and to purchase, hold, sell, transfer, mortgage, pledge and otherwise dispose of any securities or evidences of debt created by any other corporation or corporations, of this or any other state, in the same manner and to the same extent as natural persons, being the owner thereof might could or would do.

That the portion of its business to be carried on out of this state in the counties of New York, Kings, Queens, Westchester and Richmond of the

State of New York is the acquisition, sale and delivery of water and water works and property appertaining thereto in the said counties, and the principal office or place of business of said company out of this state in the counties of New York, Kings, Queens, Westchester and Richmond of the State of New York is the acquisition sale and delivery of water and water works and property appertaining thereto in the said counties, and the principal office or place of business of said company out of this state is in the City of New York, in the County and State of New York.

That the name of the City and County in which the principal part of the business of said company within this state is to be transacted is in the City of Bayonne, in the County of Hudson

Third: That the total amount of capital stock of said company is One Million Dollars—The number of shares into which the same is divided is Ten Thousand and the par value of each share is One Hundred Dollars: the amount of the same with which the said company will begin business is One Thousand Dollars which is to be divided into Ten shares of One Hundred Dollars each with the privilege of increasing to One Million Dollars as aforesaid

Fourth: That the names and residences of the stockholders and the number of shares held by each are as follows, to wit:

Name	Residence	No. of Shares
Charles E. Clarke	Montclair, N. J.	2
Anson A. Gard	Yonkers, N. Y.	2
Edward Phillips	Brooklyn, N. Y.	2
J. W. Coburn	New York, N. Y.	2
Philetus H. Maison	Rutherford, N. J.	2

Fifth: The period at which said company shall commence is the 18th day of April, 1895 and the

period at which it shall terminate is the 18th day of April 1945.

In Witness Whereof we have hereunto set out hands and seals this 18th day of April, 1895

Signed Chas. E. Clarke (seal)
Anson A. Gard "
Edw'd Phillips "
Jno. W. Coburn "
Philetus H. Maison "

State of New Jersey
County of Hudson } *ss.*

Be it remembered that on this 18th day of April 1895, before me (Norman L Rowe) a master in Chancery of the State of New Jersey, personally appeared Chas. E. Clarke, Anson A. Gard, Edward Phillips, John W. Coburn and Philetus H. Maison) who I am satisfied are the persons named in and who executed the foregoing certificate and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed/

(Signed Norman L. Rowe
Master in Chancery of New Jersey

Endorsed, Received in the Hudson Co., N. J. Clerk's office April 19, 1895 and Recorded in Clerk's Record No. on page

Signed JNo. G. Fisher
Clerk

Endorsed: Filed April 19, 1895

Signed Jno. G. Fisher
Secretary of State

Exhibit P. 2.

CERTIFICATE OF INCORPORATION
of the
NEW JERSEY SUBURBAN WATER COMPANY

THIS IS TO CERTIFY, That the undersigned do hereby associate themselves into a corporation, under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey entitled, "An Act Concerning Corporations (Revision of 1896), and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite their respective names.

First: The name of the corporation is

NEW JERSEY SUBURBAN WATER COMPANY,

Second: The location of the principal office in this State is at No. 15 Exchange Place, Jersey City, County of Hudson.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served is THE CORPORATION TRUST COMPANY of NEW JERSEY.

Third: The objects for which this corporation is formed are: The acquisition from either surface or subterranean sources of water, and the storage, sale and delivery of the same; the acquisition, construction, operation and sale of water works and reservoirs, wells, pipe lines and all other property, real and personal, appertaining to the collection, sale and distribution of water; the damming of rivers and streams, including the storage and transportation and sale of water and water power and privileges with the right to take rivulets, race-ways and lands, and

erect and maintain dams, reservoirs, race-ways, mills, manufactories and other erections, and to lease, mortgage, sell and convey the same or any part thereof; the making, purchasing and selling of manufactured articles and also of acquiring and disposing of rights to make and use the same, and also to purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of any other corporation or corporations created under the law of this or any other State, and to exercise, while owners of said stock, all the rights, powers and privileges, including the right to vote thereon, which natural persons being the owners of said stock might, could or would exercise, and to purchase, hold, sell, transfer, mortgage, pledge or otherwise dispose of any securities or evidences of debt created by any other corporation or corporations, of this or any other State, in the same manner and to the same extent as natural persons, being the owners thereof, might, could or would do; to borrow money and make and issue promissory notes, bonds and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise; to carry on any other business (whether manufacturing or otherwise) which may seem to the Company capable of being conveniently carried on in connection with the above, or calculated directly or indirectly to enhance the value of the Company's property or rights.

The corporation shall have power to conduct its business in all its branches, have one or more offices, and unlimitedly, to hold, purchase, mortgage and convey real and personal property in the State of New Jersey as well as in all other States.

Exhibit P. 2.

Fourth: The total authorized capital stock of this corporation is One Hundred Thousand ($100,000) Dollars, divided into shares of the par value of One Hundred ($100.) Dollars each.

Fifth: The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of such subscription being the amount of capital stock with which the Company will commence business, are as follows:

Name	Post Office Address	No. of Shares
Frank Koch	15 Exchange Place, Jersey City, N. J.	2
Joseph Odell	" " " " " "	5
Horace S. Gould	" " " " " "	2
Kenneth K. McLaren	" " " " " "	1

Sixth: 1—The Board of Directors shall have power, without the assent or vote of the stockholders, to make, alter, amend and repeal by-laws for the corporation, but the by-laws shall always provide for notice of the objects of any special meeting of stockholders; to fix the amount to be reserved as working capital; to authorize and cause to be executed mortgages and liens upon the property of the corporation; and from time to time sell, assign, transfer or otherwise dispose of any or all of its property, but no sale of all its property shall be made except upon the vote of the holders of a majority of stock.

2—The Board of Directors from time to time shall determine whether and to what extent, and at what times and places and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the Board of Directors, or by a resolution of the stockholders.

Exhibit P. 2.

3—The Board of Directors, by resolution passed by a majority of the whole board, may designate three directors to constitute an executive committee, which committee, to the extent provided in said resolution or in the by-laws of the corporation, shall have, and may exercise the power of the Board of Directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

Seventh: The period of existence of this Company is to be perpetual.

In Witness Whereof, we have hereunto set out hands and seals the 20th day of September, A. D. 1902.

(signed) Frank Koch (L. S.)
Joseph Odell (L. S.)
Horace S. Gould (L. S.)
Kenneth K. McLaren (L. S.)

Signed, sealed and delivered
in the presence of
Frederic K. Seward

State of New York:
County of New York: } *ss*

Be It Remembered, That on this 20th day of September A. D. 1902, before me, personally appeared Frank Koch, Joseph Odell, Horace S. Gould and Kenneth K. McLaren, who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made

Exhibit P. 3.

known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

(signed) FREDERIC K. SEWARD
A Commissioner of Deeds for the State
(SEAL) *of New Jersey, residing in New York*

Registered in the office of the Company at Jersey City, in the County of Hudson, this 20th day of September, 1902

THE CORPORATION TRUST COMPANY OF NEW JERSEY
Registered Agent
By KENNETH K. MCLAREN *Secretary*

Endorsed
Received in the Hudson Co., N. J. Clerk's Office Sept. 20, A. D. 1902 and Recorded in Clerk's Record No. on Page

MAURICE J. STACK
Clerk

Filed Sept. 22, 1902

S. D. DICKINSON
Secretary of State

Exhibit P. 3.

Not printed separately, but is attached to the bill of complaint herein as Schedule A. (pp. 19-22.)

Exhibit P. 4.

Exhibit P. 4.

AGREEMENT BETWEEN THE EAST JERSEY WATER COMPANY AND THE TOWNSHIP OF KEARNY.

This agreement made this 29th day of June, 1895, between the East Jersey Water Company, a corporation duly organized and existing by virtue of the laws of the State of New Jersey, party of the first part, hereinafter referred to as the Company, and the Board of Township Committee of the Township of Kearny, being the Board having charge and control of the water supply of the inhabitants of the Township of Kearny, in the county of Hudson, and being a municipal corporation of the State of New Jersey, party of the second part, hereinafter referred to as the Township, witnesseth as follows:

That in consideration of the moneys hereinafter agreed to be paid, and the water hereinafter agreed to be furnished, and all the covenants hereinafter set forth, the said parties for themselves, their successors and assigns, do mutually covenant, contract and agree as follows:

(1) The Company agrees to obtain and supply to the Township and the Township agrees to take from the Company, for and during the continuous term of fifteen years commencing six months from and after the date hereof, or at such earlier date as the Company may be able to furnish said water, an entire and adequate supply of water which shall be good and wholesome and shall be supplied in quantites sufficient for the purpose of domestic use, for the extinguishment of fires and for such other lawful uses and purposes in the Township as may be necessary or convenient, and for which the Township may lawfully use, sell or supply water; all the water required shall

Exhibit P. 4.

be delivered by pumping or gravity at the junction of Kearny avenue and the Belleville Turnpike road in the Township of Kearny, County of Hudson and State of New Jersey, at a head equal to at least seventy-five feet above the elevation of the present water pipe now supplying the Township of Kearny at the said point.

(2) The Company agrees to furnish and deliver and the Township agrees to take and pay for, as stipulated in this contract, all the water necessary and convenient for the uses and purposes aforesaid.

(3) Payments by said Township for water supplied under this contract shall be made by the proper disbursing officer or officers of the Township in lawful money, quarter-yearly on Thursday of the second week of each and every quarter after the delivery of water has commenced for all the water so delivered during the preceding quarter, according to meter register, upon the certificate of the superintendent of the Company certifying to the quantity of water delivered, and also certified to by the water purveyor of the Township of Kearny. In case of dispute the Township is to pay a sum equal to the amount which it paid for the corresponding quarter of the year last past and the disputed amount is to be settled by arbitration, one arbitrator being named by the Township, one by the Company and a third to be selected by the two so chosen, and the decision of a majority of these arbitrators shall be final. The Company is to carefully measure all water delivered under this contract, and the Township, by its engineers and proper officers, shall at all times have reasonable opportunity to inspect and examine the meters and appliances for measurement.

Exhibit P. 4.

The price to be paid for said water shall be at the rate of ninety dollars per million gallons for all water delivered by the Company to the Township as aforesaid.

(4) The Company agrees to put into the water mains of the Township pressure valves which will maintain a head of water at any one point designated by the Township of not less than seventy-five feet nor more than one hundred and fifty feet.

(5) The standard of water offered is in all respects to be in accordance with the specifications hereto attached.

(6) The Township agrees to place at the disposal of the Company all powers which it now has or may hereafter acquire, or which may be necessary to enable the Company to acquire, by condemnation or otherwise, the necessary rights of way in streets and highways or lands, storage reservoirs, and also water rights and other property whether within or without the Township of Kearny, which rights and powers may be exercised in the name of the Township, but at the expense of the Company, and the Company agrees to hold the Township harmless of and from all claims and demands of all persons by reason of the taking and acquiring for the purposes of this contract of all lands, rights, waters, water rights and other property. The Township hereby gives and guarantees to the Company rights of way through its streets for laying pipes and water mains to supply the Township of Kearny and other consumers outside of Kearny Township.

The Township covenants that if it should be found that any powers or rights held or possessed or that may hereafter be held or possessed

Exhibit P. 4.

by it, whether in respect to the prevention of the pollution of waters or the prevention of injury to any portion of the works constructed for the supply of water or for the punishment of such injury, or otherwise, or for the condemnation of lands, waters or rights, may be advantageously used or exercised for the purposes of this contract, that then the Township will, so far as it has or may acquire the power so to do, put such rights and powers in force and permit the Company, its successors and assigns, so to do, in the name of the Township; provided, however, that in all instances in which said use shall be made at the request of or for the benefit of the Company, its successors or assigns, the expense thereof shall be paid by the Company, and the Township shall be lawfully indemnified from any loss or damage by reason thereof.

And the Township hereby designates the following public highways and roads wherein may be laid the Company's water mains for the supply of consumers outside of Kearny Township, to wit:

1. Kearny avenue from the north to the south line of Kearny Township.

2. The Newark and Belleville Road from the thread of the Passaic River to the junction of said road with the Newark and New York Turnpike.

3. The Newark and New York Turnpike from the thread of the Hackensack River to the Harrison town line so far as the Township now has or may have power to grant rights in the same.

And the Township grants to the Company the right, license and privilege, irrevocable, to lay

Exhibit P. 4.

and place under the surface of said avenue and roads (so far as the township has power to do so) one or more water mains for the purpose aforesaid, the said mains to be placed not less than three feet below the surface of said avenue and roads respectively; on Kearny avenue the same to be laid under the roadway and within ten feet of the easterly curbline; on the Newark and Belleville road and on the Newark and New York Turnpike, to be laid on the southerly side of the road and within the southerly third of the width thereof respectively; said mains to be so laid as not unnecessarily to interfere with existing pipes; and the Company in laying the same to promptly restore the surface of the avenue and roads to as good condition as the same was before the laying of the mains and shall always maintain said mains in good condition and promptly repair the surface whenever they have occasion to disturb the same for access to said mains.

(7) The Company agrees to furnish the Township with all plans, details and working drawings as the work progresses under this contract, and the Township, through its Township surveyor, shall have the right to inspect all work performed and materials furnished by the Company.

(8) The Company agrees to complete the work and begin the delivery of water within six months from the date of this contract, but any time lost by reason of strikes, accidents, litigations or other causes unavoidable or beyond the control of the Company shall not be computed within said six months, but shall be added thereto.

(9) For every day's delay in the completion of the work beyond the term of the contract, the Company shall pay to the Township the sum of $100 per day as liquidated damages and not by way of penalty. It being understood that time lost as above stated, by strikes, accidents, litigations or other delays unavoidable or beyond the control of the Company are not to be computed within said six months.

(10) The Company hereby guarantees a continuous supply of good and wholesome water for all the terms for which the contract shall be made, suitable and sufficient for the purposes aforesaid.

(11) The parties hereto agree that the specifications hereto annexed and upon which the Company made its proposal to the Township for the supply of water shall be and are hereby made a part of this contract.

In testimony whereof the said Township has caused these presents to be signed by the Chairman of its Board of Township Committee and its seal to be hereto affixed and attested by its Clerk, and said Company has caused these presents to be signed by its Vice President and its common seal to be hereto affixed and attested by its Secretary the day and year first above written.

CHARLES ENGELSTADTER,
(Seal) *Chairman.*

Attest:
GABRIEL REID,
Township Clerk.

THE EAST JERSEY WATER COMPANY,
By HENRY S. DRINKER,
(Seal) *Vice President.*

Attest:
D. G. BAIRD,
Secretary.

Exhibit P. 5.

Supplemental Contract made this fourteenth day of February eighteen hundred and ninety-six, between the East Jersey Water Company, party of the first part, and the Board of Township Committee of the Township of Kearny, party of the second part, witnesseth:

WHEREAS, The parties hereto entered into a written contract dated June 29th, 1895, whereby the Company was to furnish to said Township a supply of water and to begin to deliver the same within six months after the date of the contract, and to continue the delivery for a term of fifteen years thereafter;

AND WHEREAS, The Company has given the Township notice that it has obtained a supply of water and has the same now ready to deliver to the Township;

AND WHEREAS, The Township has no water main of its own into which to receive the said water at the corner of Kearney and Belleville avenue as provided in said contract, but must hereafter make provision for such a main;

Now it is mutually agreed between the parties that the time for the commencement of the delivery of said water shall be June 29th, 1897, and the delivery thereof shall continue thereafter for thirteen and a half years, that is to say, until the 29th day of December, nineteen hundred and ten; provided, that if said Township shall before June 29th, 1897, build a water main or a water main shall be built by said Company available for the purpose, or a water main shall otherwise be constructed which shall be available to the Township for the purpose, then the delivery of water shall commence as soon as such main is

completed and available and shall continue until December 29th, 1910; in all other respects the said contract is hereby ratified and confirmed.

If the company shall on or before June 29th, 1897, make a contract with the Town of Harrison to supply that town with water whereby the company is to provide a water main for the Town of Harrison that the Company can control, then the Township of Kearney, may, at its option, receive the water through that main instead of receiving the same at the corner of Kearney and Belleville avenues as above mentioned; such option to be exercised on or before June 29th, 1897.

In witness whereof, the said township has cause these presents to be signed by the chairman of its Board of Township Committee and its seal to be hereto affixed and attested by its clerk and said company has caused these presents to be signed by its Vice President and its common seal to be hereto affixed and attested by its secretary the day and year first above written.

(Signed) Chas. F. Englestader,
Chairman, Board of Township Committee,
Kearney Township, Hudson Co., N. J.

Attest:

Gabriel B. Reid,
Township Clerk.

East Jersey Water Company,
By Henry S. Drinker,
Vice President.

(Seal)

Attest:

D. G. Baird,
Secretary.

June 17th, 1897.

It is hereby mutually agreed that the time for the commencement of the delivery of water under the contract of June 29, 1895, be further extended to September 29th, 1897, and that the delivery shall continue thereafter until December 29, 1910.

Wm. Bardsley,
Clerk of Township Committee.

Attest:

David Davies,
(Seal) *Clerk.*

Exhibit P. 6.

Supplemental Contract made this fourteenth day of June, A. D. 1898, between the East Jersey Water Company, party of the first part, and the Board of the Township Committee of the Township of Kearny, party of the second part, witnesseth:

Whereas, The parties hereto entered into a written contract dated June 29th, 1895, whereby the company was to furnish a supply of water and begin to deliver the same within six months after the date of the contract, and to continue the delivery for a term of fifteen years thereafter; and whereas, notwithstanding the company had the water ready for delivery and gave the township due notice thereof, yet the township not being ready to take the same, requested a postponement of the time of the beginning of the delivery of said water, to which the company consented and a supplemental agreement was accordingly made on February 14th, 1896, and a still further extension was

made by endorsement thereon; and whereas, the township has no water main of its own into which to receive said water, at the corner of Kearny and Belleville avenues as provided in said original contract, but must hereafter make provision for such a main;

It is hereby mutually agreed between the parties that the time for the commencement of the delivery of said water shall be June 29th, 1900, and the delivery thereof shall continue thereafter until the 29th day of December, 1910, provided, that if the township shall before said twenty-ninth day of June, 1900, build a water main, or a water main shall be built by said company available for the purpose, or a water main shall otherwise be constructed which shall be available to the township for the purpose, then the delivery of water shall commence as soon as such main is completed and available and shall continue until December 29th, 1910. In all respects the original contract of June 29th, 1895, is hereby ratified and confirmed.

If the Company shall on or before June 29th, 1900, make a contract with the Town of Harrison to supply that town with water whereby the Company is to provide a water main for the Town of Harrison that the Company can control, then the Township of Kearny may, at its option, receive the water through that main instead of receiving the same at the corner of Kearny avenue and Belleville avenue as above mentioned; such option to be exercised on or before June 29th, 1900.

In witness whereof the said Township has caused these presents to be signed by the chairman of its Board of Township Committee and its seal to be hereto affixed and attested by its Clerk

and said company has caused these presents to be signed by its Vice-President and its common seal to be hereto affixed and attested by its secretary the day and year first above written.

(Signed) William J. Gorsuch,
Chairman, Board of Township Committee,
Kearny Township, Hudson Co., N. J.

Attest:

James F. Kelly,
Township Clerk.

East Jersey Water Company,
By Henry S. Drinker,
Vice-President.

Attest:

Albert P. Fisher,
(Seal) *Secretary.*

Exhibit P. 7.

Assignment of Kearny Contract by East Jersey Water Company to the New Jersey Suburban Water Company and the New York and New Jersey Water Company.

This indenture of assignment, made the first day of July, nineteen hundred and three, between East Jersey Water Company, a corporation of the State of New Jersey, party of the first party, and New Jersey Suburban Water Company and New York and New Jersey Water Company, corporations of said State, party of the second part.

Whereas, The East Jersey Water Company entered into a contract with the Board of Township Committee of the Township of Kearny, a municipal corporation of New Jersey, bearing date June 29th, eighteen hundred

Exhibit P. 7.

and ninety-five, providing, among other things, for a supply of water by the East Jersey Water Company to said Township for the term of fifteen years, the same to be delivered at the corner of Kearny avenue and Belleville Turnpike Road in the Township of Kearny, Hudson County, New Jersey, as by reference thereto will more fully appear.

Now this indenture witnesseth, that the party of the first part in consideration of one dollar and other valuable consideration paid by the party of the second part, the receipt whereof is hereby acknowledged, hath assigned, transferred, conveyed and set over unto the party of the second part, their successors and assigns, the right and privilege in said contract contained to obtain and supply to said Township water for the portion of the term of fifteen years therein mentioned which now remains unexpired, and the right to receive from the Township payment therefor at the time and in accordance with the terms of said contract, and subject to the conditions therein mentioned; together with all the rights contained in said contract hereafter to construct, lay and maintain any further water mains and other fixtures and appliances necessary for the supply of said water to said Township under the terms of said contract.

And the party of the second part, jointly and severally, do covenant and agree to and with the party of the first part, that they will carry out and fulfill the terms of said contract for the supply of water to said Township, and will indemnify and hold harmless the Township as therein provided and set forth, as fully as the party of the first part, is, by the terms of said contract, bounden.

Exhibit P. 7.

It is understood, however, that they may consent to a cancellation of all their right title and interest in said contract and all the terms thereof, by agreement with the Town of Kearny, on the making of a new contract between either of them and said town for a supply of water for a longer term of years.

In testimony whereof, the parties to these presents have caused their respective common seals to be hereto affixed and duly attested and these presents to be signed and delivered by their appropriate executive officers, the day and year first above written.

EAST JERSEY WATER COMPANY,
(Seal) By EDMUND LEB GARDNER,
Vice-President.

Attest:
ALBERT P. FISHER,
Secretary.

NEW JERSEY SUBURBAN WATER COMPANY,
(Seal) By T. A. BEALL,
President.

Attest:
J. WILLIAM GRIFFIN,
Secretary.

NEW YORK AND NEW JERSEY WATER COMPANY,
(Seal) By T. A. BEALL,
President.

Attest:
JOSEPH H. BEALL,
Secretary.

Exhibit P. 8.

Schedule "E", Annexed to Bill

AGREEMENT BETWEEN EAST JERSEY WATER COMPANY AND THE NEW YORK AND NEW JERSEY WATER COMPANY, DATED MAY 29th, 1902.

AN AGREEMENT made this twenty-ninth day of May A. D., 1902. between THE EAST JERSEY WATER COMPANY, party of the first part, and THE NEW YORK & NEW JERSEY WATER COMPANY, party of the second part, both said companies being corporations of the State of New Jersey.

WITNESSETH AS FOLLOWS:

WHEREAS, by the agreement made between the parties hereto bearing date the 12th day of July, 1895, it was in the last clause of paragraph four provided that "No water shall be sold by this Company (meaning the New York & New Jersey Water Company) outside the City of Bayonne or Staten Island in the State of New York, except by further agreement made and had in writing between the parties hereto."

AND WHEREAS, it has been deemed in the interests of both parties to modify said clause;

NOW THEREFORE, it is agreed between the parties hereto that the said party of the second part may sell and deliver water from their pipe line to any person, corporation or municipality for use within Hudson County, upon the following terms and conditions, to wit:

First. It is understood and agreed that all the water sold under this agreement shall be sold directly to the consumer and in no case shall be sold for distribution or resold, except that in case of sale of water to a municipality, it may be

distributed and resold by said municipality to its inhabitants, and that in the event of sale of water by the party of the second part to a railroad company, it may be resold by said railroad company to any other railroad company where there is a joint trackage or joint terminal arrangement; that the same shall be sold by meter measurement, the meters to be satisfactory to the party of the first part both as to make and condition; and the party of the first part shall have full authority and opportunity to examine and read the meters through which the water sold under this agreement is measured, and also the records kept thereof, at all reasonable times.

Second. It is further agreed that all water taken under this agreement shall be billed to the consumer at least every three months, payable by said consumer within thirty days thereafter without rebate, and whenever a bill for water is drawn, a copy of such bill shall at the same time be made and sent to the party of the first part.

Third. It is further agreed that in all cases the party of the second part shall lay or cause to be laid all pipes from their present 30″ conduit to the proposed consumer, and shall pay, or cause to be paid the costs of said pipes, the cost of laying same, the cost of meters, and all other expenses, including rights of way; if it shall seem expedient to cause the proposed consumer to lay said pipe, or to pay the cost of either the pipe, right of way, or meter, the price of the water delivered to such consumer shall not be less than the average price at which the same is delivered to other consumers consuming approximately the same amount of water, and who do not pay for such improvements, save and except upon the approval of the party of the first part.

Exhibit P. 8.

Fourth. It is understood and agreed that if any bill for water shall have become due to the party of the second part and remain unpaid for sixty days, that upon demand of the party of the first part and a tender by them to the party of the second part of the share of said party of the second part in said bill if collected, said party of the second part will assign said overdue bill or claim to the party of the first part, accepting their proportion of said bill as their full share of the same, and will further assist the party of the first part in the collection of the same by furnishing their records and the testimony of their employees without charge.

Fifth. It is further agreed that the combined readings of all the meters used by the New York and New Jersey Water Company, including the Bayonne meters, shall every six months be compared with the readings of the meters of the East Jersey Water Company, and if these combined readings shall show a delivery of water out of the main or mains of the New York and New Jersey Water Company less in amount than the readings of the meter of the East Jersey Water Company measuring the delivery of water into the main of the New York and New Jersey Water Company at Kearny of more than one per cent., then the amount in excess of one per cent shall be paid for by the New York and New Jersey Water Company to the East Jersey Water Company at thirty dollars per million gallons within thirty days of the date of such comparison; it being the intent of this agreement that the party of the second part shall pay the party of the first part for all waste or loss of water between the meter of the party of the first part and the meters by which the water is billed for the party of the second part, except one per cent as above expressed.

Exhibit P. 8.

Sixth. That the party of the second part shall pay to the party of the first part for all water billed to its consumers under this agreement, the sum of thirty dollars per million gallons, and in addition thereto one-half the sum per million gallons at which said water is billed in excess of thirty dollars per million gallons. (For example, if the water is billed at $100 per million gallons, the party of the first part shall be paid by the party of the second part $30 per million gallons and one-half of $70 per million gallons, making a total of $65 per million gallons, and the balance of said bill shall be retained by the party of the second part as full compensation for conveying the water from the meter of the party of the first part, delivering the same to its consumers, including all costs of installation of plant, maintenance of same, collection of revenue, and all other charges and expenses of every kind.) The party of the second part agrees to pay the above expressed proportion of water bills immediately upon the receipt of the amount of the same or any portion thereof, and the party of the first part agrees to accept said sums in full payment for the delivery to the party of the second part into its pipe line at Kearney Avenue of the water so billed.

Seventh. It is further understood and agreed that no water shall be sold at a less price than sixty dollars per million gallons, except by mutual agreement between the parties hereto.

Eighth. The party of the second part agrees to take all the water required for their consumers from the party of the first part, and in good faith to carry out the terms of their contract by seeking customers and furnishing the same with water if the proportion of revenue accuing

to the second party shall equal 15% annually on the actual cost of additional pipe, cost of laying, and meters necessary to reach each individual consumer.

Ninth. It is further agreed between the parties hereto that the party of the first part shall not be liable to the party of the second part, or to any other party through failure to deliver water under this contract, when such failure is for the reason that the party of the first part does not possess the power of eminent domain; and the party of the first part shall bear no expenses by reason of this agreement, except the cost of furnishing and delivering the water to be sold under this agreement into the pipe of the party of the second part at Kearney Avenue.

Tenth: The party of the first part agrees not to exercise its right to tap the main of the party of the second part under clause six of the said agreement of July 12th, 1895, so long as the party of the second part shall in good faith prosecute the sale of water as above expressed.

Eleventh. It is further understood and agreed between the parties hereto that the agreement bearing date the 19th day of June, 1901, between the parties hereto is cancelled. but the various other agreements between the parties hereto are in no wise changed or altered except as to the modification of the last clause of paragraph four of the contract of July 12th, 1895, as herein expressed.

In Witness Whereof the said parties hereto have by their proper officers signed these presents and caused their corporate seals, duly attested, to be hereto affixed, the day and year first above written.

THE EAST JERSEY WATER COMPANY,
By EDMUND LEB. GARDINER
Vice-President

(SEAL)

Attest:
ALBERT P. FISHER,
Secretary.

THE NEW YORK & NEW JERSEY WATER COMPANY
By T. A. BEALL,
President

(SEAL)

Attest:
JOSEPH H. BEALL,
Secretary.

Exhibit P. 9.

CONTRACT OF THE TOWN OF KEARNY WITH THE NEW YORK & NEW JERSEY WATER COMPANY AND THE NEW JERSEY SUBURBAN WATER COMPANY.

At a meeting of the Board of Directors of the New York & New Jersey Water Company held August 16, 1904, the following preamble and resolutions were unanimously adopted:

WHEREAS, There has been submitted to this Board a certain preamble and resolutions adopted August 15, 1904, by the Town Council of the Town of Kearny, which preamble and resolutions are in words and figures following:

Exhibit P. 9.

"WHEREAS, The Town of Kearny is now receiving its supply of water for the uses of its inhabitants and for public uses from the New Jersey Suburban and the New York & New Jersey Water Companies under and pursuant to the terms and conditions of a certain contract made and entered into between the East Jersey Water Company and the Board of Township Committee of the Township of Kearney, dated June 29th, 1895, which said contract was thereafter extended and ratified by mutual agreements between the parties thereto on February 14, 1896, June 17, 1897, and June 14, 1898, and which said contract was assigned by the East Jersey Water Company of the New Jersey Suburban Water Company and the New York & New Jersey Water Company by instrument in writing dated July 1, 1903, of which assignment due notice was given to the Town of Kearney; and

"WHEREAS, Under and by the provisions of the said contract, the Town of Kearney is obliged to pay for the water so supplied the sum of $90 per million gallons, and is also obliged to furnish a main of its own into which to receive the said water at the corner of Kearney and Belleville avenues, in the town of Kearney; and

"WHEREAS, It is proposed by the Town of Kearny that the New Jersey Suburban Water Company and The New York & New Jersey Water Companies shall reduce the price for water now being supplied to this town under and pursuant to the aforementioned contract, from $90 to $82.50 per million gallons, the price now being paid by the Town of Harrison, under contract made by it with the New Jersey Suburban Water Company, which has been sustained by a recent decision of the Supreme Court; and shall relieve

Exhibit P. 9.

and protect the town from its existing obligation to construct and provide a main from Belleville and Kearney avenues to receive and distribute its water supply and shall tap the present 30-inch main of the New York & New Jersey Water Company in Belleville Turnpike and connect the same with the town's distributing system in Elm street and Grand Place, in order to furnish to this town better fire pressure and protection, in consideration of the extension of the aforementioned contract of June 29, 1895, for a period of ten years from the date of the expiration thereof.

"*Now, therefore, be it Resolved,* That the contract made June 29, 1895, between the East Jersey Water Company and the Board of Township Committee of the Township of Kearney, together with the supplemental contracts between the same parties made February 14, 1896, June 17, 1897, and June 14, 1898, assigned as hereinabove recited, to the New Jersey Suburban and The New York & New Jersey Water Companies, be and the same are hereby ratified and confirmed, and the term thereof extended for a period of ten years from the date of the expiration of the aforementioned contracts as in their terms provided; that is, December 29, 1910; in consideration of which extensions the price for the water to be delivered under the said contracts is to be reduced from $90 to $82.50 per million gallons, beginning with the acceptance of this resolution, and the Town of Kearney is to be relieved from the obligation heretofore imposed upon it to construct or provide a main for the reception of its water supply at Belleville and Kearney avenues, and the places of delivery of water so to be supplied under said

contract from and after the completion of the new mains and pipes herein authorized, are hereby designated to be the meter vaults of the Town of Kearney at the junction of Kearney and Midland, Bergen and Johnston avenues, and by metered connections with the mains of the town at the intersections of the Belleville Turnpike Road with Elm street and Grand Place; and the right is hereby granted to the New Jersey Suburban Water Company and The New York & New Jersey Water Company, their successors and assigns, to lay, maintain and operate such pipe or pipes, with all necessary appurtenances, in Belleville Turnpike Road and in Kearney avenue, as may be necessary to carry out the purposes of said contract hereby extended, and of this contract on the terms set forth in the contract hereby extended and on the following additional terms: The New Jersey Suburban Water Company and The New York & New Jersey Water Company may lay a main in Kearney avenue not exceeding thirty-six inches in diameter, extending from the said thirty-inch main of the New York & New Jersey Water Company in Belleville Turnpike southerly in Kearney avenue to the line of the town of Harrison, and to be laid on the easterly side of the avenue under the roadway, and within ten feet of the curb line, and at least 3 feet below the surface of the avenue; at the junction of Belleville Turnpike Road with Grand Place, a pipe six inches in diameter shall be laid from said 30-inch pipe in Belleville road across Kearney avenue and along the Belleville turnpike road to and connected with the north end of the town's main in Grand Place, and a meter shall be placed and maintained at or near Belleville turnpike road and Grand Place to

measure water delivered through such connection; at the intersection of Elm street and Belleville Turnpike road a similar connection shall be made from the 30-inch main of the water company to the 6-inch main of the town and a similar meter connection be established. The water company shall promptly restore the surface of the ground, together with the pavement, if disturbed, to as good condition as it was before the laying of the pipes and meter, and shall keep the same in order and repair until the ground disturbed is entirely settled, and shall properly guard all openings made by them in the highways and be liable for damages from their negligence in opening same and in the laying of the pipes, and shall indemnify the town from all loss by reason thereof, and shall prosecute their work diligently with a view to keep open only such portion of the street as is reasonably necessary to properly prosecute the work; the construction referred to shall be completed within one year from the date hereof, to which period, however, shall be added the time, if any, during which the construction shall be delayed by litigation or unfavorable accident.

"And no water companies shall agree to provide filtered water, and to permit additional metered supply main connections (not less than six inches in diameter each) with their mains, at any intersecting street, or on the meadows where required for manufacturing purposes, and the companies shall agree not to sell water for consumption or use within the Town of Kearney other than to the town, except to the Pennsylvania Railroad at the meadow shops, or in any case where the rights of way or existing contract or charter obligations of the water companies

shall require such delivery; and if, during the term of the contract aforesaid, the said water companies shall furnish water at a lower price than is herein provided, to any other municipality, to reach which they have to furnish the same through mains laid in our town, they shall furnish the Town of Kearney water aforesaid at the same price during the time remaining of the said contract with the Town of Kearney, at which they furnish such other municipality.

"*Resolved,* That these resolutions shall take effect when they are accepted by the New Jersey Suburban Water Company and the New York and New Jersey Water Company by an instrument in writing duly executed by said companies and filed with the Clerk of the Town of Kearny, and, when so accepted, they shall constitute a contract between the Town of Kearny and the said water companies, their successors and assigns."

Now Therefore be it Resolved, That this company hereby accepts the foregoing resolutions in all their terms, and hereby accepts the foregoing resolutions in all the conditions thereof on its part, and agrees that the said resolutions and this acceptance thereof shall constitute a contract between the Town of Kearney and the New Jersey Suburban Water Company and this company, as in said resolution provided.

Resolved, That the president and secretary of this company be and they are hereby authorized and directed to file a copy of these resolutions of acceptance, duly executed by the company under its corporate seal, in the office of the Town Clerk,

the Town Council or the Town of Kearney held date of the passage and adoption of the aforementioned resolutions.

THE NEW YORK AND NEW JERSEY WATER COMPANY,
By T. A. BEALL, *President.*

(Seal) Attest:
JOSEPH H. BEALL, *Secretary.*

I hereby certify the foregoing to be a correct copy of a resolution passed at a regular meeting of Monday, August 15, 1904.

THEO. WILDMAN,
Town Clerk.

(Town Seal.)

Exhibit P. 10.

CONTRACT BETWEEN THE TOWN OF HARRISON AND THE NEW JERSEY SUBURBAN WATER COMPANY.

This agreement made this 15th day of September, nineteen hundred and three by and between the New Jersey Suburban Water Company, a corporation duly organized and existing by virtue of the laws of the State of New Jersey, party of the first part hereinafter referred to as the company, and the Town of Harrison in the County of Hudson, being a municipal corporation of the state of New Jersey, party of the second part, hereinafter referred to as the town, witnesseth:

First. The company agrees to obtain and supply to the town and the town agrees to take from the company, for and during the continuous term of fifteen years commencing six months from and after the date hereof, or at such earlier date as

the company may be able to furnish said water (with the option to the town to extend this contract for a second period of ten years), an entire and adequate supply of water for the inhabitants of said town, which shall be pure and wholesome and shall within one year be filtered water, and to be supplied in quantities sufficient for the purposes of domestic use in said town for the extinguishing of fires, and for all other lawful uses and purposes for which the town may require or desire to have water and for which the town may lawfully use, sell or supply water; all the water required shall be delivered by pumping or gravity at the junction of Serman avenue and Fourth street, in the town of Harrison, county of Hudson and state of New Jersey, at a head equal to that under which the said town is now receiving its water supply.

Second. The company agrees to furnish and deliver and the town agrees to take and pay for, as stipulated in this contract, all the water necessary and convenient for the uses and purposes aforesaid.

Third. Payments by such town for water supplied under this contract shall be made by the proper disbursing officer or officers of the town in lawful money, quarter yearly on Thursday of the second week of each and every quarter after the delivery of water has commenced, for all the water so delivered during the preceding quarter, according to meter register upon the certificate of the superintendent of the company certifying to the quantity of water delivered and also certified to by the water surveyor of the town of Harrison. In case of dispute the town is to pay presently a sum equal to the amount which is paid for the corresponding quarter of the year

last past, and the disputed amount is to be settled by arbitration, one arbitrator being named by the town, one by the company, and a third to be selected by the two so chosen, and a decision of a majority of these arbitrators shall be final. The company is to carefully measure all water delivered under this contract by meter set for that purpose and the town, by its engineers and proper officers, shall at all times have reasonable opportunity to inspect and examine the meter and appliances for measurement.

The price to be paid for all water delivered by the company to the town during the existence of this contract shall be at the rate of $82.50 per 1,000,000 gallons.

Fourth. The town covenants that, if it should be found that any powers or rights held or possessed, or that may hereafter be held or possessed by it, whether in respect to the prevention of injury to any portion of the works constructed for the supply of water, or for the punishment of such injury, or otherwise, or for the condemnation of lands, waters or rights, may be advantageously used or exercised for the purpose of this contract, that then the town will, so far as it has or may acquire the power to do so, put such rights and powers in force or permit the company, its successors or assigns, so to do in the name of the town; *provided however,* that in all instances in which said use shall be made at the request of or for the benefit of the company, its successors or assigns, the expenses thereof shall be paid by the company and the town shall be lawfully indemnified from any loss or damage by reason thereof.

The town hereby grants to the company such rights of way through its streets, for a water main as may be necessary to supply the Town of Harrison under the contract, said main to be so laid as not unnecessarily to interfere with existing pipes, and the company, in laying the same, to promptly restore the surface of the streets to as good condition as the same was before the laying of the main, and shall always maintain said main in good condition and promptly repair the surface whenever they have occasion to disturb the same for access to said main.

Fifth. The company agrees to complete the work and begin the delivery of water within six months from the date of this contract, but any time lost by reason of strikes, accidents, litigation or other cause, unavoidable or beyond the control of the company, shall not be computed within the six months, but shall be added thereto.

Sixth. The provisions of this contract shall be binding upon and apply to the successors and assigns of the parties hereto.

NEW JERSEY SUBURBAN WATER COMPANY,
(Seal) TURNER A. BEALL,
President.

Attest:
J. WILLIAM GRIFFIN,
Secretary.

THE TOWN OF HARRISON,
(Seal) PETER SULLIVAN,
President.

Attest:
B. P. WALSH,
Town Clerk.

Exhibit P. 11.

CONTRACT BETWEEN THE SUBURBAN WATER COMPANY AND THE BOROUGH OF EAST NEWARK.

This agreement made this 31st day of August, in the year of our Lord one thousand nine hundred and six between the New Jersey Suburban Water Company, party of the first part, hereinafter called the Company, and the Mayor and Council of the Borough of East Newark, party of the second part, hereinafter called the Borough.

Witnesseth, that the said Company and the said Borough, in consideration of the mutual promises and agreements hereinafter contained, and of the sum of one dollar by each to the other in hand well and truly paid, the receipt whereof is hereby acknowledged, do agree as follows:

1. The said Company agrees to furnish to the said Borough an entire and adequate supply of water for the inhabitants of said Borough, which shall be pure and wholesome filtered water, and shall be supplied in quantites sufficient for the purpose of domestic use and the use in the Borough, for the extinguishing of fires, and all other uses and purposes for which the Borough may require or desire to have water, or may use, sell or supply water for, and during the continuous term of five years, commencing immediately, at and for the price of eighty-two dollars and fifty cents ($82.50) per million gallons; provided, however, that if the said Company shall sell water to any other municipality at a lower rate than eighty-two dollars and fifty cents ($82.50) per million gallons, then the price to be paid for water by the Borough to the Company shall at once be reduced to and shall be no higher than

Exhibit P. 11.

the lower price at which water is furnished to such other municipality by the Company.

2. The said Borough agrees to receive its water supply from said Company and pay for the same at the rate aforesaid, and as hereinbefore and hereinafter provided.

3. That the said water shall be delivered by the Company to the Borough by pumping or gravity from the thirty-inch pipe line of the Company at or near the junction of Sherman avenue and Fourth street or at such other point as may thereafter be agreed upon by the said Company and the said Borough at a head equal to that under which the Borough is now receiving its water supply.

4. That the Company shall begin the delivery of water upon the completion of the necessary connections therefor between the main of the Company and the main of the Borough, at the place aforesaid, which connection the said Company agrees to make immediately, and which connection shall be made at the cost of the said Company and under the supervision and direction of the Borough authorities.

5. That the Borough shall carefully measure the water delivered under this contract by the present meter or such other meter as may be set by it for that purpose, and joint readings shall be taken by the proper officer of the Borough and a representative of the Company, on the first day of every month; and payment by the Borough for water supplied under said contract shall be made by the proper disbursing officer or officers of the Borough in lawful money, on the order of the Mayor and council according to the measure-

Exhibit P. 11.

ments hereinbefore provided for, on the fifteenth days of July and January in each year, for all of the water delivered during the half year preceding the first days of said months of July and January.

6. That in case it shall be determined by the Court of Errors and Appeals that a certain contract for water supply heretofore made by and between the said Borough and the authorities of the City of Jersey City is valid, then the provisions of this contract shall be null and void and the obligation of the said Borought to accept and pay for water under this contract shall thereupon immediately cease and determine.

In witness whereof the said Company has caused this agreement to be signed by its president and its common corporate seal to be hereto affixed and attested by its secretary, and the said Borough has caused this agreement to be signed by its Mayor and its corporate seal to be hereto affixed and attested by its Borough Clerk the day and year first above written.

THE NEW JERSEY SUBURBAN WATER COMPANY,
By T. A. BEALL,
President.

(Seal)

Attest:
W. N. LEONARD,
Secretary.

EDWARD KENNY,
Mayor of East Newark.

Attest:
(Seal)

WILLIAM HEALEY,
Borough Clerk.

Exhibit P. 12.

THIS AGREEMENT, made this 20th day of March, 1906, by and between the NEW JERSEY SUBURBAN WATER COMPANY, a corporation of the State of New Jersey, hereinafter called the *Water Company,* party of the first part, and THE CLARK THREAD COMPANY and THE CLARK MILE-END SPOOL COTTON COMPANY, both being corporations of the State of New Jersey, hereinafter called the Thread Companies, parties of the second part, WITNESSETH:

I. The Water Company agrees to obtain and supply to the Thread Companies, and the Thread Companies agree to take from the Water Company, for and during the continuous term of Fifteen years, commencing three months from and after the date hereof, or at such later date as the pipe line and connections for the delivery of such water shall have been complete (with the option of the Thread Companies to extend this contract for a second period of ten years) an adequate supply of pure, wholesome, filtered water for the uses of the Clark and Mile-End Thread Mills, located in the Borough of East Newark, Hudson County, New Jersey, and any additions thereto or extensions thereof; and also for the Greenville Thread Works, near the Morris Canal and adjacent to the pipe lines of the Water Company and any other mills or works of the Thread Companies to which it may be desirable or convenient for them to extend such supply of water from either of the aforementioned mills. Such water shall be supplied in quantites sufficient for all the needs and requirements of the said mills, and for all the lawful uses and purposes for which the said mills may require or desire to have water.

II. The Thread Companies agree to purchase from the Water Company all the water they shall require for all the purposes of the said mills, except such as they may obtain from the Passaic River at points adjacent to said mills or from wells on their own premises, and to pay therefore the price of $82.50 per million gallons, metered measurement, which payments shall be made quarterly during each and every year of this contract, or any renewal thereof, on the 10th day of January, April, July and October in each year for the water delivered during the quarter next preceding the first day of said month. In case of any dispute as to the amount due from the Thread Companies to the Water Company for water supplied during any quarter, the Thread Companies shall pay presently a sum equal to the amount paid by them for water for the corresponding period of the year last past, and the disputed amount shall be settled by arbitration, one arbitrator to be named by the Thread Companies, one by the Water Company and a third to be selected by the two so chosen, and the decision of the majority of these arbitrators shall be final.

III. The provisions of this contract shall be binding upon and apply to the successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have caused these presents to be signed by their proper officers, duly authorized thereto, and their

corporate seals to be hereunto affixed by like authority, the day and year first above written.

NEW JERSEY SUBURBAN WATER COMPANY,
(Signed) T. A. BEALL,
President.

(Seal)
Attest:
W. N. LEONARD,
Secretary.

THE CLARK THREAD CO.,
W. CAMPBELL CLARK,
Prest.

W. G. SYMINGSON, *Secy.*
The Clark Thread Co.

THE CLARK MILE END SPOOL COTTON CO.,
W. CAMPBELL CLARK,
Prest.

MEMORANDUM OF AGREEMENT, made this 16th day of April, 1906, by and between the NEW JERSEY SUBURBAN WATER COMPANY, a corporation of the State of New Jersey, hereinafter called the Water Company, party of the first part, and THE CLARK THREAD COMPANY and THE CLARK MILE-END SPOOL COTTON COMPANY, both being corporations of the State of New Jersey, hereinafter called the *Thread Companies,* parties of the second part, WITNESSETH:

WHEREAS an agreement was entered into under date of March 20th, 1906, between the parties hereto, whereby the Water Company undertook to furnish the Thread Companies all the water they shall require for the use of their mills at East Newark, New Jersey, and the Thread Companies agreed to purchase such water and to pay for the

same at and after the rate if $82.50 per million gallons, metered measurement, save such water as the Thread Companies shall be able to obtain from their own wells or from the Passaic River at points adjacent to their mills; and

WHEREAS it now appears to be desirable that the Thread Companies shall construct and maintain the necessary pipe line to connect their mills with the present mains of the Water Company in the town of Harrison, receiving a rebate on said water rate on account thereof;

NOW THEREFORE it is further agreed between the parties as follows:

I. The Thread Companies will lay and construct a pipe line from their mills in the said Borough of East Newark to a point in the 30-inch main of the Water Company at Fourth street and Sherman avenue in the town of Harrison, or at such other point as may be agreed upon, said pipe line to be of cast iron of standard weight and construction and to be not less than 10 inches in diameter. The Thread Companies will also set upon the said pipe line at their premises or at the premises of one of them a Venturi or other standard meter of a size and character approved by the Water Company for the measurement of the water consumed under said contract. The said pipe line and meter shall be maintained and operated by the Thread Companies, but the Water Company shall have access to them at all times for the purpose of examination, testing and verification. The Thread Companies will further upon notice from the Water Company promptly repair any leaks upon said pipe line or will pay for the cost of such repairs if made by the Water Company and for all water lost upon account of leakage. In case

at any time there is reason to believe that the meter is out of order or not properly registering the amount of water delivered, either party shall have the right to have the same tested and repaired but the cost thereof shall be defrayed by the Thread Companies. The Thread Companies will also at their own expense procure the necessary rights of way or municipal consents for the laying of the said pipe line to connect their mills with the main of the Water Company.

II. In Consideration of the foregoing, the Water Company will pay to the Thread Companies a sum equal to $11.50 per million gallons on all the water delivered by it to the Thread Companies during the term of the aforesaid contract for such delivery or any extension thereof. Said payments shall be made quarterly on the tenth days of January, April, July and October, each year on all water delivered to said Thread Companies during the quarter ending on the last day of the month preceding each of said months; and when and if the Thread Companies shall use said supply of water for any of their mills in addition to those at Greenville and East Newark, the above rebate shall be increased to $12.50 per million gallons on all water delivered by the Water Company to the Thread Companies during the term of the aforesaid contract then unexpired, or any extension thereof.

The provisions of this contract shall be binding upon and apply to the successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have caused these presents to be signed by their proper officers duly authorized thereto and their

corporate seals to be hereunto affixed by like authority, the day and year first above written.

New Jersey Suburban Water Company,

(Seal) (Signed) T. A. Beall,
President.

Attest:
W. N. Leonard,
Secretary.

The Clark Thread Co.,
W. Campbell Clark,
Prest.

W. G. Symingson, *Secy.*
The Clark Thread Co.

The Clark Mile End Spool Cotton Co.,
W. Campbell Clark,
Prest.

James Valentine,
Secretary.
The Clark Mile End Spool
Cotton Co.

This Agreement, made and entered into this 1st day of June, 1906, by and between the Clark Thread Company and Clark Mile End Spool Cotton Company, parties of the first part, and the New Jersey Suburban Water Company, party of the second part, all being corporations of the State of New Jersey, Witnesseth:

Whereas the parties hereto have made and entered into an agreement under date of March 20th, 1906, for the purchase by the parties of the first part from the party of the second part of a supply of water for a period of fifteen years, as by reference to said agreement will more fully

Exhibit P. 12.

appear, which agreement provided for the delivery of said water at the corner of Fourth street and Sherman avenue, in Harrison, New Jersey, and for the procurement by the parties of the first part of necessary municipal consents and right of way for the laying of a 10-inch pipe line to their mills from the 30-inch pipe line of the party of the second part; and

WHEREAS it has been found inexpedient to make connection between said pipes at the point named, and to lay the 10-inch pipe line through the streets of the Borough of East Newark as therein contemplated, and the party of the second part has procured and obtained for the parties of the first part a license agreement from the Erie Railroad Company, permitting the laying of said pipe line for a distance of about 930 feet along the right of way of the said Railroad Company from the Fourth Street Bridge at Harrison to the mills of the parties of the first part in the Borough of East Newark.

NOW THEREFORE, it is mutually covenanted and agreed that if it should become necessary in the future, because of the revocation of such license, to remove the said 10-inch pipe line from the right of way of the Railroad Company, the parties hereto may mutually agree to some other point of delivery for the water under the aforementioned contract; and in case of failure so to agree, and the inability of either of the parties hereto to secure a satisfactory right of way or other means for delivering water into the property of the parties of the first part, the aforementioned contract may be abrogated on three months' notice, without liability, by either party to the other.

Exhibit P. 12.

In Witness Whereof, the parties hereto have caused these presents to be executed by their duly authorized officers, and their corporate seals to be hereunto affixed, the day and year first above written.

THE CLARK THREAD CO.,
W. CAMPBELL CLARK,
Prest.

W. N. LEONARD, *Secy.*
N. J. SUBURBAN WATER COMPANY,

THE CLARK MILE END SPOOL COTTON CO.,
W. CAMPBELL CLARK, *Prest.*

NEW JERSEY SUBURBAN WATER CO.
By T. N. BEALL, *Prest.*

Attest:
W. G. SYMINGSON,
Secretary THE CLARK THREAD CO.

JAMES VALENTINE,
Secretary THE CLARK MILE END SPOOL COTTON CO.
(Seal)

THE CLARK THREAD COMPANY
Newark, New Jersey

March 10, 1921

NEW JERSEY SUBURBAN WATER CO.,
Attention of Mr. Charles A. Dana, President,
30 Church Street, New York City.

Gentlemen:—

Referring to the agreement entered into under date of March 20, 1906, by and between your

Exhibit P. 12.

company and The Clark Thread Company and The Clark Mile-End Spool Cotton Company (referred to therein as the Thread Companies), providing for a supply of water by your company to the Thread Companies for the period of fifteen years therein mentioned with the option on the part of the Thread Companies to extend such agreement for a further period of ten years, which said agreement was thereafter modified by two further agreements entered into between such companies under date of April 16, 1906, and June 1, 1906, we hereby notify you as follows:

1. The Clark Thread Company in the year 1917 acquired and ever since then has been and now is the owner of all the property, assets and business of The Clark Mile-End Spool Cotton Company, including all of the rights of The Clark Mile-End Spool Cotton Company in, to and under said agreements, and each thereof.

2. The Clark Thread Company has elected to exercise and hereby exercised the said option to extend such agreement dated March 20, 1906, as modified by said two later agreements for the second period of ten years mentioned in said agreement dated March 20, 1906.

3. Notice is hereby given you by the said The Clark Thread Company of its election to exercise said option; that it hereby exercises the same, and that it requires the New Jersey Suburban Water Company to perform and comply with all of the terms and conditions of the said agreements and each thereof upon its part to be performed or complied with for and during the said second period of ten years.

Exhibit P. 12.

Kindly notify us promptly of the receipt of this notice, and oblige.

Yours truly,
THE CLARK THREAD CO.
W. CAMPBELL CLARK,
President

50 Church St.

April 9, 1921

THE CLARK THREAD COMPANY,
Newark, New Jersey

Gentlemen:—

We acknowledge receipt of your favor of March 10, 1921, in which you state, that as provided for in Section I of the Agreement dated March 20, 1906, existing between this Company and The Clark Thread Company and the Clark Mile End Spool Cotton Company, you do now exercise:

> "The option to the Thread Companies to extend this contract for a second period of ten years"

We acknowledge receipt from you of this notice that such Thread Companies do exercise the option contained in said contract, and do renew the aforesaid contract for a second period of ten years.

This letter is to be regarded as an acceptance of your election of such option, and to provide for the extension of the contract for a second period of ten years.

Very truly yours,

NEW JERSEY SUBURBAN WATER CO.

President

Exhibit P. 13.

EXTENSION CONTRACT BETWEEN THE TOWN OF HARRISON AND THE NEW JERSEY SUBURBAN WATER COMPANY.

WHEREAS, The Town of Harrison has heretofore, namely, on the 15th day of September, 1903, provided, by contract with the New Jersey Suburban Water Company, for an ample supply of pure and wholesome filtered water in quantities sufficient for purposes of domestic and manufacturing use in this town, for the extinguishing of fires and for all other lawful uses and purposes for which the town may require or desire to have water or may lawfully use, sell or supply water, which contract is for the continuous period of fifteen years, with the option to the town to extend the same for a second period of ten years, and the said contract has been sustained by the Court of Errors and Appeals of New Jersey; and the town has received for nearly five years, and is now receiving an ample, complete and satisfactory supply of water thereunder.

Now Therefore, in order that no reasonable complaint or criticism may be made that the town has not provided a supply of water sufficient in quantity and permanence to meet all the reasonable requirements of the railroads, manufacturers and other consumers located in the Town of Harrison; be it

Resolved, That the Town of Harrison hereby elects to exercise the option reserved to it in the agreement of September 15th, 1903, between the Town of Harrison and the New Jersey Suburban Water Company, to extend the term of said contract for a second period of ten years, and it

does hereby extend the said contract for such period of ten years from the date of the expiration of the first period of fifteen years for which the said contract was made and executed; and that the Town Clerk, and he is hereby directed to transmit to the New Jersey Suburban Water Company a certified copy of this resolution in order that the said company may be duly advised that the Town of Harrison has elected to exercise the option referred to.

This is to certify that this is a true copy of the resolution passed at an adjourned meeting of the common council of the Town of Harrison held June 24th, 1908.

DANIEL B. WALSH,
(SEAL) *Town Clerk.*

DANIEL B. WALSH,
(SEAL) *Town Clerk.*

Exhibit P. 14.

Not printed. It is the original record from the office of the Clerk in Chancery in the case of the City of Paterson *v.* The East Jersey Water Company.

Exhibit P. 15.

RESOLUTIONS OF KEARNY COUNCIL TO AUTHORIZE CONDEMNATION PROCEEDINGS.

WHEREAS, The New York and New Jersey Water Company and the New Jersey Suburban Water Company have given notice to the Town of Kearny that it will be necessary for the Town to procure by consent, or condemn, the right of diversion for the water supply to be furnished under its contract with the Town of Kearny,

dated August 16th, 1904, as against the riparian owners on the Passaic River below Little Falls, where the water is taken through the instrumentality of and by contract with the East Jersey Water Company.

And Whereas, The Town did, by its said contract, agree that if it should be found that any powers or rights of the Town for the condemnation of lands, water or water rights, might be advantageously used or exercised for the purpose of said contract, to put said rights or powers in force, or permit the said Companies, their successors or assigns, so to do, in the name of the Town, but at the expense of the said Companies, the Town to be indemnified for any loss or damage by reason thereof:

Resolved, That the Town of Kearny hereby determines to acquire said right of diversion, namely, the right to divert an average daily amount of two and three-tenths (2.3) million gallons of water per day, in each year, until December 29th, 1920, at Little Falls, on the Passaic River, the same being necessary for the purposes of the said contract, and for the use of the Town of Kearny for public water supply; and if unable to agree with any of the owners of the riparian lands for the said right of diversion, to condemn said right against such owners for the public use aforesaid.

Resolved, That in pursuance of said contract, Richard Roositer, Esq., of Paterson, as agent of the Town of Kearny, is authorized and directed to procure said right by agreement with the riparian owners as to the price of said right of diversion, and where no agreement can be made, to proceed to cause the same to be taken by condemnation in the name of the Town, for the public use aforesaid, but at the cost and expense of the said New York and New Jersey and New Jersey Suburban Water Company.

Resolved, That Collins & Corbin, Attorneys at Law, and Edward Kenny, Esq., Town Attorney, are authorized in the name of the Town, but at the expense of said Companies, to conduct any and all lawful condemnation or other legal proceedings for the acquirement of said right of diversion.

Resolved, That the Town Clerk be and he is hereby authorzed and directed to deliver to the said Companies certified copies of these resolutions.

I hereby certify the foregoing to be a true copy of a resolution adopted at a regular meeting of the Council of the Town of Kearny, held October 26, 1910.

William B. Ross,
Clerk.

Exhibit P. 16.

Contract May 18, 1911, East Jersey Water Company with New York and New Jersey Water Company and New Jersey Suburban Water Company.

This Agreement made this eighteenth day of May, one thousand nine hundred and eleven, between The East Jersey Water Company, party of the first part, and The New York and New Jersey Water Company and The New Jersey Suburban Water Company, parties of the second part, witnesseth:

WHEREAS, The East Jersey Water Company is causing pumping to be done for the parties of the second part of water for their purposes, to wit, the providing of a supply of water to the Town of Kearny under written contracts between the parties hereto, which contracts do not specify the source from which water shall be taken; and

WHEREAS, The water has in fact been obtained for more than ten years last past from the Passaic River at Little Falls, and is now being obtained from that source; and

WHEREAS, The Town of Kearny, by resolution of its Council passed on October 26, 1910, copy whereof is hereto appended and made part hereof, has explicitly designated and indicated the aforesaid source of supply as the source from which it is to take the water for its uses, and has determined to commence and has already commenced condemnation proceedings against certain riparian owners to take said waters in aid of the said parties of the second part, who have contracted to supply it therewith by contract dated August 15th, 1904, to which reference is hereby made; and

WHEREAS, The taking of water at that point requires the acquirement, by agreement or condemnation, of the right against the riparian owners on the Passaic River below that point, and the East Jersey Water Company possesses the water power at Little Falls and has obtained the right of diversion as against the owners of the other water power below Little Falls, so that its consent to the diversion as against the owners of the other water advised that the parties of the second part by virtue of their municipal contracts

with the Town of Kearny possess such rights of diversion as against the State for the use and benefit of said Town of Kearny:

Now, therefore, it is hereby agreed that the supply of water so to be pumped to the parties of the second part shall be taken by the parties of the second part under the authority which they are advised was conferred on them by virtue of their municipal contracts with the Town of Kearny, charters and otherwise from the Passaic River at Little Falls aforesaid, which source is hereby designated for such supply, and the supply shall be continued therefrom during the period of the said contract of August 14, 1905, with the Town of Kearny—the party of the first part being made the agent and the employee of the parties of the second part to use its water power, mains and riparian and other facilities to accomplish the diversion which is authorized by said municipal contracts and to receive per million gallons for the water so delivered through its main into the mains of the parties of the second part the prices prescribed in its contracts as compensation, not for water sold but for services as agent, and for the use of its appliances, water power, mains and property in accomplishing the municipal supply which the party of the first part hereby agrees to use and provide for that purpose; and also agrees to pay all the costs, expenses and awards incident to the condemnation of the water rights for and on behalf of the said Town of Kearny, which water rights are referred to in the said resolutions of such water supply of the Town of Kearny, and that said water rights shall thereupon be and become the property of said Town of Kearny and used for its water supply by the parties of the second part.

Nothing herein contained shall release the party of the first part from its present contract obligations to furnish to the parties of the second part a supply of water sufficient to fulfill the requirements of the existing contract between the parties hereto for the supply of the Town of Kearny from some available source, or from any other obligation or liability to the parties of the second part now existing thereunder or otherwise.

In witness whereof, the parties hereto have caused their common seals to be hereto affixed and these presents to be duly signed and delivered the day and year first above written.

THE EAST JERSEY WATER COMPANY,
By EDMUND LEB. GARDNER,
Vice President.

(L. S.) Attest:
ALBERT P. FISHER,
Secretary.

THE NEW YORK AND NEW JERSEY WATER COMPANY,
By T. A. BEALL,
President.

(L. S.) Attest:
W. N. LEONARD,
Asst. Secretary.

THE NEW JERSEY SUBURBAN WATER COMPANY,
By T. A. BEALL,
President.

(L. S.) Attest:
W. N. LEONARD,
Secretary.

Exhibit P. 16½.

RESOLUTION OF COUNCIL OF EAST NEWARK AUTHORIZING CONDEMNATION PROCEEDINGS.

WHEREAS, The New Jersey Suburban Water Company has given notice to the Borough of East Newark that it will be necessary for the Borough of East Newark to procure by consent, or condemn, the right of diversion for the water supply to be furnished under its contract with the Borough of East Newark, dated August 31st, 1906, as against the riparian owners on the Passaic River below Little Falls, where the water is taken through the instrumentality of and by contract with the East Jersey Water Company;

Resolved, That the Mayor and Council of the Borough of East Newark hereby determines to acquire said right of diversion namely, the right to divert an average daily amount of six hundred thousand (600,000) gallons of water per day, in each year, until August 31st, 1911, at Little Falls, on the Passaic River, the same being necessary for the purposes of the said contract, in all its terms and provisions, and for the use of the Borough of East Newark for public water supply; and if unable to agree with any of the owners of the riparian lands for the said right of diversion, to condemn said right against such owners for the public use aforesaid.

Resolved, That in pursuance of said contract, Terrance H. O'Donnell, Esq., of East Newark, as Agent of the Borough of East Newark, is authorized and directed to procure said right by agreement with the riparian owners as to the price of said right of diversion, and where no agreement can be made, to proceed to cause the

same to be taken by condemnation in the name of the borough, for the public use aforesaid, but at the cost and expense of the said New Jersey Suburban Water Company.

Resolved, That the Borough Clerk be and he is hereby directed to deliver a certified copy of these resolutions to the New Jersey Suburban Water Company, which company shall within ten days after the receipt thereof file with the Borough Clerk its written consent to accept these resolutions and to pay the said costs and expenses of its contract to furnish and provide water to this borough.

Resolved, That Messrs. Collins & Corbin and Davis & Hastings, Attorneys at Law, are authorized, in the name of the borough, but at the expense of said company, to conduct any and all lawful condemnation or other legal proceedings for the acquirement of said right of diversion.

Adopted March 8th, 1911. Approved March 8th, 1911.

CORNELIUS A. MCGLENNON,
Mayor.

A true copy.
Attest:
(SEAL) THOS. J. CAREY,
Borough Clerk.

Exhibit P. 17.

AGREEMENT BETWEEN THE EAST JERSEY WATER COMPANY AND NEW JERSEY SUBURBAN WATER COMPANY.

This Agreement, made this eighteenth day of May, one thousand nine hundred and eleven, between the East Jersey Water Company, party of the first part, and the New Jersey Suburban Water Company, party of the second part, witnesseth:

WHEREAS, The said East Jersey Water Company is causing pumping to be done for the party of the second part of water for its purposes, to wit, the providing of a supply of water to the Borough of East Newark, under written contracts now existing between the parties hereto, which contracts do not specify the source from which the water is to be taken; and

WHEREAS, The water has in fact been taken for the supply of said borough (or its predecessor municipal government of the same territory) for more than ten years last past at Little Falls, and is now being obtained from that source; and

WHEREAS, The Borough of East Newark, by resolution of its Council passed March 8, 1911, a copy whereof is hereunto appended and made part hereof, has explicitly designated and indicated the said source of supply as the source from which it is to take water for its uses, and has already commenced condemnation proceedings against certain riparian owners below Little Falls to take said waters in aid of The New Jersey Suburban Water Company, which has contracted to supply said water to said borough by agreement dated August 31, 1906; and

Exhibit P. 17.

WHEREAS, The taking of water at Little Falls requires the acquirement by agreement or condemnation of the right against the riparian owners on the Passaic River below that point, and The East Jersey Water Company possesses the water power at Little Falls and has obtained the right of diversion as against the owners of the other water powers below Little Falls, so that it consents to the diversion is necessary, and the parties hereto are advised that the party of the second part, by virtue of its said municipal contract, possesses such right of diversion as against the State for the uses and benefit of the Borough of East Newark:

Now, therefore, it is hereby agreed that the supply so to be pumped to the party of the second part shall be taken by the party of the second part under authority which it is advised was conferred upon it by its said municipal contract, charter and otherwise, from the Passaic River at Little Falls aforesaid, which source is hereby designed for such supply, and the supply shall be continued therefrom during the period of the said contract between the party of the second part and the Borough of East Newark, the party of the first part being made the agent and employee of the party of the second part to use its water power, mains and riparian and other facilities to accomplish the diversion which is authorized by said municipal contract, and to receive per million gallons for the water so delivered through its mains into the mains of the party of the second part the prices prescribed in its contracts as compensation, not for water sold, but for services as agent and for the use of its appliances, water power,

Exhibit P. 17.

mains and property in accomplishing the municipal supply, which the party of the first part agrees to use and provide for that purpose; and also agrees to pay all the costs, expenses and awards incident to the condemnation of the water rights for and on behalf of the said Borough of East Newark, which water rights are referred to in the said resolutions authorizing the condemnation thereof for the purpose of the water supply of said borough; and that said water rights shall thereupon be and become the property of the said borough and used for its water supply by the party of the second part.

Nothing herein contained shall release the party of the first part from its present contract obligations to furnish to the party of the second part a supply of water sufficient to fulfill the requirements of the existing contract between the parties hereto for the supply of said Borough from some available source, or from any obligation or liability to the party of the second part now existing thereunder, or otherwise.

In witness whereof, the parties hereto have caused their common seals to be hereto affixed and these presents to be duly signed and delivered the day and year first above written.

THE EAST JERSEY WATER COMPANY,
By EDMUND LEB. GARDNER,
Vice-President.

Attest:
ALBERT P. FISHER,
Secretary.

THE NEW JERSEY SUBURBAN WATER COMPANY,
By T. A. BEALL,
President.

Attest:
W. N. LEONARD,
Secretary.

EAST NEWARK RESOLUTIONS, March 8, 1911.

(Here follow resolutions in full.)

Exhibit P. 18.

RESOLUTIONS OF THE TOWN OF HARRISON AUTHORIZING CONDEMNATION PROCEEDINGS.

WHEREAS, The New Jersey Suburban Water Company has given notice to the Town of Harrison that it will be necessary for the Town to procure by consent, or condemn, the right of diversion for the water supply to be furnished under its contract with the Town of Harrison dated September 15th, 1903, as against the riparian owners on the Passaic River below Little Falls, where the water is taken through the instrumentality of and by contract with the East Jersey Water Company; and

WHEREAS, The Town did, by its said contract, agree that if it should be found that any powers or rights of the Town for the condemnation of lands, water or water rights might be advantageously used or exercised for the purpose of said contract, to put said rights or powers in force, or permit the said company, its successors or assigns, to do in the name of the Town, but at the expense of the said Company, the Town to be indemnified for any loss or damage by reason thereof:

Resolved, That the Town of Harrison hereby determines to acquire said right of diversion, namely, the right to divert an average daily amount of two million gallons of water per day, in each year, until August 16, 1929, at Little Falls on the Passaic River, the same being necessary for the purpose of the said contract,

and for the use of the Town of Harrison for public water supply; and if unable the agree with any of the owners of the riparian lands for the said right of diversion, to condemn said right against such owners for the public use aforesaid.

Resolved, That in pursuance of said contract, Clarence T. Van Deren of Harrison, as Agent of the Town of Harrison, is authorized and directed to procure said right by agreement with the riparian owners as to the price of said right of diversion, and where no agreement can be made, to proceed to cause the same to be taken by condemnation in the name of the Town for the public use aforesaid, but at the cost and expense of the said New Jersey Suburban Water Company. The award for compensation and damage to be paid by that Company.

Resolved, That Collins & Corbin, Attorneys at Law, and Michael T. Barrett, Esq., Corporation Counsel are authorized, in the name of the Town, but at the expense of said Company, to conduct any and all lawful condemnation or other legal proceedings for the acquirement of said right of diversion, but solely at the expense of said Company.

Resolved, That the Town Clerk be and he is hereby authorized and instructed to deliver certified copies of these resolutions to the New Jersey Suburban Water Company.

The above is a certified copy of a resolution at an adjourned meeting of the Common Council of the Town of Harrison, N. J., held on Tuesday Evening, October 18, 1910.

PETER J. GOODMAN,
Town Clerk.

Exhibit P. 19.

AGREEMENT OF EAST JERSEY WATER CO. WITH NEW JERSEY SUBURBAN WATER CO., MAY 18, 1911.

This agreement, made this eighteenth day of May, one thousand nine hundred and eleven, between the East Jersey Water Company, party of the first part, and the New Jersey Suburban Water Company, party of the second part, witnesseth;

WHEREAS, The East Jersey Water Company is causing pumping to be done for the party of the second part of water for its purposes, to-wit, the providing of a supply of water to the Town of Harrison under written contracts now existing between the parties hereto, which contracts do not specify the source from which the water shall be taken; and

WHEREAS, The water has in fact been obtained for more than ten years last past from the Passaic River at Little Falls, and is now being obtained from that source; and

WHEREAS, The Town of Harrison, by its Council, by their resolutions passed on October 18, 1910, a copy of whereof is hereto appended and made part hereof, has explicitly designated and fixed the said point at Little Falls for the taking of water for the supply of said town, and has commenced condemnation proceedings against certain riparian owners below Little Falls to take, as against them, the supply of water contracted to be furnished to the said town by the New Jersey Suburban Water Company which has contracted to supply it to said town; and

WHEREAS, The taking of water at said point at Little Falls requires the acquirement, by agreement or condemnation, of the right against the riparian owners on the Passaic River below that point, and the East Jersey Water Company possesses the water power at Little Falls and has obtained the right of diversion as against the owners of the other water power below Little Falls, so that its consent to the diversion is necessary; and the parties hereto are advised that the party of the second part, by virtue of its municipal contract with the Town of Harrison possesses the right of diversion as against the State for the use and benefit of the Town of Harrison,

Now, therefore, it is hereby agreed that the supply so to be pumped to the Town of Harrison shall be taken by the party of the second part under the authority which it is advised was conferred upon it by its municipal contract, charter and otherwise from the Passaic River at Little Falls aforesaid, which source is hereby designated for such supply, and the supply shall be continued therefrom during the period of the contract between the party of the second part and Town of Harrison—the party of the first part being made the agent and employee of the party of the second part to use its water power, mains and riparian and other facilities to accomplish the diversion which is authorized by said municipal contracts, and to receive per million gallons for the water so delivered through its mains into the mains of the party of the second part the prices prescribed in its contracts as compensation, not for water sold but for services as agent, and for the use of its appliances, water power, mains and property in

New Jersey State Library

Exhibit P. 19.

accomplishing the municipal supply of said town, which the party of the first part hereby agrees to use and provide for that purpose, and also agrees to pay all the costs, expenses and awards incident to the condemnation of the water rights for and on behalf of the said town, which water rights are referred to in the said resolutions authorizing the condemnation therefor for the purpose of said water supply; and that said water rights shall thereupon be and become the property of the said Town of Harrison and used for its water supply by the party of the second part.

Nothing herein contained shall release the party of the first part from its present contract obligations to furnish to the party of the second part a supply of water sufficient to fulfill the requirements of the existing contracts between the parties hereto for the supply of the Town of Harrison from some available source, or from any other obligation or liability to the party of the second part now existing thereunder or thereupon. The contract whereby the New Jersey Suburban Water Company is required to furnish water to the Town of Harrison is the contract dated September 15th, 1903, to which reference is hereby made.

Exhibit P. 20.

In witness whereof, the parties hereto have caused their common seals to be hereto affixed and these presents to be duly signed and delivered the day and year first above written.

THE EAST JERSEY WATER COMPANY,
By EDMUND LEB. GARDNER,
Attest: *Vice-President.*
ALBERT P. FISHER,
Secretary.

THE NEW JERSEY SUBURBAN WATER COMPANY,
By T. A. BEALL,
Attest: *President.*
W. N. LEONARD.

Exhibit P. 20.

PASSAIC CONSOLIDATED WATER COMPANY
General Office: 158 Ellison Street

Paterson, N. J.

May 7, 1925.

The New Jersey Suburban Water Company, and New York and New Jersey Water Company.

Gentlemen:—

The time has arrived when we can no longer permit your overdue indebtedness to our Company to increase. We have received no payment whatever from you since September 24, 1924. The amount then paid was only $25,000. on account of a sum then overdue amounting with interest to more than $97,000.

As of April 11, 1925, the arrearages for water supplied by our Company to your companies between January 1, 1923 and March 31, 1925, inclusive, aggregated without interest $184,178.47,

and with interest to $195,828.56. During April we supplied an additional 167.4 million gallons of water at the price of $13,057.20. While this last mentioned amount is not yet due it increases the amount due or to become due for water supplied prior to May 1st to nearly $209,000.

In the last talk we had with Mr. Earl in regard to these arrearages he in effect stated that we could not expect to receive any further substantial amount from your companies for some time to come. In the absence of further payments your indebtedness to us by the end of the present year would under existing conditions apparently amount to considerably more than $300,000. This we cannot permit.

We therefore notify you that unless by Monday, June 8, 1925, we have a definite and satisfactory assurance that as from and after that date you will promptly pay for the water thereafter furnished you at the rate of $78. per million gallons until such time as said rate may be legally changed, we shall thereupon turn off the water and thereafter cease to supply water to you.

Knowing that you sell some or all of the water we supply to you to the Towns of Kearney and Harrison, the Borough of East Newark and the Clark Thread Company, we are sending each of them a copy of this notice.

This notice of our proposed action is given at this early date so that your companies and their customers may be fully advised thereof in time to protect the public interest. It is entirely independent of our right of action to recover the

arrearages mentioned. Your refusal to make any arrangement for their payment leaves no course open to us other than to institute suit against you for the recovery of such arrearages and this we intend to do in the near future.

Yours truly,
PASSAIC CONSOLIDATED WATER COMPANY,
By JOHN H. COOK
President

Exhibit P. 21

This exhibit is the printed record in the *certiorari* proceedings taken by the New York and New Jersey Water Company & the New Jersey Suburban Water Company to raise the question whether those companies are Public Utilities. It is not printed because it is not deemed important, as most of it is already in evidence, in the Exhibits already marked.

Exhibit P. 22.

RULES
of the
BOARD OF PUBLIC UTILITY
COMMISSIONERS
State of New Jersey

New Jersey Reformatory Print

Exhibit P. 22.

RULES.

Sessions.

1. The Board will be in continuous session for the performance of administrative duties.

2. Meetings of the Board for the hearing of petitions and contested cases will be held on such days at such hours and at such places as the Board may from time to time designate.

3. Notice of hearing will be given by the Secretary to parties to proceedings before the Board, except when a hearing is not concluded on the day appointed therefor and verbal announcement is made by the presiding commissioner of an adjourned date. Verbal announcement so made shall be deemed due notice of continued hearing.

Complaints, Applications, &c.

4. All complaints and applications under the statute must be by petition and set forth concisely the facts upon which the complaint or application is based. The name and address of the petitioner and that of the attorney or counsel of the petitioner, if any, must appear upon the petition; the name of the corporation, association or company complained of, or to whom an order is sought (hereinafter designated respondent) must be set forth in such petition.

5. Every petitioner must file with the Board the original of the petition, and in addition thereto as many copies thereof as there may be respondents.

Exhibit P. 22.

Petitions Under Laws 1911, Chap. 195, Sec. 24

6. Petitions for approval under Section 24 of Chapter 195 of the Laws of 1911 must be accompanied by the following:

1. Copy of petition to the governing body, certified by clerk of the municipal body.

2. Certified copy of the resolution of the governing body setting a date for consideration of the petition.

3. Certificate of the clerk of the governing body showing that he posted the notices in accordance with the law.

4. Certificates of the newspapers in which said notice was published as required by law.

5. Copy of the ordinance certified by clerk of the municipal body granting same.

6. Certified copy of the minutes of the various meetings at which the ordinance was considered.

7. Certified copy of the acceptance of the company.

8. Certificate of the newspaper having published the ordinance after its passage as required by law.

9. Petition of the Company reciting the name of company under which original construction was made, in case the present ordinance provides for additions or extensions to a property already in existence.

Answers.

7. Unless otherwise directed, answers to petitions must be filed within ten days after the day on which a copy of the petition is mailed by the Secretary of the Board. The day of the mailing of the copy of the petition shall be set forth in the communication accompanying such copy.

Exhibit P. 22.

8. The Board may in any case require the answer to be filed within a shorter time or extend the time for the filing therof.

Every answer must specifically admit or deny the material allegations of the petition and set forth briefly the facts which will be relied upon to meet the allegations of the petition. A duplicate copy for service on the petitioner must accompany every answer.

9. A respondent who deems a petition insufficient upon its face to require answer to the facts alleged therein may, within seven days after the mailing of a copy of the petition, as provided for in these rules, file an application to dismiss the petition. Such application shall set forth briefly, but specifically, the grounds upon which the respondent relies for the dismissal of the petition, and must be accompanied by a duplicate copy.

10. When a respondent files such application the facts stated in the petition will be taken as admitted, but for the purposes of the application only.

11. An answer, however, will *no* be taken as an admission of the sufficiency of the petition to which it is interposed, but a petition to dismiss for insufficiency may be made at the hearing.

Service of Papers, &c.

12. The Secretary of the Board will mail to each respondent a copy of the petition, and to the petitioner a copy of the answer or application to dismiss a petition.

Where any party to a proceeding before the Board has appeared by attorney, service of any paper in the proceeding upon such attorney shall be deemed proper service upon the parties.

Exhibit P. 22.

Amendments.

13. Amendments to any petition or answer may be allowed by the Board in its discretion upon the application of the party filing the same.

Hearings.

14. On issue joined by the filing of a petition and answer thereto, or application for dismissal thereof, the Board will assign a time and place for hearing.

15. Witnesses will be examined orally before the Board, unless the facts be agreed upon as provided for in these rules.

16. The petitioner must establish the material facts alleged in the petition unless the respondent admits the same, or fails to answer the petition.

17. The respondent must prove the material facts alleged in the answer unless admitted by the petitioner, and must fully disclose the defense at the hearing.

18. In case of failure to answer, the Board will take such proof of the facts as may be deemed proper and reasonable and make such order thereon as the circumstances appear to require.

Stipulations.

19. The parties to any proceeding before the Board may, by stipulation in writing, filed with the Secretary, agree upon the facts or any part thereof, involved in the controversy, which stipulation shall be regarded and used as evidence on the hearing.

Exhibit P. 22.

Subpoenas.

20. Subpoenas requiring the attendance of witnesses will be issued, upon the application of either party to the Secretary, or upon the order of the Board.

21. Subpoenas for the production of books, papers or documents (unless directed to be issued by the Board upon its own motion) will only be issued upon application in writing, and after hearing.

The Secretary of the Board will, in advance of hearing, receive applications for subpoenas requiring the production of books and papers. He will give notice to the parties on whom it is desired service shall be made, of the receipt of such application, and of the time fixed for hearing the same.

Compliance with Orders and Recommendations.

22. Upon the issuance of an order by the Board under the statute, the corporation, association, person or company to whom the same is directed must promptly, upon compliance with the requirements of such order, notify the Secretary that action has been taken in conformity therewith.

Upon the making of any recommendation by the Board, the corporation, association or company to which the same is made must, within fourteen days after the making of the recommendation unless earlier notice is specifically required notify the Secretary of the acceptance or rejection thereof.

Failure to comply with this rule will be deemed a rejection of the recommendation.

Exhibit P. 23.

Information to Parties.

23. The Secretary of the Board will, upon request, advise as to the form of petition, answer or other paper necessary to be filed in any case, and furnish such information from the files of the Board as will conduce to a full presentation of the facts material to the controversy.

Address to the Commission.

24. All petitions, answers and other papers in any proceeding or applications in relation to any proceeding shall be addressed to the Board at its rooms, in the State House, in the city of Trenton, unless otherwise specifically directed.

NOTES—Special rules apply to petitions for approval of issues of securities, increases in rates and for orders requiring the elimination of grade crossings. The Secretary will on application advise as to these.

Exhibit P. 23.

April 2 1923

Mr. Edmund B. Gardner, President
The East Jersey Water Co.,
Paterson, N. J.

Dear Mr. Gardner:—

I have your letter of March 29th, and had not heard of the decision of the Utility Commissioners regarding the increase in the rate to you of $78. Will you please immediately send me a copy of this opinion and the supporting data, so that I may look into the same thoroughly.

Very truly yours,

Exhibit P. 23.

THE EAST JERSEY WATER CO.
158 Ellison Street
Paterson, N. J.

March 29, 1923.

Mr. Charles A. Dana, President,
New Jersey Suburban Water Company,
New York & New Jersey Water Co.,
No. 50 Church Street, New York City

Dear Mr. Dana—

This is to advise you that the New Jersey State Board of Public Utility Commissioners have finally decided our rate case, and that they have awarded a rate of $78. per million gallons for water furnished by the East Jersey Water Company. Wholesale.

In accordance with this ruling, the East Jersey Water Company will expect to collect from you the sum of $78. per million gallons for all water delivered into your pipes at the corner of Kearney Avenue and Belleville Turnpike Road, from and after January 1st, 1923. This letter is written so that you may have ample notice of the facts, and make your arrangements accordingly when you come to bill your West Hudson customers for the water furnished to them during the first quarter of this year and thereafter.

Yours very truly,

THE EAST JERSEY WATER COMPANY,

By EDMUND LEB GARDNER
President

Exhibit P. 24.

Exhibit P. 24.

NEW JERSEY SUPREME COURT

THE STATE, *ex rel.* THE NEW JERSEY SUBURBAN WATER COMPANY

Relator

vs.

JOSEPH P. RIORDAN and FRANCIS J. MCDONALD, the Mayor and Town Clerk respectively of the Town of Harrison

Defendants

On Alternative Writ—Application for Peremptory Writ of Mandamus

STATE OF THE CASE

THOMAS J. BROGAN
Attorney for Relator

MARK A. SULLIVAN
Attorney for Defendant

Exhibit P. 24.

Alternative Writ.

THE STATE OF NEW JERSEY, ss.:

(L. S.)

State of New Jersey to Joseph P. Riordan and Francis J. MsDonald, the Mayor and Town Clerk, respectively, of the Town of Harrison, New Jersey, Greeting:

Whereas on June 26th, 1924, the New Jersey Suburban Water Company, a corporation of the State of New Jersey, offered in writing to the Town of Harrison, a municipal corporation of the State of New Jersey, an extension of a contract now existing between both these parties for the supplying of water by the said New Jersey Suburban Water Company to the said Town of Harrison, said extension to be for a period of fifteen (15) years from the date of the expiration of the present contract above referred to, which will expire in 1928, upon the same terms and conditions as are contained and set forth in the said present agreement, excepting that the rate to be paid for water shall be $104.25 per million gallons instead of $82.50 per million gallons, and excepting also that the new rate of $104.25 per million gallons shall be subject to such modification as may be made therein by the Public Utility Commission of the State of New Jersey upon the application of either the Town of Harrison or the said New Jersey Suburban Water Company, and

Whereas, on July 15th, 1924, the said Town of Harrison, by its Mayor and Common Council, adopted a resolution accepting said offer of extension above referred to in all its particulars without change, and further by said resolution directed its Corporation Counsel to prepare an agreement between the said Town of Harrison and the said New Jersey Suburban Water Company in accordance with the offer and acceptance herein mentioned, and further resolved that the proper officers of the Town of Harrison be authorized and directed to execute said agreement when submitted by the said Corporation Counsel, and

Exhibit P. 24.

Whereas said Corporation Counsel did prepare and submit an agreement between the parties embodying the terms above set forth in the offer and acceptance, and

Whereas the signatory officers for the Town of Harrison, to wit, the said Joseph P. Riordan, its Mayor, and the said Francis J. McDonald, its Town Clerk, have refused to sign and execute said agreement in accordance with the resolution of said Town of Harrison above referred to;

We, therefore, being willing that due and speedy justice should be done in this behalf, command and strictly enjoin you, Joseph P. Riordan, Mayor of the Town of Harrison, N. J., and Francis P. McDonald, Town Clerk of the Town of Harrison, N. J., that immediately after the receipt of this Writ, you and both of you sign the contract or agreement above referred to for and on the part of the Town of Harrison, N. J., or cause to us to the contrary signify, lest in your default, complaint should come to us repeated; and if you shall execute this, our command, certify to our Justices of the Supreme Court, at Trenton, on the 5th day of February, 1925, together with this our Writ, and this in no wise omit at your peril.

WITNESS, WILLIAM S. GUMMERE, Esq., Chief Justice of our Supreme Court of Judicature, at Trenton, this 16th day of January, 1925.

EDWARD J. KELLEHER,
Clerk.

THOMAS J. BROGAN,
Attorney.

Exhibit P. 24.

Return.

NEW JERSEY SUPREME COURT.

THE STATE, *ex rel.*, NEW JERSEY SUBURBAN WATER COMPANY, *Relator*, *vs.* JOSEPH P. RIORDAN and FRANCIS J. McDONALD, the Mayor and Town Clerk of the Town of Harrison, *Respondents.*	*On Mandamus.*

To The Honorable Justices of the Supreme Court of New Jersey:

Joseph P. Riordan, one of the Respondents, by Mark A. Sullivan, his attorney, comes and says, that he should not be compelled to sign the contract or agreement referred to in the annexed writ on the part of the Town of Harrison, New Jersey, as by said writ he, the said Joseph P. Riordan is commanded to do, because, he says, that the matters contained in the said writ, in manner and form as the same are stated and set forth, are not sufficient in law for the said New Jersey Suburban Water Company, the above named relator, to have or maintain its aforesaid writ of mandamus against him, the said respondent, Joseph P. Riordan; and that he, the said Joseph P. Riordan, is not bound by the law of the land to obey the command of the said writ of mandamus and sign the said contract or agreement as by the said writ he is commanded to do; and the said Joseph P. Riordan according to the

Exhibit P. 24.

form of the Statute in such case made and provided, states and shows to the Court here the following reasons, that is to say: (a) that the contract or agreement mentioned in the said writ of mandamus has no approval of the governing body of the Town of Harrison endorsed thereon nor is any security given for the performance of the same all as required by "An Act concerning Municipalities," Article 32, Sec. 7; (b) that the contract or agreement mentioned in the said Writ of Mandamus is for supplies and as such should be advertised and awarded to the lowest bidder as required by an Act concerning Municipalities, Article 11, Sec. 1; (c) that the acceptance on July 15th, 1924, by the Town of Harrison of the offer by Relator to extend the contract for a water supply, then existing between the parties, for a period of fifteen years from the date of the expiration of the present contract, which will expire in 1928 upon the same terms and conditions as are contained in the present agreement excepting that the rate to be paid for water shall be $104.25 per million gallons instead of $82.50 per million gallons and excepting also that the new rate of $104.25 per million gallons shall be subject to such modification as may be made therein by the Public Utility Commission of the State of New Jersey upon the application of either the Town of Harrison or the Relator is an unreasonable and improvident exercise of the power of the Council of the Town of Harrison and a palpable abuse of its discretion and the said respondent, Joseph P. Riordan, prays that the said writ be dismissed and he, the said Joseph P. Riordan, be relieved from obeying the said command.

MARK A. SULLIVAN,
Attorney for Defendant
Joseph P. Riordan.

Exhibit P. 24.

Plea.

NEW JERSEY SUPREME COURT.

THE STATE, *ex rel.*, NEW JERSEY SUBURBAN WATER COMPANY, *Relator*, *vs.* JOSEPH P. RIORDAN and FRANCIS J. MCDONALD, the Mayor and Town Clerk of the Town of Harrison, *Respondents.*	*On Mandamus.*

And thereupon on the same first Tuesday in March, A. D. Nineteen Hundred and Twenty-five, before our Justices of our Supreme Court of Judicature at Trenton, came as well the said New Jersey Suburban Water Company in the said writ and return named, by Thomas J. Brogan, its attorney, as the said Joseph P. Riordan in the aforesaid writ and return likewise named by his attorney, and the said New Jersey Suburban Water Company, having heard the said writ and return read, protesting that the said return and matters contained therein are insufficient in law to bar or preclude the said New Jersey Suburban Water Company from having a peremptory writ of mandamus in this behalf, for plea the said New Jersey Suburban Water Company, by force of the statute in such case made and provided, saith that the matters and things set up by the respondent, Joseph P. Riordan, by way of answer in the return are immaterial and do not set up any valid reason at law why the

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relator should not have a peremptory writ of mandamus in its behalf.

THOMAS J. BROGAN,
Attorney for Relator.

Depositions.

NEW JERSEY SUPREME COURT.

THE STATE, *ex rel.*, NEW JERSEY SUBURBAN WATER COMPANY, *Relator*, *vs.* JOSEPH P. RIORDAN and FRANCIS J. MCDONALD, the Mayor and Town Clerk of the Town of Harrison, *Respondents.*	*On Mandamus.*

Depositions in the above entitled cause, taken before me, Harry Schirmer, a Supreme Court Examiner of the State of New Jersey, at the Town Hall, Harrison, New Jersey, this fourth day of March, 1925, at ten-thirty o'clock in the forenoon, pursuant to notice and agreement of counsel.

Appearances:

Harry A. Dembe, Esquire, and Thomas J. Brogan, Esquire, attorneys for relator;

Mark A. Sullivan, Esquire, attorney for respondents.

Exhibit P. 24.

It is stipulated that the depositions be taken stenographically and the signatures of the witnesses waived.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } *ss:*

FRANCIS J. McDONALD, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Sullivan.

Q You are the Town Clerk of the Town of Harrison, in the County of Hudson, Mr. McDonald? A Yes, sir.

Q And one of the defendants in this proceeding: is that right? A Yes, sir.

Q Were you Town Clerk of the Town of Harrison on July 15, 1924, at the time that this resolution with reference to the water supply from the New Jersey Suburban Water Company was passed? A I was.

Q Will you give us the names of the Councilmen who were in office at that time, and the respective dates of expiration of their terms of office? A Mayor, Joseph P. Riordan, expires December 31, 1924; Thomas F. O'Connor, expires December 31, 1924; Harry J. McLynden, expires December 31, 1925; F. Joseph O'Hare, expires December 31, 1924; Lawrence F. Gagen, expires December 31, 1925; Philip F. Cassidy, expires December 31, 1924; James P. Finnegan, expires December 31, 1925; William F. Fallon, expires December 31, 1924; William F. Kinney, expires December 31, 1925.

Q Is that all? A That is all; that is nine.

Q There are eight Councilmen and the Mayor? A And the Mayor.

Exhibit P. 24.

Q Besides the offer of the New Jersey Suburban Water Company to extend its contract for fifteen years, Mr. McDonald, was any other communication received with reference to the supplying of water to the Town of Harrison, beginning at the expiration of its present contract? A No, there was not.

Q Did you get any communication from the Town of Kearney with reference to this supply of water? A Not on that day.

Q I struck that out of my former question. A There is one there that came from Kearney.

Q Will you produce it? A (Witness produces papers).

Q Was this communication presented to the Council of the Town of Harrison? A Yes, sir.

Q When? A Why, at the night of the meeting.

Q Will you look at it and see when? A That was August 5th, 1924, it was read at a special meeting of the Council.

Mr. Sullivan: I offer that in evidence.

Mr. Brogan: I object to that as immaterial.

(Subject to the objection the papers were marked Exhibit D. 1 in evidence.)

EXHIBIT D. 1.

"July 25th, 1924.

"The Honorable Joseph P. Riordan, Mayor,
"Fourth Street, Harrison, N. J.

"My Dear Mayor:

"Attached hereto you will please find a certified copy of a resolution which was unanimously adopted at the regular meeting of the Council of the Town of Kearny held on the 23rd inst. copy of which I was di-

Exhibit P. 24.

rected to transmit to you and which is self-explanatory.

"By order of the Mayor and Council, I am,

"Yours very truly,

"WILLIAM B. ROSS,
"Town Clerk.

"WHEREAS, the Town of Kearny has signified its intention of obtaining a complete and adequate supply of pure and wholesome water from the North Jersey District Water Supply Commission, and

"WHEREAS, the Town of Kearny has asked for and received an allotment of twelve million (12,000,000) gallons of water per day, and

"WHEREAS, said allotment of twelve million (12,000,000) gallons per day is far in excess of the present needs and requirements of said Town, and

"WHEREAS, the North Jersey District Water Supply Commission has notified the officials of the Town of Kearny that the new water supply from the Wanaque would be ready for delivery in 1928, and

"WHEREAS, the Town of Harrison is under contract to receive its entire water supply from the New Jersey Suburban Water Company up to December 15th, 1928;

"THEREFORE BE IT RESOLVED, that the Town of Kearny offers and hereby extends to the Town of Harrison the right to take its entire water supply from the mains and conduits of the Town of Kearny for a period of fifteen (15) years, beginning September 15th, 1928, for the sum of $85.00 per million gallons.

"I hereby certify the foregoing to be a true copy of a resolution which was adopted by the Council of the Town of Kearny at a regular meeting held July 23rd, 1924.

"WILLIAM B. ROSS,
"Town Clerk."

Exhibit P. 24.

Q Can you tell me, Mr. McDonald, the date of expiration of the present contract for the supplying of water to the Town of Harrison? A Well, it wasn't in my time when they made the contract.

Q You don't know, Mr. McDonald? A I wouldn't be sure about it.

Q Have you got the contract here? A I haven't got the contract.

Q Mr. McDonald, does the Town of Kearny adjoin the Town of Harrison? A Well, it does, you know, around in certain parts of it.

Q Just answer my question. A Yes.

Q On what sides? A Well, on the South side.

Q And on the East? A On the East, yes, it does on the East.

Q And on the North? A Well, I just can't say, in a way.

Q You don't know? A Well, I wouldn't be sure about it; it is the way the Town goes, around through Newark.

Q What municipality adjoins Harrison on the West? A On the West, why, Newark.

Q The City of Newark? A The City of Newark.

Q What adjoins Harrison on the North? A Why, Kearny.

Taken and sworn to before me this
4th day of March, 1925.

HARRY SCHIRMER,
Supreme Court Examiner.

Exhibit P. 24.

STATE OF NEW JERSEY,
COUNTY OF HUDSON. *ss*:

WILLIAM CAMPION, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Sullivan.

Q What is your position in the Town of Harrison? A Water purveyor.

Q And that means that you have control of all the water matters of the Town of Harrison? A Superintendent; yes.

Q Can you tell us what the present consumption of water is of the Town of Harrison? A For what time?

Q Well, per day, at the present time. A Two million gallons per day.

Q Can you tell us the date of expiration of the present contract for supplying water to the Town of Harrison? A I understand it is December 31st, 1928.

Mr. Brogan: Well, of course, we object to that kind of an answer. I object to the question on the ground that the contract is the best evidence.

Q Have you possession of the contract, Mr. Campion? A No, I haven't.

Q Have you ever had possession of it? A No, sir.

Q Where is it, if you know? A I believe it is, from what I was talking to Mr. Goodman a year or more ago—

Mr. Brogan: I object to that as hearsay.

Q Who is Mr. Goodman? A Town Clerk.

Q The then Town Clerk? A The then Town Clerk. And he said—

Exhibit P. 24.

Q You don't need to tell us what he said; it is not among the files of your department? A No, it is not.

Q You are sure of that? A Yes.

Q Have you ever seen it? A I have seen it, yes.

Q But you don't recollect what the date of expiration was? A No; that was right after the water company got the contract I seen it, that is some twenty-two years ago, and that was the last time since I seen it.

Q Prior to this contract, Mr. Campion, with the New Jersey Suburban Water Company for the supplying of water to the Town of Harrison, from whom did Harrison purchase its water? A Jersey City.

Q Do you know whether the mains through which it secured its water are still in existence?

Mr. Brogan: That is objected to as immaterial.

A Well, Jersey City never owned any of Harrison's mains, but they owned the twenty-inch line along Kearny Avenue, that supplied Kearny and Harrison.

Q Is that still in existence? A That is still under the ground.

Q And it was through that that you got your water prior to the New Jersey Suburban Water Company contract? A Prior to the Suburban.

Cross examination by Mr. Brogan.

Q The pipe line that you just spoke of, Mr. Campion, has not been in use and operation for 25 years, has it? A Not since Harrison connected up with the Suburban twenty-two years ago.

Exhibit P. 24.

Taken and sworn to before me this
4th day of March, 1925.

HARRY SCHIRMER,
Supreme Court Examiner.

It is hereby stipulated by and between counsel for the respective parties that the date of expiration of the present contract between the Town of Harrison and the New Jersey Suburban Water Company is 1928.

STATE OF NEW JERSEY,
COUNTY OF HUDSON. } *ss*

JOSEPH P. RIORDAN, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Brogan.

Q Mr. Riordan, you are the Mayor of the Town of Harrison, Hudson County, New Jersey? A Yes, sir.

Q And were such Mayor during the year 1924? A Yes, sir; that is the year I took my seat.

Q You were present at a meeting held on July 15th, 1924? A Yes.

Q At which meeting the offer of the New Jersey Suburban Water Company, previously submitted to the governmental body of the Town of Harrison, was voted upon? A Yes, sir.

Q And the offer was dated June 26, 1924, addressed to the Honorable William F. Kenny, and was signed by Frederick C. Earle as Treasurer, and in the State of the Case it is marked Schedule A, is that it? A Yes.

Exhibit P. 24.

Q And at that meeting the following resolution was presented, the resolution known as Schedule B, which reads:

> Be it Resolved by the Mayor and Common Council of the Town of Harrison that the Town of Harrison shall and it hereby does accept the offer made by the New Jersey Suburban Water Company to extend the present agreement under which the Town is receiving it present water supply, dated September 15, 1903, for a period of fifteen years from the date of its expiration, upon the same terms and conditions as are contained and set forth in the said present agreement, excepting that the rate shall be $104.25 per million gallons, instead of $82.50 per million gallons, and excepting also that the new rate of $104.25 per million gallons shall be subject to such modification as may be made therein by the Public Utility Commission upon the application of either the Town of Harrison or the said New Jersey Suburban Water Company and that an agreement be entered into between the Town of Harrison and the said New Jersey Suburban Water Company in accordance herewith.
>
> "And be it further Resolved, that Hugh C. Barrett, Corporation Counsel, is hereby authorized and directed to prepare an agreement between the Town of Harrison and the New Jersey Suburban Water Company in accordance with these resolutions.
>
> "And be it further Resolved, that the proper officers of the Town of Harrison shall be and they hereby are authorized and directed to execute the said agreement in the form to be submitted by the said Hugh C. Barrett."

was it not? A Yes, sir.

Q And you voted for it? A Yes, sir.

Q And the resolution was unanimously adopted? A Yes, I believe it was; I am not sure.

Exhibit P. 24.

Q And you refused to sign the contract presented by Mr. Barrett? A Yes, sir; it was not presented to me by Mr. Barrett.

Q Do you now desire to sign a proper contract if presented to you? A No, sir; I do not.

Q You refuse to sign this contract which is authorized by the resolution which I have just read to you; that is a fact, is it not? A Yes, sir.

Cross examination by Mr. Sullivan.

Q Prior to the submission of any contract to you in accordance with that resolution, Mayor did you move to reconsider that resolution? A No.

Q Well, did you take any action with reference to the reconsideration of the resolution? A I did.

Q What did you do?

Mr. Brogan: I object to that as immaterial.

A Why, the meeting was on a Tuesday night—

Q Which meeting? A The Council meeting, that is usually held on a Tuesday night, but I can't recall the date of that meeting, it was on a Tuesday night, when the contract was awarded to the New Jersey Suburban Water Company; and the following Friday night, or Thursday night, I sent out a notice, Thursday I sent out a notice to all members of the Council to attend a Council meeting of the Whole, and we held it in this room, all members of the Council were not present, one or two were absent; I brought the matter up about the awarding of the contract and I said it had become a very unpopular move, our actions did not meet with the approval of the people of this Town—

Exhibit P. 24.

Mr. Brogan: All this is over my objection.

And I asked them if they would not call a public meeting to get the sentiments of the people, and they said they did not approve of that; "Well, now," I said, "Your hands are clean and my hands are clean," and I says, "We have nothing to fear to go before the public and have a meeting upstairs, send out notices and get an expression, and perhaps in that way can explain to the citizens of Harrison why we awarded this contract;" I said, "If you don't consent to having a public meeting, because," I says, "there is a popular feeling against awarding this contract," I said, "I know I am going to advise you, because we are transacting the affairs of this Town together, and I want to make it known to you just what my attitude may be in this matter;" so the following morning was a Saturday, and a newspaper man called me up and he said—

Q Don't tell us what the newspaper man said to you. A Well, the following morning was Saturday, and I just wrote of couple of lines on a sheet of paper and the newspaper man called me up and I told him I wanted—

Q We don't want that. A But I refused to sign the contract; I says, "I will not and I have not," here is the statement that I made, "I hadn't as yet signed the water contract between the Town of Harrison and the Suburban Water Company, and I will not sign it unless the court tells me I must sign."

Q Well, the effect of it is that you tried to get a public meeting? A Yes.

Q And the Town Council refused to have it? A Refused to have it.

Exhibit P. 24.

Q Then when the contract was presented to you for your signature by the Town Attorney you refused to sign it? A Yes.

De-direct examination by Mr. Brogan.

Q That attempt on your part to have a public meeting was subsequent to the adoption of the resolution? A Yes.

Q Now, this offer raised the rate up to $104.25 per million gallons, didn't it, Mayor? A Yes. sir.

Q And the Town of Harrison paid at that rate for some time, did it not? A Not under the new contract.

Q No, but they did pay? A One payment; I think it was one payment; only one payment of $104.25.

Q Well, that was after the rate had been fixed by the Public Utility Commission, was it not, and an increased rate had been fixed by the Suburban Water Company? A Not for the Suburban, the East New Jersey Water Company; the Suburban is a subsidiary of the East Jersey; it was never given to the Suburban Water Company to increase its rates.

Taken and sworn to before me this
4th day of March, 1925.

HARRY SCHIRMER,
Supreme Court Examiner.

Exhibit P. 24.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } *ss*:

FRANCIS J. McDONALD, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Brogan.

Q You heard the resolution which I just read to Mayor Riordan, which he said he voted for, under date of July 15, 1924? A Yes, sir.

Q And that resolution was adopted, was it not, at the meeting on that evening? A It was.

Q Unanimously? A No; Councilman Finnegan voted against it, and Councilman Fagen was absent.

Q So that it had the vote of the Mayor and six Councilmen? A That is right.

Taken and sworn to before me this
4th day of March, 1925.

HARRY SCHIRMER,
Supreme Court Examiner.

Certification by the Examiner.

To the Chief Justice of the Supreme Court of New Jersey:

I, HARRY SCHIRMER, a Supreme Court Examiner of the State of New Jersey, do certify that the foregoing is a true and accurate transcript of the depositions in the above-entitled cause, taken by and before me at the time and place hereinbefore mentioned; and I believe said

transcript fairly and accurately states the testimony given.

HARRY SCHIRMER,
Supreme Court Examiner.

Schedule A.

NEW JERSEY SUBURBAN WATER COMPANY.
55 Liberty Street, New York.

Bayonne, N. J.,
June 26th, 1924.

Hon. William F. Kenny,
Chairman Water Committee,
Town of Harrison, N. J.

Dear Sir:

Will you please permit us to remind you that the existing contract between the Town of Harrison and the New Jersey Suburban Water Company will expire in 1928.

Certain proposals have come to us, the acceptance or rejection of which is contingent upon what the Town of Harrison's attitude may be toward an extension of the present contract for a further period of years, and as a definite answer must be given by us before the end of next month we would desire at this time, if possible, to invite your immediate consideration to the question as to whether or not the Town of Harrison is interested in an extension of the present contract for a further period of fifteen years or longer from its expiration date.

We feel that inasmuch as the water situation in the northern part of the state will in all likelihood become much more acute than it is at the

present time before suitable relief could be provided, that it will be materially to the interest of the Town of Harrison to provide for its future needs at this time.

In considering an extension of the present agreement for a further period of years at the prevailing rate of $104.25 per million gallons, it might be well for you to bear in mind that an extension of the present contract made between us will of necessity be subject to the jurisdiction of the Public Utility Commission, so that if conditions at a later date shall warrant the same, either party may then apply to the said Board for a modification of the rate.

If you so desire it, you may consider this letter as an offer on our part of entering into an agreement with the Town of Harrison for an extension of the present contract for a term of fifteen years, or longer, from the date of expiration, upon the same terms and conditions, with the exception, however, that the rate is to be $104.25 per million gallons, unless previously modified by act of the Public Utility Commission.

Trusting that this matter will receive due consideration at the earliest possible date, so that we may govern ourselves accordingly in connection with the proposal we now have under consideration and the rejection or acceptance of which as has already been pointed out is largely contingent upon whether or not the Town of Harrison desires to accept the offer herein made to continue the longstanding and, we think we may say, very pleasant and satisfactory relations of the past twenty-five years, we beg you to believe we are,

Yours very truly,

FREDERICK C. EARL,
Treasurer.

Exhibit P. 24.

Schedule B.

TOWN OF HARRISON.

Be it resolved by the Mayor and Common Council of the Town of Harrison that the Town of Harrison shall and it hereby does accept the offer made by the New Jersey Suburban Water Company to extend the present agreement under which the Town is receiving its present water supply, dated September 15, 1903, for a period of fifteen years from the date of its expiration, upon the same terms and conditions as are contained and set forth in the said present agreement, excepting that the rate shall be $104.25 per million gallons, instead of $82.50 per million gallons, and excepting also that the new rate of $104.25 per million gallons shall be subject to such modification as may be made therein by the Public Utility Commission upon the application of either the Town of Harrison or the said New Jersey Suburban Water Company and that an agreement be entered into between the Town of Harrison and the said New Jersey Suburban Water Company in accordance herewith.

And be it further Resolved that Hugh C. Barrett, Corporation Counsel, is hereby authorized and directed to prepare an agreement between the Town of Harrison and the New Jersey Suburban Water Company in accordance with these resolutions.

And be it further Resolved that the proper officers of the Town of Harrison shall be and they hereby are authorized and directed to execute the said agreement in the form to be submitted by the said Hugh C. Barrett.

Exhibit P. 24.

(Sgd.) W. F. Kenney,
Chairman of Water Committee.

Francis J. McDonald,
Town Clerk.

I, Francis J. McDonald, Town Clerk of the Town of Harrison, Do Hereby Certify that the foregoing is a true and correct copy of a Resolution adopted by the Common Council of the Town of Harrison at a meeting held July 5th, 1924.

In Testimony Whereof, I have hereunto set my hand and the corporate seal of the Town of Harrison, this 22nd day of July, A. D. 1924.

Francis J. McDonald,
Town Clerk.

Schedule C.

Agreement made this day of August, 1924, by and between the New Jersey Suburban Water Company, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, party of the first part, hereinafter referred to as the Company, and the Town of Harrison, in the County of Hudson being a municipal corporation of the State of New Jersey, party of the second part, hereinafter referred to as the Town.

Whereas, the parties hereto entered into a certain agreements on the 15th day of September, 1903, a copy of which is hereto annexed and made a part hereof, wherein and whereby the

Company agreed to obtain and supply the said Town and the said Town agreed to take from the said Company an entire and adequate supply of water for the inhabitants of the said Town for and during the continuous term of fifteen years with the option to the Town to extend the said agreement for a second period of ten years, and

WHEREAS, before the expiration of the term of fifteen years provided for in the said agreement of September 15th, 1903, the said Town gave notice unto the said Company of its election to exercise the said option to extend the said agreement for the second period of ten years, and

WHEREAS, it has been agreed between the parties hereto that the said agreement of September 15th, 1903, shall be regarded as extended so that it will continue in full force and effect for an additional period of fifteen years from the date of its expiration under the said ten years option, upon the same terms and conditions as are contained in the said agreement of September 15th, 1903, excepting as herein modified.

NOW, THEREFORE, in consideration of the premises and the promises mutually exchanged between the parties hereto, it has been agreed between the said Company and the Town as follows, to wit:

1. That the said agreement of September 15th, 1903, a copy of which is hereto annexed and hereby made a part hereof, shall be and the same is hereby regarded as extended so that it will continue in full force and effect for a further period of fifteen years from the expiration date of the said ten year option contained in the said agreement of September 15th, 1903, subject, however, to the modifications hereinafter contained.

2. That all the terms, conditions and covenants contained in the said agreement of Septem-

ber 15th, 1903, shall remain in full force and effect to the same intent and purpose as if each and every part and portion thereof were herein at length set forth, for the said additional period of fifteen years from its present expiration date with the exception that the price to be paid by the Town for all water supplied by the Company to the Town during the said additional period of fifteen years herein agreed upon, shall be at the rate of One Hundred Four and 25/100 ($104.25) Dollars per million gallons instead of Eighty-two and 50/100 ($82.50) Dollars per million gallons (the amount fixed under the agreement of September 15th, 1903) but subject, however, to the right and privilege for either the Company or the Town at any time during the said additional term of fifteen years to apply unto the Board of Public Utility Commissioners of the State of New Jersey or any other State Board having jurisdiction over the same, to change the said rate for water which is being fixed under the agreement by the parties hereto.

IN WITNESS WHEREOF, the parties to this agreement have caused their respective common seals to be hereto affixed and duly attested and this agreement to be signed and delivered by their appropriate officers on the day and year first above written.

NEW JERSEY SUBURBAN WATER COMPANY,

By

President.

Attest:

Secretary.

Exhibit P. 24.

THE TOWN OF HARRISON,

By

Mayor.

Attest:

Town Clerk.

I hereby certify that the foregoing is a true copy of agreement drawn by Hugh C. Barrett, corporation counsel of the TOWN OF HARRISON, in accordance with instructions from the Common Council and presented to me by the said Hugh C. Barrett, at a regular meeting of the Common Council held on the 5th day of Aug. 1924.

FRANCIS J. McDONALD,
Town Clerk,
of Harrison, N. J.

(seal)

CONTRACT BETWEEN THE TOWN OF HARRISON AND THE NEW JERSEY SUBURBAN WATER COMPANY.

THIS AGREEMENT made this 15 day of September nineteen hundred and three, by and between the NEW JERSEY SUBURBAN WATER COMPANY, a corporation duly organized and existing by virtue of the laws of the State of New Jersey, party of the first part, hereinafter referred to as the Company and the TOWN OF HARRISON in the County of Hudson, being a municipal corporation of the State of New Jersey, party of the second part, hereinafter referred to as the Town, witnesseth:

First: The Company agrees to obtain and supply to the Town and the Town agrees to take from the Company, for and during the continu-

Exhibit P. 24.

ous term of fifteen years commencing six months from and after the date hereof, or at such earlier date as the Company may be able to furnish said water (with the option to the Town to extend this contract for a second period of ten years), and entire and adequate supply of water for the inhabitants of said Town, which shall be filtered water, and to be supplied in quantities sufficient for the purpose of domestic use in said Town, for the extinguishing of fires, and for all other lawful uses and purposes for which the Town may require or desire to have water and for which the Town may lawfully use, sell or supply water; all the water required shall be delivered by pumping or gravity at the junction of Sherman avenue and Fourth street, in the TOWN OF HARRISON, County of Hudson and State of New Jersey, at the head equal to that under which the said Town is now receiving its water supply.

Second: The Company agrees to furnish and deliver and the Town agrees to take and pay for, as stipulated in this contract, all the water necessary and convenient for the uses and purposes aforesaid.

Third: Payments by such Town for water supplied under this contract shall be made by the proper disbursing officer or officers of the Town in lawful money, quarter yearly on Thursday of the second week of each and every quarter after the delivery of water has commenced, for all the water so delivered during the preceding quarter, according to meter register upon the certificate of the superintendent of the company certifying to the quantity of water delivered and also certified to by the water purveyor of the TOWN OF HARRISON. In case of dispute the Town is to pay presently a sum equal to the amount which it paid for the corresponding quarter of the year

last past, and the disputed amount is to be settled by arbitration, one arbitrator being named by the Town, one by the Company and a third to be selected by the two so chosen and a decision of a majority of these arbitrators shall be final. The Company is to carefully measure all water delivered under this contract by meter set for that purpose and the Town, by its engineers and proper officers, shall at all times have reasonable opportunity to inspect and examine the meter and appliances for measurements.

The price to be paid for all water delivered by the Company to the Town during the existence of this contract shall be at the rate of $82.50, per 1,000,000 gallons.

Fourth: The Town covenants that, if it shall be found that any powers or rights held or possessed or that may hereafter be held or possessed by it, whether in respect to the prevention of injury to any portion of the work constructed for the supply of water, or for the punishment of such injury, or otherwise, or for the condemnation of lands, waters or rights, may be advantageously used or exercised for the purpose of this contract, that then the Town will, so far as it has or may require the power to do so, put such rights and powers in force or permit the Company, its successors or assigns so to do in the name of the Town, provided however, that in all instances in which said use shall be made at the request of or for the benefit of the Company, its successors or assigns, the expenses thereof shall be paid by the Company and the Town shall be lawfully indemnified for any loss or damage by reason thereof.

The Town hereby grants to the Company such rights of way through its streets for a water

main, as may be necessary to supply the town of Harrison under this contract, said main to be so laid as not unnecessarily to interfere with existing pipes, and the Company, in laying the same, to promptly restore the surface of the streets to as good condition as the same was before the laying of the main and shall always maintain said main in good condition and promptly repair the surface wherever they have occasion to disturb the same for access to said main.

Fifth: The Company agrees to complete the work and begin the delivery of water within six months from the date of this contract, but any time lost by reason of strikes, accidents, litigation or other cause, unavoidable or beyond the control of the Company, shall not be computed within the six months, but shall be added thereto.

Sixth: The provisions of this contract shall be binding upon and apply to the successors and assigns of the parties hereto.

New Jersey Suburban Water Company
Turner A. Beall, President.

(Seal)

Attest:

J. William Griffin, Secretary.

The Town of Harrison,
Peter Sullivan, President.

(Seal)

Attest:

B. P. Walsh, Town Clerk.

Exhibit D. 1.

Resolution of August 15, 1904—Kearny Minute Book, Volume 15, page 47.

"WHEREAS, the Town of Kearny is now receiving its supply of water for the uses of its inhabitants and for public uses from the New Jersey Suburban Water Company and the New York and New Jersey Water Company under and pursuant to the terms and conditions of a certain contract made and entered into by the East Jersey Water Company and by the Board of Township Committee of the Township of Kearny dated June 29th, 1895, which said contract was thereafter extended and ratified by mutual agreement between the parties thereto on February 14, 1896, June 17, 1897 and June 14, 1896, and which contract was assigned by the East Jersey Water Company to the New Jersey Suburban Water Company and the New York and New Jersey Water Company by an instrument in writing dated July 1, 1903, of which assignment due notice was given to the Town of Kearny.

WHEREAS, under and by the provisions of the said contract, the Town of Kearny, is obligated to pay for the water so supplied the sum of $90.00 per million gallons, and is also obligated to furnish a main of its own into which to receive the said water at the corner of Kearny and Belleville avenues in the said Town of Kearny, and

WHEREAS it is proposed by the Town of Kearny that the New Jersey Suburban Water Company and the New York and New Jersey Water Company shall reduce the price for water now being supplied to this Town under and pursuant to the

aforementioned contract from $90.00 to $82.50 per million gallons, the price now being paid by the Town of Harrison under contract made by it with the New Jersey Suburban Water Company which has been sustained by a recent decision of the Supreme Court and shall relieve and protect the Town from its existing obligation to construct and provide a main from Belleville and Kearny Avenues to receive and distribute its water supply, and shall tap the present 30 inch main of the New York and New Jersey Water Company in Belleville Turnpike and connect the same with the Town's distributing system at Elm Street and Grand Place, in order to furnish to this Town better fire pressure and protection, in consideration of the extension of the aforementioned contract from June 29, 1895 for a period of ten years from the date of the expiration thereof.

NOW THEREFORE, be it resolved that the contract made June 29, 1895 between the East Jersey Water Company and the Board of Township Committee of the Township of Kearny, together with the supplemental contracts between the same parties made February 14, 1896, June 17, 1897 and June 14, 1898, assigned as hereinbefore recited to the New Jersey Suburban Water Company and the New York and New Jersey Water Company, be, and the same are hereby ratified and confirmed and the term thereof extended for a period of ten years from the date of the expiration of the aforementioned contracts as in their terms provided, that is from December 29, 1910, in consideration of which extension the price for the water to be delivered under the said contracts is to be reduced from $90.00 to $82.50 per million gallons, beginning with the ac-

ceptance of this Resolution, and the Town of Kearny to be relieved from the obligation heretofore imposed upon it to construct or provide a main for the reception of its water supply at Belleville and Kearny Avenues, and the places of delivery of the water to be supplied under said contract from and after the completion of the new mains and pipe herein authorized are hereby described to be the water vaults of the Town of Kearny at the junction of Kearny and Midland Avenues, Bergen and Johnston Avenues, and by metered connections with the mains of the Town at the intersection of the Belleville Turnpike road with Elm Street and Grand Place, and the right is hereby granted to the New Jersey Suburban Water Company and the New York and New Jersey Water Company, their successors and assigns to lay, maintain and operate such pipe or pipes with all necessary appurtenances in Belleville Turnpike road and in Kearny Avenue as may be necessary to carry out the purposes of said contract hereby extended and of this contract on the terms set forth in the contract hereby extended and on the following additional terms: The New Jersey Suburban Water Company and the New York and New Jersey Water Company may lay a main in Kearny Avenue not exceeding 36 inches in diameter, extending from the one 30 inch main of the New York and New Jersey Water Company and *New Jersey Water Company,* in Belleville Turnpike southerly in Kearny Avenue to the line of the Town of Harrison, and to be laid on the easterly side of the Avenue under the roadway, and within 10 feet of the curb line and at least 3 feet below the surface of the Avenue; at the junction of Belleville Turnpike road with Grand Place, a pipe line six

inches in diameter shall be laid from the said 30 inch pipe in Belleville Turnpike road across Kearny Avenue and along the Belleville Turnpike road to and connecting with the north end of the Town main in Grand Place; and a meter shall be placed and guided at or near Belleville Turnpike road and Grand Place to measure water delivered through such connection; at the intersection of Elm Street and Belleville Turnpike road, a similar connection should be made from the 30 inch main of the Water company to the 6 inch main of the Town, and a similar meter connection be established. The water company shall promptly restore the surface of the ground together with the pavement as disturbed to as good condition as it was before the laying of the pipes and meters; and shall keep the same in order and repair until the ground disturbed is entirely settled and shall properly guard all openings made by them in the highways and be liable for damage in their negligence in opening same and in the laying of the pipes; and shall indemnify the Town from all loss by reason whereof; and shall prosecute and work diligently with a view to keep open only such portion of the street as is reasonably necessary to properly prosecute the work. The construction referred to shall be completed within one year from the date hereof, to which period, however, shall be added the time, if any, during which the construction shall be delayed by litigation or unavoidable accident.

And the water companies shall agree to provide filtered water and to permit additional meter supply main connections (not less than 6 inches in diameter each) with their mains at any intersecting street, or on the meadows where re-

quired for manufacturing purposes and the companies shall agree not to sell water for consumption or use within the Town of Kearny other than to the Town, except to the Pennsylvania Railroad at the meadows shops, or in any case where the rights of way or existing contract or charter obligations of the water companies shall require such delivery.

RESOLVED, that these Resolutions shall take effect when they are accepted by the New Jersey Suburban Water Company and the New York and New Jersey Water Company by an instrument in writing duly executed by said companies and filed with the Clerk of the Town of Kearny, and when so accepted, they shall constitute a contract between the Town of Kearny and the said water companies, their successors and assigns."

The foregoing Resolution was adopted with the following amendments:

"The insertion of the following at the end of the first Resolution: And if during the term of the contract aforesaid the said water companies shall furnish water at a lower price than is herein provided to any other municipality (to reach which they have to furnish the same through mains laid in our Town), they shall furnish the Town of Kearny water aforesaid at the same price during the time remaining of the said contract with the Town of Kearny at which they furnish such other municipality." (Page 53)

Exhibit D. 2.

Resolution of September 23, 1925—Kearny Minute Book—Volume 26, Page 260.

"The water committee, by councilman Stevenson, Chairman moved that the request of the Water company in that they be permitted to make a connection to their 30 inch main on the east side of Kearny Avenue just south of Johnston Avenue, be granted, and on roll call Messrs. Stevenson, Hartley, Harvey, Branch, Hood, Jones, Reed and Gardner, voted in the affirmative, eight votes; Mayor Archibald voted in the negative, 1 vote. The motion was duly declared adopted and request duly granted."

Exhibit D. 3.

July 9, 1923.

Mayor and Common Council,
Borough of East Newark, N. J.

Gentlemen:—

By the Decision of the Highest Courts of New Jersey it has been decided that the Public Utility Commission has the right to amend contracts and establish rates for the sale of water in various districts throughout this State, and in pursuance thereof the Public Utility Commission by its Decision dated March 27, 1923, has established the wholesale price of water to this Company at $78.00 per million gallons instead of the price heretofore paid by this Company to the East Jersey Water Company, Viz: $56.25, according to the written contracts heretofore existing be-

tween this Company and the East Jersey Water Company, with which you are familiar, which results in an increase of $21.75.

The Decision makes such rates effective January 1st, 1923, and therefore, we are herewith submitting our bills for the water consumed by your Town since January 1st, 1923 to June 30th. 1923 at the increase rate of $104.25 being the previous price of $82.50 Plus the increase of $21.75.

Very truly yours,

NEW JERSEY SUBURBAN WATER CO.

C. A. DANA.

President.

Exhibit D. 4.

Resolution of the Town Council of the Town of Harrison, adopted July 15, 1924.

"BE IT RESOLVED by the Mayor and Common Council of the Town of Harrison that the Town of Harrison shall and it hereby does accept the offer made by the New Jersey Suburban Water Company to extend the present agreement under which the Town is receiving its present water supply, dated September 15, 1903, for a period of Fifteen years from the date of its expiration upon the same terms and conditions as are contained and set forth in the said present agreement, excepting that the rate shall be $104.25 per million gallons, instead of $82.50 per million gallons, and excepting also that the new rate of $104.25 per million gallons shall be subject to such modification as may be made therein by the Public Utility Commission upon the application of either the Town of Harrison or the said New Jersey Suburban Water Company, and

that an agreement be entered into between the Town of Harrison and the said New Jersey Suburban Water Company in accordance herewith.

AND BE IT FURTHER RESOLVED that Hugh C. Barrett, corporation counsel, is hereby authorized and directed to prepare an agreement between the Town of Harrison and the New Jersey Suburban Water Company in accordance with these resolutions.

AND BE IT FURTHER RESOLVED that the proper officers of the Town of Harrison shall be and they hereby are authorized and directed to execute the said agreement in the form to be submitted by the said Hugh C. Barrett. Roll Call and so order Ald. O'Connor, McLydon, O'Hara, Cassidy, Fallon, Kenney and Mayor Riordan voting 'Aye' and Ald. Tunigan voting 'No.' Ald. Fagen absent.

Exhibit D. 5.

Resolution of the General Council of the Town of Harrison, adopted September 1, 1925.

"Resolution by Ald. Keimey.

BE IT RESOLVED By the Mayor and Common Council of the Town of Harrison, N. J. that permission be and it is hereby granted to the N. J. Suburban Water Co. for permission to construct an extra 20" water main from the Kearny side of North 4th St. to our meter house. All the above work to be done under the supervision of our Water Purveyor and our Street Commissioners. All cost for above to be borne by the N. J. Suburban Water Co.

Roll call and so ordered all members voting 'Aye'."

Exhibit D. 6.

Exhibit D. 6.

NEW JERSEY SUBURBAN WATER COMPANY
50 Church St.
NEW YORK.

February 28, 1924.

Hon. William F. Kenney,
Chairman Water Committee,
Town of Harrison, N. J.

Dear Sir:

May we respectfully call your attention to the fact that there remains due us for water sold to the Town of Harrison to December 31, 1923, at the now current rate of $104.25, $55,323.06.

May I ask whether payment for the last half year has been withheld pending the final determination of the Bayonne case by the Court of Errors and Appeals?

This Company has had to borrow a very considerable sum of money in order to pay a portion of their bill to the Passaic Consolidated Water Company. As the interest on this loan is a cost to this company, properly chargeable to the failure of the Towns to pay their bills in accordance with the contract, we think you can readily understand that if this condition of laxity continues, we must ask you to pay interest on these, and future bills, as it imposes an unfair burden on this company.

We still owe the Passaic Consolidated Water Co. a goodly sum, which we are unable to pay on account of the money withheld by the Towns.

We are herewith handing you two bills,—one at the old contractual rate, and the other at the increased rate as ordered by the Public Utility Commission.

Exhibit D. 7.

We respectfully ask that you pay the bill at the old rate. It would be agreeable to us that you withhold payment of the bill covering the increase pending final determination of the Bayonne case by the Court of Errors and Appeals.

Very truly yours,

NEW JERSEY SUBURBAN WATER CO.

F. C. EARL
Secretary.

Exhibit D. 7.

Charles A. Dana, 50 Church St., N. Y. C.
Mayor and Common Council

Town of Harrison, N. J.

Gentlemen:

By the decision of the Highest Courts of New Jersey it has been decided that the Public Utility Commission has the right to amend contracts and establish rates for the sale of water in various districts throughout this state and in pursuance thereof the Public Utility Commission, by its decision dated March 27, 1923 has established the wholesale price of water to this company at $78.00 per million gallons instead of the price heretofore paid by this company to the East Jersey Water Company, viz.: $56.25 according to the written contracts theretofore existing between this company and the East Jersey Water Company with which you are familiar which results in an increase of $21.75.

The decision makes such rates effective Jan. 1, 1923 and therefore we are herewith submitting our bills for the water consumed by your Town

Exhibit D. 8.

since Nov. 30, 1922 by presenting one bill for the water consumed Nov. 30-Dec. 31st, 1922 at the former contract rate and a second bill for the water consumed since and including Jan. 1st-May 31st, 1923 at the increase rate of $104.25, being the previous price of $82.50 plus the increase of $21.75.

Very truly yours

NEW JERSEY SUBURBAN WATER COMPANY
C. A. DANA, *Pres.*

Exhibit D. 8.

NEW JERSEY SUBURBAN WATER COMPANY
55 Liberty Street,
New York

May 26, 1924.

Hon. William F. Kenny,
Chairman Water Committee,
Town of Harrison, N. J.

Dear Sir:

In our communication of April 10th, you will recall that we stated that we were quite willing that the bills for the amount of the increase in the water rate fixed by the Public Utility Commission, aggregating $21,879.81, should be held in abeyance, pending the decision by the Court of Errors and Appeals in the so-called Bayonne rate case. This decision was handed down last week in favor of the Passaic Consolidated Water Co. and against the City of Bayonne; the rates as fixed by the Utility Commission being upheld.

The Town of Harrison's reason for withholding payment of the increased rate as ordered by

Exhibit D. 9.

the Utility Commission being no longer valid, as a result of the decision in the Bayonne case, which in effect finally disposes of the contention as to the right of the State to fix rates for the towns, may we ask whether you will not kindly forward us your check for the amount so held in abeyance, that is, $21,879.81.

Yours very truly,

F. C. EARL
Treasurer.

P. S. I am requesting the New York office to mail you to-night detailed bills covering the amount specified above.

F. C. E.

Exhibit D. 9.

NEW JERSEY SUBURBAN WATER COMPANY
55 Liberty Street
NEW YORK.

Bayonne, N. J. June 26th, 1924

Hon. William F. Kenny,
Chairman Water Committee,
Town of Harrison, N. J.

Dear Sir:

Will you please permit us to remind you that the existing contract between the Town of Harrison and the New Jersey Suburban Water Company will expire in 1928.

Certain proposals have come to us, the acceptance or rejection of which is contingent upon what the Town of Harrison's attitude may be toward an extension of the present contract for a further period of years, and as a definite an-

swer must be given by us before the end of next month we would desire at this time, if possible, to invite your immediate consideration to the question as to whether or not the Town of Harrison is interested in an extension of the present contract for a further period of fifteen years or longer from its expiration date.

We feel that inasmuch as the water situation in the northern part of the state will in all likelihood become much more acute than it is at the present time before suitable relief could be provided, that it will be materially to the interest of the Town of Harrison to provide for its future needs at this time.

In considering an extension of the present agreement for a further period of years at the prevailing rate of $104.25 per million gallons, it might be well for you to bear in mind that any extension of the present contract made between us will of necessity be subject to the jurisdiction of the Public Utility Commission, so that if conditions at a later date shall warrant the same, either party may then apply to the said Board for a modification of the rate.

If you so desire it, you may consider this letter as an offer on our part of entering into an agreement with the Town of Harrison for an extension of the present contract for a term of fifteen years, or longer, from the date of expiration, upon the same terms and conditions, with the exception, however, that the rate is to be $104.25 per million gallons, unless previously modified by act of the Public Utility Commission.

Trusting that this matter will receive due consideration at the earliest possible date, so that we may govern ourselves accordingly in connection with the proposal we now have under consideration, and the rejection or acceptance of which as has already been pointed out is largely contingent upon whether or not the Town of Harrison desires to accept the offer herein made, and to continue the longstanding and, we think we may say, very pleasant and satisfactory relations of the past twenty-five years, we beg you to believe we are,

Yours very truly,

F. C. Earl
Treasurer.

Exhibit D. 10.

New Jersey Suburban Water Company
50 Church Street
New York.

April 10, 1924

Hon. William F. Kenny,
Chairman Water Committee,
Town of Harrison, N. J.

Dear Sir:

I regret to have to again call the attention of the Board of Aldermen to the status of our water account with the Town of Harrison.

We have just been notified by the East Jersey Water Company, that unless payment is made by April 19th for the water supplied to us for the West Hudson Towns, during 1923 and previously, that they intend seeking redress in the courts. Obviously, if an action is brought against this Company by the East Jersey Company, in self defense it would necessitate action on our part against the Town of Harrison. We

are very loath to in anywise alter our long standing pleasant relations with Harrison, but earnestly request you to pay us for that portion of the bill at the old contractural rate of $82.50 per million gallons, leaving in abeyance, pending the final decision by the Court of Errors and Appeals, in the so-called Bayonne case, the question of the increased rate ordered by the Board of Public Utility Commissioners.

I am enclosing you herewith duplicates of the bills already rendered, amounting for the period from May 31, 1923 to September 30, 1923, to $21,579.30; for the period from September 30, 1923 to December 31, 1923, to $16,075.68, and for the period from December 31, 1923, to March 31, 1924, to $15,975.64.

I am also enclosing you herewith, which we are quite willing shall be held in abeyance, bills for the amount of the increase in rate fixed by the Public Utility Commission, aggregating $21,879.81.

In view of the large amounts now withheld by the town, and the necessity on our part to pay at least a part of the amount due to the East Jersey Company, we have found it necessary to borrow a very considerable sum of money, the interest on which has had to be paid by us. I must respectfully refer you to the provisions of the contract in regard to the provision for the payment of interest to the water company, in the event of failure to pay the bills promptly by the towns.

We wish to remind you that the increase in rate ordered by the Utility Commission was not ordered on the application, or at the request of the N. J. Suburban Water Co., and there seems no good reason why at least that portion of the bill accrued at the old contractural rate should

be withheld, and we respectfully request that you make provision at once for the payment of the bills aggregating $53,630.52.

Yours very truly,

F. C. Earl
Treasurer.

Exhibit D. 11.

An Ordinance granting permission to the New York and New Jersey Water Company, a corporation of the State of New Jersey, their successors or assigns to lay a Water Pipe in the Township of Kearny, from the junction of Kearny Avenue and the Belleville Turnpike easterly along the said Turnpike to a point where the middle line of the Newark Turnpike intersects the middle line of the Turnpike Road Leaking from Belleville to Jersey City.

Be it ordained by the Board of Township Committee of the Township of Kearny as follows:

Section 1.

That permission be and the same is hereby granted to the New York and New Jersey Water Company, a corporation of the State of New Jersey, their successors or assigns to lay a water pipe in the Township of Kearny from the junction of Kearny Avenue and the Belleville Turnpike easterly along the said Turnpike to a point where the middle line of the Newark Turnpike intersects the middle line of the Turnpike Road leading from Belleville to Jersey City.

Section 2.

And be it further ordained that said pipe shall be thirty inches in diameter and shall be laid two

feet beneath the surface of the Avenue and that after the same is laid the said pipe shall be covered and the Avenue restored to as good a condition as before the pipe was laid. And that before the work is begun hereunder an indemnity bond be given by the said company to the Township to fulfill the conditions of this section.

SECTION 3.

And be it further ordained that the said Company their successors and assigns shall be and are hereby granted permission to locate gates and all necessary appurtenances, gates boxes with necessary vaults and other contrivances as may be necessary.

SECTION 4.

And be it further ordained that this ordinance shall be inoperative and void unless the said Water Company shall commence the laying of said water pipe within six months from the final passage of this ordinance and complete same within one year from the final passage of this ordinance.

SECTION 5.

And be it further ordained that the work shall be done by direction of the Board of Township Committee and under the supervision of the Street Committee of the Township Committee and the Street Commissioners, and shall be done subject to such regulations and restrictions as are reserved in such cases.

SECTION 6.

And be it further ordained that this Ordinance shall affect the Township of Kearney in its right, title or interest in the said Turnpike Road to the extent of permission granted but shall not deprive them of the power to grant similar privileges to other water companies or corporations.

SECTION 7.

And be it further ordained that in case the requirements of the Township involves a change of grade of said Turnpike at any time in the future the said the New York and New Jersey Water Company hereby accept the franchise upon the condition that the expense of relaying the said water pipe to conform to such changed grade shall be borne by the said the New York and New Jersey Water Company and they also agree to support their pipe at their own expense in case the same becomes necessary in the laying of any sewer, water or gas pipe in or near said Turnpike.

Passed December 10th, 1895.

CHAS. F. ENGELSTADTER,
Chairman.

Attest:

GATRICE B. RIED,
Township Clerk.

Exhibit D. 12.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITIES COMMISSIONERS

EAST JERSEY WATER COMPANY,
Amendment to Rate Schedule

Pursuant to the Statutes of the State of New Jersey, East River Water Company hereby amends its schedule of rates to read as follows:

Exhibit D. 12.

East Jersey Service District.

The East Jersey Service District includes the territory within the municipal limits of the Boroughs of Totowa and West Paterson, the Township of Little Falls, the Town of Bloomfield, the Town of Nutley, and the municipalities east of the Passaic River now supplied through the Kearny pipe line, including the Cities of Bayonne and Jersey City, the Town of Harrison and Kearny, and the Borough of East Newark.

Rates for General Water Service.

Rates for metered water for domestic, commercial, manufacturing, and public purposes consist of two elements:

(1) A fixed service charge, and
(2) A proportional service charge.

Fixed Service Charges.

The fixed service charges are based upon the size of meter required to furnish the service for a given property. They are uniform throughout the entire territory served by the companies and do not include any charge for water consumed. They shall be as follows:

½″ or ⅝″	Meter.....	$ 1.50	per quarter
¾″	"	2.50	" "
1 ″	"	5.50	" "
1½″	"	13.50	" "
2 ″	"	18.00	" "
3 ″	"	45.00	" "
4 ″	"	60.00	" "
6 ″	"	120.00	" "
8 ″	"	190.00	" "
10 ″	"	220.00	" "
12 ″	"	310.00	" "
16 ″	"	460.00	" "
20 ″	"	620.00	" "
24 ″	"	800.00	" "
30 ″	"	1,050.00	" "

Exhibit D. 12.

Rates for connections of other sizes in proportion to capacity.

Proportional Service Charges.

2. East Jersey Service District (wholesale service to various communities, including the New Jersey Suburban Water Company, Town of Nutley, City of Jersey City, Town of Bloomfield, Little Falls Water Company, Borough of Totowa and City of Bayonne).

For Water .....$0.75 per 1,000 cu. ft.

This rate is to be effective March 1, 1922.

Dated, Paterson, N. J.
February 1, 1922.

EAST JERSEY WATER COMPANY,
By
JOHN H. COOK, *Vice-President,*
ALBERT P. FISHER, *Secretary.*

Exhibit D. 13.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITY COMMISSIONERS

ACQUACKANONK WATER COMPANY,
EAST JERSEY WATER COMPANY,
KEARNEY WATER COMPANY,
MONTCLAIR WATER COMPANY AND
PASSAIC WATER COMPANY,
Re Amended of Rate Schedules
dated February 1, 1922.

Statement Supporting Amendments to Rate Schedules.

TO THE BOARD OF PUBLIC UTILITIES COMMISSIONERS, STATE OF NEW JERSEY

PLEASE TAKE NOTICE that in pursuance of the Statutes of the State of New Jersey, the above named companies have filed herewith amendments to their rate schedules to take effect March 1, 1922.

The following statement is made in connection with the said amendments:

1. The names of the public utilities are Acquackanonk Water Company, East Jersey Water Company, Kearney Water Company, Montclair Water Company and Passaic Water Company, comprising one system. Said Companies own undivided interests in the pumping station and filter plant at Little Falls, New Jersey, and the service reservoir, pipe lines and necessary transmission mains leading from the joint property independently owned. The expenses of the joint operation are divided in proportion to the draft taken by the constituent companies.

2. These Companies serve the following municipalities:

Bayonne .....East Jersey Water Company
Bloomfield ....East Jersey Water Company
Clifton .....Acquackanonk Water Company
East Newark ..East Jersey Water Company
Essex County .Montclair Water Company
Glen Ridge ....Montclair Water Company
Harrison .....East Jersey Water Company
Jersey City ...East Jersey Water Company
Kearney .....East Jersey Water Company
Little Falls ....East Jersey Water Company
Montclair .....Montclair Water Company
Nutley .....East Jersey Water Company
Passaic .....Acquackanonk Water Company
Paterson .....Passaic Water Company
Prospect Park
Borough ....Passaic Water Company
Totowa .....Passaic Water Company
West Orange...Montclair Water Company
West Paterson.East Jersey Water Company

Kearney Water Company is a transportation company, and has no consumers outside of the system. Its rates are inter-company and have been so treated.

3. The rates charged by each of the above companies, except perhaps the Kearney Water Company, affect the joint enterprise and the rates charged by each of the others. Each of the constituent companies, therefore, is amending its respective rates schedules, treating them as if they were all those of a single company, and apportioning the rates equitably among the different consumers of the system.

4. Notices of said amendments in the form annexed, marked Exhibits A-1, A-3 and A-4, will be published in two newspapers of general circu-

lation in the territory served, and will be served on the officials of the respective municipalities.

5. The statement of the change in the schedules of rates is as follows: Submitted herewith is the said amendment, the effect of which is an increase in the rates at present charged by the companies, as shown by comparison of the amendment with the existing schedules, and also a change in the incidence of the rates, to eliminate discriminations, and more equitably to distribute the costs of rendering the service.

The territory is divided into districts, according to the costs of the service. These districts are (1) the Paterson-Acquackanonk District, in which rates are uniform; (2) the Montclair District, divided into (a) the Low Service District, and (b) the High Service District (the latter with a higher rate due to added costs of pumping); and (3) the East Jersey District, where the rates are all wholesale, as the distribution of the water to the ultimate consumers is done by the customers of this system.

The rates for fire protection are laid out on plan prescribed by this Board for water companies, and consist of a hydrant charge of $10 a hydrant, and an inch-foot charge based on the length and capacity of the mains. These charges are uniform throughout the whole territory.

The rates for other service are divided into uniform fixed rates and proportional rates, to cover fixed and proportional costs of the service, and where the distribution system is owned by the consumer a wholesale rate is fixed.

The schedules as amended change substantially all existing rates of the Companies, whether fixed by contract, agreement, or otherwise, so as to eliminate discriminations and equitably apportion the charges with reference to cost of the service.

6. The reasons why the change or alteration is made is that no change in the rates of these companies has been made since the general increases in costs occurred, and in the meanwhile operating expenses and taxes have grown so out of proportion to the revenues that it is imperative that these companies should secure additional income in order to obtain a fair return on the fair value of their property and to maintain their service. Further, these increases have resulted in unbalancing the rates of the several companies, treating them as a common enterprise and taking into consideration their jointly owned property. In order to eliminate the discrepancies and the discriminations which have thereby become unjust and unreasonable, it is necessary to make an amendment in the rates.

7. Attached hereto are tables (Exhibit B) showing the additional revenue required by the system as a whole, and by each company as a part of said system; the appraised value of the properties; their operating expenses and taxes for the past four years; their revenues, interest payments and dividends for a corresponding period; and a balance sheet for each company and the combined balance sheet as to the date of the appraisal.

Dated, Paterson, N. J.,

ACQUACKANONK WATER COMPANY,
By
JOHN H. COOK, *Vice-President.*
ALBERT P. FISHER, *Secretary.*

Exhibit D. 14.

East Jersey Water Company,
By
John H. Cook, *Vice-President.*
Albert P. Fisher, *Secretary.*

Kearney Water Company,
By
John H. Cook, *Vice-President.*
Albert P. Fisher, *Secretary.*

Montclair Water Company,
By
John H. Cook, *Vice-President.*
Albert P. Fisher, *Secretary.*

Passaic Water Company,
By
John H. Cook, *Vice-President.*
Albert P. Fisher, *Secretary.*

Exhibit D. 14.

Notice of Change in Rate Schedules

East Jersey Water Company,
Paterson, N. J., February 1, 1922

East Jersey Water Company hereby gives notice that it has filed with the Board of Public Utility Commissioners, at its office in the State House, Trenton, New Jersey, an amendment to its schedule of rates, to take effect March 1, 1922.

The Company's schedule of rates now in force was fixed before the War, and the great increases in cost of operation, maintenance, labor and taxes have made the rate insufficient and unbalanced, unjust and discriminatory. By the amendment, discriminations are eliminated, the costs of rendering service are more equitably distributed, and additional revenues are provided. These changes are essential in order that the service may be maintained and continued. With the new schedule of rates there have been filed with the Board amendments to the rate schedules of the affiliated companies, together with a full statement of the value of the properties, their financial conditions, and their earnings and operating expenses.

Exhibit D. 15.

Respectfully submitted,

East Jersey Water Company,
By
John H. Cook, *Vice-President,*
Albert P. Fisher, *Secretary.*

Exhibit D. 15.

Notice of Change in Rate Schedules.

New Jersey Suburban Water Company,
and
New York and New Jersey Water Company,
No. 50 Church Street,
New York City.

East Jersey Water Company,
Paterson, N. J.
February 1, 1922.

Gentlemen:

East Jersey Water Company hereby gives notice that it has filed with the Board of Public Utility Commissioners, at its office in the State House, Trenton, New Jersey, an amendment to its schedule of rates, to take effect March 1, 1922.

Exhibit D. 15.

The company's schedule of rates now in force was fixed before the War, and the great increases in cost of operation, maintenance, labor and taxes have made the rate insufficient and unbalanced, unjust and discriminatory. By the amendment, discriminations are eliminated, the costs of rendering service are more equitably distributed, and additional revenues are provided. These changes are essential in order that the service may be maintained and continued. With the new schedule of rates there have been filed with the Board amendments to the rate schedules of the affiliated companies, together with a full statement of the value of the properties, their financial conditions, and their earnings and operating expenses.

Respectfully submitted,

EAST JERSEY WATER COMPANY,
By (signed) JOHN H. COOK,
Vice-President.
(signed) ALBERT P. FISHER, *Sec.*

(Seal)

Exhibit D. 16.

Exhibit D. 16.

NOTICE TO NEW JERSEY SUBURBAN WATER COMPANY AND THE NEW YORK AND NEW JERSEY WATER COMPANY OF FILING AMENDED RATE.

Feb. 9, 1922.

New York and New Jersey Water Company,
New Jersey Suburban Water Company, and
No. 50 Church Street,
New York, N. Y.

Gentlemen:

Enclosed herewith please find notice of the filing by the East Jersey Water Company, with the Board of Public Utility Commissioners of New Jersey, of an amended rate.

Yours very truly,
(signed) JOHN H. COOK,
Vice-President.

Exhibit D. 17.

Exhibit D. 17.

NEW JERSEY SUPREME COURT.

ACQUACKANONK WATER COMPANY, EAST JERSEY WATER COMPANY, KEARNEY WATER COMPANY, MONTCLAIR WATER COMPANY and PASSAIC WATER COMPANY, *Prosecutors,*		*On Certiorari.*
against		*Rule for Judgment.*
BOARD OF PUBLIC UTILITY COMMISSIONERS, *Respondents.*		

This cause coming to be heard upon return of the writ of certiorari heretofore allowed herein, in the presence of L. Edward Herrmann and William M. Wherry, Jr., counsel for the Prosecutors, Thomas Brown, Esq., counsel for the Board of Public Utility Commissioners, and John J. Treacy, Esq., counsel for the City of Bayonne, and the court having inspected the writ, the return and the reasons, and having heard the arguments of counsel thereon, it is

Ordered that that part of the report and order of the Board of Public Utility Commissioners, dated April 20, 1922, in the matter of the schedule of rates for the above named companies, which holds that the East Jersey Water Company is not a public utility subject to the jurisdiction of the Board with respect to its rates, be set aside; that part of the said report and order which holds that the schedule of rates of the Prosecutors shall not be treated as a whole, be set aside; that part of the said report and order

Exhibit D. 17.

and that part of the order of said Board dated May 3, 1922, which strikes from the files of the Board the schedule of rates filed by the East Jersey Water Company dated February 1, 1922, be set aside, and that part of the said order of May 3, 1922, which discontinues the hearing on the increase in rates of the East Jersey Water Company, be set aside;

I allow this rule this 21st day of July, 1922.

Let it be entered.

Rule Entered this 24th day of July, 1922.

FRANCIS J. SWAYZE,
Justice Supreme Court.

On motion of L. Edward Herrmann, Attorney of Prosecutors.

I, EDWARD J. KELLEHER, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above stated cause.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this eighteenth day of June, A. D. nineteen hundred and twenty-five.

(Seal)

EDW. J. KELLEHER,
Clerk

Exhibit D. 18.

Exhibit D. 18.

NEW JERSEY COURT OF ERRORS AND APPEALS.
November Term, 1922.

EAST JERSEY WATER COMPANY, *Respondent,*	*In Error to Supreme Court.*
vs.	
BOARD OF PUBLIC UTILITY COMMISSIONERS, *et al.,* *Appellants.*	*Rule of Affirmance.*

This cause having been duly argued at the present term of this court by Thomas Brown and John Milton of Treacy & Milton, of counsel for the appellants, and L. Edward Herrmann, John B. Humphreys and William M. Wherry, Jr. (of New York bar), of counsel for the respondent, and the court having considered the same and finding no error in the records or proceeding in the Supreme Court:

It is thereupon ORDERED and adjudged that the judgment of the Supreme Court, removed by writ of error in this cause, be affirmed; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On Motion of

L. EDWARD HERRMANN,
Attorney for Respondent.

Endorsed:

"Filed Feb. 7, 1923.
THOMAS F. MARTIN,
Clerk."

Exhibit D. 19.—Extracts from Record and Briefs in Certiorari Proceedings in New Jersey Supreme Court.

Exhibit D. 19.

DECISION.

(March 27, 1923)

STATE OF NEW JERSEY,
BOARD OF PUBLIC UTILITY COMMISSIONERS.

ACQUACKANONK WATER COMPANY,
EAST JERSEY WATER COMPANY,
KEARNEY WATER COMPANY,
MONTCLAIR WATER COMPANY,
PASSAIC WATER COMPANY,
Re AMENDMENT OF RATE SCHEDULES DATED FEBRUARY 1ST,

W. M. Wherry and L. Edward Herrmann, for the petitioners.

John J. Treacy for various municipalities affected.

Edward F. Merry for City of Paterson.

George L. Record and A. O. Miller for City of Passaic.

W. B. Gourley for City of Clifton.

Randolph C. Barrett for Town of Bloomfield.

H. C. Barrett for Town of Harrison.

William J. Davis for Borough of East Newark.

One February 25, 1922, the Acquacknonk Water Company, East Jersey Water Company, Kearney Water Company, Montclair Water Company and Passaic Water Company filed with the Board a proposed amendment providing for increases in the rates then being charged. On April 20th,

1922, the Board decided that it had no jurisdiction over the East Jersey Water Company, as in the opinion of the Board, that company was not a public utility within the meaning of "An Act concerning public utilities, etc." (Chap. 195, Laws of 1911). The remaining companies filed further amendments to the existing schedules. The decision as to the East Jersey Water Company was followed by an order dated May 3d, 1922, discontinuing the hearing on the increase in rates of the East Jersey Water Company and continuing an order previously entered suspending the proposed increase in rates by the other companies.

On May 31st, 1922, the Board issued a further order suspending the rates for an additional three months or until the first day of September, 1922. Since that time, by agreement with the Board, no attempt has been made by the companies to put the proposed rates into effect pending final hearing and decision.

On July 15th, 1922, the Supreme Court, reversing the Board, decided that the East Jersey Water Company was a public utility and the companies have since proceeded upon the theory that all five companies were to be treated as an interlocked group operating the aggregate property for the joint benefit of all the municipalities and all the customers served by each and all of them.

The Court of Errors and Appeals subsequently affirmed the decision of the Supreme Court.

Society for Establishing Useful Manufactures:

An organization known as the Society for Establishing Useful Manufactures, a few years after the Revolutionary War, acquired certain water rights from the State at the Passaic Falls at Paterson and built and furnished water power to a large number of factories under certain perpetual contracts. When it became necessary to utilize the water of the river for potable purposes, agreements had to be made with the Society for Establishing Useful Manufactures allowing its diversion, while it, in turn, had to repurchase many of the factories and industries which it had originally established, in order to enable it to cancel the perpetual contracts for the supply of water power.

Passaic Water Company:

The Passaic Water Company is the oldest of the associated water companies above referred to, having been incorporated on February 13th, 1849, by special act of the New Jersey Legislature.

The Company was organized for the purpose of supplying water to the Town of Paterson and the Township of Manchester.

The first supply of water was taken about 1857, from the Passaic River at a point below the Great Falls in Paterson, opposite Gun Mill. It was pumped by means of a water wheel located a short distance below a low dam across the river at that point. In the year 1867 the intake was moved to a point above Great Falls, and there remained until December 7th, 1899, when it was again moved, this time to Little Falls, the water being delivered to Paterson through a 42-inch

steel conduit laid in the year 1897, along the Little Falls Turnpike.

In the year 1890 the Passaic Water Company began to furnish water to the Acquackanonk Water Company, from Great Falls, in Paterson, through the Paterson distribution pipe system, and thence through meters located at Crooks Avenue and Main Street, into a 20-inch cast-iron main running to Passaic through Acquackanonk Township, a part of which is served, as well as the City of Passaic.

The company has supplied water for many years to a part of Manchester Township, including the territory now known as the Borough of Prospect Park. The Passaic Water Company also supplies water to a few of the citizens of Totowa.

The company's contract for furnishing the City of Paterson with water for public uses expired August 1st, 1910, but it has continued to furnish water to the city and to its consumers under the terms and conditions of the last contract.

DYERS' PIPE LINE OF THE PASSAIC WATER COMPANY:

As the waters of the Passaic River below the Great Falls in Paterson became more and more polluted, owing to increase in the population of the city and in the number of dye houses and factories which discharge their waste into the stream, the Passaic Water Company in 1905 laid a 48-inch to 42-inch steel conduit from the dam of the Society for Establishing Useful Manufactures, just above Great Falls, to a point at the Weidmann's Silk Dyeing Plant, about two miles

down stream, for the purpose of furnishing them with a supply of clean water, and since the year 1906, the water has been supplied by gravity to various dye houses and factories located along this pipe line.

ACQUACKANONK WATER COMPANY:

The Acquackanonk Water Company was incorporated by special Act of the Legislature of New Jersey approved April 9th, 1867. It supplies water to the City of Passaic and certain parts of Acquackanonk Township.

The water supplied by this company was obtained from the canal of the Dundee Water Power and Land Company from 1871 to the year 1885, when an intake was obtained from Vreeland's Pond on Weasel Brook, Passaic. In 1890 the Vreeland Pond intake was abandoned, and the company took its water from the Passaic River above Great Falls in Paterson, the water being pumped by the Passaic Water Company through the distribution system of the City of Paterson. The supply has since been the same as that to Paterson.

From the year 1890 to 1908 water was furnished to the Acquackanonk Water Company exclusively through the Paterson distribution system, this supply being known as the "Low Pressure Supply."

In the year 1908 a 30-inch steel branch pipe was laid from the 51-inch high pressure conduit, which had been laid by the East Jersey Water Company from Little Falls to Belleville, supplementing the low pressure supply from Paterson.

Although the contract with the City of Passaic expired in the year 1909 the company has con-

tinued to furnish water to the city and its consumers at the old contract rates.

MONTCLAIR WATER COMPANY:

The Montclair Water Company was incorporated January 15th, 1887, under Act of the New Jersey Legislature, approved April 21st, 1876, for the purpose of constructing, maintaining and operating waterworks in the Township of Montclair (now the Town of Montclair), and supplying said township and its inhabitants with water.

The water first supplied to the town was obtained from wells located upon the property of the company on Watchung Avenue, Montclair. This supply continued until 1892, when the company began to receive water from the pipe lines of the East Jersey Water Company, running from Macopin Intake on the Pequannock River to the City of Newark. The Pequannock supply continued until 1904, since which time the supply has been taken from the Passaic River at Little Falls.

Water from the East Jersey Water Company's 51-inch high pressure conduit is supplied to the Montclair Water Company's distribution pipe system through two connections, one a 20-inch cast-iron pipe located at Grove Street, the other a 16-inch cast-iron pipe at Brookdale. These two pipes join at the corner of Grove Street and Watchung Avenue, where the 20-inch pipe runs along the latter to the Montclair Pumping Station.

Up to 1921 the lower portions of the Town of Montclair, together with the Town of Bloomfield, the Borough of Glen Ridge and a small part of West Orange, were supplied with water under

direct pressure from the East Jersey Water Company's 51-inch steel conduit; while the remaining high portion of the Town of Montclair is served with water pumped from the Watchung Avenue pipe line to the standpipe located upon the top of Watchung Mountain, about a mile above the pumping station. An emergency connection is still maintained with West Orange and also with Glen Ridge, but both of these places now obtain their supply from other sources.

The Montclair pumping station built at Watchung Avenue about the year 1887 is in daily use and re-pumps a large part of all the water supplied to Montclair.

On March 7th, 1887, the Montclair Water Company entered into a contract with the Township of Montclair, and since that time has supplied water to Montclair from the various sources cited. Upon the expiration of this contract in March, 1898, a new contract was entered into with the Town of Montclair, which expired in 1912, since which time the company has continued to furnish water service under the terms and conditions contained in the expired contract.

The Montclair Water Company furnishes water to the Board of Chosen Freeholders of Essex County, for use in the County Institutions at Overbrook. This supply is pumped at the Watchung Avenue station into a pipe line owned by the Freeholders, through a meter located about three-quarters of a mile from the pumping station.

The Town of Nutley is also supplied from the East Jersey Water Company's 51-inch high pressure conduit.

The Montclair Water Company also supplies the Little Falls Water Company with water,

which the latter distributes in part to Little Falls Township.

East Jersey Water Company:

The East Jersey Water Company was incorporated August 1st, 1889, under an Act of the Legislature entitled "An Act Concerning Corporations", approved April 7th, 1875, for the storage, sale and delivery of water and the construction and maintenance of the necessary reservoirs, pipe lines, and other works.

On September 24th, 1889, the company entered into contract with the City of Newark, to build a water supply system consisting of certain reservoirs lying within the Pequannock watershed and a pipe line of 50,000,000 gallons guaranteed capacity, connecting them with the City of Newark. These works were completed and the water has been furnished from them to the City of Newark since January 12th, 1892.

Under this contract, the City of Newark was permitted to draw but 27,500,000 gallons per day from the Pequannock works. This left the balance of the available flow for the service of the East Jersey Water Company, which contracted to furnish a temporary supply of water from the Pequannock Works to Jersey City.

To this end the East Jersey Water Company in 1895 built what is known as the Kearney Extension, connecting at the corner of Kearney Avenue and Belleville Turnpike, in Kearney, with three large pipes owned by Jersey City, through which water was pumped to Jersey City, at the old Jersey City Pumping Station located upon the Passaic River at Belleville.

As it was found that the works built by the company for the City of Newark were not capable of delivering the estimated quantity of 50,000,000 gallons per day, the East Jersey Water Company laid an additional 48-inch to 42-inch steel pipe from the Macopin Intake to Belleville, and an additional reservoir known as the Canistear Reservoir was built upon the Pequannock drainage area to supplement the Jersey City Supply, which continued from the Pequannock Works or from the Passaic River at Little Falls, until 1904, when the service ceased. Since this time Jersey City has obtained its own supply from the Boonton Reservoir on the Rockaway River. For a short time ending April 1st, 1922, a supplemental supply was furnished at Belleville from the East Jersey's 51-inch line.

By agreement of July 12th, 1895, the East Jersey Water Company contracted to furnish water to the New York and New Jersey Water Company for the supply of the City of Bayonne. This service has continued to the present time, the present source of supply being from Little Falls, the water being delivered to the city at the corner of Belleville and Kearney Avenues, in Kearney. The property of the New York & New Jersey Water Company has been taken over by the City of Bayonne together with the contract under which the East Jersey Water Company supplied the water to the New York & New Jersey Water Company.

The East Jersey Water Company supplies water to the City of Bayonne and to the New Jersey Suburban Water Company, which in turn supplies the Towns of Kearney, Harrison and East Newark, from the connection with the 42-inch Kearney Extension of the East Jersey Water

Company at the corner of Kearney Avenue and Belleville Turnpike.

The East Jersey Water Company had obligated itself to furnish water for the supply of Jersey City, Bayonne, Kearney, Nutley and the Montclair Water Company, its principal source of supply originally being from the Macopin Intake upon the Pequannock River. In fulfillment of its contract with the City of Newark, however, the company was required to turn over to the latter the Pequannock works. The company had prior to 1899, acquired necessary land, power and water rights at Little Falls for the further development of that supply, and in December, 1899, a low pressure pump and one high pressure pump were put into active service, two other high pressure pumps being completed shortly thereafter. In 1901 and 1902 the filtration plant located in proximity to the pumping station at Little Falls was constructed, and since then all water taken from this source by the affiliated companies has been filtered at this plant.

KEARNEY WATER COMPANY:

Under the act of New Jersey Legislature, approved April 21st, 1876, the Kearney Water Company was incorporated on October 18th, 1886, for the purpose of constructing, maintaining and operating waterworks. The company built no works, but on June 28th, 1900, acquired by deed from the East Jersey Water Company the ownership of that portion of the 51-inch conduit which lies within the limits of Joralemon Avenue, and of the 42-inch Kearney Extension pipe from Joralemon Avenue in Belleville to the corner of Kearney Avenue and the Belleville

Turnpike, in Kearney, including the river crossings.

Through this extension the Kearney Water Company transports water from the East Jersey Water Company's 51-inch steel high service conduit in Belleville, through Belleville, under the Passaic River, and thence to the intersection of Kearney Avenue and the Belleville Turnpike where it delivers the water through Venturi meters, owned by the East Jersey Water Company, into the pipe lines of the City of Bayonne and of the New Jersey Suburban Water Company, for the supply of Bayonne, Kearney, Harrison and East Newark, and for possible emergency supply of Jersey City.

From the above statement it is clear that the relative corporation ownership in the jointly used facilities cannot govern in the determination of the rates which should be charged the various consumers that are ultimately supplied with water by these various companies. The valuation of the property will therefore be determined in the aggregate and it will then be allocated in proportion to the service supplied to each municipality. The rates will then be determined upon the basis of cost of supplying the various municipalities served. The intercorporate charges and their adjustment will be left to the companies, unless and until it appears that misleading and erroneous information is being supplied through the annual reports of the respective companies.

Valuation.

As to the value of this property, we have:

I. Certain references in the testimony to an inventory and appraisal as of December 31st, 1912, made for the company by Metcalf & Eddy.

II. Certain references in the testimony to a report made December 29th, 1913, by a Board of Appraisers representing the State of New Jersey, consisting of Clemens Herschel, Nicholas S. Hill, Jr., and Dabney H. Maury.

III. A valuation submitted by Leonard Metcalf as of December 31st, 1921.

IV. A valuation made by Nicholas S. Hill, Jr., as of December 31st, 1921.

V. A valuation by Edward W. Bemis, based upon a study of book costs, reinforced by information obtained from I and II above.

It is in evidence that the gross reproduction cost of the physical property, including rights of diversion for fifty million gallons daily was fixed by the Board of Appraisers above mentioned at $9,214,684. Going value was fixed by said Board at $1,200,000, and, after making certain deductions and adjustments, the final present value of these properties, excluding right of diversion against the S. U. M. and the Dundee Company, but including the value of the water power was fixed at $8,728,300.

Mr. Metcalf's testimony brought his valuation to the sum of $14,323,000 (see appendix "A").

After adjustment by the Board for properties now used and useful, Metcalf's final value is	$14,110,460
Mr. Nicholas S. Hill, Jr., made various estimates as to value of the property, the details of which are given in Appendix "B", and arrived at the final conclusion that the property is worth.....	13,000,000
The Board has made certain adjustments and deductions from Hill's valuation for items not now used and useful which gives Hill's final value as	12,927,000

COMPARISON OF METCALF'S AND HILL'S VALUATIONS:

A comparison has been made of the appraisals submitted by the engineers for the company, by classes of property.

On structural items Hill's valuation is 98.2 per cent of Metcalf's.

Both Hill and Metcalf have taken the same amount for water rights purchased in 1922, namely, $1,120,000. Hill has added $300,000 for working capital and materials and supplies, and $150,000 for preliminary and organization expenses. Metcalf has added $175,000 for materials and supplies, and $160,000 for preliminary and organization expenses. Going value has been included by Hill in the amount of $1,510,000 and by Metcalf in the amount of $2,062,000, the widest divergence being shown in this last item.

VALUATION SUBMITTED BY DR. BEMIS:

The exhibits put in by Dr. Bemis, representing the cities, were summarized as follows (Brief for the cities, page A):

"1. An historical cost of the presently used and useful property of the company taken from the books and records of the company except as to 7%, which was estimated."

"2. What may be called a reproduction cost which took as its starting point in 1912 reproduction cost made for the State Board of Water Conservation and agreed to by Messrs. Hill and Metcalf in this case as being the fair reproduction cost to which has been added in actual prices the cost of all additions to date."

1. In preparing this historical cost study Dr. Bemis testified that he made an investigation of the books of account of the associated companies and determined the items and costs of the property in place December 31st, 1921, so far as the same could be determined, and made estimates of the value of such items of property, the cost of which he did not find on the books. He claims that the items so estimated constitute but 7 or 8 per cent of the total amount as estimated by him, or, in other words, that 93% of his total consists of items actually identified by him on the books of account. The results of this investigation are set forth principally in Exhibits R-1, R-2 and R-3. Counsel for the cities has set up in tabular form in their brief (page 13-A) an analysis of this historical cost separating the structural items into two parts, namely, (a) property installed and priced at costs prevailing before January 1st, 1916, and (*b*) property installed and priced at costs prevailing since January 1st,

1916. Dr. Bemis testified that his analysis indicated that the original cost new of the property as of December 31st, 1922, was $9,572,977 and the original cost new less accrued depreciation was $7,544,658. Counsel for the municipalities assumes the latter figure to be a fair rate base to be taken in this proceeding.

To the totals as found by Dr. Bemis the Board adds for land and structures which Dr. Bemis considered not used and useful, but which the Board includes, the sum of $192,595 cost new, or $181,145 cost new less accrued depreciation. This will bring the totals for original cost as found by Dr. Bemis, adjusted as indicated, to the amount of $9,765,572 cost new or $7,725,804 cost new less accrued depreciation (Appendix "C").

2. The second set of exhibits submitted by Dr. Bemis constitutes essentially a continuation, following Dr. Bemis' theory, of the original appraisal of 1912 brought down to December 31st, 1921, by eliminating certain items and by the inclusion of net additions since December 31st, 1912, an allowance for increased diversion water rights of 25 million gallons daily, and the correction of an error in certain items retired on the books but not included in the original appraisal. A summary of this appraisal, showing the items as adjusted by Dr. Bemis, will be given in Appendix "D."

The total as shown by Dr. Bemis on this basis is $9,641,306. He deducted, however, for structures and land not used the sum of $506,382. In Appendices "A" and "B" the Board has indicated the items which it includes and about which there was some disagreement of opinion as to whether they were used and useful or not. With

respect to the items deducted by Dr. Bemis in the amount of $506,382, the Board make a deduction for the items excluded by it of $418,735, a difference of $87,647 to be added to Dr. Bemis' figure above mentioned. In order that the figures in Appendix "D" may be comparable with those in Appendix "C," however, it is necessary to make the water rights $1,320,000 in each appendix and to include working capital of $150,277 in each appendix. With these additions to Appendix "D" the amount of $9,641,306 shown by Dr. Bemis, with the changes as suggested, is brought up to $10,249,230, which is comparable with $9,765,572 which would be his adjusted original cost new. The difference between the two figures is $483,668.

It will be noted that Dr. Bemis placed great reliance on original cost so far as he was able to ascertain the same, and that he eliminated any consideration of going concern value or appreciation due to prevailing higher prices. He submitted no appraisal of the property with a view to ascertaining present value based on reproduction cost new at unit prices now prevailing or prevalent in the immediate past.

Comments on Individual Items:

Water Power Rights. The payments for diversion rights at Little Falls, purchased from the Beattie Manufacturing Company, are to compensate that company for depletion in water power caused by the diversion to the East Jersey and associated companies. These rights were appraised by the State Board in 1912 at $413,822. The basis of the appraisal was the cost to obtain an equivalent steam power. In the later appraisal by Hill these rights have been appraised

at $615,300, using the same basis for appraisal, but taking into account the increases in cost of fuel since 1912. Both figures include overhead charges which have been disallowed in reaching the final conclusion in this decision.

Water *Diversion* Rights, purchased in 1922, $1,120,000. Below the intake at Little Falls there are two water power developments on the Passaic River, one at Paterson owned for a century or more by the Society for Establishing Useful Manufactures, commonly called the S. U. M., the other owned by the Dundee Water Power & Land Company, just above Passaic. For many years the East Jersey and associated companies have paid to the S. U. M. the sum of $5 for each million gallons of water diverted and have also paid to the Dundee Company $2 for each million gallons of water diverted. The prices paid for the right to divert water were based upon the same method as that used in estimating the value of water power.

In 1922 the water companies paid to the S. U. M. and Dundee the sum of $1,120,000 for the perpetual right to divert 70 million gallons per day. In the year 1920 the annual payment was approximately $130,000; in the year 1921 $113,755. Capitalizing the 1920 payment on a basis of 8 per cent (as claimed by the company) would give an equivalent value of $1,625,000. The average for 1918 and 1919 was $105,000. Capitalizing this amount on an 8 per cent basis would give an equivalent value of $1,312,500. Capitalizing the 1921 payment at 8 per cent would give an equivalent value of $1,422,000. Under all the circumstances the purchase of these rights for the sum of $1,120,000 is equivalent to a reduction of the

annual charge formerly paid for the same diversion rights. This purchase price allows the diversion of 75 million gallons of water daily although the quantity actually diverted has not yet reached that amount.

The price at which these rights were transferred to the water companies was based upon calculations made for the company by Mr. Leonard Metcalf. The data underlying his conclusions was submitted in exhibit P-27*a*. An independent calculation has been made with a view to determining the reasonableness of this price by a study of the value, for power purposes, of the water diverted.

These rights are, undoubtedly, of great value and while it is true that the same parties interested in these water companies are also interested in the water power rights, the water power developments were in operation for many years before the organization of the water companies and the contracts for the diversion of the water appear to have been originally made in good faith and have never been questioned. In view of all the facts, the Board concludes that the valuation of these water rights on the basis of their purchase price is proper for present value.

With regard to going value, working capital and cost of organization, allowances have been made for these items which, in the opinion of the Board, are fair and equitable. Going value depends not only on costs of developments but on the permanency of the present sources of water. Testimony was submitted both for and against the permanency of the present supply and we have given full consideration to these matters in arriving at a final conclusion as to value.

In addition to the testimony with regard to values, there is in evidence the offer of the company in 1922 (Exhibit R-7) to sell the property, inclusive of the diversion rights, for the sum of $10,594,538. This offer corresponds very closely to the figures for Dr. Bemis' historical cost with adjustments as made by the Board. The testimony indicated that this offer was made for prompt acceptance, and without prejudice to the right to prove different value in condemnation proceedings.

CONCLUSIONS AS TO VALUE:

We have then before us the following bases for determining value

Metcalf's Valuations (as adjusted)	$14,110,460
Hill's Valuations " "	12,927,000
Offer of sale " "	10,594,538
Bemis' historical cost (new)	9,765,572
Bemis' valuation based upon 1912 appraisal with additions to date and subsequent adjustment by the Board—Appendix D (new)	10,249,230

In order to ascertain the present fair value of the property used and useful in the service of the public, the Board has given consideration to all of the evidence introduced, as well as the original cost of construction as far as testimony discloses it, the amount expenses in permanent improvements, and the present as compared with the original cost of construction. In the determination of this matter we have taken it as established and given due consideration to the fact that what the company is entitled to ask is a sufficient sum to meet operating expenses, and a fair return upon the value of the property which is employed for the public convenience. Counsel for certain municipalities contended that the rates

should be based upon the values assigned to the respective corporate properties making up the system as a whole. With this we do not agree but have allocated the values upon the basis of respective use in the various classes of service and service districts.

We find the present fair value, inclusive of all elements of physical property, working capital, cost of organization, going concern and all other intangible elements, to be $11,500,000.

RETURN ON CAPITAL:

The rate of return must be such that the company will be able to finance the extensions needed from year to year to keep pace with the growth in population and changes in the character of the demand for service. Analysis of the earnings and expenses during the past few years shows a wide variation and on this account the actual conditions of no one year can be taken as full indicative of the basis upon which this company's rights to earn should be determined. The Federal income tax has been excluded from operating expenses but has, however, been included in determining the net return. As a return, inclusive of Federal income taxes to the extent of approximately $52,000, the Board allows the sum of $900,000.

BASE FOR RATES:

In determining the costs of serving customers in each service district the jointly used property, with its associated fixed charges and the operating expenses, has been allocated in accordance with the following schedule:

1. *Production:*
   This includes water rights, intakes and yard connections, land at Little Falls except that under the pumps and boiler house, buildings except pumping plant buildings, filters, sedimentation tanks, all accessories, buildings, etc., no working capital, no going value and all cost of organization.

The total fixed and operating charges for production have been divided by the total amount of water delivered to obtain a unit price per million gallons, exclusive of pumping costs.

2. *Pumping:*
   This includes boiler house land, boiler house, boilers and connections, all pumps, water power rights, power flume, pump house, pump house land, a portion of the working capital, and a portion of going value.

The aggregate fixed and operating charges for pumping have been divided into two classes in proportion to the foot-gallons or foot-pounds involved in pumping water to the two different classes of service, Class A being the high pressure, Class B being the low pressure.

The total charges against Class A service have been divided by the number of gallons of water pumped at high pressure in order to determine a cost for pumping per million gallons for high pressure water.

The total charges against Class B service have been divided by the number of gallons of water pumped at low pressure in order to determine a cost for pumping per million gallons for low pressure water.

3. *Transmission:*

Under Class A service the total fixed and operating charges on the following items of property have been included: 51-inch (high pressure) line from Little Falls to Richfield. Great Notch Reservoir with its lands and all associated pipe connections. Land and rights of way in connection with the 51-inch line.

The aggregate of these costs has been divided by the total amount of water passing through the line to Richfield. In this calculation it has been assumed, in order not to unnecessarily complicate the matter, that the branches to Montclair, Passaic and into Bloomfield were located at a central point which point has been taken, for purposes of calculation, at the branch to Passaic.

The fixed and operating charges in connection with the balance of the 51-inch line, its two connections with the New Jersey Suburban Water Company and the line now belonging to the City of Bayonne, the 16-inch line to Bloomfield, together with associated rights of way, are used as the basis for determining the cost per million gallons of water supplied by the East Jersey to Bloomfield, Nutley, the New Jersey Suburban Water Company and the City of Bayonne.

Under Class B service (low pressure to Paterson) the entire fixed and operating charges in connection with the 42-inch transmission line to Paterson have been included with all other fixed and operating charges applicable to the combined Acquackanonk-Passaic District, which includes Paterson, Clifton, Passaic, and portions of municipalities contiguous to Paterson.

4. *Distribution:*

Passaic-Acquackanonk District.

The cost of distribution in this district includes the fixed and operating charges in connection with the following: All distribution mains located in Paterson, Clifton, Passaic and the municipalities contiguous to Paterson; all reservoirs excepting the Great Notch reservoir; all land and rights of way associated with the above; service connections; meters; materials and supplies; a portion of the working capital; a portion of the going value; all incidentals and accessories; the 42-inch transmission line from Little Falls to Paterson; and the 30-inch transmission line from Richfield into the south side of Passaic, including also the 16-inch line on Van Houten Avenue, as well as the main trunk line between Paterson and Passaic.

To the fixed and operating charges for distribution is added the cost of production and the cost of pumping water at low pressure, and including also the cost of high pressure water obtained through the 20-inch line entering Passaic from the south. Adjustment has also been made to account for the additional cost due to a partial reinforcement of the 42-inch line by the regulated connection with the 51-inch line.

Montclair District:

The cost of distribution in this district includes the fixed and operating charges on the Grove Street transmission line, the distribution mains in Montclair, the service, meters, office building and shops, and all incidental and accessory prop-

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erty. It includes also a portion of working capital and a portion of going value.

After determining the cost of service in the lower level area in Montclair, the cost of supplying the upper levels of Montclair is found by adding the cost of additional pumping in Montclair.

Having determined upon a figure representing the aggregate value of these properties, it becomes necessary, in accordance with the method described above, to allocate the values to the various service areas and classes of service.

This is shown in Table I following, first line.

The amounts which the Board considers as proper allowances for return on capital, depreciation, local taxes, capital stock tax, operating expenses, and franchise taxes, are also shown in Table I.

TABLE I.

Ref.	Item	Total	General Costs: Production Little Falls	Pumping Little Falls	Local Costs: 51" Conduit and Great Notch Res.	Passaic & Acquackanonk	East Jersey and Kearney	Montclair High Service	Dyers' Line
37a	Capital	11,500,000	2,406,000	2,280,000	1,082,000	3,845,000	684,000	106,000	156,000
	per cent.	100	20.9	19.8	9.4	33.4	6.0	0.9	1.4
	Depreciable Prop.	9,151,000	1,075,000	1,765,000	900,000	3,660,000	584,000	940,000	77,000	150,000
	Return	900,000	188,100	178,200	84,600	300,600	54,000	73,800	8,100	12,600
	Depreciation	130,000	15,300	25,100	12,800	52,000	8,300	13,300	1,100	2,100
	Local Taxes	194,060	40,600	38,400	18,200	64,800	11,600	16,000	1,760	2,700
	Capital Stock Tax	1,940	406	384	182	648	116	160	17	27
	Diversion to Dyers' Line	5,076	....	....	....	....	....	....	....	5,476
	Operating Expenses	579,462	96,400	225,334	7,200	164,990	14,576	42,068	25,894	3,000
	Purchased Water	5,990	....	....	....	.....	5,990	....	....	....
	Sub Total	1,816,528	340,806	467,418	122,982	583,038	94,582	145,328	36,871	25,503
	Franchise Tax	58,416	....	....	....	44,063	1,315	9,896	1,900	1,242
	Grand Total	1,874,944	340,806	467,418	122,982	627,101	95,897	155,224	38,771	26,745

As heretofore indicated, certain Federal income taxes to the extent of $52,000 are considered as included under the head of return and are not included under other allowances for taxes. Local taxes have been allocated, as nearly as possible, to the classes of property and localities where these taxes are imposed. Capital stock tax has been included, as nearly as practicable, on a basis of the capital stock outstanding. The operating expenses have been determined by an analysis of all the exhibits in the case and a study of the operating results as shown by the annual reports for several years back. Franchise taxes, based as they are, upon a relation to gross revenues, have been determined after the determination of gross revenues, exclusive of franchise taxes.

Table II gives the calculations of cost as we have computed them. Column (10) gives the gross revenue which should be collected by the companies in the aggregate. Column (12) gives the actual gross revenue collected in the year 1922 from the respective municipalities. Comparison of columns (10) and (12) directly indicates the extent to which existing schedules must be modified, not merely for the purpose of bringing to the company a fair return on the value of the property devoted to the public use, but in order that localities, classes of service, and individuals may not be unduly and unjustly either favored or discriminated against.

The East Jersey Water Company, in selling water to the Little Falls Water Company and to the municipalities of Totowa, Bloomfield, Nutley and Bayonne, for distribution through municipally owned distribution systems, and the New Jersey Suburban Water Company, charges vari-

ous prices per million gallons. A bulk price is also charged for service through the Dyers Pipe Line. On this account it has been necessary to determine the proper prices to be charged per million gallons for these services and this is found in Column (11) of Table II.

The service in Paterson, Clifton, Passaic and Montclair is a direct service to the consumers through the companies' distribution system, with the exception of fire protection.

Exhibit D. 19.—Extracts from Record and Briefs in Certiorari Proceedings in New Jersey Supreme Court.

TABLE II.

Consumer or District	1922 Sales Million Gallons	Collecting L. F.	Pumping L. F.	Trans-mission to Brookdale	Distribu-tion and Gen'l Exp.	Other Expenses	Total	Add Franchise Tax	Total Amount	Revenue Per M. Gal.	Actual Revenue 1922
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
East Jersey Wholesale...	$8,308.34	$174,799	$282,691	$91,237	$88,692	$5,990	$643,409	$1,400	$644,809	$77.61	$333,016
Passaic and	5,909.50	151,386	161,069	24,007	582,938	....	919,400	43,978	963,378	163.02	1,079,442
Acquackanonk							52,885	2,732	55,617	400.46	46,285
Montclair							175,331	9,064	184,395	507.11	122,885
Low Service	138.88	4,041	6,539	2,139	40,166	....					
High Service	363.62	10,580	17,119	5,599	105,162	36,871					
	502.50	14,621	23,658	7,738	145,328	36,871	228,216	11,796	240,012	477.64	169,170
Dyers' Line	1,486.40	....	....	....	20,427	5,076	25,503	1,242	26,745	18.00	26,535
Grand Total	....	$340,806	$467,418	$122,982	$837,385	$47,937	$1,816,528	$58,416	$1,847,944	....	$1,608,163

Exhibit D. 19.—Extracts from Record and Briefs in Certiorari Proceedings in New Jersey Supreme Court.

SERVICE DISTRICTS:

The Passaic Water Company serves the City of Paterson and some small contiguous areas. The Acquackanonk Water Company supplies the City of Passaic, the City of Clifton and possibly some small areas not actually included in those municipalities. The City of Paterson is a city of considerable size with a large number of industries of all kinds. Although the City of Passaic is smaller than Paterson there are a great many factories located there also. Clifton, on the other hand, has a large area distinctly suburban in character. Without any detailed analysis, all the exhibits and calculations based thereon indicate that the cost of serving Passaic would lead to rates somewhat higher than those which might have to be charged Paterson. The difference, however, is not sufficient, in the opinion of the Board, to warrant a separation of the Paterson-Clifton-Passaic area into different service districts. The territory is changing in character, many new factories have been located in parts of Passaic and Clifton and the tendency will be for the different parts of this area to become more nearly similar in character, in this way gradually eliminating the differences in cost of service. We find one schedule to be just and reasonable for this district.

With regard to Montclair, the company has filed one set of schedules for the low level and a separate set of schedules for the high level which involves a second pumping. The testimony and exhibits in this case show that the difference in cost of serving the low and the high levels is so considerable that the failure to recognize this difference in cost in the development of the rate

schedules would result in an undue and unjust discrimination against those served from the low level service and in favor of those located on higher ground where the water has to be pumped a second time. Separate rate schedules are therefore provided for the two different service levels in Montclair.

FIRE PROTECTION:

A separation has been made to the fixed and operating charges with a view to the adoption of charges for fire protection as distinguished from charges for ordinary consumption of water.

We have adopted 12.5 per cent as a fair percentage of the gross revenue which should be collected through the medium of charges for fire protection.

The aggregate charge for fire protection will be divided into two parts.

(1) A charge per hydrant. This provides for the fixed and maintenance costs in connection with the hydrant, valve, branch and connections with the main. It is made uniform throughout the entire territory served directly by these companies, namely, the Passaic Water Company, Acquackanonk Water Company and Montclair Water Company.

(2) The balance of the charge is to be levied on the so-called inch-foot basis, that is, the aggregate amount of money to be collected through this charge is divided by the total number of inch-feet to obtain the unit price per inch-foot. Inch-feet is the number of units found by multiplying for each sized main the number of inches in diameter by the number of feet in its length and by the use of such a unit the total charges for fire

protection automatically keep pace with the growth of the distribution system.

Table III shows the gross revenue from the territory served by the Passaic and Acquackanonk Water Companies, divided between fire protection on the one hand and industrial and domestic service on the other.

TABLE III.

Passaic and Acquackanonk, 1922:		
Gross revenue required (see Table II)		$963,378
Miscellaneous revenue		30,555
		$932,823
Fire Service Revenue, approximately 12.5% allocated, as follows:		
2,356 hydrants at $10	$23,560	
10,999,730 inch feet at 0.84 cent	92,398	$115,958
Metered Service.		
Fixed Service Charges:		
⅝″ meters, 28,198 at $6.00 per annum		$169,188
¾″ " 559 " 10.00 " "		5,590
1″ " 166 " 22.00 " "		3,652
1½″ " 63 " 54.00 " "		3,402
2″ " 56 " 72.00 " "		4,032
3″ " 22 " 175.00 " "		3,850
4″ " 17 " 250.00 " "		4,250
6″ " 5 " 480.00 " "		2,400 $196,364
Proportional Metered Service Revenue (791,253 M cu. ft.		620,501
Average rate 78.5 cents.		

Schedule of Proportional Metered Service Rates:

For the first	10 M cu. ft. during the quarter,	$1.00 per M
" " next	90 " " " " " "	.90 " "
" " "	900 " " " " " "	.70 " "
" excess over	1,000 " " " " " "	.50 " "

Table IV shows the gross revenue from Montclair, divided between fire protection and industrial and domestic service.

TABLE IV.

Montclair Water Company:		
Gross revenue required (see Table II)	$240,012	
Miscellaneous revenue	6,267	
		$233,745
Fire Service Revenue, approximately 12.5% allocated, as follows:		
657 hydrants at $10	$6,570	
2,934,300 inch feet at 0.76 cent	22,301	$28,871

Metered Service.

Fixed Service Charges:								
5/8″ meters,	5,984	at	$6.00	per	annum	$35,904		
3/4″ "	25	"	10.00	"	"	250		
1″ "	20	"	22.00	"	"	440		
1½″ "	3	"	54.00	"	"	162		
2″ "	11	"	72.00	"	"	792		
3″ "	1	"	175.00	"	"	175		
4″ "	6	"	250.00	"	"	1,500		
6″ "	3	"	480.00	"	"	1,440	40,663	
Proportional Metered Service Revenue (69,093 M cu. ft.) Average rate $2.37.							164,211	

Schedule of proportional Metered service Rates:

			Low Service	High Service
For the first	10 M	cu. ft. during the quarter	$2.10	$2.45
" " next	90 M	" " " "	1.75	1.90
" " "	900 M	" " " "	1.40	1.45
" excess over	1,000 M	" " " "	1.05 per M	$2.90 per M

It will be noted that the unit charge for fire protection in Montclair is the same throughout the town, as in computing this charge no allowances were made for cost of pumping or any other operating charge other than maintenance.

INDUSTRIAL AND DOMESTIC RATES:

The rate schedules for industrial and domestic water service are also divided into two parts:

(1) A service charge covering the fixed charges, which is intended to partly cover the customer and readiness-to-serve costs.

(2) A consumption charge based upon costs of operating, proportional to water used.

CONCLUSIONS.

After full consideration of all matters presented in this case, the Board finds and determines that:

(1) The fair value of this property upon which rates should be predicated, including all physical and intangible elements, working capital, going concern value, etc., is $11,500,000.

(2) The net return on this property, inclusive of the Federal income tax, should be fixed at approximately $900,000.

(3) The companies as a group are entitled to an increase in gross revenue.

(4) The rates heretofore charged by the various companies now taking part in this proceeding do not properly reflect the respective costs of service in the different parts of the territory and to the different classes of service and are therefore unjust and unreasonable and unduly discriminatory.

(5) The schedules filed and proposed for adoption by the companies are likewise unjust and unreasonable.

(6) The petitioners may therefore file schedules as given below, to become effective January 1st, 1923, in accordance with the stipulation entered into by the companies before this Board.*

* See page 120.

SCHEDULE OF RATES.

EAST JERSEY WATER COMPANY:

Wholesale service to municipalities of Totowa, Bloomfield, Nutley and Bayonne and to the Little Falls Water Company and to the New Jersey Suburban Water Company and any other comparable wholesale customers, $78 per million gallons.

PATERSON-PASSAIC-CLIFTON DISTRICTS:

Fire Service Charges:

For each fire hydrant, $2.50 per quarter.

Inch-foot charge of 0.21 cent per quarter per inch diameter per foot of main, applicable to all distribution mains now in place, 4 inches diameter and larger and to mains installed in the future 6 inches diameter and larger, and to the proportion of transmission mains utilized in serving the particular community determined as follows:

(*a*) Separate the piping system into transmission and distribution mains, by treating all mains 16 inches and larger as transmission mains and all mains 12 inches and smaller as distribution mains. The 42-inch low pressure conduit outside of Paterson, all of the 51-inch high pressure conduit, that part of the 30-inch line from

Richfield to Claverack Road, and the Dyers Pipe Line are not to be included in this apportionment.

(*b*) Apportion the number of inch-feet in a given transmission main supplying more than one service district in proportion to the population served in each district according to the latest Federal census.

(*c*) Charge all transmission mains supplying but one service district to the district which they supply.

(*d*) Charge all distribution mains to the service districts which they serve.

(*e*) Apportion the inch-feet charged to a given service district among the taxing districts contained therein in proportion to the population served, as determined by the latest Federal Census.

Rates for General Service.

Metered Service:

Fixed service charges based upon the size of the meter:

½″ or ⅝″	meter,	$1.50	per	quarter.
¾″	"	2.50	"	"
1″	"	5.50	"	"
1½″	"	13.50	"	"
2″	"	18.00	"	"
3″	"	45.00*	"	"
4″	"	60.00*	"	"
6″	"	120.00	"	"
8″	"	190.00	"	"

* Rounded figures.

Proportional service charges: (based on metered use.)

For the first	10,000	cu. ft. per quarter,	$1.00	per M.	cu. ft.
" " next	90,000	" " " "	.90	" "	" "
" " "	900,000	" " " "	.70	" "	" "
" all over	1,000,000	" " " "	.50	" "	" "

Flat or Fixture Rates:

The fixture and other flat rates now in force shall be continued unchanged until all premises supplied at such rates shall have been metered. No water shall be supplied at flat or fixture rates after December 31, 1923.

Dyers Pipe Line:

Service to consumers supplied with unfiltered water from Great Falls through the Dyers Pipe Line $0.135 per 1000 cubic feet.

TOWN OF MONTCLAIR:

Fire Service Charges:

For each fire hydrant, $2.50 per quarter.

Inch-foot charge of 0.19 cent per quarter per inch diameter per foot of transmission and distribution mains now in place 4 inches diameter and larger and to mains installed in the future 6 inches diameter and larger located within the Town of Montclair with the exception of the 20-inch transmission main on Grove Street from Watchung Avenue northward to the Clifton boundary line and the transmission main on Watchung Avenue eastward from Grove Street.

Rates for General Service.

Fixed service charges based on the size of the meter:

½" or ⅝"	meter,	$1.50	per quarter
¾"	"	2.50	" "
1"	"	5.50	" "
1½"	"	13.50	" "
2"	"	18.00	" "
3"	"	45.00*	" "
4"	"	60.00*	" "
6"	"	120.00	" "
8"	"	190.00	" "

Proportional service charges:

Low Service District, including that portion of Montclair supplied without repumping at the Watchung Avenue Pumping Station:

For the first	10	M. cu. ft. in the quarter,	$2.10	per M.	cu. ft.
" " next	90	" " " " " "	1.75	" "	" "
" " "	900	" " " " " "	1.40	" "	" "
" excess over	1000	" " " " " "	1.05	" "	" "

High Service District, including that portion of Montclair supplied by repumping at the Watchung Avenue Pumping Station:

For the first	10	M. cu. ft. in the quarter,	$2.90	per M.	cu. ft.
" " next	90	" " " " " "	2.45	" "	" "
" " "	900	" " " " " "	1.90	" "	" "
" excess over	1000	" " " " " "	1.45	" "	" "

* Rounded figures.

Each of the petitioners affording fire service under the schedules shall file quarterly with the Board, beginning July 1st, 1923, for each fire district, a schedule of mains to which the inch-foot charge shall apply together with the number of

hydrants to which the quarterly fire hydrant charge shall apply.

Dated, March 27th, 1923.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
(Seal) By (Signed) H. V. OSBORNE
President.

Attest:

(Signed) ALFRED N. BARBER,
Secretary.

I hereby Certify the foregoing to be a true copy of a decision rendered by the Board of Public Utility Commissioners and ordered filed by said Board.

(Signed) ALFRED N. BARBER
(Seal) *Secretary.*

Appendix "A."

In arriving at his conclusion, Mr. Metcalf took five bases which he referred to as "criteria of Value." these being as follows (Exs. P3, P3a, 1-2-3):

(1) Book costs.

(2) Value of property on a prewar basis.

(3) Value of property on the basis of present (1920) prices.

(4) Value of property on the basis of a ten year average prices prior to the date of the valuation.

(5) Value of property on the basis of the depreciated or net reproduction cost at fair normal prices.

The original cost could not be determined because of the burning of the early records of the company in the Paterson fire of 1902.

(1) Book cost is given as..... $11,382,000

It is unreliable, however, due to the fact that the basic figure for most of the property was a figure found in some constructive balance sheets shortly after the Paterson Fire.

(2) Prewar value 8,771,000

(3) Present (1920) value..... 18,173,000

The 1920 value is found by multiplying prewar prices by Dun's and Bradstreet's index figure of 2.07.

(4) Ten year average value..... 13,332,000

(5) Fair normal value..... 14,007,000

The above figures exclude depreciation and include organization, lands, Beattie water power rights and going value on a 12.5 per cent basis, but exclude water rights purchased in 1921.

Mr. Metcalf then adopted the round figure of..... $13,500,000 as the fair value as of December 31st, 1920.

To this he adds (Ex. P24):

Water rights	$1,120,000
Additions and betterments, 1921..	175,000
making a total of.....	$14,795,000
Deduct depreciation, 1921.....	194,000
	$14,601,000
Deduct unused property.....	278,000
Resulting value as of December 31st, 1921.....	$14,323,000

In cross-examination (testimony, pp. 616-627), Mr. Metcalf agreed that certain further deductions should be made for property not now used, namely:

Stony Road Reservoir and Site	$150,010	
Totowa Reservoir, Structures and part land	26,200	
Possibly the Kikeout Reservoir Site, $72,662. From the testimony it would appear that, while the reservoir itself is not needed at the present time, the purchase of the land for the reservoir site appears to have been based upon ordinary business judgment and therefore one-half of the value of this site will be excluded	36,300	212,540

Mr. Metcalf was doubtful at first with regard to the propriety of including the 24-inch lock bar pipe located in Montclair and originally installed to aid in the service of West Orange. On later examination Mr. Metcalf stated that the entire value should be included, as this main was needed to reinforce the system in Montclair for fire purposes.

Deducting the amount which Mr. Metcalf agreed should be excluded, we have $14,110.460

Appendix "B."

Items IV, valuations by Nicholas S. Hill, Jr., are as follows:

Historical Cost.

(*a*) Capitalization.

(*b*) Book Cost.

(*c*) Cost of Reproduction on Basis of 1912 Appraisal plus actual cost of additions since that date.

(*d*) Cost of Reproduction on Basis of Prewar Prices.

(*e*) Cost of Reproduction on Basis of Average Prices, 1911 to 1920.

(*f*) Cost of Reproduction at Current Prices.

(*g*) Cost of Reproduction at 1920 Peak Prices.

Historical Cost was ignored on account of lack of records.

(*a*) Capitalization:

Aggregate of bonds	$7,392,000
Aggregate of stock	1,550,000
Approximate aggregate of other obligations	761,573
Water rights, 1921	1,120,000
Approximate total capitalization, all 5 companies	$10,823,573

(*b*) Book Cost (Fixed Capital, Materials and Supplies and Cash):

This is given by Hill for the first three companies in the following list and for the last two the figures are approximate, taken from the annual reports of these companies (Fixed Capital, Materials and Supplies and Cash).

Exhibit D. 19.—Extracts from Record and Briefs in Certiorari Proceedings in New Jersey Supreme Court.

Acquackanonk Water Company.....	$2,147,810
Montclair Water Company.....	1,478,655
Passaic Water Company.....	6,732,363
East Jersey Water Company.....	1,950,470
Kearny Water Company.....	103,461
Total, December 31st, 1920....	$11,841,559
Water Rights acquired in 1921.....	1,120,000
	$12,961,559

(c) Cost of Reproduction on Basis of 1912 Appraisal plus actual cost of additions since that date, depreciated.

Acquackanonk Water Company..	$2,250,917
Montclair Water Company.....	1,753,627
Passaic Water Company.....	4,177,815
East Jersey Water Company (by proportion)	1,906,294
Kearny Water Company (by proportion)	152,131
	$10,240,784

(d) Cost of reproduction on Basis of Prewar Prices.

Acquackanonk Water Company..	$2,030,494
Montclair Water Company.....	1,672,741
Passaic Water Company.....	3,849,560
East Jersey Water Company (by proportion)	1,756,515
Kearny Water Company (by proportion)	140,178
	$9,449,488

Exhibit D. 19.—Extracts from Record and Briefs in Certiorari Proceedings in New Jersey Supreme Court.

(e) Cost of reproduction on Basis of Average Prices, 1911 to 1920.

Acquackanonk Water Company..	$3,086,298
Montclair Water Company.....	2,069,635
Passaic Water Company.....	5,654,311
East Jersey Water Company....	2,579,492
Kearny Water Company.....	205,896
	$13,595,632

(f) Cost of reproduction at Current Prices.

Acquackanonk Water Company..	$3,735,708
Montclair Water Company.....	2,536,133
Passaic Water Company.....	6,833,233
East Jersey Water Company (by proportion)	3,117,936
Kearny Water Company (by proportion)	248,826
	$16,471,836

(g) Cost of reproduction at 1920 Peak Prices.

Acquackanonk Water Company..	$4,775,697
Montclair Water Company.....	3,312,997
Passaic Water Company.....	8,800,709
East Jersey Water Company (by proportion)	4,014,876
Kearny Water Company (by proportion)	320,469
	$21,224,748

After Mr. Hill has made the above valuations he adopts a schedule of values for the companies as follows:

Acquackanonk Water Company (pp. 93-97)	$2,940,000
Montclair Water Company (pp. 121-126)	2,010,000
Passaic Water Company (pp. 149-153)	5,430,000
East Jersey Water Company	2,580,000
Kearny Water Company	206,000
	$13,166,000

In the company's Exhibit P23, Table D, the final values have been re-allocated by Hill as follows:

Acquackanonk Water Company	$2,940,000
Montclair Water Company	2,010,000
Passaic Water Company	5,430,000
East Jersey Water Company	2,420,000
Kearny Water Company	200,000
	$13,000,000

Counsel for the municipalities (Exhibit R3) contended that Mr. Hill had included in his valuation certain elements which were not now usually allowed and also certain property, the use of which had been discontinued. The contention with regard to the inclusion of items not now allowed is based upon Mr. Hill's original explanation of how he had gone about the process of determining a fair value for the properties. Mr. Hill stated (Exhibit P6*a*) that he had started with the appraisal made in 1912 by the Board of Engineers representing the State and had added to that expenditures since that time and had deducted items discarded and depreciation which had accrued since 1912. An examination of Exhibit P6*a* in connection with the testimony referring to it shows that this was merely a line of reasoning and represented only one of several methods of getting at value. It has been contended by the engineer for the municipalities that Mr. Hill started with the concluding figure of the 1912 State Board's appraisal, namely, $8,728,300, and that that figure included bond discount, paving over mains not paid for by the company, and overhead charges on land and rights of way. These items have been set out in Dr. Bemis' Exhibit R3 (pp. 4 to 7) as follows:

Bond Discount	$475,990
Overhead charges on land and diversion rights	319,993
Paving over mains	259,667
Land and structures not now in use	506,382
	$1,562,032

Mr. Hill's valuation (*e*), average prices, 1911 to 1920, is an entirely new appraisal and includes no elements not now allowed, although it may include some items of property not fully in use. Dr. Bemis has deducted from Mr. Hill's totals for land and structures not now in use the sum of $506,382. As a matter of fact, Mr. Hill had originally included for corresponding items the amount of $404,286 (P35) so that Dr. Bemis deducts from Mr. Hill's total $102,096 too much. An examination of Mr. Hill's deductions shows that certain items in dispute, namely, the Middle, Totowa and Stony Road Reservoirs, were appraised by Mr. Hill in his last appraisal at $303,044. This has been depreciated to the extent of $150,000 so that these items remain in Mr. Hill's appraisal at the value of $153,044. Testimony indicates that the site of the Totowa Reservoir,

the Totowa Reservoir itself and the Stony Road Reservoir appraised by Mr. Hill at $165,400, should be excluded in toto. Adjusting this by appropriate deductions leaves an amount to be retained of $138,044, calling for a further reduction of $28,000. There are certain other items which Dr. Bemis has stated should be deducted from Mr. Hill's appraisal, namely:

Stony Road Structures	$17,500
Land along Pequannock River	18,245
Split Rock Reservoir Site	187,179
	$220,924

These had already been eliminated by Mr. Hill and are not found in Hill's latest adjusted figures at all. Mr. Hill had also deducted an amount of $25,682 representing lands and rights of way along the Newark Pipe Line.

Similar deductions should also be made from the Hill appraisal as have been made above from the Metcalf appraisal of one-half of the cost of the Kikeout Reservoir Site, namely, $44,705. In arriving at the figure of $13,000,000, Mr. Hill has made a reduction of $598,496. The total deductions to be made from Mr. Hill's final figure as representing items not as present in use in the service of the public will be taken at $73,000, leaving the total adjusted value of $12,927,000.

Appendix "C."

DR. BEMIS' HISTORICAL COST OF THE PRESENTLY USED AND USEFUL PROPERTY OF THE COMPANIES WHICH HE TESTIFIED WAS TAKEN FROM THEIR BOOKS, EXCEPT AS TO ABOUT SEVEN PER CENT WHICH WAS ESTIMATED AT COST OF SIMILAR INSTALLATION OF THE COMPANIES.

	(1) Original Cost new except land taken at present day values	(2) Same as (1) less Accrued Depreciation
Real Estate	$445,842	$445,842
Depreciable property priced at costs before 1916	6,290,894	4,340,397
Depreciable property priced at costs since 1916	1,365,964	1,288,143
Water Rights—Power and Diversion (75 M.G.D. bought 1922)	1,320,000	1,320,000
Tangible Fixed Capital Dec. 31, 1921 ($1,120,000 Jan. 1922)	$9,422,700	$7,394,382
Intangible Fixed Capital	0	0
Working Capital	150,277	150,277
Rate Base claimed by the Cities	$9,572,977	$7,544,659
Add land and structures which Dr. Bemis considered not used and useful but which the Board includes	192,595	181,145
Original Cost of Dr. Bemis adjusted as above	$9,765,572	$7,725,804

Exhibit D. 19.—Extracts from Record and Briefs in Certiorari Proceedings in New Jersey Supreme Court.

Appendix "D."

ADJUSTMENT AND CONTINUATION OF THE 1912 VALUATION OF THE BOARD OF APPRAISAL AS MADE BY DR. BEMIS (EXCLUDES INTANGIBLES, BOND DISCOUNT, PAVING OVER MAINS, OVERHEADS ON LAND AND WATER RIGHTS AND PROPERTY HE DEEMS NOT USED OR USEFUL. (Adjusted to be on basis comparable with Appendix "C.")

	Adjustment Appraisal Value new as of December 31, 1921, plus Diversion Rights
	$1,120,000
Land and Rights of Way	$610,582
Structures	7,942,458
Water Rights—Power and Diversion	950,000
Tangible Fixed Capital, as adjusted by Dr. Bemis	$9,503,040
Preliminary and Organization, net	138,266
Fixed Capital, Ex. P-3, page 8	$9,641,306
Add Working Capital shown in R-1	150,277
Add back property excluded by Dr. Bemis but included by the Board, $506,382, R-3, page 7, less $418,735	87,647
	$9,879,230
If water rights be taken at $1,320,000, as in Appendix "C," instead of $950,000, as above, this would add	370,000
Total as adjusted by Board	$10,249,230
Reconciliation between Appendices C" and "D."	
Appendix "D"—amount above	$10,249,230
Appendix "C"	9,765,572
Difference	$483,658

Exhibit D. 20.

Exhibit D. 20.

NEW JERSEY SUPREME COURT.

ACQUACKANONK WATER COMPANY,
EAST JERSEY WATER COMPANY,
KEARNEY WATER COMPANY,
MONTCLAIR WATER COMPANY,
and PASSAIC WATER COMPANY,
Prosecutors,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
Defendant.

Rule for Affirmance.

The court having inspected the transcript and proceedings, together with the report and order of the Board of Public Utility Commissioners returned with the Certiorari in this matter, and the reasons filed by the prosecutor, and having heard the argument of counsel thereon and maturely considered the same,

Do Order that the report and order of said Board of Public Utility Commissioners be in all things affirmed.

Rule entered this 18th day of December, 1923.

On Motion of

THOMAS BROWN,
Attorney for Defendant,
Board of Public Utility Commissioners.

Exhibit D. 21.

I, EDWARD J. KELLEHER, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above stated cause.

In Testimony whereof I have set my hand and the seal of said Court (SEAL) at Trenton, this eighteenth day of June, A. D. nineteen hundred and twenty-five.

EDWARD J. KELLEHER,
Clerk.

Exhibit D. 21.

NEW JERSEY COURT OF ERRORS AND APPEALS.

CITY OF BAYONNE, Prosecutor-Appellant, *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, Defendant-Respondent.	No. 76. March Term, 1924; On Appeal. RULE FOR AFFIRMANCE AND REMITTITUR.

This cause coming on to be heard at the March Term, 1924, and being argued by John J. Mulvaney, counsel for the Appellant, who argued the cause for Treacy and Milton and Eugene T. Sharkey, attorneys of record for the appellant, and Thomas Brown, counsel for the Respondent, and the court having taken time to consider the same and being of the opinion that the judgment under review should be affirmed in all things;

Exhibit D. 21.

It is now on this 31st day of May, A. D. 1924, ORDERED that the judgment of the New Jersey Supreme Court be in all things affirmed and that the record and proceedings be remitted to the New Jersey Supreme Court, to be therein proceeded on according to law and the practice of said court.

On motion of

THOMAS BROWN,
Attorney and counsel with Respondent.

Endorsed:

"Filed June 2, 1924,
THOMAS F. MARTIN,
Clerk."

STATE OF NEW JERSEY

DEPARTMENT OF STATE.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, DO HEREBY CERTIFY that the foregoing is a true copy of Rule for Affirmance and Remittitur Between City of Bayonne, Prosecutor-Appellant, and Board of Public Utility Commissioners, Defendant-Respondent, as the same is taken from and compared with the original Filed June 2, 1924 and now remaining on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my (Seal) Official Seal of said Court at Trenton, this Eighteenth day of June A. D. 1925.

T. F. MARTIN,
Secretary of State.

Exhibit D. 22.

Exhibit D. 22.

ORDER (Feb. 15, 1922).

BOARD OF PUBLIC UTILITY COMMISSIONERS.

IN THE MATTER OF Proposed Increases in Rates by the EAST JERSEY WATER COMPANY, PASSAIC WATER COMPANY, ACQUACKANONK WATER COMPANY and the MONTCLAIR WATER COMPANY.	*Suspending Increases.* *Order.*

The Passaic Water Company, the Acquackanonk Water Company, the East Jersey Water Company and the Montclair Water Company having submitted to the Board of Public Utility Commissioners amendments to their schedules of rates to be effective March first, one thousand nine hundred and twenty-two, and it appearing that the said amendments will increase existing rates, charges and schedules thereof, the Board hereby calls, on its own motion, a hearing for the purpose of determining whether the increases, changes or alterations by the said Passaic Water Company, Acquackanonk Water Company, East Jersey Water Company and Montclair Water Company in their rate schedules are just and reasonable, and hereby fixes Wednesday, the twenty-ninth day of March, one thousand nine hundred and twenty-two, at 10:45 A. M., as the time and the Board's room, 790 Broad Street, Newark, as the place of the hearing hereby called, and the Board, pending hearing and determination,

Exhibits D. 23 to D. 43.

HEREBY orders the increases, changes or alterations by the said Passaic Water Company, Acquackanonk Water Company, East Jersey Water Company and Montclair Water Company suspended until the first day of June, one thousand nine hundred and twenty-two, unless the Board prior to that date shall be satisfied that the said increases, changes or alterations are just and reasonable and shall approve the same.

Dated, February 15th, 1922.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
By (signed) JOHN J. TREACY,
President.

(SEAL)

Attest:
(signed) ALFRED N. BARBER,
Secretary.

Exhibits D. 23 to D. 43, Inclusive.

Exhibits D. 23 to D. 29, both inclusive, consisted of seven annual reports filed with the Board of Public Utility Commissioners of the State of New Jersey, made by the New York & New Jersey Water Company for the years 1912, 1913, 1914, 1915, 1916, 1917 and 1918. By consent they are not printed.

Exhibits D. 30 to D. 43, both inclusive, consisted of fourteen annual reports filed by the New Jersey Suburban Water Company with the Board of Public Utility Commissioners of the State of New Jersey for the years 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, and 1925. By consent they are not printed.

Exhibit D. 44.

Filed December 31, 1924.

HUDSON COUNTY CIRCUIT COURT.

NEW YORK AND NEW JERSEY WATER COMPANY and NEW JERSEY SUBURBAN WATER COMPANY, corporations of New Jersey, *Plaintiffs,* and MAYOR and COUNCIL OF THE TOWN OF KEARNEY, a municipal corporation of Hudson County, New Jersey, *Defendants.*	*Action at Law.* *Complaint.*

The plaintiffs, corporations of the State of New Jersey, with its principal offices at 15 West 8th Street, in the City of Bayonne, New Jersey, respectfully show:

FIRST COUNT

1. That the defendant is and at all times mentioned herein was a municipal corporation, incorporated under the laws of the State of New Jersey.

2. That on the 15th day of August, 1904, the Town Council of the said Town of Kearney adopted a certain preamble and resolutions, more fully set forth in the schedule hereunto annexed and marked as Schedule "A", which said resolutions were duly accepted by the plaintiffs on the 16th day of August, 1904, in accordance with the conditions contained in the said resolutions,

and a copy of the said acceptance duly executed by the plaintiffs under its corporate seals, was duly filed in the Office of the Town Clerk of the Town of Kearney, within ten days of the date of the passage and the adoption of the said resolutions, copy of which acceptance is hereunto annexed as Schedule "A", and hereby made a part hereof.

3. Under the agreement existing between the plaintiffs and the said Town of Kearney, the plaintiffs furnished 259, 102, 323 million gallons of water unto the defendant, for the three months ending December 31st, 1921, at the agreed rate of $82.50 per million gallons, aggregating the sum of Twenty-one Thousand, Three Hundred and seventy-five Dollars and 94/100 ($21,375.94), bill for which was duly submitted by the plaintiffs to the defendant, in accordance with the terms of the agreement existing, and notwithstanding the obligation of the defendants to pay the said sum of Twenty-one Thousand, Three Hundred and seventy-five Dollars and 94/100 ($21,375.94) on Thursday of the second week following the said 31st day of December, 1921, the defendants failed to pay the same, and there is still due and owing from the defendants to the plaintiffs, the said sum of Twenty-one Thousand Three Hundred and seventy-five Dollars and 94/100 ($21,375.94), besides interest from the Thursday of the second week following the same.

Plaintiffs demand judgment against the defendants for Twenty-one Thousand, Three hundred and seventy-five Dollars and 94/100 ($21,375.94) besides interest and costs of suit on the First Count.

Exhibit D. 44.

SECOND COUNT.

1. The plaintiffs repeat the allegations contained in Paragraphs 1 and 2 of the First Count of this complaint.

2. The contracts existing between the plaintiffs and the defendants, under which the plaintiffs agreed to furnish a water supply unto the defendants, and the defendants agreed to purchase the same, expired on December 29th, 1920.

3. That since the expiration of the said existing agreements on December 29th, 1920, the plaintiffs continued to supply unto the defendants, and the defendants continued to purchase from the plaintiffs, the water required for the Town of Kearney, on a basis of $82.50 per million gallons, until the time hereinafter mentioned and set forth.

4. That in the early part of 1923, the plaintiffs served notice upon the defendants, that in view of an application having been made by the East Jersey Water Company unto the Public Utility Commission for an increase in the rate to be charged for the sale of water, notwithstanding existing agreements, and the decision rendered thereon by the Public Utility Commission of the State of New Jersey, fixing $78.00 per million gallons as the rate which the plaintiffs would be obliged to pay unto the said East Jersey Water Company, from the 1st day of January, 1923 instead of the sum of $56.25 per million gallons, previously paid by the plaintiffs unto the said East Jersey Water Company, under written contracts which have not yet expired, it would be necessary for, and that the plaintiffs increase its rate unto the defendants from $82.50 to $104.25 per million gallons, beginning with January 1st, 1923.

Exhibit D. 44.

5. That the defendants continued to take its supply of water from the plaintiffs at the new rate fixed by the plaintiffs of $104.25 per million gallons, and are still taking its supply of water from the plaintiffs at the new rate fixed.

6. That for the quarter ending June 30th, 1923, the plaintiffs furnished unto the defendants, and the defendants received and accepted from the plaintiffs 688,449,787 million gallons of water, bill for which was rendered by the plaintiffs unto the defendants on June 30th, 1923, at the rate of $104.25 per million gallons, aggregating $71,770.89; that the defendants paid on account of the said indebtedness to the plaintiffs, the sum of $56,797.11, leaving a balance due to the plaintiffs of Fourteen Thousand Nine Hundred and seventy-three Dollars and 78/100 ($14,973.78) which said sum of money became due and owing from the defendants unto the plaintiffs on the Thursday of the second week following the said 30th day of June, 1923, and notwithstanding the obligation of the defendants to pay the same unto the plaintiffs, the defendants have failed and refused so to do, and there is still due and owing from the defendants unto the plaintiffs the said sum of Fourteen Thousand Nine Hundred and seventy-three Dollars and 78/100 ($14,973.78) besides interest from the Thursday of the second week following the said 30th day of June, 1923.

The plaintiffs demand as judgment against the defendants the sum of $14,973.78 besides interest from Thursday of the second week following the said 30th of June, 1923, and costs of suit on this Second Count.

Exhibit D. 44.

THIRD COUNT.

1. The plaintiffs repeat the allegations continued in Paragraphs 1 and 2 of the First Count of this complaint.

2. The plaintiffs repeat the allegations contained in Paragraphs 2, 3, 4 and 5 of the Second Count of this Complaint.

3. That for the quarter ending March 31st, 1924, the plaintiffs furnished unto the defendants, and the defendants received and accepted from the plaintiffs 295,110,489 million gallons of water, bill for which was rendered by the plaintiffs unto the defendants on March 31st, 1924, at the rate of $104.25 per million gallons, aggregating $30,765.26; that the defendants paid on account of the said indebtedness to the plaintiffs, the sum of $24,346.61, leaving a balance due to the plaintiffs of Six Thousand Four Hundred and eighteen Dollars and 65/100 ($6,418.65), which said sum of money became due and owing from the defendants unto the plaintiffs on the Thursday of the second week following the said 31st of March, 1924, and notwithstanding the obligation of the defendants to pay the same unto the plaintiffs, the defendants have failed and refused so to do, and there is still due and owing from the defendants unto the plaintiffs the said sum of Six Thousand Four Hundred and eighteen Dollars and 65/100 ($6,418.65), besides interest from the Thursday of the second week following the said 31st of March, 1924.

The plaintiffs demand as judgment against the defendants the sum of $6,418.65 besides interest from Thursday of the second week following the said 31st of March, 1924, and costs of suit on this Third Count.

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FOURTH COUNT.

1. The plaintiffs repeat the allegations contained in Paragraphs 1 and 2 of the First Count of this complaint.

2. The plaintiffs repeat the allegations contained in Paragraphs 2, 3, 4 and 5 of the Second Count of this complaint.

3. That for the quarter ending June 30th, 1924, the plaintiffs furnished unto the defendants, and the defendants received and accepted from the plaintiffs 262,473,418 million gallons of water, bill for which was rendered by the plaintiffs unto the defendants on June 30th, 1924, at the rate of $104.25 per million gallons, aggregating Twenty-seven Thousand Three Hundred and sixty-two Dollars and 85/100 ($27,362.85), which said sum of money became due and owing from the defendants unto the plaintiffs on the Thursday of the second week following the said 30th day of June, 1924, and notwithstanding the obligation of the defendants to pay the same unto the plaintiffs, the defendants have failed and refused so to do, and there is still due and owing from the defendants unto the plaintiffs the said sum of Twenty-seven Thousand Three Hundred and sixty-two Dollars and 85/100 ($27,362.85), besides interest from the Thursday of the second week following the said 30th day of June, 1924.

The plaintiffs demand as judgment against the defendants the sum of Twenty-seven Thousand Three Hundred and sixty-two Dollars and 85/100 ($27,362.85), besides interest from Thursday of the second week following the said 30th day of June, 1924, and costs of suit on this Fourth Count.

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FIFTH COUNT.

1. The plaintiffs repeat the allegations contained in Paragraphs 1 and 2 of the First Count of this complaint.

2. The plaintiffs repeat the allegations contained in Paragraphs 2, 3, 4 and 5 of the Second Count of this complaint.

3. That for the quarter ending September 30th, 1924, the plaintiffs furnished unto the defendants, and the defendants received and accepted from the plaintiffs 290,030,183 million gallons of water, bill for which was rendered by the plaintiffs unto the defendants on September 30th, 1924, at the rate of $104.25 per million gallons, aggregating Thirty Thousand, Six Hundred and fifty-two Dollars and 64/100 ($30,652.64), which said sum of money became due and owing from the defendants unto the plaintiffs on the Thursday of the second week following the said 30th day of September, 1924, and notwithstanding the obligation of the defendants to pay the same unto the plaintiffs, the defendants have failed and refused so to do, and there is still due and owing from the defendants unto the plaintiffs the said sum of Thirty Thousand, Six Hundred and fifty-two Dollars and 64/100 ($30,652.64), besides interest from Thursday of the second week following the said 30th of September, 1924.

The plaintiffs demand as judgment against the defendants the sum of Thirty Thousand, Six Hundred and fifty-two Dollars and 64/000 ($30,652.64), besides interest from Thursday of the second week following the said 30th day of September, 1924, and costs of suit on this Fifth Count.

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SIXTH COUNT.

1. The plaintiffs repeat the allegations contained in Paragraphs 1 and 2 of the First Count of this complaint.

2. The plaintiffs demand of the defendants the sum of One Hundred and Fifty Thousand ($150,000.00) Dollars, for that whereas, the said defendants on the dates set forth in the bill of particulars appearing below, became indebted to the plaintiffs in the said sum of One Hundred and fifty Thousand ($150,000.00) Dollars, for the price and value of goods sold and delivered by the plaintiffs to the defendants at the latters' request; and in the like sum of money for the price and value of goods bargained and sold by the plaintiffs to the defendants at the latters' request; and in the like sum of money for the price and value of work done, and materials for the same provided by the plaintiffs for the defendants at the latters' request; and in the like sum of money for money lent by the plaintiffs to the defendants at the latters' request; and in the like sum of money for money received by the defendants for the use of the plaintiffs; and in the like sum of money for money paid by the plaintiffs for the use of the defendants at the latters' request; and in the like sum of money for interest due from the defendants to the plaintiffs having forborne moneys due from the defendants to the plaintiffs at the defendants' request; for a long time then elapsed; and in the like sum of money for money found to be due from the defendants to the plaintiffs on an account then and there stated between them; and the defendants afterwards (to wit) on the dates set forth in the bill of particulars appearing below, in consideration of the premises, respectively

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promised to pay the said several last mentioned moneys respectively to the plaintiffs on request, yet the defendants disregarded such premises, and have not paid any of the said moneys or any part thereof; to the plaintiffs damages in the sum of One Hundred and fifty Thousand ($150,000.00) Dollars and thereupon the plaintiffs bring suit, &c/.

The following is a bill of particulars of the demand and copy of the account upon which the above count is founded:

259,102,323 gallons of water sold and delivered by the plaintiffs unto the defendants at $82.50 per million gallons for three months ending December 31st, 1921, ... $21,375.94
besides interest thereon from Thursday of the second week following December 31st, 1921.

688,449,787 gallons of water sold and delivered by the plaintiffs unto the defendants at $104.25 per million gallons for six months ending June 30th, 1923,.. $71,770.89
Paid on account 56,797.11

Balance due $14,973.78
besides interest thereon from Thursday of the second week following June 30th, 1923.

295,110,489 gallons of water sold and delivered by the plaintiffs unto the defendants at $104.25 per million gallons for quarter ending March 31st, 1924,.... $30,765.26
Paid on account 24,346.61

Balance due ..... $ 6,418.65
besides interest thereon from Thursday of the second week following March 31st, 1924.

262,473,418 gallons of water sold and delivered by the plaintiffs unto the defendants at $104.25 per million gallons for quarter ending June 30th, 1924,..... $27,362.85
besides interest thereon from Thursday of the second week following June 30th, 1924.

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290,030,183 gallons of water sold and delivered by the plaintiffs unto the defendants at $104.25 per million gallons for quarter ending September 30th, 1924,. $30,652.64
besides interest thereon from Thursday, of the second week following September 30th, 1924.

Judgment will be demanded in the sum of One Hundred and Fifty Thousand ($150,000.00) Dollars, besides interest and costs of suit on this sixth Count.

DEMBE & DEMBE
Attorneys for Plaintiffs.

Schedule "A"

CONTRACT OF THE TOWN OF KEARNEY WITH THE NEW YORK & NEW JERSEY WATER COMPANY AND THE NEW JERSEY SUBURBAN WATER COMPANY.

At a meeting of the Board of Directors of the New York & New Jersey Water Company held August 16, 1904, the following preamble and resolutions were unanimously adopted:

WHEREAS there has been submitted to this Board a certain preamble and resolutions adopted August 15, 1904, by the Town Council of the Town of Kearney, which preamble and resolutions are in words and figures following:

WHEREAS the Town of Kearney is now receiving its supply of water for the uses of its inhabitants and for public uses from the New Jersey Suburban and the New York & New Jersey Water Companies under and pursuant to the terms and conditions of a certain contract made and entered into between the East Jersey Water Company and the Board of Township Committee of the Township of Kearney, dated June 29th, 1895, which said contract was thereafter extended and

ratified by mutual agreements between the parties thereto on February 14, 1896, June 17, 1897 and June 14, 1898, and which said contract was assigned by the East Jersey Water Company to the New Jersey Suburban Water Company and the New York & New Jersey Water Company by instrument in writing dated July 1, 1903, of which assignment due notice was given to the Town of Kearney; and

WHEREAS under and by the provisions of the said contract, the Town of Kearney is obliged to pay for the water so supplied the sum of $90 per million gallons, and is also obliged to furnish a main of its own into which to receive the said water at the corner of Kearney and Belleville avenues, in the town of Kearney; and

WHEREAS it is proposed by the Town of Kearney that the New Jersey Suburban Water Company and the New York & New Jersey Water Company shall reduce the price for water now supplied to this town under and pursuant to the aforementioned contract, from $90.00 to $82.50 per million gallons, the price now being paid by the Town of Harrison, under contract made by it with the New Jersey Suburban Water Company, which has been sustained by a recent decision of the Supreme Court; and shall relieve and protect the town from its existing obligation to construct and provide a main from Belleville and Kearney Avenues to receive and distribute its water supply and shall tap the present 30-inch main of the New York & New Jersey Water Company in Belleville Turnpike and connect the same with the town's distributing system at Elm Street and Grand Place, in order to furnish to this town better fire pressure and protection, in consideration of the extension of the aforementioned contract of June 29, 1895, for a period of ten years from the date of the expiration thereof.

NOW, THEREFORE, be it Resolved, that the contract made June 29, 1895, between the East Jersey Water Company and the Board of Township Committee of the Township of Kearney, together with the supplemental contracts between the same parties made February 14, 1896, June 17, 1897 and June 14, 1898 assigned as hereinabove recited, to the New Jersey Suburban and the New York and New Jersey Water Companies, be and the same are hereby ratified and confirmed, and the term thereof extended for a period of ten years from the date of the expiration of the aforementioned contracts as in their terms provided; that is, December 29, 1910; in consideration of which extensions the price for the water to be delivered under the said contracts is to be reduced from $90. to $82.50 per million gallons, beginning with the acceptance of this resolution, and the Town of Kearney is to be relieved from the obligation heretofore imposed upon it to construct or provide a main for the reception of its water supply at Belleville and Kearney Avenues, and the places of delivery of water so to be supplied under said contract from and after the completion of the new mains and pipes herein authorized, are hereby designated to be the meter vaults of the Town of Kearney at the junction of Kearney and Midland, Bergen and Johnston Avenues, and by metered connections with the mains of the town at the intersections of the Belleville Turnpike Road with Elm Street and Grand Place; and the right is hereby granted to the New Jersey Suburban Water Company and the New York & New Jersey Water Company, their

successors and assigns, to lay, maintain and operate such pipe or pipes, with all necessary appurtenances, in Belleville Turnpike Road and in Kearney Avenue, as may be necessary to carry out the purposes of said contract hereby extended, and of this contract, on the terms set forth in the contract hereby extended and on the following additional terms: The New Jersey Suburban Water Company and the New York & New Jersey Water Company may lay a main in Kearney avenue not exceeding thirty-six inches in diameter, extending from the said thirty-inch main of the New York & New Jersey Water Company in Belleville turnpike southerly in Kearney avenue to the line of the town of Harrison, and to be laid on the easterly side of the avenue under the roadway, and within ten feet of the curb line and at least 3 feet below the surface of the avenue; at the junction of Belleville Turnpike Road with Grand Place; a pipe six inches in diameter shall be laid from said 30 inch pipe in Belleville road across Kearney avenue and along the Belleville Turnpike Road to and connect with the north end of the town's main in Grand Place, and a meter shall be placed and maintained at or near Belleville Turnpike Road and Grand Place to measure water delivered through such connection; at the intersection of Elm Street and Belleville Turnpike Road a similar connection shall be made from the 30-inch main of the water company to the 6-inch main of the town and a similar meter connection be established. The water company shall promptly restore the surface of the ground, together with the pavement, if disturbed, to as good condition as it was before the laying of the pipes and meter, and shall keep the same in order and repair until the ground disturbed

is entirely settled and shall properly guard all openings made by them in the highways and be liable for damages from their negligence in opening same and in laying of the pipes, and shall indemnify the town from all loss by reason thereof, and shall prosecute their work diligently with a view to keep open only such portion of the street as is reasonably necessary to properly prosecute the work; the construction referred to shall be completed within one year from the date hereof, to which period, however, shall be added the time, if any, during which the construction shall be delayed by litigation or unfavorable accident.

And the water companies shall agree to provide filtered water, and to permit additional metered supply main connections (not less than six inches in diameter) with their mains, at any intersecting street, or on the meadows where required for manufacturing purposes, and the companies shall agree not to sell water for consumption or use within the Town of Kearney other than to the town, except to the Pennsylvania Railroad at the meadow shops, or in any case where the rights of way of existing contract or charter obligations of the water companies shall require such delivery; and, if during the term of the contract aforesaid, the said water companies shall furnish water at a lower price than is herein provided, to any other municipality, to reach which they have to furnish the same through mains laid in our town, they shall furnish the Town of Kearney water aforesaid at the same price during the time remaining of the said contract with the Town of Kearney, at which they furnish such other municipality.

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Resolved, that these resolutions shall take effect when they are accepted by the New Jersey Suburban Water Company and the New York & New Jersey Water Company by an instrument in writing duly executed by said companies and filed with the Clerk of the Town of Kearny, and, when so accepted, they shall constitute a contract between the Town of Kearney and the said water companies, their successors and assigns.

Now Therefore Be It Resolved, that this company hereby accept the foregoing resolutions in all their terms, and hereby agrees to comply with all the conditions thereof on its part, and agrees that the said resolutions and this acceptance thereof shall constitute a contract between the Town of Kearney and the New Jersey Suburban Water Company and this company, as in said resolutions provided.

Resolved, that the president and secretary of this company be and they are hereby authorized and directed to file a copy of these resolutions of acceptance, duly executed by the company under its corporate seal, in the office of the Town Clerk of the Town of Kearney within ten days from the date of the passage and the adoption of the aforementioned resolutions.

The New York & New Jersey Water Company,

By T. A. Beall, *President.*

(seal) Attest: Joseph H. Beall, *Secretary.*

I hereby certify the foregoing to be a correct copy of a resolution passed at a regular meeting of the Town Council of the Town of Kearney held Monday August 15, 1904.

Theo. Wildman, *Town Clerk.*

(town seal)

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Copy

HUDSON COUNTY CIRCUIT COURT.

New York and New Jersey Water Company, and New Jersey Suburban Water Company, corporations of New Jersey, *Plaintiffs,* and Mayor and Council of the Town of Kearny, a municipal corporation of Hudson County, *Defendants.*	*Action at Law.* *Answer and Counter-Claim.*

Filed January 10, 1925.

The defendant, a municipal corporation of Hudson County, New Jersey, with its principal office at the Town Hall, Kearny Avenue, in the Town of Kearny, New Jersey says:

ANSWER TO FIRST COUNT

1. Defendants admit the statements contained in the first and second paragraphs of the First Count of the Complaint.

2. Defendants deny the statements made by plaintiff in the third paragraph of the First Count of the Complaint except in this, that said Plaintiffs billed defendants for the amount of water stated in said paragraph and for the price stated therein.

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ANSWER TO SECOND COUNT

1. Defendants admit the statements contained in the first, second and third paragraph of the Second Count of the Complaint, except that part of the third paragraph which reads as follows: "until the time hereinafter mentioned and set forth," which defendants deny.

2. Defendants deny the statements contained in the fourth and fifth paragraphs of the Second Count of the Complaint.

3. Defendants deny the statements contained in the sixth paragraph of the Second Count of the Complaint, except that the sum of Fifty-six Thousand Seven Hundred Ninety-seven Dollars and Eleven Cents ($56,797.11) was paid to the plaintiffs, which was in full payment of a bill rendered the Town of Kearny for 688,449,787 million gallons of water billed the defendants on June 30, 1923 at the rate of $82.50 per million gallons.

4. Defendants deny that the rate of $104.25 per million gallons is a reasonable charge or price for the water supplied by the plaintiffs to the defendants.

ANSWER TO THIRD COUNT

1. Defendants admit the statements contained in the first paragraph of the Third Count of the Complaint.

2. Defendants admit the statements contained in the second and third paragraphs of the Second paragraph of the Third Count, except that part of the third paragraph which reads as follows: "until the time hereinafter mentioned and set forth," which defendants deny, and defendants also deny the statements contained in the fourth

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and fifth paragraphs of the second paragraph of the Third Count of the Complaint.

3. Defendants deny the allegations contained in the third paragraph of the Third Count of the Complaint and say that plaintiffs billed the defendants for 295,110,489 million gallons of water at $82.50 per million gallons for the sum of $24,346.61 and that defendants paid to plaintiffs the sum of $24,346.61 in settlement for same.

3. Defendants deny that the rate of $104.25 per million gallons is a reasonable charge or price for the water supplied by the plaintiffs to the defendants.

ANSWER TO FOURTH COUNT

1. Defendants admit the statements contained in the first paragraph of the Fourth Count of the Complaint.

2. Defendants admit the statements contained in the second and third paragraphs of the Second paragraph of the Fourth Count except that part of the third paragraph which reads as follows: "until the time hereinafter mentioned and set forth," which defendants deny, and defendants also deny the statements contained in the fourth and fifth paragraphs of the second paragraph of the Fourth Count of the Complaint.

3. Defendants deny the statements contained in the third paragraph of the Fourth Count of the Complaint, except that bill was received from plaintiffs by defendants for 262,473,418 million gallons of water at the rate of $104.25 per million gallons.

3. Defendants deny that the rate of $104.25 per million gallons is a reasonable charge or price for the water supplied by the plaintiffs to the defendants.

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ANSWER TO FIFTH COUNT

1. Defendants admit the statements contained in the first paragraph of the Fifth Count of the Complaint.

2. Defendants admit the statements contained in the second and third paragraphs of the second paragraph of the Fifth Count, except that part of the third paragraph which reads as follows: "until the time hereinafter mentioned and set forth," which defendants deny, and defendants also deny the statements contained in the fourth and fifth paragraphs of the second paragraph of the Fifth Count of the Complaint.

3. Defendants deny the statements contained in the third paragraph of the Fifth Count of the Complaint, except that bill was rendered by the plaintiffs to the defendants for 290,030,183 million gallons of water at the rate of $104.25 per million gallons.

4. Defendants deny that the rate of $104.25 per million gallons is a reasonable charge or price for the water supplied by the plaintiffs to the defendants.

ANSWER TO SIXTH COUNT

1. Defendants admit the statements contained in the first paragraph of the Sixth Count of the Complaint.

2. Defendants deny the statements contained in the second paragraph of the Sixth Count of the Complaint, except wherein it is stated that defendants paid to plaintiffs the sum of $56,797.11 and $24,346.61.

3. Defendants deny that the rate of $104.25 per million gallons is a reasonable charge or price for the water supplied by the plaintiffs to the defendants.

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By way of Counter Claim defendants say:

FIRST COUNT OF COUNTER CLAIM

1. That on September 30, 1923, plaintiffs billed the Town of Kearny for 356,377,479 million gallons of water at $104.25 per million gallons, of a total value of $37,152.35, which amount the said defendants by mistake and through an oversight paid to the plaintiffs. That there never has been an agreed price of $104.25 per million gallons for water supplied by plaintiffs to defendants. That said price per million gallons is an unreasonable price.

2. That the price paid by defendants to plaintiffs prior to September 20, 1923 for water per million gallons was $82.50.

3. That because of said mistake and through said over-sight and because of said over charge, said defendants paid $7751.21 to the plaintiffs more than said plaintiffs were legally entitled to, which said sum of money became due and owing from the plaintiffs to the defendants on September 30, 1923 and notwithstanding the obligation of the plaintiffs to pay the same to the defendants, the plaintiffs have failed and refused so to do and there is still due and owing from the plaintiffs unto the defendants the said sum of $7751.21 besides interest from September 30, 1923.

4. The defendants demand as judgments against the plaintiffs the sum of $7751.21 besides interest from September 30, 1923 and costs of suit on this count.

SECOND COUNT OF COUNTER CLAIM

1. That on December 31, 1923 plaintiffs billed the Town of Kearny for 339,685,859 million gallons of water at $104.25 per million gallons, of a total value of $35,412.25 which amount the said

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defendants by mistake and through an oversight paid to the plaintiffs.

2. That there never has been an agreed price of $104.25 per million gallons for water supplied by plaintiffs to the defendants. That said price per million gallons is an unreasonable price.

3. That the price paid by defendants to plaintiffs prior to September 30, 1923 for water per million gallons was $82.50.

4. That because of said mistake and through said over-sight and because of said over charge, said defendants paid $7388.17 more than said plaintiffs were legally entitled to, which said sum of money became due and owing from the plaintiffs to the defendants on December 31, 1923 and notwithstanding the obligation of the plaintiffs to pay the same to the defendants, the plaintiffs have failed and refused so to do and there is still due and owing from the plaintiffs unto the defendants the said sum of $7388.17 besides interest from December 31, 1923.

5. The defendants demand as judgment against the plaintiffs the sum of $7388.17 besides interest from December 31, 1923 and costs of suit on this count.

THIRD COUNT OF COUNTER CLAIM

1. That during the years 1915, 1916, 1917, 1918, 1919, and 1920 plaintiffs billed the defendants for 841,100,000 million gallons of water in excess of the actual amount of water that the plaintiffs delivered to defendants or defendants received from plaintiffs. That for said 841,100,000 million gallons of water the plaintiffs demanded and collected from the defendants the sum of $69,390.75 at the rate of $82.50 per million gallons, which said sum of money became

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due and owing from the plaintiffs to the defendants on January 1, 1921 and notwithstanding the obligation of the plaintiffs to pay the same to the defendants, the plaintiffs have failed and refused so to do and there is still due and owing from the plaintiffs to the defendants the said sum of $69,390.75 besides interest from January 1, 1921, and costs of suit on this count.

FOURTH COUNT OF COUNTER CLAIM

1. The defendants demand of the plaintiffs the sum of One Hundred Thousand Dollars ($100,000), for that whereas, the said plaintiffs on the dates set forth in the bill of particulars appearing below, became indebted to the defendants in the said sum of One Hundred Thousand Dollars ($100,000.00), for the price and value of goods sold and delivered by the defendants to the plaintiffs at the latters' request; and in the like sum of money for the price and value of goods bargained and sold by the plaintiffs to the defendants at the latters' request; and in the like sum of money for the price and value of work done, and materials for the same provided by the defendants for the plaintiffs at the latters' request; and in the like sum of money for money lent by the defendants to the plaintiffs at the latters' request; and in the like sum of money for money received by the plaintiffs for the use of the defendants; and in the like sum of money for money paid by the defendants for the use of the plaintiffs at the latters' request; and in the like sum of money for interest due from the plaintiffs to the defendants having forborne moneys due from the plaintiffs to the defendants at the plaintiffs' request; for a long time then elapsed; and in the like sum of money for money found to be due

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from the plaintiffs to the defendants on an account then and there stated between them; and the plaintiffs afterwards (to wit) on the dates set forth in the bill of particulars appearing below, in consideration of the premises, respectively promised to pay the defendants on request, yet the plaintiffs disregarded such promises, and have not paid any of the said moneys or any part thereof; to the defendants damages in the sum of One Hundred Thousand Dollars ($100,000.00) and thereupon the defendants bring suit, &c.

The following is a bill of particulars of the demand and copy of the account upon which the above count is founded:

Amount paid by mistake and oversight by defendants to plaintiffs for 356,377,479 million gallons of water for the three months ending September 30, 1923, at $104.25 per million gallons	$37,152.35
For which the defendants admit the plaintiffs are entitled to at the rate of $82.50 per million gallons and should be credited with.	29,401.14
Balance due to defendants from plaintiffs because of mistake and over-sight,.....	$7,751.21
With interest from September 30, 1923	
Amount paid by mistake and over-sight by defendants to plaintiffs for 339,685,859 million gallons of water for the three months ending December 31, 1923, at $104.25 per million gallons	35,412.25
For which the defendants admit the plaintiffs are entitled to at the rate of $82.50 per million gallons and should be credited with.	28,024.08
Balance due to defendants from plaintiffs because of mistake and over-sight, ...	7,388.17
With interest from December 31, 1923	

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841,100,000 million gallons of water paid for by defendants to plaintiffs during years 1915, 1916, 1917, 1918, 1919 and 1920, at the rate of $82.50 per million gallons, but never delivered to defendants or received by them during the said years, ...	69,390.75
With interest from January 1, 1921	

Judgment will be demanded in the sum of One Hundred Thousand Dollars ($100,000), besides interest and costs of suit on this Fourth Count.

Attorney for Defendants.

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HUDSON COUNTY CIRCUIT COURT.

NEW YORK and NEW JERSEY WATER COMPANY and NEW JERSEY SUBURBAN WATER COMPANY, corporations of New Jersey, *Plaintiffs,* —*and*— MAYOR and COUNCIL OF THE TOWN OF KEARNY, a municipal corporation of Hudson County, New Jersey, *Defendants.*	*Action at Law.* *Reply to Answer and Answer to Counterclaim.* *Filed Jan.* 15, 1925.

The plaintiffs by way of reply to the answer filed by the defendants in the above entitled cause of action join issue on all matters of the complaint denied by the defendants in the said answer.

By way of answer to the counter claim the plaintiffs respectfully say:

1. They deny the allegations contained in paragraph 1. of the first count of the counter claim, excepting so much thereof as alleges that the plaintiffs billed the Town of Kearny for 356,377,479 million gallons of water at $104.25 per million gallons, totaling the value of $37,-152.35.

2. That the bill rendered September 30, 1923, was in accordance with the existing arrangement, and duly paid by the defendant without any question, dispute or oversight in connection therewith.

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3. They deny the allegations contained in paragraph 2. of the first count of the counter claim.

4. They deny the allegations contained in paragraph 3. of the first count of the counter claim.

5. They deny that the defendants are entitled to a judgment of $7,751.21 on the first count, or that there is anything due or owing from the plaintiffs to the defendants, but that on the contrary the defendants are indebted to the plaintiffs in the amounts and for the items at length set forth in the complaint filed in this cause.

6. They admit the allegations contained in paragraph 1. of the second count of the counter claim excepting so much thereof as alleges that the defendants paid the sum of $35,412.25 by mistake and oversight, which said such mentioned allegations the plaintiffs deny.

7. That the defendants paid the said sum of $35,412.25 for the water furnished, as represented by the said bill December 31, 1923, without question or dispute and in accordance with the arrangement existing.

8. They deny the allegations contained in paragraphs 2. and 3. of the second count of the counter claim.

9. They deny the allegations contained in paragraph 4. of the second count of the counter claim.

10. They deny that the defendants are entitled to judgment against the plaintiffs in the sum of $7,388.17 or any other sum as stated in the fifth paragraph of the second count of the counterclaim, and on the contrary repeat that the defendants are indebted to the plaintiffs in

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the sum and for the items as specifically set forth in the complaint filed by the plaintiffs.

11. They deny the allegations contained in paragraph 1. of the third count of the counter claim.

12. They deny that the plaintiffs are indebted to the defendants in the sum of $100,000. or any other sum in accordance with the bill of particulars contained in the first paragraph of the fourth count of the counter claim, but on the contrary allege and repeat that the defendants are indebted to the plaintiffs in the amounts and for the items set forth in the complaint filed by the plaintiffs in this Court.

(Signed) DEMBE & DEMBE
Attorneys for the Plaintiffs.

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SCHEDULE 3.

NEW JERSEY SUBURBAN WATER COMPANY
55 Liberty Street,
New York.

May 18, 1925.

John H. Cook, Esq., President,
Passaic Consolidated Water Co.,
Paterson, N. J.

Dear Sir:—

We are in receipt of your letter of May 7th, stating that you plan to discontinue the service of water on and after June 8th, 1925, and we desire to bring to your attention the fact that this will create great hardship and cause serious

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inconvenience to the towns using this water. In view of the fact that the statements which you set forth in your letter as to the amounts due from this Company to your Company are not correct, and further in view of the fact that certain of the customers named in your letter have either paid in full for the water furnished them or are planning to pay in full in the proper manner provided by law, we recommend that you reconsider taking such drastic action. If you persist in your determination to shut off the water from the consumers which we are supplying in the West Hudson towns, and suits for damages result, by reason of fires or other losses over which we have no control, we will hold you responsible for the full amount of such damages and costs.

In the fourth paragraph of your letter you ask that we give you a definite and satisfactory assurance that from and after June 8th, 1925, we will "pay promptly for the water thereafter furnished at the rate of $78.00 per million gallons until such time as said rate may be legally changed." You, in effect, ask that we relinquish the rights guaranteed to us by the contract of 1903. This, we decline to do.

Yours very truly,
Signed C. A. DANA,
President.

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PASSAIC CONSOLIDATED WATER COMPANY
General Office: 158 Ellison Street
Paterson, N. J.

Edmund LeB. Gardner
Chairman of the Board

Wm. R. Edwards, Genl. Supt.
Telephone:
Sherwood 2424.

John H. Cook, President,
A. W. Cuddeback, Vice Prest. & Treas.,
Walter W. Corrigan, Sec. & Asst. Treas.

June 1st, 1925.

The New Jersey Suburban Water Company and
New York and New Jersey Water Company.

Gentlemen:

Referring to the letter we wrote and delivered to you on May 7th, 1925, and the reply thereto sent us under date of May 18th, 1925, written on a letterhead of New Jersey Suburban Water Company and signed "C. A. Dana, President," we desire to advise you as follows:

While Mr. Dana's letter says "that the statements which you set forth in your letter as to the amounts due from this company to your company are not correct" it entirely fails to indicate any basis for such claim unless it be by the reference to the contract made between us in 1903. We are not only confident that our letter of May 7th, 1925 correctly states the amounts due from you but that it is both our right and obligation to cease furnishing water to you in view of your refusal to pay therefor at the rate established by the Board of Public Utility Commissioners and upheld by the courts. If your claim as to the incorrectness of our statement as to the amounts due is based upon anything other than the contract to which your letter refers, we shall be glad to have you point this out and confer with you in regard to any of the arrearage figures as to which there may be any dispute.

As to the statement in Mr. Dana's letter that certain of the customers named in our letter to you of May 7th, 1925 "have either paid in full for the water furnished them or are planning to pay in full in the manner provided by law," we need hardly point out to you that this is no warrant for your refusal to pay us for the water furnished you at the rate of $78. per million gallons so established.

Your reply to our letter leaves us no course open except to turn off the water. We have, however, determined to postpone doing so until Wednesday, July 1st, 1925. Unless prior to that time we have a definite and satisfactory assurance from you that as from and after that date you will promptly pay for the water thereafter furnished you at the rate of $78. per million gallons until such time as said rate may be legally changed, we shall then turn off the water and thereafter cease to supply water to you. We are sending a copy of this letter to the Towns of Kearny and Harrison, the Borough of East Newark and The Clark Thread Company.

Yours very truly,
PASSAIC CONSOLIDATED WATER COMPANY,
By (Sgd) JOHN H. COOK,
President.

Exhibit D. 47.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

ACQUACKANONK WATER COMPANY, EAST JERSEY WATER COMPANY, KEARNEY WATER COMPANY, MONTCLAIR WATER COMPANY, PASSAIC WATER COMPANY.

AMENDMENTS TO RATE SCHEDULES PURSUANT TO REPORT AND ORDER OF THE BOARD, DATED MARCH 27, 1923.

March 31, 1923.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

ACQUACKANONK WATER COMPANY
Amendment to Rate Schedule, dated March 31, 1923.

Pursuant to report and order of the Board of Public Utility Commissioners, dated March 27th, 1923, without prejudice to its rights, ACQUACKANONK WATER COMPANY hereby amends its schedule of rates as follows:

1. The charges for miscellaneous services rendered by this Company are unchanged.

2. The flat or fixture rates (except for private fire protection connections) in force prior to March 1, 1922, shall remain in effect unchanged.

3. The annual public charges and the charge for all other general water service, including private fire protection connections and metered water for domestic, commercial, manufacturing and public purposes, whether wholesale or retail, shall be in accordance with the annexed schedules prescribed by the said report and order of the Board.

4. The rates shall be applied to each customer as defined in the Rules, Regulations and Recommendations for Public Utilities prescribed by the Board of Public Utility Commissioners of New Jersey.

5. The dates upon which bills will become payable for services remain unchanged.

6. The said schedule of rates will be effective with all bills sent out on or after April 1, 1923.

Dated Paterson, N. J., March 31, 1923.

ACQUACKANONK WATER COMPANY,
By WALTER W. CORRIGAN
Secretary

Exhibit D. 47.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

EAST JERSEY WATER COMPANY,
KEARNEY WATER COMPANY,
Amendment to Rate Schedule,
dated March 31, 1923.

Pursuant to report and order of the Board of Public Utility Commissioners, dated March 27th, 1923, without prejudice to their rights, EAST JERSEY WATER COMPANY and KEARNEY WATER COMPANY respectively hereby amend their schedules of rates as follows:

1. The charges for standby services are unchanged.

2. Charges shall be in accordance with the annexed schedules prescribed by said report and order of the Board of Public Utility Commissioners. The wholesale charge shall be $78 per million gallons. This rate applies to all customers of the East Jersey Water Company.

3. The dates upon which bills will become payable for services remain unchanged.

4. The above schedule of rates will be effective with all bills sent out on or after April 1, 1923.

Dated, Paterson, N. J., March 31, 1923.

EAST JERSEY WATER COMPANY,
By WALTER W. CORRIGAN
Secy.

KEARNEY WATER COMPANY,
By WALTER W. CORRIGAN
Secy.

Exhibit D. 47.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

MONTCLAIR WATER COMPANY,
Amendment to Rate Schedule,
dated March 31, 1923.

Pursuant to report and order of the Board of Public Utility Commissioners, dated March 27, 1923, without prejudice to its rights, MONTCLAIR WATER COMPANY hereby amends its schedule of rates as follows:

1. The charges for miscellaneous services rendered by this Company, including charges for standby service and to the Essex County Institutions, are unchanged.

2. The annual public charges and the charges for all other general water service, including private fire protection connections and metered water for domestic, commercial, manufacturing and public purposes, whether wholesale or retail, shall be in accordance with the annexed schedules prescribed by the said report and order of the Board.

3. The rates shall be applied to each customer as defined in the Rules, Regulations and Recommendations for Public Utilities prescribed by the Board of Public Utility Commissioners of New Jersey.

4. The dates upon which bills will become payable for services remain unchanged.

Exhibit D. 47.

5. The said schedule of rates will be effective for all bills sent out on or after April 1, 1923.

Dated, Paterson, N. J., March 31, 1923.

MONTCLAIR WATER COMPANY,
By WALTER W. CORRIGAN
Secy.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

PASSAIC WATER COMPANY,
Amendment to Rate Schedule,
dated March 31, 1923.

Pursuant to report and order of the Board of Public Utility Commissioners, dated March 27, 1923, without prejudice to its rights, PASSAIC WATER COMPANY hereby amends its schedule of rates as follows:

1. The charges for miscellaneous services rendered by this Company are unchanged.

2. The flat or fixture rates, except for private fire protection connections, in force prior to March 1, 1922, shall remain in effect unchanged.

3. The annual public charges and the charges for all other general water service, including private fire protection connections and metered water for domestic, commercial, manufacturing and public purposes, whether wholesale or retail, shall be in accordance with the annexed schedules prescribed by the said report and order of the Board.

Exhibit D. 47.

4. The rates shall be applied to each customer as defined in the Rules, Regulations and Recommendations for Public Utilities prescribed by the Board of Public Utility Commissioners of New Jersey.

5. The dates upon which bills will become payable for services remain unchanged.

6. The said schedule of rates will be effective for the quarter billed April 1, 1923.

Dated, Paterson, N. J., March 31, 1923.

PASSAIC WATER COMPANY,
By WALTER W. CORRIGAN,
Secy.

SCHEDULE OF RATES.

AQUACKANONK WATER COMPANY,
EAST JERSEY WATER COMPANY,
KEARNEY WATER COMPANY,
MONTCLAIR WATER COMPANY,
PASSAIC WATER COMPANY,
March 31, 1923.

SERVICE DISTRICTS DEFINED:

I. *Paterson-Passaic-Clifton Service District*:

This district includes the territory within the municipal limits of the Cities of Paterson, Passaic and Clifton and the Borough of Prospect Park, and customers in contiguous territory, now or hereafter supplied through mains located in said municipalities.

Exhibit D. 47.

II. *Montclair Service District*:

This district includes the territory within the municipal limits of the Town of Montclair, and customers in contiguous territory now or hereafter supplied through mains located in the Town of Montclair.

The district is divided into the Montclair Low Service District and the Montclair High Service District, the low service district being that portion supplied directly at the pressure maintained at Little Falls; the high service district being that portion supplied through the Watchung Avenue pumping station in Montclair at the pressure of said station.

III. *East Jersey Service District*:

This district includes the territory within the municipal limits of the Boroughs of Totowa and West Paterson, Township of Little Falls, Town of Bloomfield, Town of Nutley, and the municipalities east of the Passaic River now supplied through the Kearney pipe line, including the Cities of Bayonne and Jersey City, Towns of Harrison and Kearney, and the Borough of East Newark.

SCHEDULES OF RATES:

I. *Paterson-Passaic-Clifton District*:

A. *Public Charges*:

The annual charges for that portion of the system of these Companies apportioned by the Board to fire protection purposes shall consist of two charges:

1. *Hydrant Charge.* The fixed charge for each hydrant will be $10 per annum, payable in equal quarterly instalments of $2.25 per quarter, commencing with the quarter billed April 1, 1923.

Exhibit D. 47.

2. *Inch-Foot Charge.* There shall be an inch-foot charge of .21c per quarter, beginning with the quarter billed April 1, 1923 (.84c per annum), to cover the interest, depreciation, taxes, maintenance and net return on that portion of the system so apportioned to fire protection service (other than hydrants), based on the inch diameter and feet of length of mains utilized in serving the particular municipality. The inch-foot charge shall be applied to all distribution mains now in place 4 inches in diameter and larger, and to mains installed in the future 6 inches in diameter and larger, and to the proportion of transmission mains utilized in serving the particular community, determined as follows:

(*a*) Separate the piping system into transmission and distribution mains, by treating all mains 16″ and larger as transmission mains, and all mains 12 inches and smaller as distribution mains. The 42-inch low pressure conduit outside of Paterson, all of the 51-inch high pressure conduit, that part of the 30-inch line from Ridgefield to Claverack Road, and the Dyers Pipe Line are not to be included in this apportionment.

(*b*) Apportion the number of inch-feet in a given transmission main supplying more than one service district in proportion to the population served in each district according to the latest Federal Census.

(*c*) Charge all transmission mains supplying but one service district to the districts which they supply.

(*d*) Charge all distribution mains to the service districts which they serve.

(*e*) Apportion to the inch-foot charged to a given service district among the taxing districts contained therein in proportion to the population served, as determined by the latest Federal Census.

(*f*) No portion of the transmission or distribution system of these Companies, as above defined, shall be excluded from the inch-foot charge, except by direct order of the Board specifying the portion to be excluded.

(*g*) The schedule of mains to which the inch-foot charge shall apply, together with the number of hydrants to which the quarterly fire hydrant charge shall apply, is filed herewith. (Similar schedules will be filed quarterly.)

B. *Rates for General Service*:

1. *Dyers' Pipe Line.* Service to consumers supplied with unfiltered water from Great Falls through the Dyers' Pipe Line $0.134 per thousand cubic feet.

2. *Flat or Fixture Rates.* The flat or fixture rates (except for private fire service connections) in force prior to March 1, 1922, shall be continued unchanged until all premises supplied at such rates shall be metered.

3. *Metered Service.*

(a) *Fixed Service Charges.* For all meters or connections as follows:

½″ or	⅝″	meter or	connection,	$	1.50	per	quarter
	¾″	"	"	"	2.50	"	"
	1″	"	"	"	5.50	"	"
	1½″	"	"	"	13.50	"	"
	2″	"	"	"	18.00	"	"
	3″	"	"	"	45.00	"	"
	4″	"	"	"	60.00	"	"
	6″	"	"	"	120.00	"	"
	8″	"	"	"	190.00	"	"

(b) *Proportional Service Charges*:

For the first	10,000	cu. ft.	per	quarter	$1.00	per	M.	cu. ft.
" " next	90,000	"	"	"	.90	"	"	"
" " "	900,000	"	"	"	.70	"	"	"
For all over	1,000,000	"	"	"	.50	"	"	"

II. *Montclair District*:

A. *Public Charges*:

1. For each fire hydrant, $2.50 per quarter, commencing with the quarter billed April 1, 1923.

2. Inch-foot charge of .19c per quarter per inch diameter per foot of transmission and distribution mains now in place 4 inches in diameter and larger and to mains installed in the future 6 inches in diameter and larger located within the Town of Montclair, with the exception of the 20-inch transmission main on Grove Street from Watchung Avenue northward to the Clifton boundary line and the transmission main on Watchung Avenue eastward from Grove Street.

3. No portion of the transmission or distribution system, as above defined, shall be excluded from the inch-foot charge, except by direct order of the Board specifying the portion to be excluded.

4. The schedule of mains to which the inch foot charge shall apply, together with the number of hydrants to which the quarterly fire hydrant charge shall apply is filed herewith. (A similar schedule will be filed quarterly.)

B. *Rates for General Service*:

1. *Fixed Service Charges*:

½″ or	⅝″	meter or	meter	connection,	$	1.50	per	quarter
	¾″	"	"	"	"	2.50	"	"
	1″	"	"	"	"	5.50	"	"
	1½″	"	"	"	"	13.50	"	"
	2″	"	"	"	"	18.00	"	"
	3″	"	"	"	"	45.00	"	"
	4″	"	"	"	"	60.00	"	"
	6″	"	"	"	"	120.00	"	"
	8″	"	"	"	"	190.00	"	"

Exhibit D. 47.

2. *Proportional Service Charges*:

(a) *Low Service District,* including that portion of Montclair supplied without repumping at the Watchung Avenue Pumping Station:

For the first	10,000	cu.	ft.	in	the	quarter,	$2.10	per	M. cu. ft.
" " next	90,000	"	"	"	"		1.75	"	" "
" " "	900,000	"	"	"	"		1.40	"	" "
" excess over	1,000,000	"	"	"	"		1.05	"	" "

(b) *High Service District,* including that portion of Montclair supplied by repumping at the Watchung Avenue Pumping Station:

For the First	10,000	cu.	ft.	in	the	quarter,	$2.90	per	M. cu. ft.
" " next	90,000	"	"	"	"		2.45	"	" "
" " "	900,000	"	"	"	"		1.90	"	" "
" excess over	1,000,000	"	"	"	"		1.45	"	" "

III. *East Jersey Service District*:

Wholesale service to municipalities of Totowa, Bloomfield, Nutley, Bayonne, Jersey City, and to the Little Falls Water Company and to the New York and New Jersey Water Company and the New York Suburban Water Company, $78 per million gallons.

SCHEDULE OF HYDRANTS AND MAINS
MARCH 31, 1923.

Passaic-Acquackanonk District:

(a) *Hydrants*—2,356 hydrants.
(b) *Inch feet*—10,999,730 inch feet of mains.

Montclair District:

(a) *Hydrants*—657 hydrants.
(b) *Inch feet*—2,934,300 inch feet of mains.

Exhibit D. 47.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

ACQUACKANONK WATER COMPANY
Amendment to Rate Schedule

Pursuant to the Statutes of the State of New Jersey, ACQUACKANONK WATER COMPANY hereby amends its schedule of rates as follows:

Fixed Service Charge for all unmetered connections as follows:

½" or ⅝"	service	connection,	$ .75	per	quarter
¾"	"	"	1.25	"	"
1"	"	"	2.75	"	"
1½"	"	"	6.75	"	"
2"	"	"	9.00	"	"
3"	"	"	22.50	"	"
4"	"	"	30.00	"	"
6"	"	"	60.00	"	"
8"	"	"	95.00	"	"

to be effective with bills rendered after April 1, 1923.

Dated, Paterson, N. J.,
March 31, 1923.

ACQUACKANONK WATER COMPANY,
By A. W. CUDDEBACK
Manager.

Exhibit D. 47.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

MONTCLAIR WATER COMPANY
Amendment to Rate Schedule

Pursuant to the Statutes of the State of New Jersey, MONTCLAIR WATER COMPANY hereby amends its schedule of rates as follows:

Fixed service Charge for all unmetered connections as follows:

½″ or ⅝″	service	connection,	$ .75	per	quarter
¾″	“	“	1.25	“	“
1″	“	“	2.75	“	“
1½″	“	“	6.75	“	“
2″	“	“	9.00	“	“
3″	“	“	22.50	“	“
4″	“	“	30.00	“	“
6″	“	“	60.00	“	“
8″	“	“	95.00	“	“

to be effective with bills rendered after April 1, 1923.

Dated, Paterson, N. J.,
March 31, 1923.

MONTCLAIR WATER COMPANY,
By A. W. CUDDEBACK
Manager.

Exhibit D. 47.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

PASSAIC WATER COMPANY
Amendment to Rate Schedule

Pursuant to the Statutes of the State of New Jersey, PASSAIC WATER COMPANY hereby amends its schedule of rates as follows:

Fixed Service Charge for all unmetered connections as follows:

½″ or ⅝″	service	connection,	$ .75	per	quarter
¾″	“	“	1.25	“	“
1″	“	“	2.75	“	“
1½″	“	“	6.75	“	“
2″	“	“	9.00	“	“
3″	“	“	22.50	“	“
4″	“	“	30.00	“	“
6″	“	“	60.00	“	“
8″	“	“	95.00	“	“

to be effective with bills rendered after April 1, 1923.

Dated, Paterson, N. J.,
March 31, 1923.

PASSAIC WATER COMPANY,
By A. W. CUDDEBACK
Manager.

Exhibit D. 48.

NEW JERSEY SUBURBAN WATER COMPANY
15 West 8th Street
Bayonne, N. J.

June 17, 1925

John H. Cook Esq., President,
Passaic Consolidated Water Co.,
158 Ellison Street,
Paterson, N. J.

Dear Sir:

We duly received your letter of June 1st. An unusual pressure of other matters has prevented my earlier reply to this letter if, indeed, a reply is necessary.

It seems useless for us to continue to correspond about the subject upon which we hold such totally divergent views. You are aware that the New Jersey Suburban Water Company was not a party to the proceedings before the Board of Public Utilities Commissioners which fixed a rate for your company, and that, in view of the relations of the Suburban Company to the Consolidated Company, under the contract of 1903, it is the contention of our Company that the Utilities Board is powerless to alter that contract should our company ever be summoned before it. If you continue to entertain a view contrary to this, it seems useless for either company to do anything but submit these important matters to the appropriate tribunal.

Meantime, permit me again to protest against your threat to take the law into your own hands, and turn off the water while these important

questions are judicially undetermined; and to reiterate the statement that our company will look to your company to make good any damage the Suburban Company shall suffer should you take any such drastic action on the first of July as you letter threatens.

Yours very truly,

Treasurer.

Exhibit D. 49.

March 29, 1923.

Mr. Charles A. Dana, President,
New Jersey Suburban Water Company,
New York & New Jersey Water Co.,
No. 50 Church Street, New York City.

Dear Mr. Dana—

This is to advise you that the New Jersey State Board of Public Utility Commissioners have finally decided our rate case, and that they have awarded a rate of $78. per million gallons for water furnished by the East Jersey Water Company, wholesale.

In accordance with this ruling, the East Jersey Water Company will except to collect from you the sum of $78. per million gallons for all water delivered into your pipes at the corner of Kearney Avenue and Belleville Turnpike Road, from and after January 1st, 1923. This letter is written so that you may have ample notice of the facts, and make your arrangements accordingly when you come to bill your West Hudson custom-

Exhibit D. 49.

ers for the water furnished to them during the first quarter of this year, and thereafter.

Yours very truly,
THE EAST JERSEY WATER COMPANY,
By (Sgd) EDMUND LeB. GARDNER
President.

RECEIPT FOR REGISTERED ARTICLE.

No. 17247

Registered at the Post Office Indicated in Post-*Class postage*.....

Complete record of registered mail is kept at the post office, but the sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry.

POSTMASTER,
Per.....

Postmark clearly, showing date and office.

Form 3806. 05—6852
Stamped:
Return receipt demanded.
Paterson, N. J. Registered
Mar 29 1923

Exhibit D. 49.

Post Office Department Official Business
Penalty for private use to avoid payment of postage, $300.
Postmark of delivering office and date of delivery

Stamped:
Hud. Term. Sta. N. Y. 1
Mar 30 1.30 P M 1923

Address your mail to street and number

REGISTERED ARTICLE
No. 17247
INSURED PARCEL

No.....
Return to East Jersey Water Co
(Name of Sender)
Street and Number,
or Post Office Box,.....
PATERSON,
New Jersey.

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

C. A. DANA
(Signature or name of addressee.)

L. CARBAUGH
(Signature of addressee's agent.)

Date of delivery, March 30, 1923
Form 3811.

Exhibit D. 50.

April 4, 1923.

Mr. Charles A. Dana, Prest.,
N. J. Suburban Water Co.,
50 Church St., NYCity.

Dear Mr. Dana—

Answering your letter of the 2d instant to Mr. Gardner, (who is away today), I would state that the decision of the Public Utility Commissioners is being printed. It should be completed within a day or so, and we have requested our attorney to send a copy to your office just as soon as the same is available. You should receive a copy very soon.

Yours very truly,
W W Corrigan
Secretary.

Exhibit D. 51.

June 21, 1923.

Mr. Charles A. Dana,
Prest. N. J. Suburban Water Co.,
50 Church St., NYCity.

Dear Mr. Dana—

When July 1st is here, we will have been supplying your Company with water for a period of six months without having received any compensation therefor, and it is very necessary that we should receive the payments that are due us.

I believe that you will lose considerable money if you do not apply to the State Board of Public Utility Commissioners for a rate which you may

charge for water which you furnish to the communities which you supply,—by this I mean, a rate beyond the $78. per mil. gals. which, by the decision of the said Commission, you are to pay us for the water which we furnish; as I understand that any rate which the Commission may give you will apply only from the date of your application, and will not be retroactive to any previous date.

In talking with a man who is somewhat in close touch with Harrison matters, the other day, I understood from him that Harrison would probably accept a charge on your part of approximately $20. per mil. gals. as a carrying charge from the point where you receive the water from our mains on Kearney Avenue, to the point of delivery in Harrison, and if you could thus get, say $100. per mil. gals. for the water which you delivered, you would possibly and probably be able to make that rate apply from Jan. 1, 1923.

I think you should give this matter prompt and serious attention, because we do not appear to be receiving any money from you, and we certainly must have money in order to carry on our business.

Yours very truly,
(Sgd) John H Cook
Vice-President.

Exhibits D. 52, D. 53.

Exhibit D. 52.

CHARLES A. DANA
50 Church Street
New York

June 29, 1923

Mr. John H. Cook,
East Jersey Water Co.,
Paterson, N. J.

Dear Mr. Cook:—

I have your letter of June 21st and am endeavoring to see what I can do along the lines you suggest. I hope I will be able to report progress to you shortly.

Very truly yours,

C A DANA

Exhibit D. 53.

July 2, 1923.

Mr. Charles A. Dana, Prest.,
N. J. Suburban Water Co.,
50 Church Street, New York City.

Dear Mr. Dana—

In enclose our bill for water furnished during the quarter ended June 30, 1923.

As I have stated to you before, we are operating our works at a great expense to us, for the benefit of you and your consumers and others. You have paid us no money at all for services rendered since the beginning of this year, and yo*y* must realize how necessary it is that we should have our bills paid. I hope that you are

Exhibit D. 54.

taking some action that will put you in position to pay us a very material sum of money at an early date.

Let me hear from you.

Yours very truly,

(Sgd) JOHN H COOK
Vice-President.

Exhibit D. 54.

CHARLES A. DANA
50 CHURCH STREET
NEW YORK

July 16, 1923

Mr. John H. Cook,
East Jersey Water Co.,
Paterson, N. J.

Dear Mr. Cook:—

I have your letter of July 2nd, and as you probably know by the newspapers, and otherwise, we are doing everything possible to get the Towns to pay us for the water that we have supplied them. Some of them question the legality of the decision of the Public Utility Commission, and consequently it takes me a little while to work with their Counsel.

Very truly yours,

C. A. DANA

Exhibit D. 55.

COPY

April 10, 1923.

Mr. Charles A. Dana, Prest.,
N. J. Suburban Water Co.,
50 Church St., NYCity.

Dear Mr. Dana—

Your letter of the 9th instant to Mr. Gardner has been received. Mr. Gardner is at home ill, but we have made inquiry of Mr. Wherry, our lawyer, and he tells us that yesterday he sent a copy of the decision of the Utility Commissioners to your office,—no doubt after your letter was written.

Yours very truly,
W. W. Corrigan,
Secretary.

Exhibit D. 56.

July 9, 1923

Mayor and Common Council
Town of Kearny, New Jersey.

Gentlemen:

By the decision of the Highest Courts of New Jersey it has been decided that the Public Utility Commission has the right to amend contracts and establish rates for the sale of water in various districts throughout this State, and in pursuance thereof the Public Utility Commission by its Decision dated March 27, 1923, has established the wholesale price of water to this Company of $78.00 per million gallons instead of the price heretofore paid by this Company to the East

Jersey Water Company, viz: $56.25, according to the written contracts heretofore existing between this Company and the East Jersey Water Company, with which you are familiar, which results in an increase of $21.75.

The Decision makes such rates effective January 1st, 1923, and therefore, we are herewith submitting our bills for the water consumed by your Town since January 1, 1923 to June 30, 1923 at the increased rate of $104.25, being the previous price of $82.50 plus the increase of $21.75.

Very truly yours,
New Jersey Suburban Water Co.

President

Exhibit D. 57.

No. 158 Ellison Street, Paterson, N. J.,

May 23, 1923.

New York and New Jersey Water Company, and
New Jersey Suburban Water Company,
No. 50 Church Street, New York City,

To The East Jersey Water Company, *Dr.*

For water delivered into the pipes of the New York & New Jersey Water Company and the New Jersey Suburban Water Company, at the corner of Kearny Avenue and Belleville Turnpike, during the quarter ended March 31, 1923—

Month of January 1923	195.5	mil. gals.
Month of February "	186.2	"
Month of March "	205.0	"
Total	586.7	"

@ the rate fixed by the New Jersey State Board of Public Utility Commissioners in their decision dated March 27, 1923, namely, $78.00 per million gallons $45,762.60

(NOTE: If not paid by June 2d, 1923, add interest from that date.

Exhibit D. 57.

No. 158 Ellison Street, Paterson, N. J.,

July 2, 1923.

New York and New Jersey Water Company, and
New Jersey Suburban Water Company,
No. 50 Church Street, New York City,

To The East Jersey Water Company, *Dr.*

For water delivered into the pipes of the New York & New Jersey Water Company and the New Jersey Suburban Water Company, at the corner of Kearny Avenue and Belleville Turnpike, during the quarter ended June 30, 1923—

Month of April	1923	202.4 Mil. Gals.
Month of May	"	218.8 "
Month of June	"	216.3 "
Total		637.5 "

@ the rate fixed by the New Jersey State Board of Public Utility Commissioners in their decision dated March 27, 1923, namely, $78.00 per million gallons $49,725.00*

Amount due by bill dated May 23, 1923, for water delivered during January, February and March, 1923..... $45,762.60

Interest on same from June 2, 1923, to July 2, 1923, 30 days @ 6% per annum... 225.68

Amount due on said previous bill, with interest... $45,988.28**

Total amount due on this bill..... $95,713.28

NOTE: * If not paid by July 12th, 1923, add interest on this amount of $49,725.00 from that date.

** Interest on this amount of $45,762.60 to be added from June 2, 1923, to date of payment.

Exhibit D. 57.

No. 158 Ellison Street, Paterson, N. J.,

Oct. 2, 1923.

New York and New Jersey Water Company, and
New Jersey Suburban Water Company,
No. 50 Church Street, New York City,

To The East Jersey Water Company, *Dr.*

For water delivered into the pipes of the New York & New Jersey Water Company and the New Jersey Suburban Water Company, at the corner of Kearny Avenue and Belleville Turnpike, during the quarter ended Sept. 30, 1923—

Month of July	1923	203.6 Mil. Gals.
" " August	"	208.6 "
" " Sept.	"	202.0 "
Total		614.2 "

@ the rate fixed by the N. J. State Board of Public Utility Commissioners in their decision dated March 27, 1923, namely, $78. per million gallons..... $47,907.60

Bill of July 2d, 1923..... $49,725.00

Bill of May 23d, 1923..... 45,762.60

Balance Principal July 12, 1923 95,487.60

Interest @ 6% per annum from June 2, 1923, to July 12/23, 40 days on $45,762.60. $ 300.90

Interest @ 6% per annum from July 12, 1923, to Oct. 2, 1923, on $95,487.60—82 days 1,287.13

1,588.03

Balance Principal as above..... 95,487.60 97,075.63

Amount due on this bill..... $144,983.23

If not paid by October 12, 1923, add interest from that date.

Exhibit D. 57.

Credit by payment Jan. 22/24	25,000.00	
Balance of principal	$102,843.27	
Interest on $102,843.27 from Jan. 22/24 to Apl. 2/24, 71 days @ 6% per annum	1,200.31	
Interest to date	4,861.09	
Balance of principal as above		102,843.27
Amount of principal to date		145,033.47
Amount of Interest to date as above		4,861.09
Amount due by this bill		149,894.56

(If not paid by April 12, 1924, add interest from that date.)

No. 158 Ellison Street, Paterson, N. J.,

July 1, 1924.

New York and New Jersey Water Company, and New Jersey Suburban Water Company,

To Passaic Consolidated Water Company, Dr.

For water delivered into the pipes of the New York & New Jersey Water Company and the New Jersey Suburban Water Company, near the corner of Kearny Avenue and Belleville Turnpike, Kearny, N. J., during the quarter ended June 30, 1924—

April	1924	171.1	Mil. Gals.	
May	"	167.9	"	
June	"	159.7	"	
Total		498.7	" @ $78. per M. G.	$38,898.60

Balance of Principal per bill of April 2, 1924	$102,843.27	
Balance of Interest per bill of April 2, 1924		$4,861.09
Bill of April 2, 1924, for water furnished during quarter ended March 31, 1924	42,190.20	
Total principal due Apl. 2/24.	145,033.47	
Interest on $102,843.27 from April 2, 1924, to April 12, 1924, 10 days @ 6% per annum		169.06

Exhibit D. 57.

Interest on $145,033.47 from April 12, 1924, to April 19, 1924, 7 days @ 6% per annum		166.89
Credit by payment April 19, 1924	30,000.00	
	115,033.47	
Interest on $115,033.47 from April 19, 1924, to June 10, 1924, 52 days @ 6% per annum		983.30
Credit by payment June 10, 1924	8,000.00	
Balance of Principal	107,033.47	
Interest on $107,033.47 from June 10, 1924, to July 1, 1924, 21 days @ 6% per annum		369.48
Interest to date		6,549.82
Principal as above		107,033.47
Principal to date of this bill		145,932.07
Interest to date of this bill		6,549.82
Amount due		152,481.89

NOTE: If not paid by July 11, 1924, add interest from that date.

No. 158 Ellison Street, Paterson, N. J.,

Oct. 1, 1924.

New York and New Jersey Water Company, and New Jersey Suburban Water Company,

To Passaic Consolidated Water Company, Dr.

For water delivered into the pipes of the New York & New Jersey Water Company and the New Jersey Suburban Water Company, near the corner of Kearny Avenue and Belleville Turnpike, Kearny, N. J., during the quarter ended Sept. 30, 1924—

Month of July,	1924	168.2	M. G.		
August	"	176.3	"		
Sept.	"	168.8	"		
Total		513.3	"	@ $78.	$40,037.40

Exhibit D. 57.

Balance of principal due by bill of July 1, 1924.....	$107,033.47	
Balance of Interest due by bill of July 1, 1924		$6,549.82
Bill of July 1, 1924.....	28,898.60	
Total principal due July 1, 1924	145,932.07	
Interest on $107,033.47 July 1/24 to July 2/24, 1 day at 6% per annum		17.59
Credit by cash July 2/24.....	56,000.00	
Bal. principal July 2/24.....	89,932.07	
Interest on $51,033.47 July 2/24 to Sept. 24/24, 84 days @ 6% per annum.....		704.68
Interest on $38,898.60 July 11/24 to Sept. 24/24, 75 days @ 6% per annum.....		479.57
Credit by cash Sept. 24/24....	25,000.00	
Bal. Principal Oct. 1, 1924....	64,932.07	
Interest on $64,932.07 Sept. 24/24 to Oct. 1/24, 7 days @ 6% per annum		74.72
Interest to date		7,826.38
Balance of principal as above.....		64,932.07
Total principal to date		104,969.47
Interest as above		7,826.38
Amount due by this bill		112,795.85

(If not paid by Oct. 11, 1924, add interest from that date.)

Exhibit D. 57.

No. 158 Ellison Street, Paterson, N. J.,

Jan. 2, 1925.

New York and New Jersey Water Company, and New Jersey Suburban Water Company,

To Passaic Consolidated Water Company, Dr.

For water delivered into the pipes of the New York & New Jersey Water Company and the New Jersey Suburban Water Company, near the corner of Kearny Avenue and Belleville Turnpike, Kearny, N. J., during the quarter ended Dec. 31, 1924—

Month of October 1924	173.4	Million Gallons	
November "	159.1	"	
December "	172.7	"	
Total	505.2	Mil. Gals. @ $78.	$39,405.60

Balance of principal due per bill of Oct. 1, 1924 .....$	64,932.07	
Balance of Interest due per bill of Oct. 1, 1924		$7,826.38
Bill of Oct. 1, 1924 for water..	40,037.40	
Total principal due Oct. 1/24.	104,969.47	
Interest on $64,932.07 from Oct. 1, 1924, to Jan. 2, 1925, 93 days @ 6% per annum.....		992.65
Interest on $40,037.40 from Oct. 11, 1924, to Jan. 2, 1925, 83 days @ 6% per annum....		546.26
Balance of Principal Jan. 2/25	104,969.47	$104,969.47
Balance of Interest Jan. 2, 1925		9,365.29
Total principal to date .....$		144,375.07
Interest as above		9,365.29
Amount due by this bill .....$		153,740.36

Note: If not paid by Jan. 12, 1925, add Interest from that date.

Exhibit D. 57.

No. 158 Ellison Street, Paterson, N. J.,

April 1, 1925.

New York and New Jersey Water Company, and New Jersey Suburban Water Company,

To Passaic Consolidated Water Company, Dr.

For water delivered into the pipes of the New York & New Jersey Water Company and the New Jersey Suburban Water Company, near the corner of Kearny Avenue and Belleville Turnpike, Kearny, N. J., during the quarter ended March 31, 1925—

Month of January	1925	174.5	Million Gallons
February	"	158.1	"
March	"	177.7	"
Total		510.3	Mil. Gals. @ $78. $39,803.40

Balance of principal due by bill of January 2, 1925	$104,969.47	
Balance of Interest due by bill of January 2, 1925		$9,365.29
Bill of Jan. 2, 1925, for water	39,405.60	
Total principal due Jan. 2/25.	144,375.07	
Interest on $104,969.47 from Jan. 2, 1925, to April 1, 1925, 89 days @ 6% per annum....		1,535.72
Interest on $39,405.60 from Jan. 12, 1925, to April 1, 1925, 79 days @ 6% per annum.....		511.73
Balance of Principal April 1, 1925	$144,375.07	
Balance of Interest Apl. 1/25		$11,412.74
Balance of Principal as above		144,375.07
Total Principal to date		$184,178.47
Interest as above		11,412.74
Amount due by this bill		$195,591.21

Note: If not paid by April 11, 1925, add Interest from that date.

Exhibit D. 57.

No. 158 Ellison Street, Paterson, N. J.,

July 1, 1925.

New York and New Jersey Water Company, and New Jersey Suburban Water Company,

To Passaic Consolidated Water Company, Dr.

For water delivered into the pipes of the New York & New Jersey Water Company and the New Jersey Suburban Water Company, near the corner of Kearny Avenue and Belleville Turnpike, Kearny, N. J., during the quarter ended June 30, 1925—

Month of April	1925	167.4	Million Gallons
May	"	171.6	"
June	"	181.2	"
Total		520.2	Mil. Gals. @ $78. $40,575.60

Balance of principal due by bill of April 1, 1925	$144,375.07	
Balance of Interest due by bill of April 1, 1925		$11,412.74
Bill of Apl. 1, 1925, for water.	39,803.40	
Total principal due Apl. 1/25.	184,178.47	
Interest on $144,375.07 from Apl. 1, 1925, to July 1, 1925, 91 days @ 6% per annum....		2,159.69
Interest on $39,803.40 from April 11, 1925, to July 1, 1925, 81 days @ 6% per annum....		529.98
		14,102.41
By Cash June 12, 1925.....	39,750.08	
Balance of Principal July 1, 1925	$144,428.39	144,428.39
Credit Interest on $39,750.08 June 1, 1925, to July 1, 1925, 19 days @ 6%.....		124.15
Principal to date		$185,003.99
Interest to date		13,978.26
Amount due by this bill		$198,982.25

Note: If not paid by July 11, 1925, add Interest from that date.

Exhibit D. 58.

Exhibit D. 58.

Copy

TOWN OF KEARNY

To New Jersey Suburban Water Co., and
New York & New Jersey Water Co.

June 30, 1923

To water supplied to Town of Kearny for six months ended June 30, 1923 as follows:

Readings	Dec. 31st	June 30th		
Stewart	85,044,300	104,199,300	19,155,000	Cu. Ft.
Midland	88,526,300	108,682,800	20,156,500	" "
Quincy	69,013,400	84,609,600	15,596,200	" "
Bergen	87,007,700	104,174,400	17,166,700	" "
Johnston	292,257,700	310,390,500	18,132,800	" "
Kearny Taps.	181 days @ 10119		1,831,539	" "
			92,038,739	Cu. Ft.

688,449,787 gals. @ $104.25 per m. g.....$71,770.89

Copy

TOWN OF KEARNY

To New Jersey Suburban Water Co., and
New York & New Jersey Water Co.

September 30, 1923

To water supplied to Town of Kearny for three months ended September 30, 1923 as follows:

Readings	June 30th	Sept. 30th		
Stewart	104,199,300	112,833,900	8,634,600	Cu. Ft.
Midland	108,682,800	118,305,800	9,623,000	" "
Quincy	84,609,600	92,282,800	7,673,200	" "
Bergen	104,174,400	113,217,200	9,042,800	" "
Johnston	310,390,500	322,130,000	11,739,500	" "
Kearny Taps.	92 days @ 10119		930,948	" "
			47,644,048	Cu. Ft.

356,377,479 gals. @ $104.25 per M. G.....$37,152.35

Exhibit D. 58.

Copy

TOWN OF KEARNY

To New Jersey Suburban Water Co., and
New York & New Jersey Water Co.

December 31, 1923

To water supplied to Town of Kearny for three months ended December 31, 1923, as follows:

Readings	Sept. 30th	Dec. 31st		
Stewart	112,833,900	120,549,200	7,715,300	Cu. Ft.
Midland	118,305,800	127,514,600	9,208,800	" "
Quincy	92,282,800	99,760,600	7,477,800	" "
Bergen	113,217,200	122,217,500	9,000,300	" "
Johnston	322,130,000	333,209,400	11,079,400	" "
Kearny Taps.	92 days @ 10119		930,948	
			45,412,548	Cu. Ft.

339,685,859 gals. @ $104.25 per M. G.....$35,412.25

Copy

TOWN OF KEARNY

To New Jersey Suburban Water Co., and
New York & New Jersey Water Co.

March 31, 1924

To water supplied to Town of Kearny for three months ended March 31, 1924 as follows:

Readings	Dec. 31st	March 31st		
Stewart	120,549,200	127,313,500	6,764,300	Cu. Ft.
Midland	127,514,600	135,568,100	8,053,500	" "
Quincy	99,760,600	106,785,000	7,024,400	" "
Bergen	122,217,500	129,647,600	7,430,100	" "
		Jan. 5th		
Johnston	333,209,400	333,251,700	42,300	
5 days av. @ 101,655			508,335	
55 " " " 110,122			6,056,710	
Started Zero March 1st			2,652,800	
			9,260,145	" "
Kearny Taps.	91 days @ 10119		920,829	" "
			39,453,274	Cu. Ft.

295,110,489 gals. @ $104.25 per M. G.....$30,765.26

Exhibit D. 58.

Copy

TOWN OF KEARNY

To New Jersey Suburban Water Co., and
New York & New Jersey Water Co.

June 30, 1924

To water supplied to Town of Kearny for three months ended June 30, 1924 as follows:

Readings	March 31st	June 30th		
Stewart	127,313,500	133,928,900	6,615,400	Cu. Ft.
Midland	135,568,100	143,189,200	7,621,100	" "
Quincy	106,785,000	113,446,700	6,661,700	" "
Bergen	129,647,600	136,377,800	6,730,200	" "
Johnston	2,653,800	9,193,600	6,540,800	" "
Kearny Taps:	91 days @ 10119 per day		920,829	
			35,090,029	

262,473,418 Gals. @ $104.25 per M. G. $27,362.85

Copy

TOWN OF KEARNY

To New Jersey Suburban Water Co., and
New York & New Jersey Water Co.

Sept. 30, 1924

To water supplied to Town of Kearny for three months ended September 30, 1924 as follows:

Readings	June 30th	Sept. 30th		
Stewart	133,928,900	141,022,000	7,093,100	Cu. Ft.
Midland	143,189,200	151,837,400	8,648,200	" "
Quincy	113,446,700	120,637,700	7,191,000	" "
Bergen	136,377,800	144,311,700	7,933,900	" "
Johnston	9,193,600	16,705,300	7,511,700	" "
Kearny Taps			930,948	" "
			39,308,848	" "

290,030,183 Gals. @ $104.25 per M. G. $30,652.64

Exhibit D. 58.

Copy

TOWN OF KEARNY

To New Jersey Suburban Water Co., and
New York & New Jersey Water Co.

December 31, 1924

To water supplied to Town of Kearny for three months ended December 31, 1924, as follows:

Readings	September 30th	December 31st	Cu. Feet
Stewart	141,022,000	147,893,800	6,871,800
Midland	151,837,400	160,178,300	8,340,900
Quincy	120,637,700	127,566,700	6,929,000
Bergen	144,311,700	152,140,700	7,829,000
Johnston	16,705,300	23,478,500	6,773,200
Kearny Taps.....	92 days average @ 10119		930,948
			37,674,848

281,807,863 Gals. @ $104.25 per M. G. $29,378.47

Copy

TOWN OF KEARNY

To New Jersey Suburban Water Co., and
New York & New Jersey Water Co.

March 31, 1925

To water supplied to Town of Kearny for three months ended March 31, 1925, as follows:

Readings	December 31st	March 31st	Cu. Feet
Stewart	147,893,800	154,307,300	6,413,500
Midland	160,178,300	168,273,100	8,094,800
Quincy	127,566,700	134,298,700	6,732,000
Bergen	152,140,700	159,670,000	7,529,300
Johnston	23,478,500	30,073,000	6,594,500
Kearny Taps.....	90 days average @ 10119		910,710
			36,274,810

271,335,578 Gals @ $104.25 per M. G. $28,286.73

Exhibit D. 58.

Copy

TOWN OF KEARNY

To New Jersey Suburban Water Co., and
New York & New Jersey Water Co.

June 30, 1925

To water supplied to Town of Kearny for three months ended June 30th, 1925 as follows:

Readings	March 31st	June 30th	Cu. Feet
Stewart	154,307,300	161,005,900	6,698,600
Midland	168,273,100	176,445,900	8,172,800
Quincy	134,298,700	140,953,900	6,655,200
Bergen	159,670,000	166,871,000	7,201,000
Johnston	30,073,000	36,242,200	6,169,200
Kearny Taps.....	91 days average @ 10119		920,829
			35,817,629

267,915,863 Gals @ $82.50 per M. G.....$22,103.06

Copy

TOWN OF KEARNY

To New Jersey Suburban Water Co., and
New York & New Jersey Water Co.

September 30, 1925

To water supplied to Town of Kearny for three months ended September 30, 1925 as follows:

Readings	June 30th	Sept. 30th	Cu. Feet
Stewart	161,005,900	167,046,400	6,040,500
Midland	176,445,900	184,063,500	7,617,600
Quincy	140,953,900	146,975,400	6,021,500
Bergen	166,871,000	173,860,100	6,989,100
Johnston	36,242,200	40,804,300	4,562,100
Kearny Taps.....	92 Days average @ 10119		930,948
			32,161,748

240,569,876 Gals. @ $82.50 per M. G.....$19,847.01

Exhibit D. 58.

Copy

TOWN OF KEARNY

To New Jersey Suburban Water Co., and
New York & New Jersey Water Co.

December 31, 1925

To water supplied to Town of Kearny for three months ended December 31, 1925 as follows:

Readings	September 30th	December 31st	Cu. Ft.
Stewart	167,046,400	173,231,000	6,184,600
Midland	184,063,500	192,323,900	8,260,400
Quincy	146,975,400	153,789,500	6,814,100
Bergen	173,860,100	182,056,900	8,196,800
Johnston	40,804,300	46,113,500	5,309,200
Kearny Taps.....	92 days @ 10119		930,948
			35,696,048

267,006,439 Gals. @ $82.50 per M. G.....$22,028.03

Copy

TOWN OF KEARNY

To New Jersey Suburban Water Co., and
New York & New Jersey Water Co.

March 31, 1926

To water supplied to Town of Kearny for three months ended March 31, 1926 as follows:

Readings	December 31	March 31st	Cu. Feet
Stewart	173,231,000	179,511,600	6,280,600
Midland	192,323,900	200,675,100	8,351,200
Quincy	153,789,500	160,704,900	6,915,400
Bergen	182,056,900	190,441,000	8,384,100
Johnston	46,113,500	51,862,400	5,748,900
Kearny Taps.....	90 days @ 10110 cu. ft. per day		910,710
			36,590,910

273,700,007 Gals. @ $82.50 per M. G.....$22,580.25

Exhibit D. 59.

Exhibit D. 59.

Copy

May 31, 1923

TOWN OF HARRISON

To New Jersey Suburban Water Company

	Dec. 31st	May 31st		
16″ Vent	410,527,000	541,348,000	130,821,000	Gals.
#593624	638,983,900	753,970,000	114,986,100	"
16″ Tor.	301,306,200	411,401,000	110,094,800	"
			355,901,900	"

355,901,900 gals. @ $104.25 per M. G.....$37,102.77

Copy

September 30, 1923

TOWN OF HARRISON

To New Jersey Suburban Water Company

	May 31st	Sept. 30th		
16″ Vent	541,348,000	639,986,000	98,638,000	Gals.
#593624	753,970,000	841,822,300	87,852,300	"
		Aug. 31st		
16″ Tor	411,401,000	468,533,000	57,132,000	"
Average for September is based on August consumption			17,945,000	"
			261,567,300	Gals.

261,567,300 gals. @ $104.25 per M. G.....$27,268.39

Exhibit D. 59.

Copy

December 31, 1923

TOWN OF HARRISON

To New Jersey Suburban Water Company

	Sept. 30th	Dec. 31st		
16″ Vent	639,986,000	725,511,000	85,525,000	Gals.
#593624	841,822,300	899,128,000	57,305,700	"
16″ Tor		52,026,000	52,026,000	"
			194,856,700	"

194,856,700 gals. @ $104.25 per M.G.....$20,313.81

Copy

March 31, 1924

TOWN OF HARRISON

To New Jersey Suburban Water Company
To water delivered during the three months ended March 31, 1924, as follows:

	Dec. 31st	March 31st		
16″ Vent	725,511,000	821,495,000	95,984,000	Gals.
#593624	899,128,000	929,295,000	30,167,000	"
16″ Tor	52,026,000	119,518,000	67,492,000	"
			193,643,000	Gals.

193,643,000 gals. @ $104.25 per M.G.....$20,187.28

Exhibit D. 59.

Copy

June 30, 1924

TOWN OF HARRISON

To New Jersey Suburban Water Company
To water delivered during the six months ended June 30, 1924, as follows:

	December 31st	June 30th		
16″ Vent	725,511,000	898,544,000	173,033,000	Gals.
#593624	899,128,000	959,746,000	60,618,000	"
16″ Tor	52,026,000	189,548,000	137,522,000	"
			371,173,000	Gals.

371,173,000 Gals. @ $104.25 per M. G.....$38,694.78

Copy

Sept. 30, 1924

TOWN OF HARRISON

To New Jersey Suburban Water Company
To water delivered during the quarter ended Sept. 30th, 1924 as follows:

	June 30th	Sept. 30th		
16″ Vent	898,544,000	966,610,000	68,066,000	Gals.
#593624	959,746,000	991,857,000	32,111,000	"
16″ Tor	189,548,000	254,973,000	65,425,000	"
			165,602,000	"

165,602,000 Gals. @ $104.25.....$17,264.01

Exhibit D. 59.

Copy

December 31, 1924

TOWN OF HARRISON

To New Jersey Suburban Water Company
To water delivered during the quarter ended Dec. 31, 1924

	Sept. 30th	October 11th		
16″ Vent.	966,610,000	974,186,000	7,576,000	Gals.
9 days average @ 731,233 1/3 per d.			6,581,100	"
	Nov. 20th	December 31st		
	973,900,000	28,447,000	54,547,000	"
	Sept. 30th	December 31st		
#593624	991,857,000	23,878,000	32,021,000	"
16″ Tor.	254,973,000	324,141,000	69,168,000	"

169,893,100 Gals. @ $104.25 per M. G.....$17,711.36

Copy

March 31, 1925

TOWN OF HARRISON

To New Jersey Suburban Water Company

	December 31st	March 7th	March 31st	Gallons
16″ Vent.	28,447,000	85,941,000		57,494,000
Averaged March 7th to March 14th				5,427,000
	March 14th			
	85,941,000		101,412,000	15,471,000
	December 31st			
#593624	23,878,000		54,901,000	31,023,000
16″ Tor..	324,141,000		405,621,000	81,480,000
				190,895,000

190,895,000 Gals. @ $82.50 per M. G.....$15,748.84

Exhibit D. 59.

Copy

June 30, 1925

TOWN OF HARRISON

To New Jersey Suburban Water Company
To water delivered during the quarter ended March 31, 1925

	March 31st	June 1st	
16″ Venturi ..	101,412,000	156,082,000	54,670,000 Gals.
Averaged for 14 days @ 910433 per day			12,746,062 "
	June 14th	June 30th	
	156,082,000	172,089,000	16,007,000 "
	March 31st	June 30th	
#593624	54,901,000	90,412,000	35,511,000 "
16″ Tor	405,621,000	488,949,000	83,328,000 "
			202,262,062 Gals.

202,262,062 Gals. @ $82.50 per M. G.....$16,686.62

Copy

September 30, 1925

TOWN OF HARRISON

To New Jersey Suburban Water Co.
To water delivered during the quarter ended September 30, 1925

	June 30th	Sept. 30th	Gallons
16″ Venturi ...	172,089,000	254,249,000	82,160,000
#593624	90,412,000	127,000,000	36,588,000
16″ Tor	488,949,000	570,680,000	81,731,000
			200,479,000

200,479,000 Gals. @ $82.50 per M. G.....$16,539.51

Exhibit D. 59.

Copy

December 31, 1925

TOWN OF HARRISON

To New Jersey Suburban Water Company
To water delivered during the quarter ended December 31, 1925

	Sept. 30th	Dec. 31st	Gallons
16″ Vent	254,249,000	336,404,000	82,155,000
#593624	127,000,000	165,219,000	38,219,000
16″ Tor	570,680,000	652,514,000	81,834,000
			202,208,000

202,208,000 Gallons @ $82.50 per M. G.....$16,682.16

Copy

March 31, 1926

TOWN OF HARRISON

To New Jersey Suburban Water Company
To water delivered during the quarter ended March 31, 1926

	December 31st	Jan. 28th	
16″ Vent	336,404,000	354,622,000	18,218,000 Gals.
Averaged for 62 days @ 933900 Gal. per day			57,901,800
	December 31st	March 31st	
#593624	165,219,000	207,494,000	42,275,000
16″ Tow	652,514,000	741,157,000	88,643,000

207,037,800 gallons @ $82.50 per M. G.....$17,080.61

Exhibit D. 60.

Exhibit D. 60.

Copy

June 30, 1923

BOROUGH OF EAST NEWARK

To New Jersey Suburban Water Company,
50 Church Street, New York, N. Y.

To water supplied during the six months ended June 30th, 1923, as per the following meter readings:

	Dec. 31st	June 30th	
Meter #220222 ..	13,708,800	20,619,000	6,910,200 cu. ft.

51,826,500 gals. @ $104.25 per M. G.....$5,402.92

Copy

September 30, 1923

BOROUGH OF EAST NEWARK

To New Jersey Suburban Water Company
To water supplied during the three months ended September 30th, 1923, as per following meter readings:

	June 30th	Sept. 30th	
#220222	20,619,000	25,078,900	4,459,000 cu. ft.

33,449,250 gals. @ $104.25 per m. g.....$3,487.08

Copy

December 31, 1923

BOROUGH OF EAST NEWARK

To New Jersey Suburban Water Company
To water supplied during the three months ended December 31, 1923, as per the following meter readings:

	Sept. 30th	Dec. 31st	
#220222	25,078,900	28,931,400	3,852,500 cu. ft.

28,893,750 gals. @ $104.25 per M. G.....$3,012.17

Exhibit D. 60.

Copy

March 31, 1924

BOROUGH OF EAST NEWARK

To New Jersey Suburban Water Company
To water supplied during the three months ended March 31, 1924, as per the following meter readings:

	Dec. 31st	March 31st	
#220222	28,931,400	32,981,900	4,050,500 cu. ft.

30,378,750 gals. @ $104.25 per M. G.....$3,166.98

Copy

June 30, 1924

BOROUGH OF EAST NEWARK

To New Jersey Suburban Water Company
To water supplied during the three months ended June 30th, 1924, as per the following meter readings:

	March 31st	June 30th	Cubic Feet
#220222	32,981,900	37,897,600	4,915,700

36,867,750 Gals. @ $104.25 per M. G.....$3,843.46

Copy

September 30, 1924

BOROUGH OF EAST NEWARK

To New Jersey Suburban Water Company
To water supplied during the three months ended September 30th, 1924, as per the following meter readings:

	June 30th	Sept. 30th	Cu. Feet
#220222	37,897,600	43,322,800	5,425,200

40,689,000 Gals. @ $104.25 per M. G.....$4,241.83

Exhibit D. 60.

Copy

December 31, 1924

BOROUGH OF EAST NEWARK

To New Jersey Suburban Water Company
To water supplied during the three months ended December 31, 1924, as per the following meter readings:

	September 30th	December 13th	Cu. Feet
#220222	43,322,800	47,004,000	3,681,200
18 days average @ 46,800 cu. ft. per day			841,400
			4,523,600

33,927,000 gals. @ $104.25 per M. G.....$3,536.88

Copy

March 31, 1925

BOROUGH OF EAST NEWARK

To New Jersey Suburban Water Company
To water supplied during the three months ended March 31, 1925, as per the following meter readings:

#220222
90 Days average @ 46,800 cu. ft. per day..4,212,000 Cu. Ft.
31,590,000 Gals. @ $104.25 per M. G.....$3,293.25

Copy

June 30, 1925

BOROUGH OF EAST NEWARK

To New Jersey Suburban Water Company
To water supplied during the three months ended June 30th, 1925, as per the following readings:

#220222
Averaged for 53 days @ 46,800 cu. ft. per day....2,480,400

May 23rd	June 30th	
259,000	1,817,600	1,558,600
		4,039,000

30,292,500 Gals. @ $82.50 per M. G.....$2,499.13

Exhibit D. 60.

Copy

September 30, 1925

BOROUGH OF EAST NEWARK

To New Jersey Suburban Water Company
To water supplied during the three months ended Sept. 30th, 1925 as per the following readings:

	June 30th	Sept. 30th	Cu. Feet
#220222	1,817,600	4,752,200	2,934,600

22,009,500 Gals. @ $82.50 per M. G.....$1,815.78

Copy

December 31, 1925

BOROUGH OF EAST NEWARK

To New Jersey Suburban Water Company
To water supplied during the three months ended December 31st, 1925 as per the following readings:

	Sept. 30th	Dec. 31st	Cu. Feet
#220222	4,752,200	7,419,000	2,666,800

20,001,000 Gals. @ $82.50 per M. G.....$1,650.08

Copy

March 31, 1926

BOROUGH OF EAST NEWARK

To New Jersey Suburban Water Company
To water supplied during the three months ended March 31st, 1926 as follows:

	December 31st	March 31st	Cu. Feet
#220222	7,419,000	9,807,800	2,388,800

17,916,000 gals. @ $82.50 per M. G.....$1,478.07

Defendant's Exhibit A.

BEING CHARTERS OF FOLLOWING WATER COMPANIES, VIZ. PASSAIC WATER COMPANY, ACQUACKANONK WATER COMPANY, CERTIFICATE OF INCORPORATION OF KEARNY WATER COMPANY, CERTIFICATE OF INCORPORATION OF MONTCLAIR WATER COMPANY, AND CERTIFICATE OF ORGANIZATION OF EAST JERSEY WATER COMPANY.

CHARTER OF THE PASSAIC WATER COMPANY.

An Act to incorporate the Passaic Water Company.

1. Be is enacted by the Senate and General Assembly of the State of New Jersey, That William Cundell, John Hopper, Cornelius S. Van Wagoner, William Crosset, Stephen Allen, Patrick Maginnis and Abraham Godwin, and such other persons as may hereafter be associated with them, shall be, and are hereby ordained, constituted and declared to be a body corporate and politic, in fact and in name by the name of "The Passaic Water Company"; and by that name they and their successors shall and may have continued succession, and shall be persons in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all courts and places whatsoever; and shall have power to make and use a common seal, and the same at pleasure to alter; and they and their successors, by the same name and style, shall be capable of purchasing any real or personal estate necessary and expedient to the objects of this incorporation.

2. And be it enacted, That the capital stock of said company shall be one hundred thousand dollars, which shall be divided into shares of twenty-five dollars each, which shall be deemed personal property, and transferable in such manner as the said corporation shall by their by-laws direct.

3. And be it enacted, That the above named persons, or a majority of them, shall be commissioners to open books to receive subscriptions to the capital stock of said corporation, at such time or times, and place or places, in the town of Paterson, as they, or a majority of them may think proper; the books for subscription shall be kept open for at least three days, from ten o'clock in the morning until five o'clock in the afternoon, upon fifteen days' notice being given, in both the newspapers published in Paterson; and, at the time of subscribing, ten per cent. shall be paid on each share subscribed for to the commissioners, or one of them; and as soon as six hundred shares of the said stock shall be subscribed, such commisioners shall give like publication for a meeting of the stockholders to choose seven directors, a majority of whom shall reside within the present limits of the Paterson Fire Association; and such election shall be made at the time and place appointed by such of the stockholders as shall attend for that purpose, either in person or by lawful proxy, each share of the capital stock entitling the holder thereof to one vote; and the said above named persons or any three of them, shall be inspectors of the first election of directors of the said incorporation, and shall certify under their hands, the names of those persons duly elected and deliver over the subscriptions, books and moneys paid in, deducting a reasonable compensation for their own services, to the said directors, and the time and place of holding the first meeting of the directors shall be fixed by the

said inspectors; and the said directors shall, as soon as may be after their election, choose a president out of their own number, who shall reside within the aforesaid limits; and the directors chosen at each annual meeting thereafter, on the second Monday in June, or on such other day as the directors for the time being shall designate, by a publication in the papers as aforesaid, shall elect a president as aforesaid; and in case of the death, resignation, or removal of the president or any director, the vacancy may be filled by the directors for the remainder of the year; and the said company, when organized as aforesaid, shall have power to erect and maintain all necessary waterworks, fountains, reservoirs and conduits, and also to obtain and secure the right to use, divert and appropriate any springs, streams and ponds of water, or either, in the County of Passaic, as they may deem necessary for the purposes hereby contemplated.

4. And be it enacted, That four directors shall constitute a quorum, who shall be competent to transact all business of the said corporation; the directors shall have power to call in the remainder of the stock subscribed for, by instalments of two dollars and fifty cents each, upon thirty days' notice, published in said newspapers; provided, that not less than thirty days shall intervene between the payments of the respective instalments; they shall have power to forfeit shares upon which default shall arise to and for the use of the company, and make and prescribe such by-laws, rules and regulations, not inconsistent with the constitution or laws of this state or of the United States; and also to appoint and remove such officers and workmen, and fix the salaries of their presidents as to them shall seem proper, and annually appoint inspectors of election for directors.

5. And be it enacted, That the president and directors of the said company be, and they are hereby authorized and invested with all the rights and powers necessary and expedient to survey and lay out the site for one or more reservoirs, drains, ditches, conduits, aqueducts, pipes, fountains, water-wheels, force pumps, and all other works and devices which they may deem necessary for supplying the town of Paterson and village of Manchester within the limits aforesaid, with water sufficient for extinguishing fires, culinary and other family uses, watering the streets, and such other purposes as may conduce to the health and comfort of the citizens; and it shall be lawful for the said president and directors, or others in their employ, to enter at all times upon all lands or water, in said county, and survey, search, excavate and bore for water, and examine the quality thereof, and locate all and singular the reservoirs, drains, ditches, aqueducts, pipes, fountains, water-wheels, force pumps, and buildings, and all other necessary work and appendages thereto, doing no unnecessary damage to private or other property; and when said locations shall have been determined on, the president and directors shall cause a map to be made of all the lands (excepts streets now in use) which they require for the purposes aforesaid, and file the same in the office of the clerk of Passaic; and then it shall be lawful for the said company, by its officers, agents, engineers, superintendents, contractors, workmen and other persons in their employ, to enter upon, take possession of, hold, have, use, occupy, excavate, erect reservoirs, water-wheels, wheel-houses, force pumps, and to

do all other things which shall be suitable or necessary for completing the works hereby contemplated, and keeping them in repair, subject to such compensation as is hereinafter provided for.

6. And be it enacted, That if the said company or its agents cannot agree with the owner or owners of such required lands, for the use or purchase thereof, or if, by reason of the legal incapacity or absence of such owner or owners, no such agreement can be made, the said company shall give notice to the persons interested, if known, and in the state, or if unknown, or out of the state, by publication in both the Paterson papers, that they intend to make application to one of the judges of the court of common pleas in said county, on a day and at a place to be named in said notice, and not less than twenty days from the service or publication thereof, for the appointment of three commissioners; and on the said day, and at the place named in said notice, the said judge shall make said appointment under his hand and seal; and it shall be the duty of said commissioners (having first taken an oath or affirmation before some person authorized to administer the same) faithfully and impartially to examine the matter in question, and make a true report, according to the best of their skill and understanding, to meet at such time and place as they shall designate, giving at least fifteen days' notice of their said meeting, as hereinbefore directed, and on the day so appointed, to proceed to view and examine the said lands, and make a just and equitable estimate of the value of the same, and assess the damages which will accrue from erecting said works, and the said commissioners shall report in writing to the parties interested, the whole amount which the company

must pay each owner, stating in said report, the metes and bounds of the lands assessed, which said report the said company shall file in the office of the clerk of Passaic, to remain of record therein; and a copy thereof, certified by the clerk of the said county, shall at all times be considered as plenary evidence of the right of said company to have, hold, use, occupy, possess and enjoy the land so described; and it shall be the duty of said company to pay the said owner or owners the amounts assessed as aforesaid, or, in case the owner or owners refuse to receive the same or live out of the state or are incapacitated by law to receive the same, then said sum shall be paid and delivered to the clerk of said county, to be by him retained for such owner; and upon making payment in either of the ways above stated, the title of the premises mentioned in the said award, and so paid for, shall be vested in the said company.

7. And be it enacted, That if the said owners, or any of them, are dissatisfied with the report of the commissioners named in the preceding section, the said party so dissatisfied may appeal to the circuit court of said county, at its next term, whereupon the said court shall proceed to hear and determine the whole matter, in the same manner as if such owner had summoned the said company to appear before them; and if the jury, upon the trial of the cause, shall find a greater sum than the commissioners have awarded, or the company offered, in favor of the said owner or owners, then judgment thereon, with costs, shall be entered against the company, which shall constitute a lien upon the premises in question, which said lien shall have priority over any other encumbrance which said company may have given;

New Jersey State Library

but if the said jury shall find the same or a less amount than the company shall have offered, or the said commissioners awarded, then the person appearing shall pay the costs, in such manner as the court shall direct.

8. And be it enacted, That if any person shall wilfully and maliciously injure any of the said works of the said corporation, such person or persons shall forfeit and pay therefor, to the said company, three times the amount of damages sustained by means of such injury, to be recovered by said corporation with costs of suit in an action of debt, in any court having cognizance thereof.

9. And be it enacted, That the said company be, and they are hereby fully authorized and empowered to lay their pipes beneath such public roads, streets, avenues and alleys as they may deem necessary for the purpose aforesaid, free of all charge, to be made by any person or persons, or body politic whatsoever for said privilege, and also such hydrants at the crossings or intersections of the said streets and alleys, provided, that the said pipes shall be laid at least two feet below the surface of the same, and shall not in any wise unnecessarily obstruct or interfere with the public travel or damage public or private property.

10. And be it enacted, That the said company may sell and dispose of the water issuing from said reservoirs, aqueducts or pipes for such price or prices, or annual rent, and under such restrictions as they may think proper.

11. And be it enacted, That if the work of constructing said reservoirs and appendages shall not be commenced in good faith within the term

of two years from the date of the approval of this act, the same shall be null and void.

12. And be it enacted, That this act shall go into effect immediately.

Approved February 13, 1849.

Chapter CXCIX.

An Act to authorize the construction of works to supply the city of Paterson with water.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the president and council of the city of Paterson are hereby authorized and directed within twenty days after this act shall take effect, as hereinafter provided, to appoint three commissioners, to be called "water commissioners," who shall have the powers and perform the duties hereinafter mentioned; one of which water commissioners shall hold his office until the first Monday in January, eighteen hundred and fifty-three, another until the first Monday in January, eighteen hundred and fifty-four, and the other until the first Monday in January, eighteen hundred and fifty-five, to be determined by the said president and council; during the month of January in each year hereafter, one water commissioner shall be appointed by said president and council, who shall hold his office for the term of three years from the first Monday of said month of January; in case a vacancy should occur in the office of water commissioner, the said president and council shall appoint a proper person to fill the same, to serve the unexpired term; no member of the council shall be eligible to the office of water commissioner.

2. And be it enacted, That the said water commissioners and every of them, appointed under the provisions of this act, before entering upon the discharge of the duties prescribed by this act, shall severally take and subscribe, before the clerk of said city, who is hereby authorized to administer the same, an oath or affirmation faithfully and impartially to discharge all the duties imposed on him by this act, which said oath or affirmation shall be filed in the office of the clerk of said city; and further, before entering upon the discharge of the duties prescribed by this act, each of said water commissioners shall enter into bonds to "the president and council of the city of Paterson," with two freehold sureties, to be approved of by the said president and council, in such sum (not less than three thousand dollars) as they may direct, conditioned for the true and faithful performances of all the duties of the said office of water commissioner; no water commissioners shall be interested or concerned, directly or indirectly, in any contract or agreement for furnishing labor or materials in the erection or repair of the works authorized by this act, which said water commissioners may make or cause to be made, but each of said water commissioners shall be entitled to receive from the said president and council, the sum of one dollar and fifty cents per day for each day actually employed, not exceeding on the whole the sum of one hundred dollars in each year.

3. And be it enacted, That the said water commissioners are hereby invested with all the powers necessary to enable them to construct, keep up and maintain such reservoirs, aqueducts and apparatus for elevating water, as they may deem necessary from time to time, with such

erections in the Passaic, or such other river or body of water as they may deem expedient, and to construct such other works, establishments and fixtures as may be, in their opinion, required to effectuate the objects of this act, and to use such water for the purposes contemplated by this act, and to lay all pipes under the streets or through private property in said city, that may be needed to conduct said water to the reservoirs and from the reservoirs to such part of the city and vicinity as the president and council of said city may from time to time deem expedient; and for these purposes said water commissioners may make all such contracts, and employ all such engineers, workmen and laborers as they may deem necessary, subject, however, to the restrictions hereinafter provided.

4 And be it enacted, That if it should become necessary in the opinion of said water commissioners, to lay pipes through any private lands in said city, or if any private lands shall be required for erecting reservoirs or other works thereon, and no agreement can be made with the owner or owners thereof, as to the amount of compensation to be paid for the laying said pipes through said lands, or the price of said lands, or for the water required for the purposes of this act, as the case may be, by reason of the unwillingness of said owners, or any of them, to accept such compensation or price as said water commissioners may deem reasonable, or by reason of the absence or legal incapacity of said owners, or any of them, it shall be the duty of either of the justices of the Supreme Court of this state, upon application to him by the president and council of said city, and reasonable notice to the owner or owners, to appoint three disinterested appraisers, from

the county of Passaic, to determine the compensation to be paid for the laying of said pipes through said lands, or the price to be paid for said lands or water, as the case may be; and it shall be the duty of the said appraisers, (after having taken an oath or affirmation faithfully and impartially to discharge the trusts herein reposed in them, and after having carefully viewed the premises), within twenty days after their appointment, to deliver to said water commissioners a written appraisement, under the hands and seals of them, or a majority of them, of the award they may have made, containing a short description of the lands through which the pipes are to be laid, or of the lands required for the erection of reservoirs or other works as aforesaid, or a statement of the quantity of water required to be taken for the purposes of this act, as the case may be, which the said water commissioners shall cause to be recorded in the registry of deeds for the county of Passaic; and upon payment or tender, by the said water commissioners, to such owner or owners as aforesaid, or some one of them, of the sum awarded in such appraisement, if any, then the said water commissioners shall have the right to lay said pipes through the lands aforesaid, or the president and council of the city of Paterson shall be deemed seized in fee simple of the lands required for the erection of the said reservoirs or other works, or of the water so required, as the case may be, as aforesaid; and in case any owner or owners of such lands shall be femme covert, under age, *non compos mentis,* or out of the state, then and in the case it shall be sufficient for said water commissioners to pay the amount which may have been appraised, as aforesaid, into the Court of Chancery of this state, subject to the

order of said court, for the use of the party or parties entitled to the same, the costs of all which proceedings shall be taxed by the said justice of the Supreme Court, and paid by the said president and council.

5. And be it enacted, That in case the said president and council, or the owner or owners of the said land or water, shall be dissatisfied with the report of the commissioners named in the preceding section, and shall apply to the judge of the circuit court of the county of Passaic, at the next term after the filing of the said report, the court shall have the power, upon good cause shown, to set the same aside, and thereupon to direct a proper issue for the trial of the said controversy to be formed between the said parties, and to order a jury to be struck, and a view of the premises to be had, and the said issue to be tried at the next circuit court to be holden in the said county, upon the like notice and in the same manner as other issues in the said court are tried; and it shall be the duty of the said jury to determine the compensation to be paid for the laying of pipes through said lands, or the price to be paid for lands required for erecting reservoirs or other works thereon, or the price to be paid for the water taken for the supply of said city, as the case may be; and if they shall find a greater sum than the said commissioners shall have awarded in favor of the said owner or owners, then judgment thereon, with costs, shall be entered against the said president and council, and execution awarded therefor; but if the jury shall be applied for by the said owner or owners, and shall find the same or a less sum than the said water commissioners shall have offered, or less than shall have been awarded, then the said costs to be paid

by said applicant or applicants, and either deducted out of the said sum found by the said jury, or execution awarded therefor, as the court shall direct; but such application shall not prevent the said water commissioners from taking the said land or water, upon filing the aforesaid report.

6. And be it enacted, That whenever it shall become necessary to make any repairs or alterations in any pipes which may have been laid through any private lands, either by virtue of the preceding section or by agreement with the owner or owners thereof, it shall be lawful for the said water commissioners, with their workmen and agents, and with necessary vehicles, tools and implements, to enter upon said lands and make the necessary repairs and alterations, doing no unnecessary damage; provided always, that nothing in this section contained shall be so construed as to protect the said water commissioners, or their workmen or agents, from any action that may be brought against them individually, by the owner or owners of said lands, for any damage which they may have wilfully or unnecessarily done.

7. And be it enacted, That the work and materials, which the said water commissioners are hereinbefore authorized to procure, shall be obtained by contract, whenever practicable, and that notice shall be given by said water commissioners by public advertisement, so that ample time may be given for the reception of proposals therefor; in every advertisement the proposals invited shall be set forth with as much precision as possible, and it shall be distinctly stated in such advertisement that no extra allowance, above the contract price agreed upon, will be made under any pretext whatsoever; each contract shall, in all cases, be awarded to the lowest bidder therefor, who shall

give bond, with ample security, for the faithful performance of the contract; all such bonds shall be executed to "the president and council of the city of Paterson," and deposited for safekeeping in the office of the clerk of said city, and no extra allowances shall be made, by said water commissioners, to any contractor or contractors; all contracts involving a greater amount than one hundred dollars, and all contractors' bonds, shall be presented to and approved of by the president and council of said city before said contract shall take effect.

8. And be it enacted, That when said works shall been sufficiently completed, the said water commissioners shall have authority to make contracts, in the name of the president and council of said city, to furnish water to individuals, and to establish such general rates of price, and times of payment thereof, as they may deem proper, and to prescribe such rules, regulations, conditions and restrictions as to the use of the water as may, in their opinion, be necessary to prevent abuse; and said water commissioners shall have power, and it shall be their duty, to stop off the water from any premises, the owner or occupants of which shall have neglected to pay such price at the time specified for the payment thereof, or shall have violated or permitted the violation of any of said rules, regulations, conditions or restrictions; and whenever the said water commissioners shall have caused the water to be stopped off from any premises, for either of the causes aforesaid, they shall not permit the same to be restored until the applicant for such restoration shall have paid all arrearages of water rent, together with the expense incurred in stopping off the water; or in case said water shall have been

stopped off by reason of any violation of the rules aforesaid, then they shall not permit the same to be restored until the expense of stopping off the same shall have been paid by the applicant for such restoration, and such applicant shall have given satisfactory security or assurance that such violation shall not again occur.

9. And be it enacted, That the said water commissioners shall have power to employ proper persons in the management of the works aforesaid, and in the collection of the said water rents, upon such terms as they may deem reasonable; provided, that no regular salaries or commissions shall be allowed or paid by said water commissioners, without having been first by them submitted to and approved of by the president and council of said city.

10. And be it enacted, That it shall be the duty of said water commissioners to erect fire plugs in the public streets of said city, through which pipes for the supply of water shall have been laid, in such number and locations as the president and council of said city may from time to time direct, and to supply the same with water from the aforesaid works.

11. And be it enacted, That if any person or persons shall wilfully do, or caused to be done, any act whatsoever whereby the said works, or any pipes, conduit, canal, plug, cock, tank, cistern, reservoir, or any other thing appertaining to the same, shall be stopped, obstructed, or injured, the person or persons so offending shall, upon conviction thereof before any police magistrate of said city, forfeit and pay the sum of fifty dollars, with costs, which sum shall be collected in the name of the president and council of said city, and shall be paid over to treasurer of said city.

12. And be it enacted, That if any person or persons shall wilfully pollute or adulterate the waters in any reservoir erected under the provisions of this act, every person so offending shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine, not exceeding five hundred dollars, or by imprisonment at hard labor, not exceeding three years, or both, at the discretion of the court, before whom such conviction shall be had.

13. And be it enacted, That it shall be the duty of the president and council of said city, from time to time, at the request of said water commissioners, to issue the bonds of said city for an amount not exceeding, in the whole the sum of seventy-five thousand dollars; these bonds shall bear a rate of interest not exceeding six per cent. per annum, payable semi-annually, the principal thereof to be payable on the first day of July, in the year eighteen hundred and eighty-two, or sooner, at the option of said city; it shall be the duty of the treasurer of said city to make sale of the bonds, so issued as aforesaid, at not less than their par value, and to pay the proceeds of said sales to said water commissioners, to be by them appropriated to the discharge of the duties imposed upon them by this act; the loan hereby authorized shall be called the water loan of said city.

14. And be it enacted, That the bonds issued under the provisions of this act, shall not be liable to any tax which may hereafter be levied by order of the president and council of said city.

15. And be it enacted, That all the revenues which may be derived from the rents of water authorized by this act, and from other sources connected with said works, shall be received by

said water commissioners, and so much of the same as may be necessary shall be appropriated by them, under the restrictions hereinbefore provided, to the maintenance, preservation, and extension of said works; the said water commissioners shall also pay semi-annually from said revenue such sums to the city treasurer as shall be sufficient to pay the semi-annual interest accruing on the bonds authorized by this act; the residue of said revenues shall be paid over, semi-annually, by the water commissioners to the treasurer of said city, to be by him invested under the direction of the president and council of said city; and with the accumulation thereof, reinvested, under the like direction for the final extinguishment of said water loan.

16. And be it enacted, That in the month of May, in each and every year, it shall be the duty of said water commissioners to certify to the president and council of said city, what, in their opinion, will be the net revenue of the said works for the ensuing year, applicable to the payment of the semi-annual interest on said water loan; and it shall thereupon be the duty of said president and council to add to the amount of taxes for that year such sum as, having due regard to said estimate, said president and council may deem sufficient, together with the net revenue of said works, to pay the semi-annual interest on said water loan.

17. And be it enacted, That it shall be the duty of said water commissioners to keep all funds which may come to their hands on deposit with a bank located in said city, or in the cites of Newark or New York; and they shall draw said funds by checks upon said bank, to be signed by at least two of their number, which said checks

shall specify briefly the purposes for which the same are drawn; and the said water commissioners shall keep accurate account of their receipts and disbursements in proper books, to be by them provided for the purpose, which shall always be open for the inspection of the president and council of said city, and their authorized agents, and which accounts shall be annually, in the month of March, audited by a committee of said council, and an abstract thereof shall be published with the annual statement of the city finances; every water commissioner, at the expiration of his term of office, shall deliver to his co-commissioners all books and papers which he may have in his possession or custody by virtue of his said office; and all books and papers of said water commissioners, which are no longer currently needed by them, shall be deposited with the clerk of said city, who is hereby required to keep them safely in his office, but with liberty to said water commissioners, at all times, to examine the same in said clerk's office.

18. And be it enacted, That an election by ballot shall be held, on the third Monday in April next, in each of the wards of said city, at the places of holding the last election in said city, and upon like notice, at which election the electors of said city shall vote upon the question of supplying water to said city, as authorized by this act; those in favor of that object depositing ballots with the words "For water" written or printed thereon, and those opposed thereto depositing ballots with the words "Against water" written or printed thereon; the poll of such election shall be opened at nine o'clock in the forenoon, and shall be kept open till four o'clock in the afternoon, and the election officers of the

several wards shall conduct such election; and in case of vacancy from any cause, such vacancy shall be filled by the electors of the ward in which the same may arise before the opening of the poll; after counting off the votes polled, the result of said election in each ward shall be certified, by the election officers in each ward, to the president and council of said city; and if it shall appear that a majority of the electors of said city, voting at such election, have voted for water, then this act shall be deemed to take effect immediately, but if a majority of the said electors shall have voted against water, then it shall be lawful for the president and council of said city to submit the same question to the voters of said city for their decision in the manner aforesaid, at a special election, whenever they may deem proper; provided, that not more than one election for such purpose shall be ordered in any one year; and whenever at any such election, a majority of the persons voting thereat shall be found in favor of supplying the said city with water, according to the provisions of this act, the same shall go into operation and take effect, and not otherwise.

Approved March 26, 1852.

Chapter XXX.

An Act to renew and re-establish an act entitled "An Act to incorporate the Passaic Water Company," approved February thirteenth, eighteen hundred and forty-nine, and supplemental thereto.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the act entitled "An Act to incorporate the Passaic

Water Company," approved February thirteenth, eighteen hundred and forty-nine, is hereby revived and re-established, and that so much of the eleventh section of said act as requires that the work for constructing the reservoirs and appendages of said company, to be commenced in good faith within the time of two years from the date of the approval of said act, be and the same is hereby repealed, and the time of commencing the said works, as specified in the eleventh section of said act, is hereby extended to the first day of January A. D. eighteen hundred and fifty-seven.

2. And be it enacted, That the commissioners appointed by virtue of the first section of said act are hereby changed, and the commissioners, incorporators, and their successors, appointed for the purpose of said act, shall now and hereafter be Thomas D. Hoxsey, John J. Brown, Cornelius S. Van Wagoner, John Drew and Samuel Smith; and the said commissioners in this section named, are now appointed and endowed with all the powers and duties that the original incorporators and commissioners received under said act, in case they had proceeded within the time prescribed by said act, for the purpose of carrying the same into effect.

3. And be it enacted, That so much of the first section of said act as appoints other persons than those in last preceding section commissioners and incorporators, be and the same is hereby repealed.

4. And be it enacted, That nothing in said act incorporating the Passaic Water Company, or in this act, shall be construed to authorize and empower the said company to take, without the consent of the Society for the Establishing Use-

ful Manufactures, for that purpose had and obtained, any water for the purposes of said act from above the falls of the Passaic river at the city of Paterson.

5. And be it enacted, That the directors of said corporation may at any time after their election when the same may be deemed expedient, increase the capital stock of said company to two hundred thousand dollars.

Approved February 9, 1854.

Chapter XV.

A supplement to an act entitled, "An act to renew and re-establish an act to incorporate the Passaic Water Company", approved February thirteenth, eighteen hundred and forty-nine, and supplemental thereto, approved February ninth, eighteen hundred and fifty-four.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That it shall be lawful for the said Passaic Water Company, from time to time, to borrow such sums of money as may be necessary to construct and complete the works of the said company, with the appendages thereto, authorized by the act to which this is a supplement and to issue their bonds, at such rates of interest as may be stipulated, and to sell the same on the best procurable terms, without invalidation thereof by virtue of any statute against usury; and for securing the payment of the same, full power and authority is hereby granted to the said company to pledge or hypothecate by way of mortgage, trust, or otherwise, the whole or any part of the works of said company,

now or hereafter to be owned by said company, together with all the privileges, appendages, and appurtenances of said water company, and also all franchises and chartered rights of said company; and such pledge, hypothecation, trust and bond and mortgage shall be valid in law for securing the payment of any sum or sums of money borrowed, with the interest thereon accruing, which the same may be given to secure; and in case default shall be made in the payment of any moneys so borrowed and secured, the person or persons, body politic or corporate, their legal representatives, successors or assigns, claiming, under such pledge, hypothecation, bond, mortgage or trust, may, by due process of law, acquire the title to have, hold, use, occupy and enjoy the said water works, and appendages, with the privileges, appendages and appurtenances to the same belonging, and all the property of said company and the franchises and chartered rights, aforesaid, and take and receive the tolls, rents, issues and profits and advantages thereof, during the whole residue of the term for which the said company is chartered or incorporated, in as full and ample a manner as the stockholders of said company could or might have had, used and enjoyed the same, subject, nevertheless, to all the restrictions, limitations and conditions contained in the act incorporating said company, and the supplement thereto, and any deed, by which any pledge, hypothecation, mortgage or trust shall be created by virtue of this act, shall be entered on record in the office of the clerk of the county of Passaic, the same first having been acknowledged or proved according to law.

Approved February 9, 1855.

Chapter CCXCVIII.

A further supplement to the act entitled "An Act revising and amending the act to incorporate the city of Paterson," approved March fourteenth, eighteen hundred and sixty-one.

1. Be it enacted by the senate and general assembly of the state of New Jersey, that the mayor and aldermen of the city of Paterson, in order to supply said city with pure and wholesome water, are hereby authorized to construct works for that purpose, or to purchase "The Passaic Water Company's rights, franchises, lands, property, real and personal, of every kind and description; and the said Passaic Water Company upon securing, to be paid to said company by the mayor and aldermen of the city of Paterson, the purchase money or price therefor, according to the terms which may be agreed upon between the said mayor and aldermen and the said company, are hereby authorized to assign, transfer, sell and convey to the mayor and aldermen of the city of Paterson all the rights, franchises, lands, property, real and personal, of every kind and description, to said company belonging or in them vested, or to which they are entitled, together with all the capital stock of said company, and the said company are hereby fully authorized and empowered to make such transfer, assignment, sale and conveyance, and the same when so made shall be complete and effectual for the transfer, assignment, sale and conveyance to the said mayor and aldermen of the city of Paterson, as well of their capital stock as of said rights, franchises, lands and property, real and personal, and all certificates of said capital stock shall be immediately on such transfer delivered up to the custody of the said mayor

and aldermen, and from the time of such transfer said certificates shall have no validity in the hands of any person or persons other than the mayor and aldermen of the city of Paterson, and they are hereby authorized to accept the said property; and shall thereupon be invested with all the rights, powers and privileges conferred on the said company by their charter and supplements thereto and with such other powers, rights and privileges as are by this act conferred, and to hold and use the same as hereinafter directed and to take and convey from the sources of supply now used by the said "Passaic Water Company," or which they are empowered to use, and from any other source, sufficient water to supply the city of Paterson with pure and wholesome water for all purposes.

2. And be it enacted, That the mayor and aldermen of the city of Paterson, should they not purchase the Passaic Water Company's works, as authorized as aforesaid, are in that case hereby authorized, in the manner hereinafter provided, to take and convey into and through the city of Paterson such portions of the water of any river, brook or spring as may be required to furnish the inhabitants of said city with a sufficient quantity of pure and wholesome water, for domestic and other purposes; provided, they shall not take any part of the water which the Society for Establishing Useful Manufactures have a right to under their charter without their consent for that purpose first obtained.

3. And be it enacted, That the mayor and aldermen of the city of Paterson, in pursuance of the authority hereby conferred, may appoint and employ all proper engineers, surveyors, superintendents, clerks or other agents, or assistants,

necessary and convenient for accomplishing the purposes contemplated by this act, and provide by ordinance suitable compensation therefor, and may enter upon any lands for the purpose of making surveys and examinations for the same.

4. And be it enacted, That the mayor and aldermen of the city of Paterson may take and hold any lands or other real estate necessary for the construction of any canals, aqueducts, reservoirs, and other works for conveying or containing water, or for the erection of any buildings or machinery, or for laying any pipes or conduits, for conveying the water into or through the said places or to secure and maintain any portion of said works, and in general may do any other act necessary or convenient for accomplishing the purposes contemplated by this act, and may distribute the water throughout the corporate limits of the said city.

5. And be it enacted, That in case of any disagreement between the mayor and aldermen and the owners of any land or water rights, which may be required for said purposes or affected by any operation connected therewith, as to the amount of compensation to be paid to such owner, or in case any such owner shall be an infant or a married woman or insane, or shall be absent from this state, the circuit court in and for the county of Passaic shall on the application of either party nominate and appoint three disinterested persons to examine such property, and estimate the value thereof or damage sustained thereby, and who shall after reasonable notice to the parties of the time and place where they will be heard in relation to the matter, proceed without delay to make their report thereon, and deliver the same to the court at the next session thereof which shall be held in the said county.

6. And be it enacted, That whenever such report shall be confirmed by the court aforesaid, the mayor and aldermen shall within two months thereafter pay to the said owner or to such person or persons as the said court may direct the sum mentioned in said report in full compensation for the property so required or for the damage sustained as the case may be, and thereupon the mayor and aldermen of the city of Paterson shall become seized in fee of such property so required, and shall be discharged from all claims by reason thereof.

7. And be it enacted, That the mayor and aldermen of the city of Paterson, and all persons acting under their authority shall have the right to use the ground or soil under any road, railroad, highway, street, lane, alley or court within this state, for the purpose of constructing the works contemplated by this act, on condition that they shall cause the surface of such road, highway, street, lane, alley or court to be restored to its original state and all damage done thereto be repaired.

8. And be it enacted, That all contracts for work and materials or for the construction of the works, shall be made in writing and one copy thereof shall be deposited with the comptroller of said city, and that public notice shall be given of the time and place at which sealed proposals will be received for entering into any contract by publishing the same in the newspapers of the city of Paterson, and in such other manner as the mayor and aldermen may direct; and every person proposing shall accompany such proposition with a bond, to be approved by the mayor

and aldermen conditioned to faithfully carry into effect his or their proposition if accepted.

9. And be it enacted, That for the purpose of paying for the property of the Passaic Water Company, should the same be purchased as authorized by this act, and in case the same should not be so purchased then for the purpose of paying all the expenses and costs of constructing water works as herein authorized and of such land as shall be taken or purchased therefor, and of erecting all works and buildings necessary for the accomplishment of the same and all other expense incident thereto, the mayor and aldermen of the city of Paterson are hereby authorized and empowered to issue seven per centum coupon bonds under their corporate seal and the signature of the mayor, to be denominated "Paterson City Water Bonds," to an amount not to exceed five thousand dollars, with interest payable semi-annually and redeemable at such times as the said mayor and aldermen may deem proper, not exceeding thirty years from the issuing thereof, and to pledge the credit of the city and the real and personal property therein for the payment of the said bonds, which bonds it shall be lawful for the mayor and aldermen to sell; provided that no bond shall be sold for less than par, and to provide for the payment of the interest and principal of the same as hereinafter mentioned.

10. And be it enacted, That the mayor and aldermen of the city of Paterson shall keep regular books of account, and books for the recording of the whole of the official proceedings in reference to said water works, and all clerks and agents employed in their service shall be sworn to the faithful performance of their duties; and the said mayor and aldermen shall in each year,

at least fifteen days before the charter election, make a full report of the condition of the works under their charge, accompanied by a statement of their receipts and expenditures on account of the same, which report shall be published in the same manner as the city treasurer's report.

11. And be it enacted, That the mayor and aldermen of said city shall regulate the distribution and use of the water in all places and for all purposes where the same may be required and from time to time shall fix the price for the use thereof and the times of payment, and may erect any number of public hydrants, and in such places as they shall see fit, and direct in what manner and for what purposes the same shall be used.

12. And be it enacted, That the owner and occupant of any house, tenement or lot, shall each be liable for the payment of the price or rent fixed by the mayor and aldermen of the city of Paterson, for the use of the water by such occupier, and such price or rent so fixed shall be a lien upon said house, tenement, or lot in the same way and manner as other taxes assessed on real estate are liens and shall be collected in like manner if not previously paid.

13. And be it enacted, That it shall be the duty of the mayor and aldermen of the city of Paterson to fix the price which shall be assessed upon such house or other buildings and upon vacant lots situated upon streets, lanes, alleys or courts that have been actually opened or parts thereof through or into which distributing pipes shall be fixed with reference to ultimately paying from the net proceeds thereof the interest and the principal of the "Paterson City Water Bonds," authorized by this act to be issued; and the net

Defendant's Exhibit A.

17. And be it enacted, That the mayor and aldermen of the city of Paterson, are hereby authorized to cause such surveys, maps and returns to be made as may be necessary to enable them to prescribe and adopt, either for the whole or any part of said city, the location of streets and sewers, or either, and the width thereof, hereafter to be opened or constructed therein; and when such location, width and grade shall be adopted, the surveys, maps and returns prescribing and defining the same, shall be recorded in the clerk's office of the county of Passaic, and thereupon no street or sewer shall thereafter, within the district comprised in any such survey, map and return be opened or constructed except in conformity therewith as to location, width and grade, and fully to accomplish the purposes contemplated by this section, the said mayor and aldermen may employ such engineers, surveyors and other persons, and provide for their compensation and pass such ordinances as they may deem to be proper, and may enter upon any land for making surveys and examinations.

18. And be it enacted, That the mayor and aldermen of the city of Paterson are hereby authorized and empowered to purchase a tract of land lying within said city, at a cost not exceeding one hundred thousand dollars, to be laid out, enclosed, ornamented and used for a public park, and to employ such architects, engineers, and other persons necessary to accomplish the purpose contemplated by this section and to pass and adopt all such ordinances, rules, regulations and by-laws as they may deem proper for laying out, enclosing, ornamenting and using said park by the public.

Defendant's Exhibit A.

19. And be it enacted, That the mayor and aldermen of said city, for the purpose of paying for the purchase of said tract of land and defraying all the expenses and costs of enclosing, laying out and ornamenting the same, and other expenses incident thereto, shall have authority to issue seven per centum coupon bonds under their corporate seal and the signature of the mayor to be denominated "Paterson City Park Bonds," to an amount not exceeding one hundred thousand dollars, with interest payable semi-annually and redeemable at such time or times within twenty-five years from the issuing thereof as the said mayor and aldermen may deem proper, and to pledge the credit of said city and all the real and personal property therein for the redemption of said bonds, which bonds it shall be lawful for the mayor and aldermen to sell, provided that no bond shall be sold for less than par.

20. And be it enacted, That the mayor and aldermen of said city shall yearly and every year until said bonds shall be wholly paid off, order and cause to be assessed and collected by tax at the time and in the manner that other taxes in said city are assessed and collected, a sum of money sufficient to pay the interest on said bonds as the same falls due, and to pay and discharge the principal when the same shall be payable.

21. And be it enacted, That any person who shall wilfully destroy, mutilate, deface, injure or remove any fence railing or other work or thing for the protection or ornament of said park or shall wilfully destroy, cut, break, or injure any tree, shrub, or plant within the limits thereof shall be guilty of a misdemeanor and shall upon conviction thereof before the recorder of said city or other court of competent jurisdiction in the

county of Passaic, be punished by a fine not less than five, nor more than twenty-five dollars, and shall also be liable in an action of trespass to pay any damages proved against him.

22. And be it enacted, That the mayor and aldermen of the city of Paterson are hereby authorized and empowered to purchase in said city, a suitable site, and erect thereon a public market, a city hall and other public buildings, at a cost not to exceed two hundred thousand dollars, and to employ suitable architects, engineers and other persons necessary to accomplish the purpose hereby contemplated, and to pass all such ordinances, rules, regulations and by-laws for the establishment, maintenance, using, renting and governing said market, city hall, and other public buildings as they may deem proper.

23. And be it enacted, That the said mayor and aldermen are hereby authorized and required to fix and establish the rates of compensation and rents to be paid by those using or leasing said market or any part thereof and to execute leases to such person or persons, and for such part or parts thereof, and for such term or terms, and for such rent or rents as they may deem proper.

24. And be it enacted, That for the purpose of paying for such site and for the erection of said buildings thereon and defraying the expenses incident thereto, the mayor and aldermen of the said city shall have authority to issue seven per cent. coupons bonds, under their corporate seal and the signature of the mayor to be denominated "Paterson City Improvement Bonds," to an amount not exceeding two hundred thousand dollars with interest payable semi-annually, and redeemable at such time or times within twenty-five years from the issuing thereof as they may deem

proper, and to pledge the credit of the city and all the real and personal property therein, for the payment of the said bonds; which bonds it shall be lawful for the said mayor and aldermen to sell provided that no bond shall be sold for less than par.

25. And be it enacted. That it shall be the duty of the said mayor and aldermen to fix the price or rent and compensation to be assessed upon or paid by any person or persons using or occupying the said market and public buildings and grounds with reference to ultimately paying from the net proceeds thereof the interest and principal of the said "Paterson City Improvement Bonds," hereby authorized to be issued and the net proceeds received from or on account of said market and public buildings, after paying all expenses for maintaining said market and public buildings and salaries and wages and incidental charges, shall be applied first to the payment of the interest upon the said bonds, and next, the remainder shall be safely invested and allowed to remain a sinking fund, to be applied to the redemption of said bonds at maturity, provided however, if at any time the said net proceeds shall be insufficient to pay the interest on the said bonds as the same falls due, and to pay and discharge the principal at the time it shall become due and payable, then in that case the mayor and aldermen of said city shall order and cause to be assessed and collected by tax, at the time and in the manner as other taxes are assessed and collected, a sum sufficient to pay such deficiency.

26. And be it enacted, That when the said Paterson City Improvement Bonds shall be paid and cancelled, so much of the income derived from the said market and public buildings as may be

necessary therefor, shall be applied by the said mayor and aldermen to the payment of salaries, wages and costs of repairs and other current expenses required for keeping the whole in good repair, and making such additions thereto, as may be deemed to be necessary, and the balance thereof shall be paid to the treasurer of said city quarterly and such payments shall be accompanied with a statement showing the whole amount of money received during the preceding quarter, and also an account of all moneys paid during the same time, specifying to whom and for what they were paid, which statement shall be verified by affidavit, and one copy thereof delivered to the comptroller of said city, to be by him filed and properly entered in his books.

27. And be it enacted, That the mayor and aldermen shall keep regular books of account in reference to said market and public buildings and all clerks and agents employed in their service in and about said market and public buildings shall be sworn to the faithful performance of their duties and the said mayor and aldermen shall in each year at least fifteen days before the charter election make a full report of the receipts and expenditures from and on account of the said market and public buildings which report shall be published in the same manner as the treasurer's report.

28. And be it enacted, That all lands and real estate and property of every kind which may be owned or held by the said mayor and aldermen by virtue of this act shall be exempt from all taxes and assessments.

29. And be it enacted, That neither of the said improvements except that authorized in section seventeen of this act shall be commenced until a

majority of the legal votes given at an election for that purpose, held at such time or times and places one whereof at least shall be in each ward of said city as the mayor and aldermen thereof shall by ordinance prescribe, shall be in favor of any such improvement upon which a vote shall be so taken, provided that no such election shall be held until the said mayor and aldermen shall ascertain and cause to be published in the Paterson daily papers, at least twenty days prior thereto, the price for which the Passaic water works can be purchased, and as near as may be the cost of putting them in a condition to meet the present and prospective demands of the city for water, and also the cost as near as may be of new water works for such purpose.

30. And be it enacted, that this act shall take effect immediately.

Approved April 4, 1867.

Chapter CCCLXIV.

A further supplement to an act entitled, "An Act to incorporate the Passaic Water Company," approved February thirteenth, eighteen hundred and forty-nine.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the Passaic Water Company be and they are hereby authorized to increase their capital stock to the sum of five hundred thousand dollars, at such time or times and in such manner as the board of directors of said company, or a majority of them, may deem proper.

2. And be it enacted. That this act shall take effect immediately.

Approved April 7, 1868.

Chapter CCCCXIV.

A further supplement to the act entitled "An Act to incorporate the Passaic Water Company," approved February thirteenth, one thousand eight hundred and forty-nine.

Whereas a portion of the city of Paterson cannot be adequately supplied with pure and wholesome water without the construction of new and expensive works, involving a large outlay and expenses; therefore,

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That it shall be lawful for the Passaic Water Company to construct such new water works as may be necessary to supply the whole city of Paterson with pure and wholesome water and that for this purpose they shall possess all the rights, powers, privileges, and franchises heretofore granted to the said the Passaic Water Company, and the several supplements thereto.

2. And be it enacted, That it shall be lawful for the said Passaic Water Company to increase the amount of their capital stock to any sum not exceeding seven hundred and fifty thousand dollars.

3. And be it enacted, That it shall be lawful for the Passaic Water Company, for the purposes of constructing such new and additional works for the supply of the citizens of Paterson with pure and wholesome water, from time to time to borrow such sum or sums of money as may be necessary to construct and complete the works of the said company, with all the reservoirs, pipes and appendages thereto authorized by the act to which this is a further supplement, and to issue

their bonds at such rates of interest as may be stipulated, and sell the same on the best procurable terms without invalidation thereof by virtue of any statute against usury, and for securing the payment of the same, full power and authority is hereby granted to the said company to pledge by way of trust, mortgage or otherwise the new and additional works so as aforesaid to be hereafter constructed for the supply of said city with water, with all their privileges and appendages and appurtenances, and also all the franchises and chartered rights pertaining to such additionally to be constructed works of said company, and such pledge, hypothecation, trust and bond and mortgage shall be valid in law for securing the payment of any sum or sums of money borrowed with the interest thereon accruing which the same may be given to secure, and in case default shall be made in the payment of any moneys so borrowed and secured, the person or persons, body politic or corporate, their legal representatives, successors or assigns claiming under such pledge, hypothecation, bond, mortgage or trust, may, by due process of law, acquire the title to have, use, occupy and enjoy the said new and additional water works so to be constructed, with the privileges, appendages and appurtenances to the same belonging, and to take and receive the tolls, rents, issues and profits and advantages thereof during the whole residue of the term for which said company is chartered or incorporated in as full and ample a manner as the stockholders of said company could or might have had, used and enjoyed the same and *and* any deed by which any pledge, hypothecation, mortgage or trust shall be created by virtue of this act shall be entered on record in the clerk's office in the county of Pas-

saic, the same having first been acknowledged according to law.

4. And be it enacted, That it shall be lawful for Passaic Water Company to purchase and hold any land or lands adjoining their reservoirs in the city of Paterson, or which may be necessary for their reservoir or reservoirs for the purpose of retaining and storing water, that they may deem expedient and necessary for their use or ornament of their works, and may bargain and sell and convey the whole or any portion of said lands by a vote of the majority of the directors of said company, and may execute a mortgage for the purchase money of said lands when so purchased.

5. And be it enacted. That it shall be lawful for the said company upon obtaining the consent in writing, of all its stockholders, to call in, receive and cancel any part of its capital stock not exceeding one half of the amount now issued, and thereupon to execute and deliver to any stockholder of said company who shall so surrender any part of his said stock to be cancelled, the bonds of the said company to an amount equal to the stock so surrended, which bonds shall be of the denomination of five hundred dollars, and payable in twenty years from the issuing thereof, with interest at the rate of seven per centum per annum, with interest coupon annexed, payable half-yearly.

6. And be it enacted. That this act shall be considered a public act and shall take effect immediately.

Approved March 31, 1871.

AN ACT TO INCORPORATE THE ACQUACANONK WATER COMPANY.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, that Charles M. K. Paulison, Henry B. Crosby, Richard A. Terhune, Benjamin N. Cleveland and David B. Sickels and such other persons as may hereafter be associated with them, shall be and are hereby ordained, constituted and declared to be a body corporate and politic in fact and in name, by the name of "The Acquackanonk Water Company," and by that name they and their successors shall and may have continued succession, and shall be persons in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all courts and places whatsoever, and shall have power to make and use a common seal, and the same at pleasure to alter, and they and their successors by the same name and style shall be capable of purchasing any real and personal estate necessary and expedient to the objects of this corporation.

2. And be it enacted, That the capital stock of said company shall be fifty thousand dollars, which shall be divided into shares of twenty-five dollars each, which shall be deemed personal property, and transferable in such manner as the said corporation shall by their by-laws direct.

3. And be it enacted, That the above named persons or a majority of them, shall be commissioners to open books to receive subscriptions to the capital stock of said company, at such time or times and place or places, in the village of Passaic as they or a majority of them may think proper; the books for subscription shall be kept

open for at least three days, from ten o'clock in the morning until five o'clock in the afternoon, upon fifteen days' notice being given, in both the newspapers published in Paterson; and at the time of subscribing, ten per centum shall be paid on each share subscribed for to the commissioners, or one of them; and as soon as two hundred shares of the said stock shall be subscribed, such commissioners shall give like publication for a meeting of the stockholders to choose five directors, a majority of whom shall reside within the township of Acquackanonk, and such election shall be made at the time and place appointed by such of the stockholders as shall attend for that purpose, either in person or by lawful proxy, each share of the capital stock entitling the holder thereof to one vote; and the said above named persons, or any three of them, shall be inspectors, and shall certify under their hands, the names of those persons duly elected, and deliver over the subscription books and money paid in, deducting a reasonable compensation for their own services to the said directors; and the time and place of holding the first meeting of the directors shall, be fixed by the said inspectors; and the said directors shall, as soon as may be after their election, choose a president out of their own number, who shall reside in the aforesaid limits, and the directors chosen at each annual meeting thereafter, on the second Monday in June, or on such other day as the directors for the time being shall designate, by a publication in the papers as aforesaid, shall elect a president as aforesaid; and in case of death, resignation or removal of the president or any director, the vacancy may be filled by the directors for the remainder of the year; and the said company,

when organized as aforesaid, shall have power to elect and maintain all necessary water works, fountains, reservoirs and conduits, and also to obtain and secure the right to use, direct and appropriate any springs, streams and ponds of water, or either, in the County of Passaic, as they may deem necessary for the purposes hereby contemplated.

4. And be it enacted, That three directors shall constitute a quorum, who shall be competent to transact all business of the said corporation; the directors shall have power to call in the remainder of the stock subscribed for, by instalments of two dollars and fifty cents each, upon thirty days' notice, published in said newspaper; provided that not less than thirty days shall intervene between the payments of the respective instalments; they shall have power to forfeit shares upon which default shall arise, to and for the use of the company, and make and prescribe such by-laws, rules and regulations, not inconsistent with the constitution of or laws of this state, or of the United States; and also to appoint and remove such officers and workmen, and fix the salaries of their presidents, as to them shall seem proper, and annually appoint inspectors of election for directors.

5. And be it enacted, That the president and directors of the said company be, and they are hereby authorized and invested with all the rights and powers necessary and expedient to survey and lay out the site for one or more reservoirs, drains, ditches, conduits, aqueducts, pipes, fountains, water wheels, force pumps, and all other work and devices, which they may deem necessary for supplying the village of Passaic with water sufficient for extinguishing fires, culinary and

other family uses, watering the streets, and such other purposes as may conduce to the health and comfort of the citizens; and it shall be lawful for the said president and directors, or others in their employ, to enter at all times upon all lands or water in said county, and survey, search, excavate and bore for water, and examine the quality thereof, and locate all and singular the reservoirs, drains, ditches, aqueducts, pipes, fountains, water wheels, force pumps and buildings, and all other work and appendages thereto, doing no unnecessary damage to private or other property; and when said location shall have been determined on, the president and directors shall cause a map to be made of all lands (except streets now in use) which they require for the purpose aforesaid, and file the same in the office of the clerk of Passaic; and then it shall be lawful for the said company, by its officers, agents, engineers, superintendents, contractors, workmen and other persons in their employ to enter upon, take possession of, hold, have, use, occupy, excavate, erect reservoirs, water wheels, wheel houses, force pumps, and do all other things which shall be suitable or necessary for completing the works hereby contemplated, and keeping them in repair, subject to such compensation as is hereinafter provided for.

6. And be it enacted, That if the said company or its agents, cannot agree with the owner or owners of such required lands for the use or purchase thereof, or if by reason of the legal incapacity or absence of such owner or owners, no such agreement can be made, the said company shall give notice to the persons interested, if known and in the state, or if unknown or out of the state, by publication in both the Paterson

papers, that they intend to make application to one of the judges of the court of common pleas in said county, on a day and at a place to be named in said notice, and not less than twenty days from the service of publication thereof for the appointment of three commissioners, and on said day and at the place named in said notice, the said judge shall make said appointment under his hand and seal; and it shall be the duty of said commissioners (having first taken an oath or affirmation before some person authorized to administer the same) faithfully and impartially to examine the matter in question, and make a true report according to the best of their skill and understanding, to meet at such time and place as they shall designate, giving at least fifteen days' notice of their said meeting as hereinbefore directed, and on the days so appointed to proceed to view and examine the said lands, and make a just and equitable estimate of the value of the same, and assess the damages which will accrue from erecting said works; and the said commissioners shall report in writing to the parties interested, the whole amount which the company must pay each owner, stating in said report the metes and bounds of the land assessed which said report the said company shall have filed in the office of the clerk of Passaic; to remain of record therein, and a copy thereof, certified by the clerk of said county, shall at all times be considered as plenary evidence of the right of said company to have, hold, use, occupy, possess and enjoy the lands so described; and it shall be the duty of said company to pay the owner or owners the amounts assessed as aforesaid, or in case the owner or owners refuse to receive the same, or live out of the state, or

are incapacitated by law to receive the same, then said sum shall be paid and delivered to the clerk of said county, to be by him retained for such owner; and upon making payment in either of the ways above stated, the title of the premises mentioned in the said award and so paid for, shall be vested in said company.

7. And be it enacted, That if said owners, or any of them, are dissatisfied with the report of the commissioners in the preceding section, the said party so dissatisfied may appeal to the circuit court of said county at its next term, whereupon the said court shall proceed to hear and determine the whole in the same manner as if such owner had summoned the said company to appear before them; and if the jury, upon trial of the cause, shall find a greater sum than the commissioners have awarded, or the company offered, in favor of the said owner or owners, then judgment thereon, with costs, shall be entered against the company, which shall constitute a lien upon the premises in question, which said lien shall have priority over any other encumbrance which said company may have given; but if the said jury shall find the same or less amount than the company shall have offered, or the said commissioners awarded, then the person appealing shall pay the costs in such manner as the court shall direct.

8. And be it enacted, That if any person shall wilfully and maliciously injure any of the said works of the said company, such person or persons shall forfeit and pay therefor to the said company three times the amount of damages sustained by means of such injury, to be recovered by said corporation, with costs of suit, in an action of debt, in any court having cognizance thereof.

9. And be it enacted, That said company be, and they are hereby fully authorized and empowered to lay their pipes beneath such public roads, streets, avenues, and alleys as they may deem necessary for the purpose aforesaid, free of all charge to be made by any person or persons, or body politic whatsoever, for said privilege, and also such hydrants at the crossing or intersections of the said streets and alleys; provided, that the said pipes shall be laid at least two feet below the surface of the same, and shall not in any wise unnecessarily obstruct or interfere with the public travel or damage public property, and that the earth excavated in laying said pipes shall be replaced so that the surface of the ground shall be in as good condition as the same was before said excavations were made.

10. And be it enacted, That said company may sell and dispose of the water issuing from said reservoirs, aqueducts or pipes for such price or prices as annual rent, and under such restrictions as they may think proper.

11. And be it enacted, That if the work of constructing said reservoirs and appendages shall not be commenced in good faith within the term of two years from the date of the approval of this act, the same shall be null and void.

12. And be it enacted, That this act shall go into effect immediately.

Approved April 9, 1867.

A supplement to an act entitled "An Act to incorporate The Acquackanonk Water Company," approved April ninth, eighteen hundred and sixty-seven.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey That it shall not be lawful for the said company to take or draw any water from the Passaic river or any of its tributaries above the dam of the Dundee Manufacturing Company, without the consent of the said last mentioned company, or to take the waters of said river above the Great Falls, or of any spring or stream tributary thereto, or interfere with the rights and privileges of the Society for Establishing Useful Manufactures.

2. And be it enacted, That this act shall take effect immediately.

Approved April 21, 1868.

A further supplement to the act entitled "An Act to Incorporate the Acquackanonk Water Company" approved April ninth, 1867.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey. That the capital stock of said company be and the same is hereby increased to a sum not exceeding two hundred thousand dollars.

2. And be it enacted, that it shall be lawful for the said "The Acquackanonk Water Company," from time to time, to borrow such sum or sums of money as may be necessary to construct and complete the works of the said company, with the appendages thereto, authorized by the act to which this act is a supplement, and to issue their bonds at seven per cent. per annum interest, and

to sell the same on the best procurable terms without invalidation thereof by virtue of any statute against usury; and for securing the payment of the same, full power and authority is granted to said company to pledge or hypothecate by way of mortgage, trust or otherwise, the whole or any part of the works of said company now or hereafter to be owned by said company, together with all the privileges, and appendages, and appurtenances of the said water company, and also all the franchises and chartered rights of said company, and such pledges, hypothecation, trust, and bond and mortgage shall be valid in law for securing the payment of any sum or sums of money borrowed, with the interest thereon accruing, which the same may be given to secure, and in case default shall be made in the payment of any money so borrowed and secured, the person or persons, body politic or corporate, their legal representatives, successors or assigns, claiming under such pledge, hypothecation, bond, mortgage or trust may, by due process of law, acquire the title to have, hold, use, occupy and enjoy the said water works and appendages, with the privileges, appendages and appurtenances to the same belonging, and all the property of said company, and the franchises and chartered rights aforesaid, and to take and secure the tolls, rents, issues, profits and advantages thereof during the whole residue of the term for which said company is chartered or incorporated, in as full and ample a manner as the stockholders of said company would or might have had, used and enjoyed the same, subject nevertheless to all the restrictions, limitations and conditions contained in the act incorporating said company, and the supplement thereto; and any deed by which any pledge, hy-

pothecation or trust shall be created by virtue of this act shall be entered on record in the clerk's office for the county of Passaic, the same having been first acknowledged or proved according to law.

3. And be it enacted, That the time limited in the eleventh section of the act to which this is a supplement, providing for the time within which the construction of the works authorized by said act shall be commenced, is hereby extended for the space of two years from the date of the passage of this act.

Approved March 9, 1871.

A further supplement to an act entitled "An Act concerning Corporations," approved April 7th, 1875.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That it shall not be necessary for any of the directors of any water company heretofore, or which may be hereafter, organized under the act to which this is a further supplement, or any other act, general or special, or in pursuance of any special charter, to reside in any specified township or city in this State, although it may be so required by any such act or special charter; neither shall it be necessary to limit the number of directors of any such company so organized or which may be so organized, under any such acts or under any such special charter, to the number named, therein or in any of them; provided, that the directors of any such company shall not be less than three in number.

2. And be it enacted, That this act shall take effect immediately.

Approved Feb. 21, 1877.

CERTIFICATE OF INCORPORATION OF THE KEARNEY WATER COMPANY.

This is to certify that we, John R. Bartlett, of the City of New York, in the State of New York, Whiting G. Snow, of the township of Montclair, in the County of Essex, and the State of New Jersey, Henry C. Andrews, of the City of New York, in the State of New York, George M. Keasbey, of the City of Newark, in the County of Essex, and State of New Jersey, George S. Jones, of the City of Orange, Essex County, in the State of New Jersey, William Green, of the township of Kearney, in the County of Hudson, and the State of New Jersey, and Edward V. B. Dodd, of the City of Newark, in the County of Essex, and State of New Jersey, do hereby associate ourselves into, and form a company under and by virtue of an Act of the Legislature of New Jersey, entitled "An act for the construction, maintenance and operation of water works for the purpose of supplying cities, towns and villages of this State with water," approved April 21st, 1876, and the several supplements thereto and amendments thereof, for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

First: That the name which we have adopted and assumed to designate said company and to be used in its business and dealings is the Kearney Water Company.

Second: The amount of the capital stock is one million dollars; the number of shares into which

the same is divided is ten thousand shares, and the par value of each share is one hundred dollars.

Third: The term of the existence of said corporation shall be fifty years, commencing on the twenty-second day of October, A. D., eighteen hundred and eighty-six and terminating on the twenty-second day of October, A. D., nineteen hundred and thirty-six.

Fourth: The number of directors of said company shall be five, but may be increased as the by-laws may direct.

Fifth: The names of the directors of said company who shall manage the affairs the first year or until their successors are elected and qualified are: John R. Bartlett, Henry C. Andrews, Whiting G. Snow, George N. Keasbey and William Green.

Sixth: The works are to be constructed and the business of said company carried on for the township of Kearney in the County of Hudson, and said company is for the purpose of constructing, maintaining and operating water works in said township, and for the purpose of supplying said township and the inhabitants thereof with water; and for the purpose of constructing, maintaining and operating works in connection therewith for the purpose of supplying water to such other cities, towns, townships and villages as it may be lawful for it to supply for public and private uses, by contract with any of such cities, towns, townships, and villages made with their respective municipal or other authorities.

In witness whereof, we have hereunto set our hands and seals this eighteenth day of October, A. D., eighteen hundred and eighty-six.

Signed, sealed and delivered
in the presence of:

As to John R. Bartlett,	John R. Bartlett, [L. S.]
Whiting G. Snow,	Whiting G. Snow, [L. S.]
Henry C. Andrews,	Henry C. Andrews, [L. S.]
George M. Keasbey	George M. Keasbey, [L. S.]
and George S. Jones	Geo. S. Jones, [L. S.]
E. A. S. Man.	
As to William Green and	
Edward V. B. Dodd	William Green, [L. S.]
A. Q. Keasbey	Edward V. B. Dodd. [L. S.]

State of New Jersey, }
Essex County, } ss.:

Be it remembered that on the eighteenth day of October in the year of Our Lord eighteen hundred and eighty-six before me, one of the masters of the Court of Chancery, personally appeared John R. Bartlett, Whiting G. Snow, Henry C. Andrews, and George M. Keasbey and that on the twentieth day of said October before me likewise personally appeared George S. Jones, who are to me known to be five of the persons described in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they each acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

E. A. S. Man,
Master in Chancery of New Jersey.

Defendant's Exhibit A.

STATE OF NEW JERSEY, }
ESSEX COUNTY, } ss.:

Be it remembered that on the twenty-first day of October in the year of Our Lord eighteen hundred and eighty-six before me, one of the masters of the Court of Chancery, personally appeared William Green and Edward V. B. Dodd, to me known to be two of the persons described in and who executed the foregoing certificate and, I having first made known to them the contents thereof, they each acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

A. Q. KEASBEY,
Master in Chancery of New Jersey.

The consent of the corporate authorities of the township of Kearney is hereby given to the organization of the within mentioned company, and to such acts, matters and things in connection therewith as it is lawful and proper that such consent should be given according to the statute in such case made and provided and in accordance with the resolution passed by the township committee of the township of Kearney, on the 15th day of October, eighteen hundred and eighty-six.

GABRIEL B. REID, [L. S.]
Chairman of the Township Committee.

Attest:

EDWARD J. KENNY,
Town Clerk.

Defendant's Exhibit A.

CERTIFICATE OF INCORPORATION OF THE MONTCLAIR WATER COMPANY.

This is to certify that we:

John R. Bartlett of the City, County and State of New York;

Joseph Van Vleck, Township of Montclair, County of Essex, State of New Jersey;

Jasper R. Rand, Township of Montclair, County of Essex, State of New Jersey;

Edwin A. Bradley, Township of Montclair, County of Essex, State of New Jersey;

Albert P. Fisher, of the City of Brooklyn, County of Kings, State of New York;

Whiting G. Snow, Township of Montclair, County of Essex, State of New Jersey, and

Henry C. Andrews, of the city, county and state of New York; do hereby associate ourselves into and form a company under and by virtue of an act of the Legislature of New Jersey, entitled "An Act for the construction, maintenance and operation of water works for the purpose of supplying cities, towns and villages of this state with water," approved April 21st, 1876, and the several supplements thereto and amendments thereof, for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

First: That the name which we have adopted and assumed to designate said company, and to be used in its business and dealings is, The Montclair Water Company;

Second: The amount of the capital stock is one million dollars. The number of shares into which the same is divided is ten thousand shares, and the par value of each share is one hundred dollars.

Defendant's Exhibit A.

Third: The term of the existence of said corporation shall be fifty years, commencing on the fifteenth day of January, *Anno Domini,* eighteen hundred and eighty-seven, and terminating on the fifteenth day of January, Anno Domini, nineteen hundred and thirty-seven;

Fourth: The number of directors of said company shall be five but may be increased as the By-Laws may direct;

Fifth: The names of the directors of said company who shall manage the affairs the first year, or until their successors are elected and qualified, are:

John R. Bartlett,
Jasper R. Rand,
Whiting G. Snow,
Edwin A. Bradley, and
Albert P. Fisher;

Sixth: The works are to be constructed, and the business of said company carried on in the Township of Montclair in the County of Essex; and said company is for the purpose of constructing, maintaining and operating water works in said township, and for the purpose of supplying said township, and the inhabitants thereof, with water; and for the purpose of constructing, maintaining and operating works in connection therewith for the purpose of supplying water to such other cities, towns, townships and villages as it may be lawful for it to supply for public and private uses, by contract with any of such cities, towns, townships and villages, made with their respective municipal or other authorities.

Defendant's Exhibit A.

In witness whereof, we have hereunto set our hands and seals this thirteenth day of January, A. D., eighteen and eighty-seven.

Signed, sealed and delivered
in the presence of:

as to John R. Bartlett,
Albert P. Fisher,
Whiting G. Snow,
and Henry C. Andrews — JOHN R. BARTLETT [L. S.]
J. VAN VLECK, [L. S.]
George M. Keasbey. — JASPER R. RAND, [L. S.]
EDWIN A. BRADLEY, [L. S.]
as to Joseph Van Vleck,
Jasper R. Rand,
and Edwin A. Bradley — ALBERT P. FISHER [L. S.]
WHITING G. SNOW [L. S.]
HENRY C. ANDREWS [L. S.]
Jno L. Blake.

STATE OF NEW JERSEY,
ESSEX COUNTY, } SS.:

Be it remembered that on this thirteenth day of January, in the year of our Lord eighteen hundred and eighty-seven, before me, one of the Masters of the Court of Chancery, personally appeared Joseph Van Vleck, Jasper R. Rand and Edwin A. Bradley, to me known to be three of the persons described in, and who executed the foregoing certificate, and I, having first made known to them the contents thereof, they each acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

JNO. L. BLAKE,
Master in Chancery of New Jersey.

Defendant's Exhibit A.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.:

Be it remembered, that on this thirteenth day of January in the year of our Lord eighteen hundred and eighty-seven, before me, one of the Masters of the Court of Chancery personally appeared John R. Bartlett, Albert P. Fisher, Whiting G. Snow and Henry C. Andrews to me known to be four of the persons described in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they each acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

GEORGE M. KEASBEY,
Master of Chancery of N. J.

The consent of the corporate authorities of the Township of Montclair is hereby given to the organization of the within mentioned company, and to such acts, matters and things in connection therewith as it it is lawful or proper that such consent should be given for according to the statute in such case made and provided, and in accordance with the resolution passed by the Township Committee of the Township of Montclair, on the thirteenth day of January, eighteen hundred and eighty-seven.

THOMAS RUSSELL,
Chairman of the Township Committee.
[SEAL]

Attest:
A. EBEN VAN GIESON,
Acting Town Clerk.

Endorsed: Filed January 15, 1887.

HENRY C. KELSEY,
Secretary of State.

Defendant's Exhibit A.

CERTIFICATE OF INCORPORATION OF THE EAST JERSEY WATER COMPANY.

This is to certify that we, Charles Hartshorne, John B. Garrett, Henry S. Drinker, Thomas N. McCarter, Louis R. Barrett, John Hood and David G. Board, do hereby associate ourselves into a company under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled "An Act concerning Corporations," approved April seventh, eighteen hundred and seventy-five, and the several acts supplementary thereto and amendatory of the same, for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

First. That the name which we have assumed to designate such company, and to be used in its business and dealings, is

"THE EAST JERSEY WATER COMPANY."

Second. That the place in this State where the business of such company is to be conducted are the Counties of Essex, Union, Morris, Passaic, Hudson and Bergen, and the principal office of said company shall be in the City of Newark, in said County of Essex. And that the objects for which the company is formed are the storage, sale and delivery of water and the construction and maintenance of the necessary reservoirs, pipe line and other works therefor, the acquisition of the necessary and appropriate property, real and personal, with the power to lease, sell, mortgage and convey the same or any part thereof.

Third. That the total amount of capital stock of said company is three million dollars; the number of shares into which the same is divided is thirty thousand, and the par value of each share is one hundred dollars.

The amount with which said company will commence business is three million dollars, which is divided into thirty thousand shares of the par value of one hundred dollars each;

Fourth. The names and residences of the stockholders and the number of shares held by each are as follows:

Charles Hartshorne, Philadelphia, Pa., twenty-nine thousand four hundred (29,400) shares.

John B. Garrett, Philadelphia, Pa., one hundred (100) shares.

Henry S. Drinker, Philadelphia, Pa., one hundred (100) shares.

Thomas N. McCarter, Newark, N. J., one hundred (100) shares.

Louis R. Barrett, Bloomfield, N. J., one hundred (100) shares.

John Hood, Camden, N. J., one hundred (100) shares.

David G. Baird, Beverly, N. J., one hundred (100) shares.

Fifth. The period at which said company shall commence business is the first day of August, A. D., eighteen hundred and eighty-nine, and the period at which it shall terminate is the first day of August, A. D., nineteen hundred and thirty-nine.

In witness whereof we have hereunto set our hands and seals this first day of August, A. D., eighteen hundred and eighty-nine.

Signed, sealed and delivered
in presence of

Robert H. McCarter,

CHAS. HARTSHORNE, [L. S.]
JOHN B. GARRETT, [L. S.]
HENRY S. DRINKER, [L. S.]
THOMAS N. MCCARTER, [L. S.]
LOUIS R. BARRETT, [L. S.]
JOHN HOOD, [L. S.]
D. G. BAIRD, [L. S.]

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } SS.:

Be it remembered that on this first day of August, A. D., eighteen hundred and eighty-nine, before me, the subscriber, a Master in Chancery of the State of New Jersey, personally appeared Charles Hartshorne, John B. Garrett, Henry S. Drinker, Thomas N. McCarter, Louis R. Barrett, John Hood and David G. Baird who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed. All of which I certify.

ROBERT H. MCCARTER,
Master in Chancery of New Jersey.

Endorsed:

"Received in the Essex County Clerk's Office Aug. 1st, 1889, and recorded in Book 4 of Incorporated Business Co's on page 4 &c.

S. A. SMITH,
Clerk."

"Filed August 1, 1889.

HENRY C. KELSEY,
Secretary of State."

Defendant's Exhibit B.

CONSOLIDATION AGREEMENT.

(Charter of Passaic Consolidated Water Company.)

AGREEMENT dated the 10th day of May, One Thousand nine hundred and twenty-three, between ACQUACKANONK WATER COMPANY, incorporated under Special Statute passed by the Legislature of New Jersey in 1867, party of the first part; EAST JERSEY WATER COMPANY, incorporated under the Laws of New Jersey on August 1, 1889, party of the second part; KEARNY WATER COMPANY, incorporated in October, 1886, under the Act of the New Jersey Legislature of 1876, party of the third part; MONTCLAIR WATER COMPANY, incorporated on January 15, 1887, under the Act of the New Jersey Legislature of 1876, party of the fourth part; and PASSIAC WATER COMPANY, incorporated by the Act of the Legislature in 1852, party of the fifth part, by the Directors of the said corporations, respectively, WITNESSETH:

WHEREAS the principal and registered office of the said party of the first part is at 158 Ellison Street, Paterson, New Jersey, and John H. Cook is the agent therein and in charge thereof and upon whom process against said corporation may be served; and the principal and registered office of the said party of the second part is at 158 Ellison Street, Paterson, New Jersey, and John H. Cook is the agent therein and in charge thereof and upon whom process against said corporation may be served; and the principal and registered office of the said party of the third part is at 158 Ellison Street, Paterson, New Jersey, and

John H. Cook is the agent therein and in charge thereof and upon whom process against said corporation may be served; and the principal and registered office of the said party of the fourth part is at 30 Park Street, Montclair, New Jersey, and John Schetty is the agent therein and in charge thereof and upon whom process against said corporation may be served; and the principal and registered office of the said party of the fifth part is at 158 Ellison Street, Paterson, New Jersey, and John H. Cook is the agent therein and in charge thereof and upon whom process against said corporation may be served; and

WHEREAS the said corporations were formed and organized by and in pursuance of the said Acts of Legislature hereinabove referred to, for the purpose of carrying on business of the same nature, namely, the supplying of water for domestic and public uses in said State; and

WHEREAS the respective Boards of Directors of the said corporations deem it advisable for the purpose of greater efficiency and economy of management, and in order more efficiently to carry on their business and discharge their public duties, to merge and consolidate the said corporations under and pursuant to the provisions of an Act entitled "An Act Concerning Corporations (Revision of 1896)," and in pursuance of all other legal powers and authority for that purpose conferred.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements, covenants, provisions and grants herein contained, it is hereby agreed by and between said corporations, parties hereto, and by and between their Directors respectively as follows:

Defendant's Exhibit B.

ARTICLE I

The said corporations shall be and they are hereby consolidated into a single corporation, under the name of PASSAIC CONSOLIDATED WATER COMPANY, hereinafter called the consolidated corporation.

ARTICLE II

The said consolidated corporation shall have and possess and may use, exercise and enjoy all the rights, powers, privileges and franchises of all of the corporations, parties to this agreement.

ARTICLE III

The Board of Directors of the said consolidated corporation shall be seven in number, and the names and places of residence of the first Directors and officers thereof who shall hold office until their successors are elected or appointed, are as follows:

DIRECTORS	ADDRESS
Edmund LeB. Gardner	Ridgewood, New Jersey;
John H. Cook	Passaic, New Jersey;
Allan W. Cuddeback	Paterson, New Jersey;
Walter W. Corrigan	Clifton, New Jersey;
William R. Edwards	Paterson, New Jersey;
Peter J. Nestler	Passaic, New Jersey;
Robert J. Nelden	Paterson, New Jersey;

OFFICERS

President.....Edmund LeB. Gardner
Vice-President.....Allan W. Cuddeback
Vice-President and Treasurer....John H. Cook
Secretary and Assistant Treasurer,
Walter W. Corrigan

Defendant's Exhibit B.

ARTICLE IV

The capital stock of the consolidated corporation is Five million dollars ($5,000,000) of common stock, divided into fifty thousand (50,000) shares of the par value of One Hundred dollars ($100) each.

ARTICLE V

The said corporations, parties to this agreement, shall be and they are hereby consolidated upon the understanding that the present indebtedness, and all legal obligations and duties, of each of the said corporations shall be assumed in full by the consolidated corporation.

ARTICLE VI

Upon consummation of this consolidation, all property, real, personal and mixed, of the said corporation, parties hereto, shall vest in the said consolidated corporation, and the said corporations, parties hereto respectively, shall make and execute all assignments, conveyances and assurances, and do any and all things necessary to vest the title to their property and franchises of every kind and nature in the said consolidated corporation, and otherwise shall carry out the purposes of this agreement.

Until the said consummation, the parties hereto shall continue to conduct their respective businesses.

ARTICLE VII

The capital stock of Acquackanonk Water Company now outstanding, amounting to 4,000 shares of the par value of $25 each, shall be exchangeable for stock of the consolidated corporation as follows: 2.27375 shares of stock of the consolidated corporation for one share of stock of Acquackanonk Water Company.

The capital stock of East Jersey Water Company now outstanding, amounting to 1,000 shares of the par value of $100 each, shall be exchangeable for stock of the consolidated corporation as follows: 5.74 shares of stock of the consolidated corporation for one share of stock of East Jersey Water Company.

The capital stock of Kearny Water Company now outstanding, amounting to 1,000 shares of the par value of $100 each, shall be exchangeable for stock of the consolidated corporation as follows: 2.84 shares of stock of the consolidated corporation for one share of stock of Kearny Water Company.

The capital stock of Montclair Water Company now outstanding, amounting to 5,000 shares of the par value of $100 each, shall be exchangeable for stock of the consolidated corporation as follows: 1.51 shares of stock of the consolidated corporation for one share of stock of Montclair Water Company.

The capital stock of Passaic Water Company now outstanding, amounting to 30,000 shares of the par value of $25 each, shall be exchangeable for stock of the consolidated corporation as follows: .1925 of a share of stock of the consolidated corporation for one share of stock of Passaic Water Company.

Scrip without voting power or right to participate in dividends shall be issued for fractional shares.

The balance of the stock of the consolidated corporation may be issued, when authorized by the Directors.

The amount of capital stock of the consolidated corporation issued in exchange for shares of stock of the Acquackanonk Water Company, East Jersey Water Company, Kearney Water Company, Montclair Water Company and Passaic Water Company, is fixed for the purpose of this agreement only, and is not intended by any of the parties hereto to be an admission that the stock of the consolidated corporations so issued represents or expresses the full value of the property rights and franchises of the parties hereto or their equity therein, or to preclude the corporation created by this agreement from claiming and proving at any time hereafter, and for any purpose, the full value of said property rights and franchises.

The consolidated corporations shall have all powers conferred by law, including the power to issue securities, borrow money and pledge or mortgage its franchise rights, privileges and property, necessary to provide or pay for extensions, repairs and betterments of its plant and property, or for other corporate purposes.

ARTICLE VIII

Each stockholder of the corporations, parties to this agreement, upon presenting a certificate or certificates of stock and surrendering the same to be cancelled, shall be entitled to receive a certificate or certificates for the proper number of shares, or scrip for the fractional shares, of the capital stock of the consolidated corporation to which he is entitled hereunder, and to be registered as a stockholder of said consolidated corporation.

ARTICLE IX

The Directors of the consolidated corporation shall be elected by the stockholders thereof annually on the first Tuesday in April, and shall

hold office for the ensuing year or until their successors are duly elected.

The officers of said corporation shall be appointed by the Directors thereof at their first meeting after their annual election. The term of all officers to be for one year and until their successors are duly appointed.

ARTICLE X

The principal and registered office of said consolidated corporation is No. 158 Ellison Street, in the City of Paterson, New Jersey, and John H. Cook is the agent therein and in charge thereof, and upon whom process against the consolidated corporation may be served.

ARTICLE XI

The consolidated corporation shall pay all expenses of the consolidation effected by this agreement.

The parties hereto agree that the party of the first part shall take all necessary steps and conduct all proceedings to carry out and effectuate the said consolidation.

IN WITNESS WHEREOF the said parties to this agreement have, in pursuance of resolutions passed by the Board of Directors of each of the said corporations respectively at meetings duly called and held, caused the respective corporate seals of each of said corporations to be hereto affixed and these presents to be signed by their respective Presidents or Vice-Presidents, and attested by their respective Secretaries, all duly thereunto authorized, and have also caused these

presents to be signed by their respective Directors, the day and year first above written.

ACQUACKANONK WATER COMPANY,
By JOHN H. COOK, *Vice President.*

(SEAL)

Attest:
WALTER W. CORRIGAN, *Secretary.*

EAST JERSEY WATER COMPANY,
By JOHN H. *Cook, Vice President.*

(SEAL)

Attest:
WALTER W. CORRIGAN, *Secretary.*

KEARNEY WATER COMPANY,
By JOHN H. COOK, *Vice President.*

(SEAL)

Attest:
WALTER W. CORRIGAN, *Secretary.*

MONTCLAIR WATER COMPANY,
By JOHN H. COOK, *Vice President.*

(SEAL)

Attest:
WALTER W. CORRIGAN, *Secretary.*

PASSAIC WATER COMPANY,
By JOHN H. COOK, *Vice President.*

(SEAL)

Attest:
WALTER W. CORRIGAN, *Secretary.*

Walter W. Corrigan,
A. W. Cuddeback
Edmund LeB. Gardner
Whiting G. Snow
John J. Slater
John H. Cook
Peter J. Nestler
Directors of
ACQUACKANONK WATER COMPANY.

Edmund LeB. Gardner
Walter W. Corrigan
John H. Cook
A. W. Cuddeback
Whiting G. Snow
Directors of
EAST JERSEY WATER COMPANY.

Edmund LeB. Gardner
Walter W. Corrigan
John H. Cook
A. W. Cuddeback
Peter J. Nestler
Directors of
KEARNEY WATER COMPANY.

Edmund LeB. Gardner
Wm. R. Edwards
Walter W. Corrigan
John H. Cook
Whiting G. Snow
Directors of
MONTCLAIR WATER COMPANY.

Edmund LeB. Gardner
Wm. R. Edwards
Walter W. Corrigan
John H. Cook
A. W. Cuddeback
Whiting G. Snow
Robert J. Nelden
Directors of
PASSAIC WATER COMPANY.

ACQUACKANONK WATER COMPANY

CERTIFICATE

STATE OF NEW JERSEY }
COUNTY OF PASSAIC } ss.:

WALTER W. CORRIGAN, Secretary of Acquackanonk Water Company, a corporation incorporated under special Statute passed by the Legislature of New Jersey in 1867, does hereby certify:

1. That the foregoing agreement of consolidation of said corporation with East Jersey Water Company, Kearney Water Company, Montclair Water Company and Passaic Water Company, was made by the Directors of said Acquackanonk Water Company, at a duly convened meeting called for that purpose.

2. That the said agreement was submitted to the stockholders of said Acquackanonk Water Company at a meeting thereof called on the 31st day of May, 1923, for the purpose of taking the same into consideration of which meeting twenty days' notice of the time, place and object thereof was mailed to the last-known post office address of each of said stockholders.

3. That the said agreement was considered by the said stockholders at said meeting and a vote

of the stockholders was taken by ballot for the adoption or rejection of said agreement, and that stockholders owning more than two-thirds of the shares of the capital stock of said Acquackanonk Water Company voted in favor of the adoption of said agreement.

4. That the meeting of stockholders of Acquackanonck Water Company, and the said vote by ballot upon the adoption of said agreement, were held and taken separately from the meeting of stockholders and vote of said East Jersey Water Company, Kearney Water Company, Montclair Water Company and Passaic Water Company.

5. That the principal office of the said Acquackanonk Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said East Jersey Water Company in the State of New Jersey is at 158 Ellison Street, Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Kearney Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Montclair Water Company in the State of New Jersey is at 30 Park Street, in the Town of Montclair, and that John Schetty is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of

the said Passaic Water Company in the State of New Jersey is at 158 Ellison Street, in the city of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served.

In Witness Whereof I have hereunto set my name as Secretary of Acquackanonk Water Company, and the sale of said Acquackanonk Water Company this 31st day of May, Nineteen hundred and twenty-three.

(SEAL) Walter W. Corrigan,
Secretary of
Acquackanonk Water Company.

State of New Jersey }
County of Passaic } ss.:

Be it Remembered that on the 31st day of May in the year of our Lord, One thousand nine hundred and twenty-three, before me, a Notary Public of the State of New Jersey, personally appeared Walter W. Corrigan, to me known, who being duly sworn according to law, on his oath doth depose and make proof to my satisfaction that he is the Secretary of the said Acquackanonk Water Company, one of the corporations mentioned in the foregoing agreement; that he well knows the seal of said corporation; that is was so affixed to said agreement in pursuance of a resolution of the Directors of the said corporation; that John H. Cook is the Vice President of the said corporation, Acquackanonk Water Company; that he saw the said John H. Cook, as such Vice President, affix said seal thereto, sign and deliver said agreement, and heard him declare that he signed, sealed and delivered the same as

the voluntary act and deed of the said corporation in pursuance of said resolution, and that this deponent signed his name thereto at the same time as a subscribing witness, and that this deponent is the same person who, as Secretary of said corporation, Acquackanonk Water Company, executed the foregoing certificate.

Sworn to and subscribed before me
at Paterson, N. J., the day and
year aforesaid.

GUSTAVE LEIMBACHER,
Notary Public of N. J.

(SEAL)

EAST JERSEY WATER COMPANY

CERTIFICATE

STATE OF NEW JERSEY }
COUNTY OF PASSAIC } SS.:

WALTER W. CORRIGAN, Secretary of East Jersey Water Company, incorporated under the Laws of New Jersey on August 1, 1899, does hereby certify:

1. That the foregoing agreement of consolidation of said corporation with Acquackanonk Water Company, Kearney Water Company, Montclair Water Company and Passaic Water Company, was made by the Directors of said East Jersey Water Company, at a duly convened meeting called for that purpose.

2. That the said agreement was submitted to the stockholders of said East Jersey Water Company at a meeting thereof called on the 31st day of May, 1923, for the purpose of taking the same into consideration, of which meeting twenty days'

notice of the time, place and object thereof was mailed to the last-known post office address of each of said stockholders.

3. That the said agreement was considered by the said stockholders at said meeting and a vote of the stockholders was taken by ballot for the adoption or rejection of said agreement, and that stockholders owning more than two-thirds of the shares of the capital stock of said East Jersey Water Company voted in favor of the adoption of said agreement.

4. That the meeting of stockholders of East Jersey Water Company, and the said vote by ballot upon the adoption of said agreement were held and taken separately from the meeting of stockholders and vote of said Acquackanonk Water Company, Kearney Water Company, Montclair Water Company and Passaic Water Company.

5. That the principal office of the said Acquackanonk Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said East Jersey Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Kearney Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Montclair Water Company

in the State of New Jersey is at 30 Park Street, in the Town of Montclair, and that John Schetty is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Passaic Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served.

In Witness Whereof I have hereunto set my name as Secretary of East Jersey Water Company, and the seal of said East Jersey Water Company, this 31st day of May, Nineteen hundred and twenty-three.

Walter W. Corrigan
Secretary of
East Jersey Water Company.

(SEAL)

State of New Jersey }
County of Passaic } ss.:

Be it Remembered that on the 31st day of May in the year of our Lord, One thousand nine hundred and twenty-three, before me, a Notary Public of the State of New Jersey, personally appeared Walter W. Corrigan, to me known, who, being duly sworn according to law, on his oath doth depose and make proof to my satisfaction that he is the Secretary of the said East Jersey Water Company, one of the corporations mentioned in the foregoing agreement; that he well knows the seal of said corporation; that it was so affixed to said agreement in pursuance of a resolution of the Directors of the said corporation; that John H. Cook is the Vice President of the

said corporation, East Jersey Water Company; that he saw the said John H. Cook, as such Vice President, affix said seal thereto, sign and deliver said agreement, and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of the said corporation in pursuance of said resolution, and that this deponent signed his name thereto at the same time as a subscribing witness, and that this deponent is the same person who, as Secretary of said corporation, East Jersey Water Company, executed the foregoing certificate.

Sworn to and subscribed before me
at Paterson, N. J., the day and
year aforesaid.

Gustave Leimbacher,
Notary Public of N. J.

(SEAL)

KEARNEY WATER COMPANY

Certificate

State of New Jersey }
County of Passaic } ss.:

Walter W. Corrigan, Secretary of Kearney Water Company, incorporated in October, 1886, under the Act of the New Jersey Legislature of 1876, does hereby certify:

1. That the foregoing agreement of consolidation of said corporation with Acquackanonk Water Company, East Jersey Water Company, Montclair Water Company and Passaic Water Company, was made by the Directors of said Kearney Water Company, at a duly convened meeting called for that purpose.

2. That the said agreement was submitted to the stockholders of said Kearney Water Company at a meeting thereof called on the 31st day of May, 1923, for the purpose of taking the same into consideration, of which meeting twenty days' notice of the time, place and object thereof was mailed to the last-known post office address of each of said stockholders.

3. That the said agreement was considered by the said stockholders at said meeting and a vote of the stockholders was taken by ballot for the adoption or rejection of said agreement, and that stockholders owning more than two-thirds of the shares of the capital stock of said Kearney Water Company voted in favor of the adoption of said agreement.

4. That the meeting of stockholders of Kearney Water Company, and the said vote by ballot upon the adoption of said agreement, were held and taken separately from the meeting of stockholders and vote of said Acquackanonk Water Company, East Jersey Water Company, Montclair Water Company and Passaic Water Company.

5. That the principal office of the said Acquackanonk Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said East Jersey Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served, and that the principal office of the said Kearney Water Company in the State of New Jersey is at 158 Ellison Street, in the City

of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Montclair Water Company in the State of New Jersey is at 30 Park Street, in the Town of Montclair, and that John Schetty is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Passaic Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served.

In witness whereof I have hereunto set my name as Secretary of Kearney Water Company, and the seal of said Kearney Water Company, this 31st day of May, Nineteen hundred and twenty-three.

Walter W. Corrigan,
Secretary of
Kearney Water Company.

State of New Jersey }
County of Passaic } ss.:

Be it Remembered that on the 31st day of May in the year of our Lord, One thousand nine hundred and twenty-three, before me, a Notary Public of the State of New Jersey, personally appeared Walter W. Corrigan, to me known, who, being by me duly sworn according to law, on his oath doth depose and make proof to my satisfaction that he is the Secretary of said Kearney Water Company, one of the corporations mentioned in the foregoing agreement; that he well

knows the seal of said corporation; that it was so affixed to said agreement in pursuance of a resolution of the Directors of the said corporation; that John H. Cook is the Vice President of the said corporation, Kearney Water Company; that he saw the said John H. Cook, as such Vice President, affix said seal thereto, sign and deliver said agreement, and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of the said corporation in pursuance of said resolution, and that this deponent signed his name thereto at the same time as a subscribing witness, and that this deponent is the same person who, as Secretary of said corporation, Kearney Water Company, executed the foregoing certificate.

Sworn to and subscribed before me
at Paterson, N. J., the day and
year aforesaid.

GUSTAVE LEIMBACHER,
Notary Public of N. J.

(SEAL)

MONTCLAIR WATER COMPANY

CERTIFICATE

STATE OF NEW JERSEY }
COUNTY OF PASSAIC } SS.:

WALTER W. CORRIGAN, Secretary of Montclair Water Company, incorporated on January 15, 1887, under the Act of the New Jersey Legislature of 1876, does hereby certify:

1. That the foregoing agreement of consolidation of said corporation with Acquackanonk Water Company, East Jersey Water Company,

Kearney Water Company and Passaic Water Company, was made by the Directors of said Montclair Water Company, at a duly convened meeting called for that purpose.

2. That the said agreement was submitted to the stockholders of said Montclair Water Co. at a meeting thereof called on the 31st day of May, 1923, for the purpose of taking the same into consideration, of which meeting twenty days' notice of the time, place and object thereof was mailed to the last-known post office address of each of said stockholders.

3. That the said agreement was considered by the said stockholders at said meeting and a vote of the stockholders was taken by ballot for the adoption or rejection of said agreement, and that stockholders, owning more than two-thirds of the shares of the capital stock of said Montclair Water Company voted in favor of the adoption of said agreement.

4. That the meeting of stockholders of Montclair Water Company, and the said vote by ballot upon the adoption of said agreement, were held and taken separately from the meeting of stockholders, and the vote of said Acquackanonk Water Company, East Jersey Water Company, Kearney Water Company and Passaic Water Company.

5. That the principal office of the said Acquackanonk Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said East Jersey Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that

John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Kearney Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Montclair Water Company in the State of New Jersey is at 30 Park Street, in the Town of Montclair, and that John Schetty is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Passaic Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served.

In Witness Whereof I have hereunto set my name as Secretary of Montclair Water Company, and the seal of said Montclair Water Company, this 31st day of May, Nineteen hundred and twenty-three.

(seal) Walter W. Corrigan,
Secretary of
Montclair Water Company.

State of New Jersey,
County of Passaic, } ss.:

Be it Remembered that on the 31st day of May, in the year of our Lord, One thousand nine hundred and twenty-three, before me, a Notary Public of the State of New Jersey, personally appeared Walter W. Corrigan, to me known, who,

being by me duly sworn according to law, on his oath doth depose and make proof to my satisfaction that he is the Secretary of the said Montclair Water Company, one of the corporations mentioned in the foregoing agreement, that he well knows the seal of said corporation; that it was so affixed to said agreement in pursuance of a resolution of the Directors of the said corporation; that John H. Cook is the Vice President of the said corporation, Montclair Water Company; that he saw the said John H. Cook, as such Vice President, affix said seal thereto, sign and deliver said agreement, and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of the said corporation in pursuance of said resolution, and that this deponent signed his name thereto at the same time as a subscribing witness, and that this deponent is the same person who, as Secretary of said corporation, Montclair Water Company, executed the foregoing certificate.

Sworn to and subscribed before me
at Paterson, N. J., the day and
year aforesaid.

(seal) Gustave Leimbacher,
Notary Public of N. J.

Defendant's Exhibit B.

PASSAIC WATER COMPANY

Certificate

State of New Jersey, }
County of Passaic, } ss.:

Walter W. Corrigan, Secretary of Passaic Water Company, incorporated by the Act of the Legislature in 1852, does hereby certify:

1. That the foregoing agreement of consolidation of said corporation with Acquackanonk Water *Water* Company, East Jersey Water Company, Kearney Water Company and Montclair Water Company, was made by the Directors of said Passaic Water Company, at a duly convened meeting called for that purpose.

2. That the said agreement was submitted to the stockholders of said Passaic Water Company at a meeting thereof called on the 31st day of May, 1923, for the purpose of taking the same into consideration, of which meeting twenty days' notice of the time, place and object thereof was mailed to the last-known post office address of each of said stockholders.

3. That the said agreement was considered by the said stockholders at said meeting and a vote of the stockholders was taken by ballot for the adoption or rejection of said agreement, and that stockholders owning more than two-thirds of the shares of the capital stock of said Passaic Water Company voted in favor of the adoption of said agreement.

4. That the meeting of stockholders of Passaic Water Company, and the said vote by ballot upon the adoption of said agreement, were held and taken separately from the meeting of the stockholders and vote of said Acquackanonk Water

Defendant's Exhibit B.

Company, East Jersey Water Company, Kearney Water Company and Montclair Water Company.

5. That the principal office of the said Acquackanonk Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of said East Jersey Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Kearney Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Montclair Water Company in the State of New Jersey is at 30 Park Street, in the Town of Montclair, and that John Schetty is the agent therein and in charge thereof upon whom process against the Company may be served; and that the principal office of the said Passaic Water Company in the State of New Jersey is at 158 Ellison Street, in the City of Paterson, and that John H. Cook is the agent therein and in charge thereof upon whom process against the Company may be served.

In witness whereof, I have hereunto set my name as Secretary of Passaic Water Company, and the seal of said Passaic Water Company, this

Defendant's Exhibit B.

31st day of May, Nineteen hundred and twenty-three.

WALTER W. CORRIGAN,
Secretary of
PASSAIC WATER COMPANY.

(SEAL)

STATE OF NEW JERSEY }
COUNTY OF PASSAIC } SS.:

BE IT REMEMBERED that on the 31st day of May, in the year of our Lord, One Thousand nine hundred and twenty-three, before me, a Notary Public of the State of New Jersey, personally appeared WALTER W. CORRIGAN, to me known, who, being by me duly sworn according to law, on his oath doth depose and make proof to my satisfaction that he is the Secretary of the said Passaic Water Company, one of the corporations mentioned in the foregoing agreement; that he well knows the seal of said corporation; that it was so affixed to said agreement in pursuance of a resolution of the Directors of the said corporation; that John H. Cook is the Vice President of the said corporation, Passaic Water Company; that he saw the said John H. Cook, as such Vice President, affix said seal thereto, sign and deliver said agreement, and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of the said corporation in pursuance of said resolution, and that this deponent signed his name thereto at the same time as a subscribing witness, and that this deponent is the same person who, as Secretary of said corporation, Passaic Water Company, executed the foregoing certificate.

Defendant's Exhibit B.

Sworn to and subscribed before me
at Paterson, N. J., the day and
year aforesaid.

GUSTAVE LEIMBACHER,
Notary Public of N. J.

(SEAL)

Duplicate Original

filed Oct. 30th, 1923.

THOMAS F. MARTIN,
Secretary of State.

(SEAL)

Defendant's Exhibit B.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITY COMMISSIONERS

In the Matter of the Application of the Acquackanonk Water Company, East Jersey Water Company, Kearney Water Company, Montclair Water Company and Passaic Water Company for Approval of Consolidation Agreement forming Passaic Consolidated Water Company.

In the Matter of the Application of the Acquackanonk Water Company, East Jersey Water Company, Kearney Water Company, Montclair Water Company and Passaic Water Company for Approval of the Issuance of Capital Stock of Passaic Consolidated Water Company for the purpose of said consolidation to the amount of Thirty-five Thousand Shares at the par value of One Hundred Dollars ($100) a share.

Certificate.

Application being made to the Board of Public Utility Commissioners by the Acquackanonk Water Company, East Jersey Water Company, Kearney Water Company, Montclair Water Company and Passaic Water Company for approval of consolidation and merger forming Passaic

Defendant's Exhibit B.

Consolidated Water Company and of the issuance by the latter of its capital stock in the amount of Three Million, Five Hundred Thousand Dollars ($3,500,000) par value for the purpose set forth in said petition, which by reference thereto herein is made part thereof, and the said Board being satisfied after investigation and due hearing that the proposed issue of said capital stock is to be made in accordance with law and the purpose of said issue being approved by the Board, the said Board

HEREBY GRANTS said application (subject to Conference Order Number Seven), and APPROVES said proposed consolidation and issue of said capital stock by said Company.

Dated Octobed 26th, 1923.

BOARD OF PUBLIC UTILITY COMMISSIONERS,

By (signed) H. V. OSBORNE,
President.

(SEAL)

Attest:

(signed) ALFRED N. BARBER,
Secretary.

I HEREBY CERTIFY the foregoing to be a true copy of Certificate adopted by the Board of Public Utility Commissioners at a meeting held Friday, October 26, 1923, and recorded in the minutes of said meeting.

ALFRED N. BARBER,
Secretary.

(SEAL)

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals

THE NEW YORK AND NEW JERSEY WATER CO. ET AL.,
Complainants-Appellants,
v.
PASSAIC CONSOLIDATED WATER COMPANY,
Defendant-Respondent.

No. 32.
Oct. Term,
1927.

SUPPLEMENTAL MEMORANDUM FOR APPELLANTS.

Several inaccuracies in the Brief of the Respondent require notice:

1. On page two it is asserted that the contract between the East Jersey Company and the complainants obligated the former to deliver to the latter all the water the complainants might need to furnish a supply to Bayonne, Kearny, Harrison and East Newark.

The fact is (Schedule A, p. 19) that the agreement was to deliver and take all the water required by the complainants for all their present and future uses in Hudson County.

2. On page four it is said the hearing before the Utility Board began in March, 1922, and continued until the latter part of the year. Apart from the fact that this is entirely *ab extra* the record, it completely

ignores the fact that a long time elapsed in which the question as to whether the East Jersey Company was a utility was being bruited in the Board, in the Supreme Court and in this Court.

3. The brief in its discussion with reference to the reserved police power over utility contracts, completely ignores the fact that the Suburban Company has a private contract with the Clark Thread Works, in which the public has no interest whatever, and which is beyond the reach of the Board. *Arkansas Gas Co.* v. *The Railroad Co.,* 261 *U. S.* 379, and other cases cited on page 45 of the main brief for appellants.

4. It is claimed that both the Supreme Court and this Court have passed upon the question of the necessity of notice. This is an error. An examination of the opinion of Mr. Justice Bergen in *Edison Storage Battery* v. *Public Utility Board,* 93 *Law* 301, in the Supreme Court, shows that it was there held that the fact that the objecting companies were all heard on the rehearing that was had, gave them their day in court. No case in this or any other court of this State has undertaken to interpret the statute and rule on which we rely, otherwise than that a party to a contract under which private as well as public rights are affected by any change of rate is not to be served with a notice.

5. Again the brief departs from the record when on page 19 it asserts the publication in the public press of the notice of hearing there referred to antedated the taking of proofs with regard to the rate to be established by the East Jersey Company. I know nothing whatever about the matter, and it is of course improper for counsel to draw any inference from any such unproven facts. The same thing is true with regard to the statement on page 21, to the effect that the conversation between Mr. Dana and Mr. Cook occurred several months before the taking of certain testimony.

6. At the top of page 21, of respondent's brief, it is stated "a copy of the East Jersey Water Company's amendments of February 1, 1922, was mailed to the

appellants by the East Jersey Company. This is an error, as an examination of the exhibits referred to will disclose.

7. The effort to confuse the Court by endeavoring to tie up the appellants with the City of Bayonne is quite unfair. Bayonne was named by the East Jersey Company in the proceedings as a party to be affected by the rate and it was specially notified by the Board of the pendency thereof; it appeared and contested valiantly.

8. The amendment of Chapter 130 of the Laws of 1918 to section 38 of Chapter 195 of the Laws of 1911 (the original Utility Act) does not enlarge the right to review by *certiorari.* All that this amendment effected was to authorize the Supreme Court or this Court, on review by *certiorari,* to order a rehearing by the Utility Board. In fact, the words in the original act (section 38) authorizing a review of any order "on the application of any person or public utility affected thereby" are omitted from the amendment, and it is *only parties to the proceedings* who, claiming to be injured, may now sue out a *certiorari.* Indeed, Mr. Justice Bergen, delivering the opinion of the Supreme Court in the *Edison Case, supra* (93 *N. J. Law* 301, 304), said:

> "Whether the Utility Commissioners are required to determine private rights arising on contracts, in fixing rates for the public good, and to discriminate between those of the public who have contracts and those who have not, and thus make a discrimination according to agreements between citizens, or whether their orders should be general, as to all who are within the class affected, we are not required to pass on in this case, although inclined to the opinion that such orders should be general, leaving the contracting parties to settle their rights in an action, raising that question, in which they are parties, *and not by certiorari.*

This was in 1919.

9. The respondents argue we have been heard on the question of the sufficiency of the rates in this case, that the dismissal of the bill was general, and therefore we cannot claim a repeat to our day in court. The Vice-Chancellor refused to go into the question of rates until he determined the question whether we were bound by the action of the Board. He then held we were bound and so dismissed the bill. Of course, if we are not bound then, under the cases cited in the main brief, we are entitled to be heard. See, especially, *Reagan* v. *Farmers Loan and Trust Co.*, 154 *U. S.* 362. Cited in our main brief on page 47.

10. On pages 28 and 29, the respondent asserts twice that the appellants have thus far unjustifiably opposed the proceedings on the part of the West Hudson towns to have the rates to be charged them by the appellants fixed by the Utility Board. This is a grossly misleading statement. It is true that after those proceedings were commenced before the Board, Chief Justice Gummere, after argument, allowed a *certiorari* to determine the question which impressed him as important, whether the appellants were public utilities. The Supreme Court (135 *Atl. Rep.* 923) decided they were utilities January 19, 1927. The opinion in this case was filed February 17, 1927 (Record, p. 108) and the decree was advised April 18, 1927. No appeal was taken from the decision of the Supreme Court, and should I follow the practice of my adversaries, I might quote a letter from me to the Utility Board, written shortly after the decision of the Supreme Court, urging it to proceed with the matter.

Respectfully,

ROBERT H. McCARTER,

Counsel for Appellants.

October Term, 1927.

New Jersey Court of Errors and Appeals

Between

THE NEW YORK AND NEW JERSEY WATER COMPANY AND NEW JERSEY SUBURBAN WATER COMPANY, corporations,
Complainants-Appellants,

and

PASSAIC CONSOLIDATED WATER COMPANY, a corporation,
Defendant-Respondent

ON APPEAL FROM CHANCERY.

BRIEF FOR DEFENDANT-RESPONDENT.

Nature of Suit.

This is an appeal from a decree of the Court of Chancery in a suit brought by the appellants for the specific performance of certain contracts made by the East Jersey Water Company (subsequently incorporated by merger into the Respondent) under which they contend that the respondent is obligated to deliver water to them for less than the rate of $78. per million gallons fixed therefor by the Board of Public Utility Commissioners.

The issues in this suit are identical with those in *Bayonne* v. *Passaic Consolidated Water Co.*, 98 N. J. Eq. 174, where a decree advised by Vice Chancellor Bentley dismissing a similar bill was unanimously affirmed by this Court on his opinion at the January 1926 Term (not yet re-

ported), save in the single one arising from the fact that the appellants were not directly notified in writing by the Board of Public Utility Commissioners of its proceedings resulting in the establishment of such $78. rate and did not participate therein. The appellants claim that the absence of such notice and their non-participation in such proceedings makes the decision of the Board establishing such rate a nullity as to them. This constitutes their sole ground of appeal from the decree below.

As will sufficiently appear, however, not only was full public notice of such proceedings given but the appellants had ample actual notice thereof and deliberately refrained from participating therein. On behalf of the respondent it is respectfully submitted that the fact that direct written notice was not given the appellants by the Board and that they did not appear therein in nowise distinguishes this case from the Bayonne case, and that the decree below dismissing the appellants' bill was required and should be affirmed.

Statement of the Case.

The statement of facts in appellants' brief, no doubt inadvertently, contains some inaccuracies and omissions, and by reason thereof, as well as the manner in which such statement is framed a brief independent statement of the facts is required.

By means of a series of contracts made many years ago the East Jersey Water Company obligated itself to deliver to the appellants forever all of the water that the latter might need to furnish a supply of water to the City of Bayonne, the Towns of Kearny and Harrison and the Borough of East Newark, as well as to private consumers. (Exhibit P-8, Rec. p. 142; P-3, Rec. p. 19; P-16, Rec. p. 184; P-17, Rec. p. 179).

Having secured these contracts the appellants made or took over contracts for supplying water to Kearny, Harrison and East Newark (hereinafter referred to as the West Hudson Towns), for their use and that of their inhabitants, and to the Clark Thread Company, for varying terms of years, as a result of which the appellants received $82.50 per million gallons for the water supplied by them (Exhibits P-4; Rec. p. 129; P-6, Rec. p. 137; P-7, Rec. p. 139; P-10, Rec. p. 153; P-13, Rec. p. 170; P-11, Rec. p. 157; Rec. p. 55, lines 10-33, Exhibit P-24, Rec. p. 198).

Under their contracts with the East Jersey Water Company the appellants were required to pay for the water delivered to them for Bayonne a rate much less than $78. per million gallons. For the water supplied by the appellants to the West Hudson Towns and the Clark Thread Company, these contracts fixed a rate of $30. per million gallons, plus one-half of whatever sum the appellants received from their consumers in excess of $30. per million gallons, so that upon the basis of such $82.50 rate the East Jersey Water Company received for the water delivered by it to the appellants for these consumers $56.25 per million gallons. On September 6, 1918 (which was several years *before* and not *after* the decision of the Board fixing the $78. rate as is more than once erroneously stated in appellants' brief), Bayonne acquired from the appellants their pipe lines by which Bayonne was supplied with water and also the appellants' rights under their contracts with the East Jersey Water Company in so far as they related to the Bayonne supply (Rec., p. 54, lines 8-29; p. 59, line 16; p. 60, line 27).

Thus matters stood until early in 1922. At that time the East Jersey Water Company was delivering water to Bayonne and also to the appellants for the West Hudson towns and the Clark Thread

Company at the said contract rates. The Acquackanonk Water Company, Passaic Water Company, Montclair Water Company and the Kearny Water Company, all affiliated with the East Jersey Water Company, were then engaged in delivering water in other nearby municipalities. In February, 1922, these five companies joined in filing amended rate schedules with the Board of Public Utility Commissioners materially increasing their rates (Exhibits D-12, Rec., p. 243; D-13, Rec., p. 246). The Board, following its usual practice, suspended these rates and directed a hearing to be had thereon (Exhibit D-22, Rec., p. 308). This hearing began in March, 1922, and continued until the latter part of that year. On March 27, 1923, the Board rendered its decision in and by which it found and determined that

"* * *

(3) The companies as a group are entitled to an increase in gross revenue.

(4) The rates heretofore charged by the various companies now taking part in this proceeding do not properly reflect the respective costs of service in the different parts of the territory and to the different classes of service and are therefore unjust and unreasonable and unduly discriminatory.

(5) The schedules filed and proposed for adoption by the companies are likewise unjust and unreasonable.

(6) The petitioners may therefore file schedules as given below, to become effective January 1, 1923, in accordance with the stipulation entered into by the companies before this Board.

Schedule of Rates
East Jersey Water Company

Wholesale service to municipalities of Totowa, Bloomfield, Nutley and Bayonne and to the Little Falls Water Company and to the New Jersey Suburban Water Company and

any other comparable wholesale customers $78. per million gallons."

(Exhibit D-19, Rec. p. 257 at pp. 289-290.)

In its decision the Board also stated:

"The East Jersey Water Company supplies water to the City of Bayonne and to the New Jersey Suburban Water Company, which in turn supplies the Towns of Kearny, Harrison, and East Newark, from their connection with the 42 inch Kearny Extension of the East Jersey Water Company at the corner of Kearny Avenue and Belleville Turnpike."

(Exhibit D-19, Rec. p. 257 at p. 265.)

Schedules containing the rates so authorized were thereupon filed by the five companies (Exhibit D-47, Rec. pp. 342-353).

Following this decision the five companies, Bayonne and Montclair promptly sued out writs of certiorari requiring the Board to return the proceedings so had before it. Said return was duly made, the certiorari proceedings consolidated and a full hearing had before the Supreme Court. That Court on December 18, 1923, entered judgment as follows:

"The court having inspected the transcript and proceedings, together with the report and order of the Board of Public Utility Commissioners returned with the certiorari in this matter, and the reasons filed by the prosecutor, and having heard the argument of counsel thereon and maturely considered the same,

Do Order that the report and order of said Board of Public Utility Commissioners be in all things affirmed."

(Exhibit D-20, Rec., p. 305.)

The opinion of the Supreme Court upon which the above recited judgment was entered is not officially reported, but will be found in 125 Atl. Rep. p. 33 and 1 N. J. Misc. Rep. 575. The five

New Jersey State Library

companies and Bayonne appealed to this Court which on June 2, 1924, unanimously affirmed this judgment "in all things", on the opinion of the Supreme Court (Exhibit D-21, Rec. pp. 306-307; 100 N. J. L. 169; see also *Acquackanonk Water Co.* v. *Public Utility Commissioners,* 100 N. J. L. 169). Notwithstanding such proceedings and their confirmation Bayonne refused to pay the rate so allowed the East Jersey Water Company, claiming that notwithstanding the fixing of such new $78. rate it was entitled to receive water from the East Jersey Water Company at its old contract rate. This suit was heard before Vice Chancellor Bentley and his decree dismissing the bill unanimously affirmed by this Court. *Bayonne* v. *Passaic Consolidated Water Company, supra.*

Under the Points I and II of our argument we will fully review and discuss the facts with regard to the notice and actual knowledge which the appellants had of the said proceedings before the Board resulting in the fixing of $78. as the rate which the East Jersey Water Company should charge all of its customers, including the appellants for the water which they furnish to the West Hudson towns and The Clark Thread Company. All that need be added now is that in the Fall of 1923 the five affiliated companies above referred to were consolidated into the respondent (Defendant's Exhibit B, Rec. pp. 450-477) and that such Consolidated Company is entitled and required to charge the rates so fixed for the East Jersey Water Company.

ARGUMENT.

I.

Appellants were not entitled to any special or individual notice of the proceedings before the Board of Public Utility Commissioners resulting in the establishment of the $78. rate.

As appears from the appellants' brief their claim that the rate of $78. established by the decision of the Board rendered March 27, 1923, and upheld by both the Supreme Court and this Court is not effective as to them, but that they are only required to pay their old contract rate, is based *solely* upon the ground that they were not given any special or individual notice of, and did not participate in, the proceedings resulting in this decision. Such contention is entirely without merit, and this for each of the following reasons:

(a) *The contracts ~~requiring~~ providing for the delivery of water to the appellants at a rate of $56.25 per million gallons gave them no right to the continuance of that rate after the exercise by the State of its police power to regulate the rate for this service.*

This is conceded at the very outset of the appellants' argument (Appellants' brief, p. 27) as indeed it must be in view of the decision of this Court in *Atlantic Coast Electric Ry. Co.* v. *Public Utility Board,* 92 N. J. L. 168; *Hackensack Water Company* v. *Public Utility Commissioners,* 96 N. J. L. 184; *Acquackanonk Water Co., et al.* v. *Bayonne,* 100 N. J. L. 169 (adopting the Supreme Court's opinion reported in 1 N. J. Misc. Rep. 575, not officially reported), and *City of Bayonne* v. *Passaic Consolidated Water Company,* decided

at the January Term 1926, not yet reported, and adopting the opinion of Vice Chancellor Bentley, 98 N. J. Eq. 174; and the long line of decisions of the United States Supreme Court culminating in *Union Dry Goods Co.* v. *Georgia Public Service Corp.*, 248 U. S. 372 (1919).

(b) *Having no right to the continuance of their preferential contract rate after the fixing of a just and reasonable uniform rate by the proper State authorities under the State's regulatory power over all public utility rates, the appellants in the absence of express statutory requirement, were not entitled to any specific or individual notice of the proceeding in which the $78. rate was established.*

The proceeding resulting in the establishment of the $78. rate by the Board was not directed against the appellants, or any other of the consumers served by the East Jersey Water Company, whether holding contracts with it or not. It was one to fix a uniform, just and reasonable rate for all such consumers. No contract for a lesser rate could be sustained in such a proceeding. The giving of notice or the total absence of notice to the holder of such a contract could not in anywise effect the rate thereafter to be charged for the public utility service provided for therein. Having no right to the continuance of the contract rate when the State in a proper proceeding fixed a just and reasonable rate for such service to all of its citizens who might require it, the holder of such a contract, in the absence of express legislative requirement, is not entitled to any special notice of such proceeding, or to any notice other than that given to the public generally.

The situation is entirely different from those under review in the cases relied upon by the appellants holding that one cannot be deprived of property or a vested right without due process

of law. In *Shaw* v. *Standard Piano Co.*, 87 N. J. Eq. 350, it was held that the appointment of a receiver under Sec. 68 of the Corporation Act without affording the company an opportunity to be heard upon the application, was a taking of its property without due process of law because such appointment divested the company of all of its real and personal property and all its franchises, rights, privileges and effects. In *Balling* v. *Board of Excise of the City of Elizabeth,* 79 N. J. L. 197, the revocation of the prosecutor's license to keep an inn and tavern deprived him from carrying on his chosen licensed occupation for a year, which right was guaranteed to him by our State Constitution. In *D. L. & W. R. R. Co.* v. *Public Utility Board,* 84 N. J. L. 619, the prosecutor had notice of the proceeding complained of and participated therein and the order of the Board was affirmed. However, the Court found that the order was broader than the investigation warranted. It pointed out that a railroad company's right to charge a particular rate for a service could not be judicially effected without notice to it of the proceedings in which its rates were sought to be effected. In *Chicago, etc. Railway Co.* v. *Minnesota,* 134 U. S. 418, the Court reviewed an order of the Railroad and Warehouse Commission of Minnesota reducing the railway company's rates. The order was made under a statute which not only required no notice to the Railroad Company of the hearing but afforded it no opportunity to introduce witnesses before the commission and deprived it of any right of review of the Board's order in any Court. The railway company in fact had notice of the proceeding and appeared therein. The Court held, however, that such an act was unconstitutional and set aside the order. Of course, our statute is radically different from the one involved in that case. It not

only requires notice to the public utility whose rates are to be revised but an opportunity for it to be fully heard thereon before the Commission and to have its order reviewed by the Supreme Court and this Court, and whenever it shall appear equitable and just, a rehearing is provided at which additional testimony may be produced (P. L. 1918, p. 305). The other cases cited by the appellant are principally those where condemnation proceedings were undertaken, or taxes or assessments sought to be imposed as liens, or process in the nature of an execution secured without any notice whatsoever to the one who would thus be deprived of property.

There is nothing in any of the cases cited in the appellant's brief to indicate that notice to every or any consumer of a utility's service is required in a proceeding to fix its rates. The present case is no different in principle from the numerous cases holding that in a rate proceeding passengers of a railway or trolley line, telephone subscribers, or the consumers of gas or electric current, are not entitled to individual notice, and that to attempt to require this would render utterly impractical the exercise of the State's power to regulate rates. The fundamental error of the appellant's argument is disclosed by their contention that the proceedings resulting in the establishment of the uniform rate of $78. for them and for the other comparable customers of the East Jersey Water Company, was one in which the State undertook "to modify such contracts." The "rights", which the appellants assert could not be modified without due process of law, were not in fact rights at all but a mere claim to an unduly favorable rate for a public service under contracts of a character uniformly held

to be ineffective when the State has fixed a higher rate as just and reasonable.

The same erroneous view is also embodied in the portion of the appellants' brief in which the proceeding before the Public Utility Board is characterized as judicial or *quasi* judicial, for as this Court held in *Hackensack Water Co.* v. *Public Utility Commissioners, supra*:

> "The power to fix rates is not a judicial function but a legislative one."

and the proceeding in question therefore was necessarily legislative.

As was said by the United States Supreme Court in *Home Telephone Co.* v. *Los Angeles,* 211 U. S. 265, 278 (1908):

> "But rate regulation is purely a legislative function and, even where exercised by a subordinate body upon which it is conferred, the notice and hearing essential in judicial proceedings and, for peculiar reasons in some forms of taxation, would not seem to be indispensable."

In *Randall Gas Co.* v. *Star Glass Co.,* 88 S. E. 840 (Supreme Ct. of App. of W. Va. 1916), the Court said in part:

> "Process in the form of notice to a corporation to be affected by a contemplated or intended order of the Commission * * * or to the patrons of such a corporation, is neither contemplated, nor provided for, by the act, nor is it essential to the validity thereof. The power conferred upon the Commission is legislative in character. * * * Upon its own motion or otherwise the Commission may investigate any such rate, and, if necessary, so alter it as to make it conform to the requirements of the statute. The omission of the requirement of notice assimilates the procedure of the Commission to that char-

> acterizing legislative action, and it is justified and sustained by those reasons of public policy upon which notice is dispensed with in legislation."

However, we need not concern ourselves further at this point with the alleged failure to give the appellants the kind of notice which they claim they should have had of the proceedings before the Board, for as will sufficiently appear (1) they had full and timely actual knowledge of such proceedings; (2) the statute under which the proceedings were had afforded the appellants ample opportunity to review the Board's decision in the Supreme Court and in this Court and to obtain a rehearing before the Board if equity or justice required, and (3) if such method of review was not their sole remedy, to raise as they have by their bill in this independent suit whatever questions they desired to have the courts pass upon.

(c) *There is no statutory requirement entitling consumers to individual notice of a proceeding for the fixing of rates for a public utility service.*

Under the Public Utility Act of 1911 a proceeding for a change in an existing rate for a Public Utility may be instituted by the Board either without any previous action on the part of the Utility, or after the filing by the Utility of schedules of increased rates. In the former case the proceeding is governed by Section 16 of the Public Utility Act (P. L. 1911, p. 377), which naturally and properly provides for a hearing upon notice to the public utility whose rates are being investigated or attacked. In the latter case, the proceeding is governed not by section 16 but by section 17 (h). That the proceeding here was under section 17 (h) is admitted in the appellants' statement of facts (appellants' brief, pp. 7-8), although

this is controverted in the argument made on their behalf. A reading of this section, however, shows that such admission is required, for it provides that:

> "When any public utility as herein defined shall increase any existing individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage and other special rates, or change or alter any existing classification, the board shall have power either upon written complaint or upon its own initiative to hear and determine whether the said increase, change or alteration is just and reasonable. * * * The board shall have power pending such hearing and determination to order the suspension of the said increase, change or alteration until the said board shall have approved said increase, change or alteration, not exceeding three months" (P. L. 1911, p. 380).

In this case there was no action by the Board on its own initiative for a change in the existing rate and no complaint was filed with regard thereto. On the contrary, the proceedings were initiated solely because of the filing on February 1, 1922, by East Jersey Water Company and its associated companies of their amended rate schedules (D-12, Rec., pp. 243-245; D-13, Rec., pp. 246-250), which schedules were suspended by the Board on February 15, 1922, by an order which fixed a time and place for a hearing thereon (Exhibit D-22, Rec., p. 308). This was in entire conformity with the procedure provided for in Section 17 (h) of the statute. In accordance with the practice of the Board a copy of its order suspending the rates and fixing the time and place for the hearing was sent to the public utilities, whose rates were thus suspended (Rec., p. 80, lines 38-40). No further notice of the hearing was required, although as appears from appellants' brief, full public notice was also given.

This point has already been passed upon by the Board itself, by the Supreme Court and by this Court. In the *Matter of the Application of an Increased Rate to Contracts with Public Service Electric Company for Electric Power, N. J. Public Utility Repts.*, Vol. 6, p. 239, the Board had approved of a schedule of increased rates for electric power filed by the Public Service Electric Company. Thereafter the holders of numerous contracts providing for power at lower rates claimed before the Board that they had received no notice of the proceedings in which the new schedules were approved, that it was necessary to give notice thereof to the holder of each such contract and that therefore, notwithstanding the order of the Board approving the new rates they were entitled to the benefit of their contract rates. The Board after pointing out that the original proceeding was based upon the filing by the Public Service Electric Company of a new schedule of rates and that the proceeding was one to determine whether the proposed rates were just and reasonable, said, in denying the application:

> "Under subdivision (h), paragraph 17, P. L. 1911, 'An Act Concerning Public Utilities', it does not appear that it is necessary for any notice to be given in a proceeding to hear and determine whether an increase, change or alteration in rates is just and reasonable; but on the increase of the rates the Board has power, upon written complaint, or upon its own initiative, to hear and determine the justness and reasonableness of the rates, and also power pending the hearing and determination, to order a suspension of the increase" (p. 246).

This decision of the Board was affirmed by the Supreme Court on certiorari, *Edison Storage Battery Co.* v. *Public Utility Board,* 93 N. J. L. 301.

The foregoing clearly demonstrates the incorrectness of the statement on p. 36 of appellants' brief that it is the settled practice of the Board to give notice in such cases.

In *O'Brien* v. *Public Utility Board,* 92 N. J. L. 44, the Supreme Court reviewed on certiorari an order of the Board fixing as just and reasonable a charge on all initial transfers issued by the Public Service Railway Company to its passengers in addition to the charges theretofore exacted. On behalf of the prosecutor it was claimed that this order was invalid because made ~~upon~~ without a valuation by the Board of the Company's property, at a hearing without notice. In affirming the Board's order the Supreme Court said (p. 46):

> "The prosecutor assumes that the only power of the Board in respect to rates is to fix just and reasonable individual rates, after hearing upon notice, as provided in paragraph (c) of section 16 of the Public Utility Act. This section may properly be described as the section of the act which authorizes the board to take proceedings adverse to the 'public utility' and to require it to do what it may not want to do. It is because the proceedings under that section are *in invitum,* that care is taken to provide for notice and a hearing, without which the proceedings would be without due process of law. If section 16 were the only section of the act applicable, there would be some force in the prosecutor's contention. There are other sections which prevent this narrow construction of the act. * * * The act provides not merely for proceedings *in invitum,* but by paragraph (h) of section 17, for agreement between the board and the 'public utility'. That paragraph provides for an increase of rates by the 'public utility' itself, authorizes the board to hear and determine whether the increase is just and reasonable, and makes it the duty of the board to approve the increase

> upon being satisfied that the same is just and reasonable. The difference in the two methods is fundamental. * * * The contrast between the method of section 16 and the method of section 17 could not be better shown than it is by making the board the actor in section 16 (c), and making the 'public utility' the actor in section 17 (h). * * * In fact the exact method provided by section 17 (h) has been pursued in this case."

The decision of the Supreme Court in this case was affirmed by this Court which, after reviewing other phases of the case, said:

> "All of the other questions raised on the argument are sufficiently dealt with by Mr. Justice Swayze in the opinions read by him for the Supreme Court, and it is not necessary here to re-state them." Id. p. 587.

The rule of the Board referred to on page 9 of appellants' brief providing that "Notice of hearing will be given by the Secretary to parties to the proceedings before the Board", did not require that notice of the proceeding in question should be given to the appellants or any other consumers but merely to the public utilities whose rate schedules had been suspended, and which if determined to be unjust or unreasonable would not become effective. This rule was in force at the time of the proceedings of the Board reviewed and affirmed in the Edison Storage Battery Company case, supra, in which, as already appears, no special or individual notice thereof was given to the holders of contracts which were held to have become ineffective by reason of the Board's order. Yet the Court found that no such notice was required, saying:

> "The record shows that the Electric Company extensively published its intention to

> make the additional charge" (93 N. J. L. 301, at p. 302).

In the decision so affirmed the Board said:

> "Whether or not notice was required, it is elementary that it was unnecessary to give special notice to every one affected, because, if this were required, it would be necessary in the fixing of all rates, or determination of the reasonableness thereof, to give notice to every patron of the utility that might be affected thereby. This is impracticable, and would be impossible in the majority of cases; * * * The powers of utility regulation are so universally connected with the welfare of all members of society, as such, that this Board obtains jurisdiction of the subject-matter without giving special notice to each individual affected.
>
> The holders of contracts, who knew of the hearing and did not question the increase, apparently relied on their power contracts. It is needless to reiterate that these contracts were made, and are subject to the Board's paramount right to regulate rates, by an increase or decrease thereof."
>
> (6 *N. J. Public Utility Reports* 239 at pp. 246-247.)

In view of this showing the learned Vice Chancellor, in his opinion below, properly said (Rec. pp. 110, 111):

> "It must be borne in mind that the Board of Public Utility Commissioners was created in the public interest to meet a need that was fast becoming vital in importance. The Board cannot, in reason, be expected, in the transaction of its multitudinous affairs, to reach every last individual who may be affected by its ruling. It has said itself that it would be impracticable in most of the cases appearing before it, to give special notice to everyone to be affected. * * * For the reason already expressed, it would seem a

dangerous thing to lay down the rule sought to be declared, namely, that the notice referred to in the act and rule, means notice upon everybody who will be affected by the decision.''

II.

Full public notice was given of the filing of the amended rate schedules of the East Jersey Water Company and of the proceedings resulting in the fixing of the $78. rate, and the appellants had full and timely actual knowledge thereof.

(a) *Such public notice was given.*

As stated in appellants' brief the East Jersey Water Company and the companies affiliated with it repeatedly published notice of the amendments to their rate schedules filed on February 1, 1922, during the period from February 4th, to February 25th, 1922, in newspapers circulating in Kearny, Harrison, East Newark, Newark, Jersey City, Bayonne, Nutley, Clifton, Passaic, Paterson, and Montclair, and any other municipalities in which any of them rendered service. A copy of the Board's order dated February 15, 1922, suspending the rates and ordering a hearing thereon was also mailed by the Board to the officials of seventeen municipalities including each of the West Hudson towns, Bayonne, and every other municipality in which any of the companies furnished service. (Rec. p. 80, line 19 to p. 81, line 10.) Early in the proceedings the Board ruled that the East Jersey Water Company was not a public utility and therefore not entitled to have a rate established for its service. The East Jersey Water Company certioraried this order and pend-

ing the hearing in the Supreme Court the taking of proofs with regard to any rate for its service was discontinued. In July, 1922, such order was reversed, the Supreme Court ruling that this company was a public utility. This decision was affirmed by this Court (Exhibit D-17, Rec. p. 254; D-18, Rec. p. 256; *Acquackanonk Water Co.* v. *Public Utility Board,* 97 N. J. L. 366, *affirmed East Jersey Water Co.* v. *Board of Public Utility Commissioners,* 98 N. J. L. 449). In September, 1922, before the taking of any proofs with regard to the rate to be established for the East Jersey Water Company was begun, the following notice was published in newspapers circulating not only in each of the West Hudson Towns and Bayonne, but in every other municipality in which any of the Companies rendered services.

"Notice of Rehearing

Notice is hereby given that there is pending before the Board of Public Utility Commissioners of the State of New Jersey, a hearing on schedule of rates of the undersigned companies; that the next hearing has been set for October 25, 1922, at the Kinney Building, Newark, N. J., at 10:45 A. M. At that time evidence will be offered supporting the schedule of rates for the East Jersey district'' (Rec. pp. 90-91).

At about the same time this notice was also served upon the officers of all of these municipalities (Rec. p. 92, lines 10-25).

Surely all of this constituted the giving of unusually full public notice. Moreover, the matter of materially changing the rates charged for water in these various municipalities was one of much public interest and comment in the newspapers referred to during the period of nearly a year that the hearing covered. As appears from

the evidence of the President of each of the appellant companies the principal office of each thereof was located in Bayonne during all of the years 1922 and 1923 and its Treasurer's office was there (Rec. p. 94, lines 20-37, p. 98, line 35).

This showing clearly warranted the following question and reply thereto appearing in the opinion below (Rec. pp. 111-112):

> "Can there be the slightest question in anyone's mind that the publication of the notice in this case came to the attention of the officers and agents of complainants? Certainly, there can be none in the mind of any reasonable man" (Rec., pp. 111-112).

Indeed, the appellants make no contention to the contrary, claiming merely that because their knowledge was not derived from a notice sent them by the Board, the rate fixed by the Board cannot be enforced against them.

In the Matter of the Application of an Increased Rate to Contracts with Public Service Electric Company for Electric Power, supra, the Board, in its decision, said:

> "It is claimed, however, that subdivision (c), section 16 of the said act applies, which provides for hearings upon notice, by order in writing, to fix just and reasonable rates, etc.
>
> Assuming that notice is necessary, an inspection of the records in the original case indicates that substantial notice of the application was given, through newspapers and otherwise, of the proposed increase of rates and hearing."

(b) *The appellants had full and timely actual knowledge of the filing of the East Jersey Water Company's amended rate schedules and the proceedings had thereon.*

A copy of the East Jersey Water Company's amendments of February 1, 1922, was mailed to the appellants by the East Jersey Water Company on February 9, 1922 (Exhibits D-15, Rec., p. 251, and D-16, Rec., p. 253). They knew, therefore, that such amendments would go into effect on March 1, 1922, unless suspended by the Board under section 17 (h). As no attempt was made to enforce the increased rate between March 1, 1922, and January 1, 1923, the appellants must have known of their suspension and the hearing with regard thereto. This, moreover, is not left to inference as Mr. Cook, the President of the respondent, testified that as early as May, 1922, he discussed the progress of the pending rate proceedings with Mr. Dana, the President of each of the appellants (Rec., p. 105, lines 11-29). Mr. Dana, although called in rebuttal, in nowise attempted to contradict this evidence. This conversation occurred at least several months before the taking of the proofs with regard to the East Jersey Water Company's rates was commenced, and in fact the record throughout discloses that at all times during the progress of the proceeding the appellants, although declining to participate therein, were familiar with its progress.

The Board's decision was rendered on March 27, 1923, and three days later the appellants received notice in writing thereof and very shortly thereafter were furnished with a copy of the decision (Ex. D-49, Rec., p. 355, p. 357, lines 27-35; Ex. D-50, Rec., p. 358; Ex. D-55, Rec., p. 362). The record is also replete with evidence that following the Board's decision the appellants deliberately elected to refrain from participating in the review thereof had in the Supreme Court and in this Court, although fully informed with regard thereto (Ex. D-3, p. 231; D-7, p. 235; Ex. D-56, p. 262; Ex. D-54, p. 310, at p. 312; Ex. D-6, p. 234; Ex. D-10, p. 239).

Having thus stood by until the justice and reasonableness of the $78.00 rate were established by the Board and affirmed by the Supreme Court and this Court, the appellants should not be allowed to come into equity three years later and obtain relief upon the ground that they had no opportunity to be heard in those proceedings.

III.

The appellants can be in no better position than Bayonne or any other holder of a contract for a preferential rate merely because they were not given special or individual notice of the proceeding before the Board of Public Utility Commissioners. They could have asserted their "contract rights" in the proceedings before the Board, or upon a certiorari for the review thereof, or perhaps in a separate suit for that purpose. They have in fact attempted to follow this last course in this very suit, and the decree appealed from is an adjudication contrary to their contention.

(a) Having knowledge of the proceedings instituted by the East Jersey Water Company for the establishment of a just and reasonable rate for its service the appellants might have appeared therein as Bayonne did, offered their contracts in evidence, and claimed that they were inviolable in so far as they entitled them to a rate of $56.25 instead of a rate to be fixed by the Board. That the Board would not have been warranted in sustaining such a claim is clear under the decisions of this Court and of the United States Supreme Court cited under Point I (a) of this brief. This is conceded on p. 27 of the appellants' brief.

(b) The appellants might have refrained, as they did, from participating in such proceedings, but certioraried the Board's decision upon the ground that it violated their alleged contract rights, which they also refrain from doing. As originally enacted in 1911 section 38 of the Public Utility Act (P. L. 1911, p. 388) did not make it clear that the appellants either had this remedy or if so that it provided the sole means of having their rights under said contracts judicially reviewed and determined. By Chapter 130 of the Laws of 1918 (P. L. 1918, p. 304) this section was, however, materially amended so as to provide (1) that any order thereafter made by the Board might be reviewed upon certiorari by the Supreme Court if application therefor is made within thirty days from the date upon which such order becomes effective; (2) that the Supreme Court should have jurisdiction to review such order and to set the same aside in whole or in part when it clearly appeared that there was no evidence before the Board to support reasonably the same, or that the same was without the jurisdiction of the Board; and (3) that if, with respect to any order thus brought under review, it should appear equitable and just that a rehearing should be had before the Board, the Supreme Court might order it, and that the Board should thereupon proceed to rehearing upon the testimony theretofore taken before it *and upon such additional testimony if any as might be produced.* The intention of the Legislature to provide a direct method of review of any order of the Board thereafter made upon the complaint of any person affected thereby, whether participating in the proceedings had before the Board resulting in such order or not, is here made entirely clear. And we submit that such amendment makes it equally clear that this is the sole remedy provided. As

already appears, the appellants received and were in possession of a copy of the Board's order in ample time to have sued out a writ of certiorari to test its validity in so far as it affected them. Had they in this way brought to the attention of the Supreme Court that they had contracts upon which they relied and which had not been before the Board that court had express jurisdiction to direct a rehearing upon which the contracts in question could have been offered by the appellants and their rights thereunder determined either by the Board, or by the Supreme Court and this Court upon a review of the Board's decision. Instead of taking this course they waited from the Spring of 1923 until the Summer of 1925 and then filed their bill herein to compel the specific performance of contracts purporting to entitle them perpetually to unduly low and preferential rates. In taking this course, as the learned Vice Chancellor has pointed out (Rec. p. 112), they were only attempting to "put off the evil day" when they would no longer have this preference over all other consumers receiving an identical service.

(c) Even if it should be held that certiorari was not the only means provided for the assertion by the appellants of their "contract rights", it is clear that in this very suit they have presented every question which they could possibly be entitled to have adjudicated. After this Court's decree finally determining the $78. rate to be a just and reasonable one, the respondent notified the appellants that unless they would agree to pay for the water thereafter delivered to them at such rate it would discontinue its service to them. A copy of this notice was also sent to each of the municipalities which would thus be deprived of a water supply in order that they might protect themselves in the situation which had thus arisen.

(Rec. p. 6, lines 14-18, p. 30, line 38; p. 31 line 17; Ex. P-20, Rec. p. 187). Each of the West Hudson Towns thereupon instituted suit to restrain such action upon the part of the respondent, and an order was made in each of these suits in the form of the one attached as an appendix to the appellants' brief. From a reading of such order it is apparent that what was thereby accomplished and intended so to be was the prevention of such action by the respondent pending the time that in a proceeding before the Public Utility Board the rate which, in view of the increased cost of the water to the appellants, each of the West Hudson Towns should pay for the water delivered to them. Each of these earlier suits is still pending and the restraining order made in each of them is still effective.

The appellants were also parties to each of these other suits and their bill of complaint in the present suit, thereafter instituted, was really filed, not for the purpose of preventing the respondent from refusing to deliver water to them, which it had already been effectively restrained from doing, but of compelling the specific performance of the appellants' contracts. The pleadings and proofs in this suit as the record discloses raised and dealt with the issue as to whether or not the complainants were entitled to have their contracts specifically performed; that is, whether, after January 1, 1923, they were required to pay the $78. rate or only the rate fixed by these contracts. The appellants have in this suit brought to the attention of the Court every circumstance which they considered might entitle them to retain this preferential rate. Their bill was not dismissed upon the ground that they had sought the wrong remedy, but on the merits. They have, therefore, had in this independent suit the day in Court which they might have had long since in the certiorari proceeding above referred to. This suit must result, as any

other proceeding necessarily would, in an adjudication that any contract rights which the appellants previously had to a lower rate ceased upon the fixing of the $78. rate.

IV.

The Appellants' case is without equity and shows an unwillingness to do equity.

The appellants are public utilities. They own and operate a water system and supply water for public use under franchises granted by the State and by municipalities thereof (Exhibits P-1, Rec., p. 120; P-2, Rec., p. 124; D-11, pp. 241-243; D-1, pp. 226-230; D-2, p. 231; D-5, p. 233; P-9, p. 149, at p. 150; P-10, p. 153, at p. 156; p. 58, lines 1-12, 34-40; p. 59, lines 1-15; p. 57; p. 59, lines 1-15, 20-40; P-60, lines 1-2; P-60, line 20; p. 61, line 10; p. 53, lines 20-40; p. 54, lines 1-8; p. 55, line 35; p. 56, line 27). Each of them comes directly within the definition of a public utility contained in the Public Utilities Act, as construed in *Acquackanonk Water Company* v. *Public Utility Board,* 97 N. J. L. 366, affirmed, *East Jersey Water Company* v. *Board of Public Utility Commissioners,* 98 N. J. L. 449. Each of them has been directly held to be a Public Utility both by the Board of Public Utility Commissioners and the Supreme Court. In re *Town of Kearny,* 49 N. J. L. Journal 17 (not officially reported), affirmed *New York and New Jersey Water Company* v. *Board of Public Utility Commissioners,* 135 Atl. Reporter 923; 5 N. J. Misc. Rep. 148 (not yet officially reported). In view of this the loss of their low preferential rate need have worked no such hardship to them as might have resulted in the case of a private consumer

who had assumed obligations from which he could not be relieved in reliance upon a contract he had with a public utility for a particular rate. Instances of the many cases where the fact that such a hardship would necessarily result from the establishment of a uniform rate has been held to constitute no ground for not enforcing it were brought to the Court's attention in the *Bayonne case, supra;* including *Louisville & Nashville R. R. Co.* v. *Mottley,* 219 U. S. 467 (1911); *Leiper* v. *Baltimore & P. R. Co.,* 105 Atl. 551 (Sup. Ct. of Pa., 1918); *Raymond Lumber Co.* v. *Raymond Light & Water Co.,* 159 Pac. 133 (Sup. Ct. of Wash., 1916); *Minneapolis, etc., Ry. Co.* v. *Menasha Wooden Ware Co.,* 150 N. W. 411 (Sup. Ct. of Wis., 1914); *Shaper* v. *Cleveland, etc., Ry Co.,* 108 Atl. 407 (Sup. Ct. of Pa., 1919); *Yeatman* v. *Towers,* 95 Atl. 158 (Ct. of App., Md., 1915); *Seaman* v. *Minneapolis, etc., Ry. Co.,* 149 N. W. 134 (Sup. Ct. Minn., 1914); and *Central R. R. Co. of N. J.* v. *U. S.,* 229 Fed. 501 (Cir. Ct. of App., 3d Cir., 1915).

Being public utilities the appellants are bound by no inviolable contract obligations requiring them to furnish water at any particular rate. At any time since they have been required to pay the respondent more than their old contract rate, they could readily have obtained from the Board whatever increase in their own rates this additional cost warranted. This they have certainly known ever since the Board's decision of March, 1923, establishing the $78. rate. This they were advised to do at least as early as the Spring of 1923, but refused to do.

About the time the rate case was decided, Mr. Dana, the President of each of the appellants, discussed this matter with the President of the respondent, and "spoke about making an application to have a rate fixed for his companies"

(Rec., p. 105, line 35, to p. 106, line 12). Mr. Dana admits that at that time he told Mr. Cook that he was "afraid that the result might be extended to his companies" and that he then consulted counsel about applying to the Utility Board for a rate for his Companies (Rec., p. 106, line 1, p. 107, lines 1-20). Shortly thereafter and on July 9, 1923, Mr. Dana wrote to the authorities of the Town of Kearny, saying:

> "By the decision of the highest courts of New Jersey it has been decided that the Public Utility Commission has a right to amend contracts and establish rates for the sale of water in various districts throughout this State" (Ex. D-56, p. 362).

On June 26, 1924, Mr. Earl, the Treasurer of the appellant, the New Jersey Suburban Water Company, in writing to the Town of Harrison, said:

> "It might be well for you to bear in mind that any extensions of the present contract made between us, will, of necessity be subject to the jurisdiction of the Public Utility Commission so that if conditions at a later date shall warrant the same, either party may then apply to the said Board for a modification of the rate" (Ex. D-9, p. 237, at p. 238, lines 18-28).

The necessity of the appellants making an application to the Board to fix rates for its services was again pointed out to them by the order entered in each of the three suits instituted by the West Hudson Towns prior to the filing of the bill of complaint herein (Rec., pp. 68-69; Exhibit P-21; appellants' brief, p. 49, par. 1).

Instead of taking this course the appellants have actively and thus far effectively resisted the carrying out of the Court's order in each of such three suits by unjustifiably opposing the proceedings instituted by Kearny and Harrison pursuant to such orders to have such rates fixed, using as their excuse for doing so that neither of the appellants is a public utility or in anywise subject to the jurisdiction of the Board. In re *Town of Kearny, supra, New York and New Jersey Water Company, et al.* v. *Board of Public Utility Commissioners, supra.* And this notwithstanding the fact that both of them for many years filed annual reports with the Board in the form prescribed by it for every water utility, and that the New Jersey Suburban Water Company still continues so to do (Rec., p. 83; Exhibits D-23 to D-43, Rec., p. 309).

While the appellants have thus been refusing to pay the $78. rate and preventing the West Hudson towns from having the Public Utility Commission fix just and reasonable rates for the service rendered these towns by the appellants, they have endeavored to enforce increased rates for their service to the West Hudson towns based upon the fact that they are required to pay the respondent the $78. rate. As early as June, 1923, they increased their rates to the West Hudson towns by from $82.50 to $104.25, the difference of $21.75, the exact amount of the difference between their old contract rate of $56.25 and the $78. rate allowed the East Jersey Water Company (Exhibit D-58, Rec., pp. 374-377; Exhibit D-59, Rec., pp. 380-383; Exhibit D-60, Rec., pp. 386-388; Exhibit D-6, Rec., p. 234; Exhibit D-7, Rec., p. 235; Exhibit D-8, Rec., p. 236; Exhibit D-9, Rec., p. 237; Exhibit D-10, Rec., p. 240; Exhibit D-44, Rec., p. 310 at p. 312, etc.). Moreover, an examination of these exhibits will disclose that in their dealings with their customers since the $78. rate was established the appellants have termed as "the prevailing rate" they are entitled to charge not $82.50 but $104.25. In the case of the Town of

Kearny at least they are seeking to enforce such increased rate in an action at law (Exhibit D-44, p. 310).

As we have just seen, the appellants have been saying in effect to the West Hudson towns "You and we are subject to the jurisdiction of the Public Utility Commission and either of us may apply to it for a modification of any rate fixed by contract between us" (Ex. D-9, p. 238, lines 20-28), but when the West Hudson towns have thereafter actually made such an application at the direction of the Court of Chancery the appellants have taken the position before the Commission and the Supreme Court that the Commission has no control over them or their rates because they are not public utilities. To the respondent and in their argument before this Court they insist that notwithstanding the fixing of a new rate by the Board, they still have an unimpaired contract right to receive water from the respondent at the rate of $56.25.

As the learned Vice Chancellor has well said (Rec., p. 112):

> "* * * The complainants knew the effect of the filing of the new rates by The East Jersey Water Company, and they knew that the proceedings before the Board would have an effect upon the public, and they must be assumed to have known then, and to know now, that any preferential rate in their respective favors would injuriously affect a large number of the public and, therefore, would be illegal. Under these circumstances, it would be ridiculous to say that they should be permitted to reap the benefits of their plan to sit by until a complicated proceeding had been consummated, and then put off the evil day by attempting to interpose between them and the effect of the order this very harsh and technical defense, although under the guise of an original bill."

The able opinion of the Vice Chancellor points out clearly the inequity of the appellants' reliance upon the sole ground that the notice they received of the proceedings resulting in the $78. rate was not the kind of notice necessary to affect their rights. As he well expressed this:

> "One cannot in this Court, with knowledge of a fact, complain that notice was never served upon him, and therefore that he had taken no steps to assert or protect his right and expect assistance" (Rec. p. 112).

Little, if anything, need be said with regard to the appellants' contention that while the New Jersey Suburban Water Company was expressly named in the schedules filed by the East Jersey Water Company on February 1, 1922, and the Board's decision of March 27, 1923, resulting therefrom, The New York and New Jersey Water Company was first expressly mentioned in the amendments filed after this decision. This shows the length to which the appellants are driven in an effort to retain their preferential rate. The contracts set up in the bill of complaint and principally relied upon by the appellants, were made with them jointly (Schedules A and B attached to bill of complaint, Rec. pp. 19-25). The water delivered under these contracts was delivered to them jointly and they were uniformly billed for it jointly (Ex. D-57, Rec. pp. 363-373). For such of this water at least as is in turn supplied to the Town of Kearny, that municipality is billed therefor by the appellants jointly (Ex. D-58, Rec. pp. 374-379). The suit brought against Kearny in an endeavor to collect for water furnished by the appellants to it at the rate of $104.25 was brought by them jointly (Ex. D-44, Rec., p. 310). The Board's decision fixing the $78. rate is expressly made applicable to "The New Jersey Suburban Water Company and any other comparable whole-

sale customers.'' This showing, coupled with the fact that the amended rate schedules filed February 1, 1922, constituting the basis of the proceeding before the Board, were mailed to both the New York and New Jersey Water Company and the New Jersey Suburban Water Company, makes impossible any plausible argument in favor of the appellants on the ground mentioned.

Nowhere in the appellants' bill of complaint nor anywhere else in the case is the contention made that the $78. rate fixed by the Board for the service rendered by the respondent to the appellants is other than just and reasonable.

Since the decree appealed from was made, the appellants by means of still a further suit have enjoined the respondent until the final outcome of this suit from proceeding at law to collect any part of the large amount due from them to it at the just and reasonable rate fixed by the Board more than four and a half years ago and upheld by this Court in June, 1924. Even now at the very conclusion of their brief the appellants say:

> ''We do not now ask the Court to determine all the questions involved, nor do we ask the Court to supersede the Utility Board in fixing the rate in so far as the public interest, if there be any, may justify a modification. All that is here sought is an adjudication to the effect that until these issues are raised and determined by the proper tribunal the East Jersey Water Company be enjoined,'' etc.

We respectfully submit that, if not previously determined, all ''of the questions involved'' must be deemed to have been finally and properly determined in favor of the respondent by the decree appealed from, and that the time has now arrived when the respondent should be permitted to collect from the appellants the same rate which all of its other consumers have paid for all of the water delivered to them since January 1, 1923. To this end we respectfully submit that the decree below dismissing the bill of complaint herein should be affirmed with costs.

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Of Counsel.

October Term, 1927.

New Jersey State Library