# P U B L I C  H E A R I N G

before

ASSEMBLY COUNTY GOVERNMENT AND REGIONAL AUTHORITIES COMMITTEE

ASSEMBLY BILL NO. 4365

(Concerns the ownership of water supply utilities, and would specifically prohibit water supply utilities from being corporately related to companies which are in the real estate business)

April 26, 1989
Oradell Borough Hall
Oradell, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman John E. Rooney, Chairman
Assemblyman George Hudak

ALSO PRESENT:

Assemblywoman Elizabeth Randall, District 39
Assemblyman William "Pat" Schuber, District 38
Assemblyman Patrick J. Roma, District 38

Cindy A. Lombardi
Office of Legislative Services
Aide, Assembly County Government and
Regional Authorities Committee

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Hearing Recorded and Transcribed by
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State House Annex
CN 068
Trenton, New Jersey 08625

New Jersey State Legislature
ASSEMBLY COUNTY GOVERNMENT
AND
REGIONAL AUTHORITIES COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
(609) 292-1596

# NOTICE OF PUBLIC HEARING

Cindy A. Lombardi, Aide to the Assembly County
Government and Regional Authorities Committee
(609) 292-1596

The Assembly County Government and Regional Authorities Committee will conduct a public hearing on Wednesday, April 26, 1989 at 7:00 p.m. at the Oradell Borough Hall, 355 Kinderkamack Rd., Oradell, N.J.

The subject of the hearing will be Assembly Bill No. 4365, which concerns the ownership of water supply utilities, and would specifically prohibit water supply utilities from being corporately related to companies which are in the real estate business.

The Chairman has requested that the following governmental officials give testimony at the public hearing on the transfers of land made in 1983 (and subsequent transfers) by United Water Resources and its subsidiaries:

The Public Advocate, or his designee;

The Attorney General, or his designee;

The President of the Board of Public Utilities, or her designee;

The Executive Director of the State Commission of Investigation, or his designee;

The Administrator of the Bergen County Tax Board, or his designee;

The State Treasurer, or his designee;

The tax assessors of the following municipalities, or their designees: River Vale, Emerson, Haworth, Closter, Norwood, Harrington Park, Oradell, Woodcliff Lake and New Milford;

(over)

The Administrator of the Securities and Exchange Commission's Regional Office for New York and New Jersey, or his designee; and

The Director, Water Division, of the New York State Public Service Commission, or his designee.

Persons wishing to testify should contact Cindy Lombardi, Committee Aide, at (609) 292-1596. Those persons presenting written testimony should provide 10 copies to the committee on the day of the hearing.

DIRECTIONS:

From the Garden State Parkway (North or South)

Take exit 165 off of the Parkway. Continue going straight off the ramp, continuing through three traffic lights. At the fourth traffic light, make a right. This is Kinderkamack Road. Oradell Borough Hall is located on the right side of Kinderkamack Road approximately 1 1/2 blocks in.

# ASSEMBLY, No. 4365

# STATE OF NEW JERSEY

INTRODUCED MARCH 2, 1989

By Assemblymen ROONEY, ROMA, Schuber, Mazur, Duch, Baer, Gill, and Kern

*AN ACT* concerning the ownership of water supply public utilities and supplementing chapter 19 of Title 48 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds and declares that in an effort to foster efficiency in the delivery of public utilities, government has granted certain protections to corporations which engage in this delivery; that recent developments in the public utility industry, notably the establishment of large holding companies owning public utilities as well as non-utility businesses, have the potential to change the manner in which the industry operates and which have not been subject to careful public examination; that the potential for conflicts of interest arising from these new corporate relationship is too great to permit these relationships to continue; and that it is necessary to require that public utilities disassociate themselves from certain non-utility companies while the Board of Public Utilities prepares an analysis of, and makes recommendations concerning, the regulation of these relationships.

2. As used in this act:

"Non-complying water utility" means a water utility which is a subsidiary of a real estate enterprise, has been merged with a subsidiary real estate enterprise, or is part of, or associated with, a holding company which also owns a real estate enterprise.

"Real estate enterprise" means any individual, sole proprietorship, partnership, business, association, or corporation, the principal function of which is the buying, selling, or development of real estate.

"Water utility" means a public utility which owns or operates a public water system as defined in section 3 of P.L.1977, c.224 (C.58:12A-3).

3. a. Notwithstanding the provisions of chapter 10 of Title 14A of the New Jersey Statutes or any other law to the contrary,

a water utility operating in this State shall not merge another corporation or corporations into itself, nor merge itself, or itself and any subsidiary corporation into another corporation if the other or subsidiary corporation is, or is part of, or associated with, a real estate enterprise.

b. A non-complying water utility shall take appropriate action to divest itself of any association with a real estate enterprise.

c. The Board of Public Utilities shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), take appropriate action to revoke the license, certificate of public convenience and necessity, permit, franchise, or other approval necessary to operate in this State of a non-complying water utility, petition pursuant to section 4 of this act for the appointment of a conservator for the non-complying water utility, and transfer that license, certificate of public convenience and necessity, permit, franchise, or other approval to the conservator appointed.

d. The board may delay for up to one year the revocation and petition if it determines that a non-complying water utility is, or will be, taking appropriate action to comply with this section within a reasonable amount of time.

4. a. A conservator may be appointed pursuant to section 5 of this act to assume the operation, maintenance, or improvement, or any combination thereof, of a non-complying water utility if the board makes a written finding of deficiency that: (1) the public utility is associated with another corporation in violation of subsection a. of section 3 of this act; and (2) the public utility has not made a good faith attempt to comply with the provisions of subsection b. of section 3 of this act.

b. Upon making a written finding pursuant to section 4 of this act, the board shall transmit a written notification of deficiency to the non-complying water utility. This notification of deficiency shall set forth in detail a proposed schedule for the compliance with the provisions of this act.

c. Within 30 days of receipt of a notification of deficiency pursuant to subsection b. of this section, the non-complying water utility shall prepare and submit to the board, for review and approval, a compliance schedule and financial plan for the severing of any association in violation of section 3 of this act

with another corporation. Within 15 days of receipt of a compliance schedule and plan submitted pursuant to this subsection, the board shall either approve the schedule and plan or notify the non-complying water utility of the changes necessary for approval. If the board notifies a non-complying water utility that changes in the schedule and plan are necessary to receive the board's approval, the non-complying water utility shall have 15 days in which to resubmit the amended compliance schedule and financial plan to the board.

d. If a non-complying water utility does not submit a compliance schedule and plan to the board pursuant to the provisions of subsection c. of this section, or does not make any required amendments thereto when required by the board pursuant to the provisions of subsection c. of this section, or fails to execute the compliance schedule and financial plan, the board shall adopt the compliance schedule and financial plan on behalf of the non-complying water utility, and shall petition the Superior Court for appointment of a conservator to implement the compliance schedule and financial plan, and to otherwise assume the operation, maintenance, or improvement, or any combination thereof, of the public water system pursuant to the provisions of this act.

5. a. The provisions of any other law, rule or regulation to the contrary notwithstanding, one year after the effective date of this act and upon petition by the board a conservator may be appointed by the Superior Court to assume the operation, maintenance, or improvement, or any combination thereof, of any non-complying water utility.

b. The Superior Court may proceed in a conservatorship action in a summary manner or otherwise and shall have the power to appoint and remove one or more conservators and to enjoin the non-complying water utility from exercising any of its privileges, from collecting or receiving any charges or rates, and from paying out, selling, assigning or transferring any of its property to other than a conservator, except as the court may otherwise order.

c. Any conservator appointed by the court shall be qualified by experience and training to assume the operation, maintenance, or improvement, or any combination thereof, of the non-complying

water utility for which the appointment is made.

d. Every conservator shall, before assuming the duties of conservator, execute and file a bond for the faithful performance of the duties thereof, payable to the board, and with any surety, for an amount and in a form the appointing court shall prescribe.

e. When more than one conservator is appointed pursuant to this section, the provisions of this act applicable to one conservator shall be applicable to all; the debts and property of the non-complying water utility may be collected and received by any of them; and the powers and rights conferred upon them shall be exercised by a majority of them.

f. A conservator appointed by the court pursuant to this act shall have the authority, with the approval of the board, to increase the rates or charges imposed for the service provided by the non-complying water utility in an amount necessary to pay for all costs associated with the appointment and implementation of a conservatorship pursuant to this act, including, but not necessarily limited to, the cost of implementing the compliance schedule approved by the board, and the cost of the services provided by the conservator.

g. Any person employed by the non-complying water utility for which a conservator has been appointed pursuant to this act who is serving under tenure or permanent civil service status shall retain all tenure rights and may continue in the employment of the non-complying water utility; except that all employees of the non-complying water utility shall perform only those duties prescribed or delegated by the conservator.

6. A conservatorship established pursuant to this act shall continue for a period of not less than one year. At any time thereafter the water utility may petition the appointing court to terminate the conservatorship and return control of the public water system to the water utility. The court shall terminate the conservatorship, and return control of the public water system to a water utility only after the board holds a public hearing on the petition at a location within the area served by the public water system, and makes a written finding that the water utility has provided all assurances deemed necessary by the board that the deficiency is corrected and the water utility is in compliance with the provisions of this act.

7. a. The board shall undertake a study concerning the types of business relationships and associations that public utilities are authorized to, or not prohibited from, entering with other corporations which have the potential to create conflicts of interest among related corporations.

b. Within two years of the effective date of this act, the board shall submit to the Governor and the Legislature a report detailing the findings of the study and recommend legislative and administrative actions necessary to further curb potential conflicts of interest consistent with the study.

8. The board may, pursuant to the provisions of the "Administrative Procedure Act," adopt rules and regulations necessary to carry out the provisions of this act.

9. This act shall take effect immediately.

## STATEMENT

This bill would prohibit public utilities operating public water systems from being associated with other corporations which are principally engaged in the buying, selling, or development of real estate. The bill would also require that public utilities operating public water systems and associated with companies that are principally engaged in the buying, selling, or development of real estate, sever their relationship with those companies. The underlying assumption is that there are too many opportunities for potential conflicts of interest among the related companies, especially with respect to the selling of land by the public utility to the real estate company.

The bill would also authorize the Board of Public Utilities to take action against a water utility which did not take reasonable action to divest itself from any association with a real estate company. This action could include the petitioning of the Superior Court to appoint a conservator of the public utility to carry out the divestiture, and to operate the public utility until such time as the public utility conforms with the provisions of the bill.

Finally, the bill directs the Board of Public Utilities to undertake a study of the different corporate associations which

may lead to similar conflicts of interest, and recommend appropriate legislative and administrative actions to prevent them.

PUBLIC UTILITIES
Corporations

Prohibits water supply public utilities from being corporately related to companies in real estate business.

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NOTE: Map of the property that is Lapatka Associates, Paramus, New Jersey, 3.9 acres, block 205, lot 4, known as G-1 on assessment maps of transfer by Hackensack Water Company to Rivervale Realty, is on file with Committee Aide. Cannot be reduced within the limits of this transcript.

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mjz: 1-102

**ASSEMBLYMAN JOHN E. ROONEY (Chairman):** I would like to call this meeting to order. I want to thank you all for coming tonight. This is a special Committee meeting for the Assembly County Government and Regional Authorities Committee. It is specifically for the purpose of conducting a public hearing on one bill. That bill is A-4365. It deals with the Hackensack Water Company and their being in the real estate business.

The first thing I would like to do, before we go into comments, is introduce the Committee who are here today. Starting on my left is George Hudak, who came all the way from Union County. He is a regular member of this Committee. To my right is Assemblyman Pat Roma. The three on the right are not regular members, but they are Bergen County legislators from the district, and are most concerned with the problem of the Water Company. So Pat Roma, we have to my immediate right; Assemblyman Pat Schuber, also from District 38; and my colleague in District 39, Assemblywoman Lisa Randall. The four of us from Bergen County are all co-sponsors of this bill, as well as all the other legislators from both parties in Bergen County.

So, by the legislation sponsors alone, you can tell that this is a bipartisan issue. It is something that all of us in Bergen County are concerned with, and we are opening the remarks on that basis.

What I would also like to do is acknowledge the presence of our Mayor -- our host Mayor -- Mayor Hague, who is here tonight. She is right in the first row. Mayor Hague, again, thank you very much for the use of your lovely borough hall facilities. (applause) I would like to open the floor to Mayor Hague at this time.

**M A Y O R C A R O L Y N H A G U E:** (speaking from audience) On behalf of the town of Oradell and all of the surrounding towns of the watershed, I welcome our distinguished

Assemblypeople who have come to our town to introduce this bill. This problem is about a year old now, and we have all worked hard together.

Once again, I thank you for coming. I certainly appreciate your presence here in Oradell, because Oradell is very concerned with this subject.

ASSEMBLYMAN ROONEY: Thank you very much, Mayor, both for your presence and for your support.

I had some opening comments, and I am looking for them at the present time. Please bear with me. As I walked in tonight, I was handed multiple reams of paper. I apologize to the rest of the Committee. I want to say just for the record, you received the backup material for this meeting the same time I did -- when we walked in tonight. It's right here; I have it right here.

I want to welcome you to this public hearing at Oradell Borough Hall. We convened this hearing tonight in order to hear testimony on Assembly Bill 4365. It would prohibit public utilities operating under public water systems from being associated with other corporations which are principally engaged in the buying, selling, or development of real estate. The bill would also require that public utilities operating public water systems and associated with companies that are principally engaged in the buying, selling, or development of real estate to sever their relationships with those companies. The underlying assumption is that there are too many opportunities for potential conflicts of interest among the related companies, especially with respect to the selling of land by public utilities to the real estate company.

In 1984, the Hackensack Water Company transferred 700 acres of watershed land to Rivervale Realty. The Water Company is now seeking to sell another 300 acres, which are currently leased as golf courses to Rivervale, despite the recently enacted 18-month moratorium on transfers. The ratepayers of

the Hackensack Water Company received an $18 refund per household in 1984 from the $10.6 million land sale to Rivervale. Conceivably, Hackensack Water Company can sell off additional property at a profit and not be accountable to ratepayers.

I am very concerned about the situation, which is why we have contacted the following groups: the Public Advocate; the Attorney General; the President of the Board of Public Utilities; the Executive Director of the State Commission of Investigation; the Administrator of the Bergen County Tax Board -- who I see in the back; the State Treasurer; the Administrator of the Securities and Exchange Commission, Regional Office for New York and New Jersey; the Director of the Water Division of the New York State Public Service Commission; the Tax Assessors of River Vale, Emerson, Haworth, Closter, and Norwood, Harrington Park, Oradell, Woodcliff Lake, and New Milford.

Ladies and gentlemen, it is my privilege to open this special public hearing to those who wish to testify. I want to say that we have had responses from all of these organizations. The Attorney General's Office, I believe, is monitoring these hearings. The Board of Public Utilities will testify. The State Commission of Investigation will use the transcript from this hearing as any basis for further action. The Tax Board is here. The State Treasurer, I believe, has a representative present. The SEC has called me and said that they also would like to look at the transcript of these hearings. The Public Service Commission -- the PSC in New York -- has advised me that there is currently an investigation pending with Rivervale Realty's relationship to the Spring Valley Water Company, which falls under the umbrella of United Water Resources.

So, we have had quite a bit of response. We have a very interesting and distinguished audience tonight. I see my

neighboring Mayor from Norwood here -- Mayor Gus D'Ercole. I see our Senator -- Senator Contillo -- from District 38. Former Assemblywoman Greta Kiernan is here. So, there is a major concern on the part of the elected officials. I see tax assessors from various towns, and I appreciate that. Thank you, Daryl (speaking to member of Assembly Majority staff), for getting additional seats.

At this time, I would like to open for comments from my colleagues. First we will start with our regular Committee member, George Hudak. George, anything you would like to say at this time?

ASSEMBLYMAN HUDAK: Thank you, Mr. Chairman. At this point, I think I would just like to hear whatever is going to take place here this evening. I will reserve my comments for later.

ASSEMBLYMAN ROONEY: Again, I wish to thank you very much for coming up from Union County. George has been a very steadfast member of the County Government and Regional Authorities Committee, and a very important member representing the Minority side of the hearing, and representing it very well.

I would like to go to my right now, Assemblyman Pat Roma.

ASSEMBLYMAN ROMA: Thank you, Mr. Chairman, and thank all of you for being here. I'm sorry I was late. I had a budget hearing down in Trenton, and getting off the Turnpike there was a little bit of construction. But, I was able to get here, and that is what is important.

As John indicated, this is an important bill. Many of the bills we work on, from an environmental standpoint, are important. We have had a number of hearings. We are all very sensitive to the concept of clean water. We are sensitive to the environmental needs. Open space is an issue, and quite frankly, it is probably one of the most important issues that we will face in the future.

We all look forward to the quality of life. While we have come forward with a number of measures in the Assembly, cleaning up our oceans and getting into various other areas, this here in Bergen County is probably of paramount importance. That is why we are here tonight to take testimony and to look at the possibility of a potential conflict of interest. If that potential does exist, the testimony we will have will give us a basis for carrying forward in future hearings. The bottom line is to determine exactly what type of interest we have, whether or not it is detrimental to the ratepayers, and then to make further recommendations and have hearings to protect the water quality and all of our residents in the districts, which are 39, 38, 37, and for that matter, in the entire State. Because when we talk about an issue like this watershed development, we are talking about the State of New Jersey, and we are talking about the fate of our children and the legacy we will leave for many years to follow.

It is a corrective step we can take. All too often in the Legislature, we must do something that is reactive. We have to wait for a problem, and then put in a bill. This is forward looking from the standpoint of what we can do to look at the water supply and protect it for everyone.

Thank you, Mr. Chairman, and thank you for listening.

ASSEMBLYMAN ROONEY: Thank you, Mr. Roma. Assemblyman Schuber?

ASSEMBLYMAN SCHUBER: Thank you, Mr. Chairman. I appreciate the opportunity to be part of this panel tonight on this very, very important issue. And I thank you for taking the opportunity to utilize the Thirty-Eighth District, in particular Oradell, for the site of this particular hearing.

Very briefly-- I am not going to repeat what has been said, other than to indicate that in my opinion, two of the most important issues that face the residents of Bergen County are: One, the preservation of open space; and two, the

preservation of the water quality that we have come to expect and enjoy in this county.

The legislation that was signed in November, which provides for a moratorium on the part of those companies which have watershed property from transferring them, or developing them, was one step in the progress toward solving this issue in favor of the consumers and the citizens of our county, and in fact, of the State.

The second issue that came up was the issue with regard to those acres owned by the Hackensack Water Company, which were allegedly allowed to be transferred by the Board of Public Utilities at a prior time, which is the subject matter of a decision to be made by the Attorney General, we hope in favor of locking that property into the moratorium also.

I think the capstone of this whole process is this particular legislation, which questions the entire process, because what we are saying here now is not necessarily taking out parcels of land and indicating whether they should be transferred or not. But what we are doing here is questioning the process. Should, in fact, a public utility, which has a monopoly, be allowed to be associated with a fraternal corporation or entity, for the purpose of developing their own real estate? Is that the business they are supposed to be in?

I think it is inherent with potential conflict, to the detriment of the consumer and our citizens, and I think it is adverse to the two issues which I previously mentioned. Accordingly, I think the testimony that will be elicited tonight will be very enlightening and very helpful to the members of this Committee in reaching a decision with regard to this important bill.

I welcome all of those who will testify tonight, and I appreciate the big crowd that has come out on this important issue.

Thank you, Mr. Chairman.

ASSEMBLYMAN ROONEY: Thank you, Mr. Schuber. And my colleague, Assemblywoman Lisa Randall.

ASSEMBLYWOMAN RANDALL: Thank you, Mr. Chairman. Clearly I think what we are doing here in Bergen County by having a public hearing on this bill, is being watched by other counties. This is something which I have discussed with my colleagues who represent the central and southern portions of the State. The reason the issue has come to a head here, is because of the development and over-population, if you will, in Bergen County. That is why the particular issue happens to have settled here before us.

The legislative proposal we wish to take testimony on tonight represents a major policy decision on the part of the legislators. To be responsible, to be sure, when we are considering a major policy decision such as this, we must measure its impact on those who will be directly affected. In that regard, I look forward to the testimony of, indeed, not only the Hackensack Water Company, but any public utility here tonight that is going to tell us about the potential impact on this legislation.

However, in my view, it is good social policy. There is no question about that. In order to also be responsible, we must measure the potential legality of our legislative proposal. It is always irresponsible to proceed with something which we know is constitutionally infirm in some fashion. I have reviewed this proposal. I know of no legal infirmaties, constitutional or otherwise, that are represented in this legislative proposal.

I look forward to hearing the testimony, and hope that we will find that, in fact, this is as sound a public policy as we believe it to be.

Thank you, Mr. Chairman.

ASSEMBLYMAN ROONEY: Thank you, Assemblywoman Randall. I would also like to say that the entire delegation

to my right are lawyers, so we have some very interesting legal advice here tonight. So, if there is any question by anyone, we will defer to the legal experts here.

ASSEMBLYMAN SCHUBER: Mr. Chairman, if I might-- I think the record should reflect that I had a conversation last week with Assemblyman Mazur, and Assemblyman Mazur indicated his desire to be here tonight. As you know, he has unfortunately been hospitalized. I know he would have liked to have been here, and the record, I think, should indicate his continuing interest in this important matter.

ASSEMBLYMAN ROONEY: Right; absolutely. I would also like to announce that Tom Duch, who is a regular member of the County Government and Regional Authorities Committee, is not here tonight. I believe the reason for it, is that his wife just had a baby. I think that is a valid excuse, and I would like to have my staff make sure that we send him a card of congratulations also.

One thing I would like to say, as far as the testimony we are about to hear tonight-- The concern I have is that when the original direction of the Board of Public Utilities -- and this is what I have heard over the past several weeks-- It was the Board of Public Utilities which suggested that the Hackensack Water Company divest of its excess watershed properties, in order to reduce the rates to the ratepayers. That was the original supposed reason for these transfers.

At that time, we would anticipate that the Board of Public Utilities, that the Public Advocate, who is also involved, and many other public agencies that were involved, were looking out for the best interests of the ratepayer, and what happened as a result of it. Part of it, I have to say, was a result of Assemblyman Schuber's hearing on the Moratorium Bill, which prevented the transfer of the last 300 acres. When we started looking into the cost of the transfers, there were major questions in my mind as to what really happened, and how

we were not protected. We were not protected from the greed and avarice of a corporation looking for profit. That is what the problem here is, that I find with these transfers.

The transfers of the original 700 acres occurred at about $15,000 per acre. I have lived in Bergen County for the last 24 years, and I think in the last 24 years you probably couldn't buy any acreage of land for $15,000 an acre, much less in 1983. I have consulted with many appraisers and many of the tax people -- the assessors -- in the various towns. In 1983, the average value of land in this area was approximately $150,000 to $200,000 an acre. The result of this property transfer, at $15,000 an acre, gave each homeowner an $18 rebate on your water bill. And what kind of benefit is $18? We got half of it.

The other thing that happened, so the appraisers tell me, is that when this was changed from green areas into now the Water Company's Rivervale Realty Company, they were supposed to get three years' back taxes. They also got three years' back taxes based on approximately 10% of the real value of this land. To me, the question comes up: The land that was acquired under condemnation proceedings, at very low pricing, now is being transferred into the real estate company's own sister company -- or the Water Company's own sister company, Rivervale Realty, at only 10% of the value. Who does that benefit? It benefits only the United Water Resources Company; that is all it benefits, and their stockholders perhaps.

These are the questions I have. I have heard things that I want to have on the record tonight; that some of this land was condemned in 1977 for a price of $38,000 per acre, and then in 1983, transferred from Hackensack Water to Rivervale Realty Company, at $12,000 per acre. Something is wrong here, ladies and gentlemen, and these are the questions I have. I don't believe this benefited the ratepayer. I don't believe it benefited the taxpayer. I believe it benefited only the United

Water Resources private company. It has really inflated their stock prices over the years, and has enabled them to show very, very high profits, at whose expense? At the ratepayer's expense; at the municipal taxpayer's expense.

These are the questions I hope that some of these agencies can answer. I would like to have them address those issues when they come up.

The first one I would like to hear from-- Our host Mayor is Mayor Hague. I have a notice here from a stockholder of the Hackensack Water Company, who just happens to have the same name, Mr. Robert Hague. Would you like to come up and speak first, Mr. Hague, since we are in your lovely community of Oradell? Mr. Robert Hague, from Oradell.

**R O B E R T Z. H A G U E:** Thank you. I did not expect to be the lead-off speaker here. Usually, I am very far down the line.

ASSEMBLYMAN ROONEY: Not in our minds at all.

MR. HAGUE: Well, thank you. I date back in Oradell over 70 years. My family goes back many times that. So, a good deal of the history of this land I know either firsthand, or from hearing it from my parents or grandparents.

When Hackensack Water Company formed, they obtained the right to take water from the river and sell it. And it was a boom, because at that time it was getting more crowded, and people needed a source of clean water. They took water from the river, down a little bit north of what we call North Hackensack now.

Later, they moved up and started taking it at what we call New Milford, where the pumping station is now, and still they were taking from a flowing stream. This was clear, nice water. As they needed more, and the flowing stream couldn't always be relied on, they added reservoirs. This required getting land. Gradually, this resulted in them getting control of this valley, either through buying or making an order when they had condemnation rights in their back pocket.

My great-grandfather operated a saw and grist mill where the Oradell Dam is. My mother tells of riding on the carriage that took the logs back and forth into the saw. I tell you this to show you the kind of thing that was going on around here. There was fishing; there was boating; there was skating; all of these things.

Gradually, they were taken away from us. When I would complain -- I remember complaining to my father when they fenced the lake in and wouldn't even let us skate on it -- he said, "Well, you know, you've got to realize, this protects this area. Otherwise, it would be all built up, and you wouldn't know what you would have there. At least we have the open space." This went on up until recently, that people thought that way.

Now, there was no law saying they couldn't change it from open space to something else, because at the time they started, no one would have thought there was a need for a law like that. Laws originate when need shows. Unfortunately, it is usually a bit too late.

But, along with this getting control of the land and keeping us from using it, they got low taxes on that land, because after all, it was only watershed. I own land adjacent to some of theirs. I pay a lot of taxes; they pay very little. On top of this, at times, if they thought taxes were too high, they would hold back; put a strangle hold on these towns. I have known a time when this town had to go out and raise money from citizens who could buy tax anticipation notes, because otherwise we couldn't have paid our employees. All of this as the Water Company got more and more of a hold on this area.

Now other things have happened. I mentioned how it was a flowing stream. Down below the New Milford dams-- There used to be enough water going down there that I can remember there even being a small bathing beach in New Milford. No one

would bathe down there now. It is just dirty tidewater coming up. There is not even enough through flow that Bergen County could develop the park along the river, which they had planned to call "Lake Hackensack."

Now, true, we need the water for drinking, but in so doing -- in so giving them the rights to this, they have taken away this area up here, as well as the usefulness of that area below New Milford. I think it should be considered here that something that was built up all for the good of the area, has now been used and turned against us, as they want to come in, develop up to the reservoir, to a distance that I think is very questionable on the quality of water, but very questionable on the quality of life in this area. They will get rid of a good deal of our woodland that we still have, get rid of wetlands, ruin all these things. Why? For a few dollars for a little while to the taxpayers. Once this land is gone, they will have to get back to making money on purifying and selling water. I question whether the water will be as good as it would have been without this.

Thank you. (applause)

ASSEMBLYMAN ROONEY: Thank you, Mr. Hague. We appreciate it. I am going to limit the applause, and I also want the ability to limit the boos, if there are some later. I would appreciate it if we could just dispense with the outbursts.

I would like, at this time, to invite the representative from the BPU, Mr. Zarillo, to come up, to add some--

**A N T H O N Y J. Z A R I L L O:** Spice to the--

ASSEMBLYMAN ROONEY: --spice. We did ask the BPU to review their records on the particular transfers and on the incident.

MR. ZARILLO: If you will bear with me for just a minute, until I get my--

ASSEMBLYMAN ROONEY: Yes. I see you have quite a bit of information.

MR. ZARILLO: Well, I want to try to give you as much information as we possibly can.

My name is Tony Zarillo, and I am the Executive Officer of the Board of Public Utilities. To my left I have with me this evening, Ms. Jean Fox, who is the Director of the Division of Water and Sewer.

Really, Mr. Chairman and members of the Assembly, I am here to respond to your questions, and to try to provide you with whatever information we have that would be helpful in your deliberations. If you want, I can go back to your original query with regard to the 1983 transfer and what occurred at that time. I am going to rely, for the most part, on the Board's written orders that were issued at that time. My memory is not getting any better than anybody else's as I move up in age, so I would rather read from the orders. I can't remember what I had for breakfast, no less what I did in 1983.

With your indulgence, let me try to set the scene for the Committee as to what occurred. As a result of a major rate proceeding that was filed by the Hackensack Water Company in that 1981-83 time frame, the Board stated in its written order as follows: "At the conclusion of its last rate case, the Company was requested to justify its land holdings to the Board. The Board finds the Company present real estate analysis regarding its protective land holdings to be substantially inadequate. Accordingly, petitioner is directed to submit to the Board a detailed report on the justification of all protected lands and specific plans for all other lands held by the Company and reflected in the rate base. Said report shall be submitted within 90 days of the date of this order. The Company shall coordinate this effort with the Director of the Division of Water and Sewer, the Director of the Division of Utility Finance, Accounts, and Audits, and the

Board's Legal Division. A copy of all findings shall also be forwarded to the Division of Rate Counsel."

It was that order that gave rise to the subsequent report that was submitted by the Company with regard to the land holdings that it felt would be required in order to ensure -- and I want to underscore the word "ensure" -- adequate protection of the aquifers and water supplies of Hackensack Water Company.

The Board also recognized that there was some concern with fair and equitable treatment of the ratepayer, and therefore the sharing issue of what occurs if and when that land is disposed of with the ratepayer was also paramount in the Board's evaluation of this issue.

At that time -- and I might say to date -- there was no existing case law in New Jersey on the issue concerning the proper treatment for rate-making purposes of appreciated value derived from the transfer of non-depreciable property no longer used and useful in providing utility services. The Board had reviewed the available and pertinent decisions rendered in other jurisdictions to try to determine what appropriate position the Board should take, on this issue. The Board noted that there were various decisions of the courts and utility commissions across the country, and they differed. Some courts had found that the utility ratepayer was entitled to no compensation, no sharing on the disposition of property held by the utility company. Other jurisdictions held that there should be some sharing, and other jurisdictions were silent on the issue.

So, the Board was faced with not only establishing what was considered to be the fair market value of the property, but how you balance the competing interests the Board has as its legal mandate given to it by the Legislature of keeping in equity and balance the rights of the shareholder and the protection of the ratepayer.

The Company, as a result of the Board's order-- By the way, Chairman, I don't have copies I can give you this evening, but I would be happy to provide to you or to your Aide copies of these decisions for your file and for the record.

ASSEMBLYMAN ROONEY: I think we all have copies.

MR. ZARILLO: All right, very good. I'm glad.

ASSEMBLYMAN ROONEY: Everyone here has a copy?

MS. LOMBARDI: (Committee Aide) Yes. Everyone here has a copy of this order, and the final order.

ASSEMBLYMAN ROONEY: It is the 17 December '84?

MR. ZARILLO: Yes. There are three pertinent orders that I would like to reference for the record, if I may: The order that I just read from is dated January 12, 1983, and the appropriate reference would be BPU Docket No. 815-447 OAL -- meaning Office of Administrative Law -- Docket No. PUC 8172-81. The subsequent order which was issued after that order was dated December 17, 1984, and the Docket No. in that matter was 8312-1096. And the following order was issued on May 30, 1984 (sic), the same Docket No. -- 8312-1096 -- which was the order of implementation. I'm sorry. Did I say '86? Strike that, it's '85. I stand corrected. Thank you, Jean.

Another issue came up as to how does one establish the fair market value of the property, and I would like to quote from the Board's decision and order in Docket No. 8312-1096, dated December 17, 1984: "We would also note that the conclusions set out here and above were reached only after a thorough review of the applicability in this matter of the Board's regulations pertaining to bidding and advertising -- N.J.A.C. 14:1-6.10. The purpose of these regulatory provisions is to ensure that a utility receive the fair market value for any property which it may sell. As the matter now before the Board does not entail the sale of property, we are in agreement with the Board-appointed appraiser that the bidding and advertising regulations are not appropriate and should be

waived in this proceeding. It is the opinion of the Board that the utilization of professional appraisals represents a reasonable alternative to bidding and advertising for purposes of determining the fair market value of the subject property in this matter." And that is the end of the quote.

So, it was in that order that the Board found a methodology that was acceptable -- readily acceptable -- in many forms, and after review of its own legal requirements and appropriate statutes, determined that appraisals were an adequate surrogate for the bidding and advertising requirement, primarily because -- and I underscore "primarily" -- this was not a sale, but a proposed transfer of the land. And the Board so ordered that appropriate appraisers be utilized to establish the value of the property. It was that background and that series of events that brought us to the matter involving the disposition of the 717.91 acres.

Mr. Alexander Summer -- S-U-M-M-E-R Company -- and Stack and Stack, Inc. were retained as appraisers for the property. They appraised the property, and the property appraised by Mr. Summer was at $11,065,000, and for Stack and Stack, $10,160,000. The Board's order also provided that if the appraisal values of the two appraisers came in at the same level, that was to be considered to be the fair market value of the property. And if not, in the event that the appraisals did differ, and that the higher appraisal did not exceed the lower by 10%, the Board would consider averaging the two to establish the fair market value. Obviously, by the two appraisals that I just quoted, they did not violate that provision of the Board order. The appraisals were averaged, and the value was set at $10,612,500.

After further proceedings before the Board in which the Public Advocate, the Board staff, and the Company all participated, the Board developed a sharing formula by which both the shareholder and the ratepayer shared in the net gain

on the disposition of the property. The result of that was the $18, Mr. Rooney, that you did, in fact, mention earlier on in your opening statement.

One other bit of information: The Public Advocate, in that proceeding, appealed part of the Board's order to the Appellate Division of the Superior Court of the State of New Jersey, and on June 6, 1986, the Appellate Division stated, and I quote: "The Public Advocate appeals from the order of implementation of June 25, 1985. After a careful review of this matter, we have concluded in this appeal raising essentially legal questions, that the decision of the Board is supported by sufficient credible evidence on the record as a whole, and the issues of law raised are clearly without merit." And the Board's orders were, in fact, affirmed.

That brings us through the process in a very, very quick and abbreviated way from the point of how the Board went about identifying the land that was no longer needed in the protection of the water supply, to the actual disposal and disposition of the land.

I am happy and will be available to answer whatever questions you might have.

ASSEMBLYMAN ROONEY: I think we have to go back a little bit further than where we started today. I would like to ask the Public Advocate's Office -- I mean, I'm sorry, the BPU's Office: At what time did United Water Resources enter this picture, and at what juncture was it decided that the land was going to be transferred instead of sold at public auction or on the open market, at what was really the fair -- I mean, the f-a-i-r market value? Because the values that we have listed here by the two appraisers are approximately 10% of the real value at the time of these transfers. This is the question that I would like to have answered at some point in time.

MR. ZARILLO: Let me go back to the question you raised, Assemblyman, on the establishment of the values.

ASSEMBLYMAN ROONEY: Can we start with the United Water Resources and how that occurred and what, if anything, the Board of Public Utilities -- what their involvement was with the establishment of this holding company?

MR. ZARILLO: May I give you some overview on holding companies, if you will? The Board, since 1960 through 1970, has been considering requests of various utilities to form holding companies. Holding companies are not necessarily something new. They have been on the scene for some time. Jersey Central Power and Light Company is a holding company of GPU, and has been for many, many years. That predates Hackensack and many of the other ones.

The SEC recognized holding companies, and there are appropriate laws down at the SEC that regulate the financings for holding companies, with certain limitations on what type of securities can and cannot be issued.

The Hackensack Water Company filed with the Board a petition on March 7, 1983, requesting authority to transfer all of its then issued and outstanding shares of common stock to the United Water Resources, Inc. holding company. The Board investigated that request. The matter was fully reviewed, fully analyzed, and on June 12, 1983, the Board, in the appropriate Docket No., which I will give you now -- 833-195 -- approved the creation of the holding company of United Water Resources. Within the umbrella of that holding company, there were regulated and non-regulated entities, the regulated entity being the Hackensack Water Company, which the Board is responsible for, and the non-regulated entities, one of which being Rivervale Realty.

The Board, after that particular petition, was petitioned by a number of other utilities. As I indicated, Public Service Electric & Gas Company, Elizabethtown Water

Company, Atlantic City Electric Company, and the New Jersey Natural Gas Company have all received Board approval for the establishment of, and the formation of holding companies.

The Board, obviously, had a very serious concern about the impact that the formation of these holding companies would have on the financial viability and the service adequacy to the ratepayers of the utility company. And the Board, in each of its orders involving the approvals of the holding companies, set forth certain criteria, certain guidelines, certain standards that ensure the protection of those ratepayers from any harm that might come from the corporate umbrella of the holding company.

The Board continues to monitor that situation on an ongoing basis, to ensure that none of those concerns become realities. As to date, while we have not been aware of, nor have we been made aware of, any of those evils or concerns, we continue to look at that from the standpoint of sensitivity about the impacts that I have referred to and I have mentioned.

The fact that a utility company operates within the ambit of a holding company is not, in and of itself, evil. It is not, in and of itself, a risk, additional or otherwise, to the ratepayers of the utility company. As a matter of fact, there are many renown financial people and economists who would argue that it insulates the utility company from many of the more risky businesses that the non-regulated entities would be involved in, and therefore it is beneficial to ratepayers. There are different schools of thought on that issue. Not everybody agrees with it. The Board is concerned, as I indicated, about those issues. Those were the kinds of issues that were brought before the Board. As the Legislature, I am sure, is well aware, the Board's proceedings are fully litigated. They are open to the public; they are open to the participation of the Public Advocate and other interested parties. They are held either before the Board themselves, or

before the Office of Administrative Law, which is a creation of the Legislature, and the decisions of the Board are predicated on the record that is established in that proceeding.

There are many varied and differing views that come before the agency, and are argued and debated within the confines of that litigated proceeding. Not everybody, I can assure you, likes vanilla ice cream and, as a result, the Board is bound not only to hear and to evaluate the varying positions, but to make a decision based on that record.

That, I hope, answers your question as to where we were and where we are with regard to holding companies.

ASSEMBLYMAN ROONEY: Basically what you said, though, is that on June 12, 1983, the Board approved the formation of the holding company, United Water Resources. And just prior to that, this massive land transfer was being contemplated.

The point I still come up with, and the question I would like answered at some point in time, by someone, is how land that is worth $150,000 to $200,000 an acre, that was bought for public watershed purposes, was bought under condemnation of a regulated company, could be transferred at $15,000 an acre to a non-regulated company in the sole business of developing real estate and properties? That is the question that keeps buzzing around in my mind. How did this happen, when the Board of Public Utilities had to look at this? In fact, there is evidence that we will hear later in this hearing that only five years earlier, some of that land was condemned at $38,000 an acre, then transferred at an appraisal price of $12,000 an acre. These were the internal transfers that were going on.

These are the questions that keep coming to mind. If -- and in fact we see it many times -- a government contractor is on a cost-plus basis regulated by the government, and at some point in time he uses either materials, services, labor, or some sort of resources of that government contract for a

private customer of his, that person goes to jail. That company is put up in court. That is an absolute violation of the law -- using these public properties for private purposes. And this is how it appears to me. We have had this transfer at one-tenth of value, and they are now going to go out and sell those, and there is evidence that properties have been sold. The Public Utility Commission in New York is investigating the Spring Valley Water Company for a transfer just a couple of years ago, that was made at $300,000 for 24 acres, that Rivervale Realty turned around, two months later, and sold for $1.2 million.

MR. ZARILLO: The Public Service Commission in New York, Assemblyman, did not have an appraisal made of that property. They used a Realtor. The Realtor evaluated -- estimated it, as best I can discern from my investigation into that concern.

Let me speak to that: We used the appraisals. That is public record that has been documented, and neither I nor the Board are disavowing it. We used those appraisals as a basis for establishing value -- the value of the property, the market value. Appraisals, as I am sure all of you know, especially the lawyers, are used every day in our business life to establish value. The two appraisers came to us. They were independent appraisers. They had no prior relationships with the utility company as it was established, and they set the value.

Let me just indicate to you that one of the appraisers, Alexander Summer, was an approved appraiser for the State of New Jersey, Department of Environmental Protection, the New Jersey Health Care Facilities Financing Authority, the New Jersey Department of Transportation, the Bergen County Department of Public Works, the Bergen County Board of Freeholders, the Veterans' Administration, and the Passaic County Sewerage Authority. This appraiser, on the basis of his

qualifications and experience, as far as the Board was concerned, was eminently qualified to render his opinion as to what the value of the property was, for the purposes of our proceeding. Not only did we use him, but we used the other gentleman to verify that.

ASSEMBLYMAN ROONEY: Let me interject one thing: I think I can shorten your response quite a bit, because one of the things you did to these appraisers -- the same thing you did to them in 1987, when the appraisals were done by, I believe, Stack and Stack and the other outfit-- I asked the Water Company's attorney what was the classification of the property, and it was watershed. It was not residential property. It was not any other thing. So, if that was zoned for watershed, it is worthless property. All you can value that property at is the condemnation value of that land. That's it.

But we all knew that the Hackensack Water Company's new parent company -- United Water Resources -- was going into the development of land business. That is what should have been done. You should have told those appraisers at that time, and so should the Public Advocate. I am not picking on you personally. What I am saying is, we all knew the business that Hackensack Water Company was telling us they were in now. They were in the real estate business. They weren't going to sit with this land as parkland and keep it in open space forever. They were out there to make a buck.

So, that is why you got the appraisals you got, because it was worthless property under the current zoning. And any one of these mayors or councilmen who are here today, or tax assessors, who are telling you that because of this transfer they are locked in-- They were granting all of these subdivisions that were coming down the line. And because of the situation of the Hackensack Water Company going to the Public Advocate, going to you, saying, "We want to develop this

land so it is developed properly as a good neighbor to the Water Company," you said, "Fine," and I can agree with that, rather than having some developer who is going to come in and do something that might jeopardize our water supply.

The Water Company-- We were trusting them, saying, "Yes, they are going to do the best they can to protect the water." Well, let me tell you, from what I can see, they did the best they could to protect their pocketbooks and their profits, and that is the name of the game here.

MR. ZARILLO: I want to make sure one thing is clear: I am not here to defend the Water Company.

ASSEMBLYMAN ROONEY: I understand that. I don't want to be an adversary.

MR. ZARILLO: I am here to provide you with the background and the information as to what we did and why we did it. You certainly have all the prerogatives in the world to agree or disagree with us. What I am saying to you is, what we did has been fully documented; has been fully litigated as would stand the rigors of the test that we have as a mandate from the Legislature and, not only that, has even been on appeal.

Let me make one other final observation on these appraisals: We asked the very question that you have posed to us, Chairman Rooney, because we shared that concern. I can tell you that I am not an appraiser, and I have no knowledge of how you go about doing these appraisals or what occurs in a condemnation proceeding. But I can tell you this: On the record, in the most recent proceeding before the Board, it was indicated to us under oath by the appraisers that you are required to provide the appraisal based on the best, highest possible use of the land, as it is currently zoned -- as it is currently zoned -- not what one can anticipate could happen down the road.

ASSEMBLYMAN ROONEY: As currently zoned.

MR. ZARILLO: That is what the appraisers use, which I understand also is the basis of MAI standards for appraising property. Now, that is on the record in the proceeding. We relied on the credibility and the integrity of those individuals. There was no evidence that was brought forth by anybody that controverted that evidence.

ASSEMBLYMAN SCHUBER: I think that is the whole controversy, isn't it? The rule is the highest and best use, by the way, and the highest and best use to me-- I remember this. Now it is all coming back to me. This was the subject matter of the other hearing we held in Oradell six months ago--

ASSEMBLYMAN ROONEY: That's right; that is where this came from.

ASSEMBLYMAN SCHUBER: --the highest and best use of that property. I think we all had to know that that property was not going to be retained as watershed property, once it was transferred; that it would have a greater use thereafter.

MR. ZARILLO: But, you cannot use that in establishing value in a condemnation proceeding. That is the point I am attempting to make here. Whether you agree with that or not is your prerogative. What I am saying is, that is what was brought out in the hearings; that the highest and best use is what governs, and that you cannot assume that you have -- let's for example use agricultural zoning -- assume that you are going to subdivide that and have residential development, and ask the condemnation judge to make the value on the basis of the assumption of the rezoning of the property.

ASSEMBLYWOMAN RANDALL: Mr. Chairman?

ASSEMBLYMAN ROONEY: Assemblywoman Randall. Yes, ladies first.

ASSEMBLYWOMAN RANDALL: If I may, through the Chairman-- Before we leave this point, just so that I understand, you're saying that because of the fact that this was to be a non-sale of the 700 acres, the rules that applied

in doing the appraisal were, number one, that an appraisal itself would be permitted; no further extensive type of analysis, an appraisal, and that that appraisal was to use the same principles that would be used in a condemnation proceeding.

MR. ZARILLO: No, I didn't mean to imply that. That appraisal was being used because the Board was faced with the issue of establishing value -- fair market value -- and that appraisal was used as a surrogate for the bidding procedure that might otherwise have been used.

ASSEMBLYWOMAN RANDALL: All right. And as part of that, the rules that applied in that 1984 appraisal included an analysis based on current zoning. Now, my question is: Had this been a sale of land, what would the rules have been in determining value?

MR. ZARILLO: I have no way of speculating as to what the rules would have been on establishing the value. You've got to tell me what the terms and conditions of the sale were. What is it that the buyer and the seller were bargaining for? Were they buying land that was going to be subdivided by the seller and transferred over to the buyer? I have no way of-- I mean--

ASSEMBLYWOMAN RANDALL: Well, let me give you a simple hypothetical to the effect that-- Let us suppose that the 1984 transfer had been a proposed sale by the Hackensack Water Company to, theoretically, a private entity real estate development. Call it "River Realty." If that had been a private sale of -- a proposed private sale of that 700 acres, what would your rules have been in determining how that property should be valued?

MR. ZARILLO: The Board did exactly what it would do if there were a sale of a major piece of property by PSE&G to a developer where we use appraisals and we don't require bidding. The Board's rules are such where the Board can determine what course of action it feels is in the best

interest of the public, based on the circumstances surrounding that transaction. Public Service, for example, files with us periodically, or Bell Telephone, or other major utilities disposing of no longer used and useful buildings, or plots of land that they no longer need. We do not require that that be put out for bid. We require that an appraisal be submitted on the value of that property, and then, based on the value of that property from the appraisal standpoint, we adjudge the sales price.

If they are in line, the Board would normally approve them. If they are not, we would raise questions about them. That same procedure which has been used constantly before this Board from time immemorial was the procedure used in Hackensack. This was not a unique, unusual, or special set of circumstances, by any stretch.

ASSEMBLYWOMAN RANDALL: Not to belabor this point, but if the proposed transfer had been to a development company unaffiliated with Hackensack Water, that advised you that what they were going to do was to attempt to develop it as residential property-- I am asking if you would have questioned the methodology, and perhaps used a different methodology than was used here?

MR. ZARILLO: If I may, Assemblywoman-- We are not in the business -- the Board of Public Utilities -- of asking what the property is going to be used for. Our statutory requirement as a Board of Public Utilities is not to intrude into local zoning or local issues, and that would be a local issue. Our responsibility is to ensure that the investment that is made by the utility company in the property and the appertainments thereto that are necessary to provide the service are fair and reasonable, and that the rates that ultimately flow from that investment and those costs are reasonable; and also to ensure that the public receives safe, proper, and adequate service.

If a utility company sells land, and if they were going to put up a circus tent and have Barnum and Bailey come in there, the value of the land would not change as far as we are concerned. We would use the appraisal -- whatever the appraisal quoted. If it was in line with what we believed to be the fair market value, it would be disposed of. Our job is to protect the ratepayer in the areas that I told you. What the buyer does with that property, we assume is going to be controlled by the local entities within which that property is located.

ASSEMBLYWOMAN RANDALL: But you would have an interest in making sure that it is an arm's length transaction--

MR. ZARILLO: Oh, definitely.

ASSEMBLYWOMAN RANDALL: --so that the ratepayer is getting back what the ratepayer ought to get back after selling off part of the ratepayer's land.

MR. ZARILLO: And there has been absolutely not one iota of evidence to show that these transfers, both the one that occurred in 1985 and the one that occurred recently, which is being held up, and which is in court and the subject of the legislation, were not anything other than done as an arm's length transaction.

ASSEMBLYWOMAN RANDALL: Okay, thank you.

ASSEMBLYMAN ROONEY: I think we will give you some evidence to that effect at a later time.

Mr. Hudak has a question.

ASSEMBLYMAN HUDAK: Mr. Chairman, just--

MR. ZARILLO: If I may-- I'm sorry, Assemblyman Hudak. I don't mean to not allow my -- really the technical person who is the one I rely on so often for her advice-- She has a couple of comments, and with your permission and endurance--

**J E A N F O X:** Some points on the discussion that just happened: I wasn't involved in the earlier transfer, but in

the petition that is now pending, we were concerned about the issue of highest and best use and what that was. We called our appraiser in, the one the Board hired, the independent appraiser -- we had no contact at all with the company or the company's appraiser -- and we asked him about that. He said for Bergen County, because of the lack of open space, that the highest and best use would be recreational open space. That is what he told us. We questioned him for a half an hour on that. He was very clear about it. An MAI guy-- I mean, he is one of the best appraisers.

ASSEMBLYMAN ROONEY: Jean, I have to respond to that. We have tax assessors; we have local officials; we have public citizens here; we have people who live in this area. And the value of this property, at this present time, is about $400,000 per acre, not $41,000, as was the proposed transfer price. The way this is going down, and it has gone down, with all--

I'll give you another good example. We have spoken-- I have to compliment Jean Fox. Jean has been very patient, with this Chairman for one, and with other members of the Committee and our staff. She has given us a lot of her time and effort. And, Mr. Zarillo, please take this back to the powers that be, that she is an excellent representative of the BPU.

But, the one piece of evidence I want to give is, the property that they acquired -- the Woodcliff Lake property-- There were 27 acres acquired at $15,000 under the original transfer. That was the $10.4 million, I believe, that was the original transfer. If you look at the sale of the Woodcliff Lake property, 27 acres went for $7.2 million, approximately a quarter of a million dollars an acre in 1987, two years after the transfer at $15,000 an acre. Are we being ripped off, or are we not being ripped off? This is not the public interest. This is not something that we should have to pay for the Hackensack Water Company to get into the real estate business

and make a profit on the backs of its ratepayers and its taxpayers and its residents in every community in the surrounding area.

This is the purpose of this hearing: to find out how it happened and make sure it doesn't happen again, and perhaps even, yes, reverse what originally happened on these transfers. (applause) No, no, please. I said I didn't want any boos either. So, please hold it back.

These are the things that we are going to give you as evidence tonight. That is why there is a public record of this. You are going to have lot and block numbers from people who come up here to testify. We want to know: How can you say that the land was worth $15,000 in '83, when it was transferred in '84, '85, and how was it worth $41,000 in this day and age, when the real values were $150,000, $200,000, and $400,000, respectively?

These are the questions. I appreciate what you're saying, but highest and best-- Please don't put that on the record. I think it does you a disservice.

MS. FOX: That is what I was told by our appraiser. The other points are the risks involved with the average-- The $15,000 was an average, a part of this land. What they each did -- all the appraisers did in both cases -- was parcel by parcel. There is a whole list of the parcels and how much they were worth. They went out there and they looked at these parcels. A lot of the parcels, part of them are wetlands; some of them are all wetlands. The wetlands are not as valuable as the buildable areas.

The other point is, this is not subdivided. There is a cost involved with acquiring subdivisions, and there is time involved, and there is risk involved, as to whether the local officials are going to allow that. That is another consideration, when you are talking about the value of it. So when you talk $15,000 an acre-- Maybe that is off, maybe it's

not, I mean, based on the information you have. But on the other hand--

ASSEMBLYMAN ROONEY: I'll buy all the acreage you have at $15,000, or even $41,000 an acre.

MS. FOX: That doesn't mean that every acre that was transferred was a $15,000 acre. Some were a lot more, if you look at the appraisals; some were a lot less, because it was wetlands, and you couldn't do anything with it.

ASSEMBLYMAN ROONEY: Let me have Mr. Hudak's question at this time.

ASSEMBLYMAN HUDAK: Mr. Chairman, the first speaker mentioned something about eminent domain that was given to the Hackensack Water Company. Did they actually acquire any properties--

ASSEMBLYMAN ROONEY: Yes.

ASSEMBLYMAN HUDAK: --of that 700 acres under eminent domain?

ASSEMBLYMAN ROONEY: Absolutely. I think the BPU should--

MR. ZARILLO: I can't answer that question.

ASSEMBLYMAN ROONEY: We'll have testimony--

ASSEMBLYMAN HUDAK: Well, my next question is, about how much of it was acquired by eminent domain?

MR. ZARILLO: This property, Assemblyman, has been acquired, I believe, over a tremendous time horizon. How it all got into the title of the company, I don't know at this point.

Let me just, by way of background, indicate to you that it was not unusual for utility companies -- not only water companies, but utility companies by and large -- to acquire land in the development of the company, the reason being -- and this has been traditional across the country -- that land has a tendency to appreciate in value, and it is cheaper to buy the land at the lowest possible cost and keep it for future use,

rather than to try to go out and negotiate for the title at the time the land is actually needed, because when the buyer knows that -- or the seller knows that, they usually try to extract out of you the highest cost. So that occurred, especially in an area such as Bergen. I will say that it was foresight that the utility company did hold as much land as it did, because of the need for the tremendous amount of water supplies it requires to serve the population in this area.

ASSEMBLYMAN ROONEY: Thank you, Mr. Zarillo. Mayor Hague has her hand up.

MAYOR HAGUE: (speaking from audience) I just want to ask a question: You speak of utility companies and how it is legal for them to have holdings -- land holdings -- which I agree. But, don't you think there is a difference between Public Service Electric and Gas holdings, as compared to a water company, where their holdings are part of their product? They are the producer of their product, where the others manufacture their product. I think that makes a great deal of difference.

You said they needed that watershed property because it held the water, and delivered the water. I think there is a great deal of difference between just any utility and a water company.

ASSEMBLYMAN ROONEY: We appreciate the comment, Mayor Hague. Anyone else on the panel--

ASSEMBLYMAN SCHUBER: I just want to ask a question, if I might. I just want to go back to the appraisal again; the issue of the appraisers who were chosen to make these appraisals. You indicated they were independent appraisers. Is that correct?

MR. ZARILLO: The company had its appraiser, and we required an independent appraiser of our choice, which was the gentleman I referred to, Alexander Summer. The actual appraisal was done by Richard D. Pietrowitz.

ASSEMBLYMAN SCHUBER: So, you had one independent appraiser then. Is that correct?

MR. ZARILLO: We had two appraisers, two individual-- I considered the first appraiser-- Even though he was chosen by the company, he was an independent appraiser. It wasn't done by an employee of the company.

ASSEMBLYMAN SCHUBER: I understand that, but the one appraisal was done by a company chosen by the Water Company. Is that correct?

MR. ZARILLO: That is correct.

ASSEMBLYMAN SCHUBER: And that would have been Stack and Stack, correct?

MR. ZARILLO: That is correct.

ASSEMBLYMAN SCHUBER: Do you know whether, in fact, Stack and Stack does work for the Water Company doing their appraisals?

MR. ZARILLO: They did the second one, but prior to that time, to the best of my recollection, they had not done any work for the company prior to the appraisal in '85, or '84, whenever that took place.

ASSEMBLYMAN SCHUBER: Do you know that for a fact?

MR. ZARILLO: To the best of my recollection.

ASSEMBLYMAN SCHUBER: And the Alexander Summer Company was chosen by whom?

MR. ZARILLO: The Board of Public Utilities.

ASSEMBLYMAN SCHUBER: Off what?

MR. ZARILLO: Pardon?

ASSEMBLYMAN SCHUBER: How did you come across them?

MR. ZARILLO: We had a list of appraisers that we gathered. The list was submitted to the Board and, as I recall, the Board chose that appraiser.

ASSEMBLYMAN SCHUBER: Do you have any knowledge as to whether that particular company had ever done any work for the Water Company?

MR. ZARILLO: Again, to the best of my knowledge, that was asked, and there was no prior work done by Alexander Summer for the Hackensack Water Company.

ASSEMBLYMAN SCHUBER: Who paid for these appraisals?

MR. ZARILLO: The Water Company was required to pay for those appraisals, and those appraisals were a basis for establishing the sharing concept which was finally approved by the Board.

ASSEMBLYMAN SCHUBER: Now, as I understand it, you have indicated that these appraisals were to have been done on the basis of the standard for that, which was the highest and best use in that particular area as zoned, and I guess as unencumbered. Correct?

MR. ZARILLO: That is correct.

ASSEMBLYMAN SCHUBER: You indicated that as a result, they were appraised as watershed properties. Is that correct?

MR. ZARILLO: They were appraised on the value of the current existing zoning. Some of the property in land two was recreational. Other property in land one could have been recreational -- not recreational, could have been residential, could have been watershed property. There could have been a mix of the zoning. I don't recall the details of all those zonings and all of the properties.

ASSEMBLYMAN SCHUBER: So in essence, the properties themselves obviously were zoned locally, and all of the acreage then had a mixture of types of zoning involved. Correct?

MR. ZARILLO: That is correct.

ASSEMBLYMAN SCHUBER: And some of it was not necessarily recreational, but was, in fact, residential. Correct?

MR. ZARILLO: That is correct.

ASSEMBLYMAN SCHUBER: And some of it, I assume, was -- considering some of the municipalities involved, I assume would have been probably large acreage zoning, such as one-- A half acre was one-acre or maybe two-acre zoning?

MR. ZARILLO: I don't recall the specifics of that.

ASSEMBLYMAN SCHUBER: My recollection, or my knowledge of the areas would indicate that they probably were.

MR. ZARILLO: I would accept that, subject to check. I have no reason to doubt it.

ASSEMBLYMAN ROONEY: Pat, what I want to do is get into the values of the property. Perhaps we are really burdening the BPU with areas that are not within their expertise.

What I would like to do is ask, first, the Public Advocate, if they have any input. Next I would like to call on the Bergen County Tax Board Executive, Mr. Dante Leodori, to give us some of the information as far as Bergen County, and what land in the area-- If you would, Dante, we will discuss it when you come up, but I want the Public Advocate's Office first. I guess it is Mr. Makul, representing the Public Advocate. I believe the Public Advocate is in the hospital, or--

**R A Y M O N D E. M A K U L, E S Q.:** His father passed away.

ASSEMBLYMAN ROONEY: Oh, I'm sorry.

MR. MAKUL: The funeral was yesterday.

ASSEMBLYMAN ROONEY: I didn't realize that. And you're here to represent him basically?

MR. MAKUL: Yes. I am the Director of the Division of Rate Counsel. I guess I could probably shed the most light on the 1987 proposed transfer, as opposed to the earlier transfer.

During the time of the earlier transfer-- I was with the Public Advocate, Division of Rate Counsel, from 1976 through early 1983. I left and was in law and consulting for a period of time, and returned as Director of the Division of Rate Counsel in November of 1986.

We have prepared testimony on the bill which is proposed. We are submitting that to you in writing. I think

our time here will be better spent talking about some of your concerns involving these appraisals, the fair market value, and I know there are a lot of questions concerning our involvement in the proposed 1988 transfer.

First of all, I would like to say I think there is a lot in Public Utility regulation which the Public Advocate -- the Division of Rate Counsel within the Public Advocate -- does not think is good policy. Nevertheless, these policies were policies which were set at the Board of Public Utilities. The Legislature has oversight over these policies, because rate-making is a delegated legislative responsibility. It is appropriate that a Committee such as this look into some of those policies and legislate changes if it believes changes are appropriate.

The Public Advocate has long opposed the formation of utility holding companies, for the very reasons that you cite in the proposed legislation; namely it creates potential for conflicts of interest. Not only is management's attention turned to business ventures outside of the utility area, but typically what happens is, some of the ventures they get involved with are higher risk, and this higher risk translates into a higher cost of stock, a higher demanded return. It generally drives up the cost of capital, we believe.

Nonetheless, the Board of Public Utilities has allowed the formation of holding companies, and within the water area, part of what has been formed is real estate sister companies to the water utilities. In the case of Hackensack Water, the Board has permitted these transfers to occur on the basis of appraised valuations, notwithstanding the fact that there are Board regulations that specify that when property is sold, that property should be sold in an advertised sealed bid type of auction. I happen to agree that if the purpose of a sale is to exact the highest price, and that price is to be a fair market value price, it is pretty hard to see how a fair market value

could better be assessed than through a fair market sale, through a bid process in which there are informed buyers. Even if you happen to have an uninformed buyer who may happen to have deep enough pockets, the company and the ratepayers would get the benefit of the highest possible price.

The second thing which occurs in which there is potential conflict of interest is this question of sharing. If a utility -- a water utility -- forms a holding company, and part of that holding company is a real estate venture, there are two potential sources of profit: The first source of profit is to the water company itself. The land that is acquired is typically-- The land which it is trying to sell or transfer is typically land which was acquired decades ago at a small fraction of its present market value. When that sale occurs to the sister utility, even if it is at a price that is well below market value, it nonetheless represents a very significant gain to the water utility. So, you have an incentive for the water utility itself to try to get rid of these lands and to realize a profit. It is an extraordinary gain. Sometimes there are subsequent fights as to who gets to keep it, but typically it is considered to be a non-recurring transaction, and the arguments that are at least made by the utilities, are that whatever the gain was, it is extraordinary, non-recurring, and it should get to keep it.

With respect to the fact that-- There are no guidelines as to who gets this gain. However, if the ratepayers were to get 100% of the gain, it certainly would eliminate the pangs that people have that there is a potential conflict of interest on the part of the water company to sell the property in order to get the gain for the water utility.

If the land is transferred to a real estate sister company, that real estate sister company then has -- particularly below fair market value, whatever that is -- that company then has the opportunity not only to realize the

benefit of the difference between fair market value and the imputed transfer price, but it also has the potential of making the money on the development of the property. So, I happen to agree with you that the present system does create conflicts of interest with respect to decisions as to whether or not-- The great bias is to get rid of property, as opposed to holding onto property if it is at all questionable.

Another problem that exists with respect to water utilities in this State, is that there is no hard and fast standards as to what kind of land is necessary to have as watershed. I hate to say it, but you down in Trenton, when you are down there in your legislative session, and you drink the water out of the water fountain, that water is coming out of the Delaware River about three or four miles north of the State House, and that intake point is downstream of many sewage treatment plant outfalls. There are no standards as to what kind of watershed is necessary. The standards are pretty much the quality of what comes out of the tap, not what kind of land was put aside to have it get to the tap.

On the other hand, I happen to live in Morris County. We have watershed land up there which is posted with all kinds of "No Trespassing" signs, and there are cyclone fences. There really is no uniform standard. So to say that any particular piece of property in an overall watershed is or is not used and useful, is a very subjective, judgmental type of thing. We could probably say you could remove three or four girders from the Brooklyn Bridge and it would still stand, but that doesn't necessarily say those girders are not contributing anything to the overall integrity of the bridge.

What happened with respect to the transfer last year? The Division of Rate Counsel was put in an environment of trying to represent consumer interests, where there were already firm Board policies in place that transfers based on appraisals would be permitted, and this type of sharing between

ratepayers and the company would occur. Within the context of that kind of regulatory environment, the Division of Rate Counsel was put in the position of trying to establish what the best deal for the ratepayer is.

Anyone who read The Bergen Record last summer may have seen me quoted. There was a time when we were considering opposing, formally, the use of the appraisal method. One of these appraisers, the one who was hired by the BPU itself-- Two appraisals came in. The company-sponsored appraisal was actually at a higher level than the BPU-sponsored appraisal. There was a meeting held, which I attended, and I did a lot of questioning of the BPU appraiser. I thought this appraisal was, in my mind, questionable, because it resulted in an overall price of approximately $55,000 per acre.

In the appraisal was a citation of other property transfers which had occurred in the area in an equivalent time frame. Well, first of all, there aren't too many transfers of 90- to 200-acre tracts in Bergen County. I am not an appraiser either, but my understanding in questioning this appraiser, and my general understanding of how appraisals work, is that appraisals look to equivalent types of transfers in the same area of equivalent types of property. It is very hard to find equivalent transfers of 80- to 100-acre tracts in Bergen County. Nonetheless, the appraisal which was supposed to establish a fair market value as of 1987, established a $55,000 per acre valuation. Yet, another golf course, which had been sold, I believe it was to Sterling Chemical, which was but a driver shot away from one of the existing golf courses, had sold in 1985 for $85,000 an acre.

Upon questioning the appraiser as to why it is that this property nearby sold for $85,000 an acre, yet he was using a valuation of $55,000 an acre, the answer we got was, "Well, that's different, because Sterling Chemical really" -- it was either Sterling Chemical or Sterling Drug; I can't remember

which -- "wanted the property." Now, I always assumed we ascertained the fair market value-- It was supposed to be with willing buyers and willing sellers, and that was the basis of appraisals. So it was always based on a situation where someone really wanted the property.

I think we could have, in that case, had a lot of fun and raised a lot of problems with the valuation. But as things developed in the course of that case, it became very clear to the Public Advocate, in the Division of Rate Counsel, that what was desired by the people in this area was not to get a $60 credit as opposed to a $42 credit, but rather that the transfer not occur at all.

Under those circumstances, of either the transfer not occurring at all or, second best, that land somehow being preserved, driving up its value and forcing the sale to a third-party developer did not appear to be in accordance with our perception of what the public will was. So what we did in the course of that proposed transfer was, we developed what we thought was the highest possible valuation, using the appraisal method that was proposed to be used by the Board.

We did so because if that is an establishment and the company is asserting, through sworn testimony, that this is the fair market value of the property, then the company would be stopped from asserting otherwise should anyone, such as the county itself, or a subdivision of the county, be able to get the funds together to pay that appraised valuation. In other words, if it was a low evaluation, if the company had put a low price on it, that should be the price at which the company should be willing to sell the property.

We agreed to an evaluation that was based upon these appraisals. However, we did not agree, or support, the concept of the transfer to Rivervale Realty. We abstained on that. Senator Contillo's bill on watershed preservation had already been introduced in the Legislature. It was going through the

Legislature -- the legislative steps. In the meantime, the Board found it necessary, since there was no agreement that this transfer should go forward, to have lengthy hearings on the subject matter. Part of what occurred in those hearings was the company putting on testimony regarding the valuation of the property, based upon its appraisal.

By the time the case before the Board came to an end, it was-- Fortunately, within a week or two afterwards, before the Board had made a decision, Senator Contillo's Watershed Preservation Act was signed into law. I feel that our participation in that matter was probably the trickiest representation that the Division of Rate Counsel has ever performed. I know we were vilified for going along with this $6.1 million position, but the purpose of doing that was that the alternative would have been to recommend that that property go up for sale. Had it gone for sale and a price had come in two or three times that high, there is no way this county would be able to even dream of acquiring that property as it is now, I understand, contemplated.

Since that time, the Public Advocate has, before the Bergen County Board of Freeholders, represented that if the county buys this land through some condemnation proceeding, there will be a gain on that property which would go to Bergen County ratepayers, under the Board's formula. What we have told Bergen County, is that so long as they have a hearing which shows some good measure of public support for this concept, we would support the idea that the ratepayer share should, in effect, be thrown into the purchase price, thereby even further reducing the acquisition cost to the county.

Frankly, I think the best way of preserving this land-- Once, because there was no legislation on the books at the time, because there has been no legislative guidance as to how we view watershed land, at that point in time the best way of preserving these lands was to buy it in fee simple. Our

actions, at that time, were consistent with trying to make that possible.

Thank you.

ASSEMBLYMAN ROONEY: Thank you, Mr. Makul. George, do you have a question?

ASSEMBLYMAN HUDAK: No.

ASSEMBLYMAN ROONEY: Anyone from the Committee have a question? Yes?

ASSEMBLYMAN ROMA: One of the questions you raised in that article you referred to last year with your position-- The article was entitled, "State Land Sale May Cheat Water Firm's Customers." You indicated that there were a number of factors that were taken into account; namely that you don't have such attractive property with a large amount, as you indicated; the second problem dealing with the golf course leases, which would have to be factored in. But there was another factor that you brought up. One of the things that should be considered as an alternative to the appraisal, is the submission of bids.

MR. MAKUL: Yes.

ASSEMBLYMAN ROMA: And it's possible, even if the appraisal is 100% accurate, if someone is willing to pay more, then the ratepayers would have had an interest in selling it for more.

MR. MAKUL: Exactly, and I believe that is true. There are many transfers of land which occur in the course of Public Utility regulation, which do not have the degree of controversy that surrounded this land. There are companies which wind up with a right-of-way or a tract or, as Mr. Zarillo said, a building which is now surplus to its needs. Even in that context, however, the ratepayer, where the sale would not be controversial-- A sale that is an open market sale would not result in the property being sold to necessarily the most informed buyer. It would be sold to the most optimistic buyer;

the one who is willing to pay the highest price. Therefore, I believe that over a large number of transactions, the overall end result would be a higher source of revenue to be shared with ratepayers.

The other thing I might note is, subsequent to all of this controversy involving Hackensack Water, there was a non-controversal transfer by Elizabethtown Water. Appraisals were used in that case. The two appraisals came in about 40% apart. The late Commissioner Guido, I recall, was-- I sat at the Board meeting. He was extremely disillusioned as to the ability of the appraisal method to ascertain a fair market value. I didn't take notes, but I recall he was very-- He could not understand how the two appraisals could be so grossly different.

ASSEMBLYMAN ROMA: But the end point of what you indicated in the article, was that it was a closed market, where no one gets a shot at the property.

MR. MAKUL: That is true; that is true. If you use an appraisal method, another person who is out there who might be willing to pay more than the appraisal, really has no shot at the property.

ASSEMBLYMAN ROMA: Thank you.

ASSEMBLYMAN ROONEY: Thank you, Mr. Makul. We appreciate your testimony.

Dante Leodori, from the Bergen County Tax Board. Can you help us at all with the land values of Bergen County?

D A N T E L E O D O R I: (speaking from audience; no microphone) Mr. Chairman and members of the Assembly: I came here because I received a letter, and would like to be a help to the Committee, you know, if I can answer any questions you folks may have.

So, I would rather hold back and wait. I think just a couple of comments while I am waiting here-- You have talked about appraisals and what have you. You know, by statute,

assessments in the State of New Jersey-- Nothing is assessed at 100%. That is the percentage level in the County of Bergen. And we talked about the various types of appraisals here. But I haven't heard the opinions of the tax court that tell us what values, particularly the assessors, to put on the property. You have underwater land; you have land that is needed to purify the water; recreational land; you have upland, land that is zoned for other than what I have mentioned. That has not come about here.

We have court decisions from the Tax Court, telling the assessors in our office how much to assess this type of property for in a given municipality. You need to do that by ratio.

I would just like to call this to your attention: If there is any question as to value in anyone's mind, if you think the value is too high or too low, any taxpayer of Bergen County can file a tax appeal with our office -- the Bergen County Board of Taxation -- and/or the Tax Court of the State of New Jersey. Okay? So, you can appeal that value. As long as you are a taxpayer in the county, you can appeal that to the Tax Court.

ASSEMBLYMAN ROONEY: Dante, please, could you move to the microphone, because she is not picking you up. We have a transcriber here. Just sit down at the--

MR. LEODORI: I might as well sit down. I have been standing up for a while; it feels good.

ASSEMBLYMAN ROONEY: Yeah, for a change. Maybe we will get you to stay for a while.

MR. LEODORI: What I am trying to suggest here is that to establish value, like this gentleman said, appraisals 40% apart-- We analyze 5000 or 6000 appraisals a year. I have been doing that for 35 years, so I have seen all kinds of numbers, you know. But I think the court will give us the final determination as to that. You can file a tax appeal.

The Hackensack Water Company has filed many appeals in the last 25 or 35 years, and they won many cases. A lot of them were stipulated to by the municipalities, and eventually the Tax Court gave certain numbers to put down there.

All I am saying is, these are the avenues. If you really want to determine value, there is a method; there is a media. You could go back to 1983, where any taxpayer, again, or this Board-- Any taxpayer, in 1983, could have filed a tax appeal against the Water Company or its subsidiaries. Then you could at least get your day in court, and make a decision from there.

ASSEMBLYMAN ROONEY: Dante, one of the-- You bring that up, and yes, we could have. I have heard that response that we could have done that at the time. But when there is such a transfer as this, and you have the Board of Public Utilities and the Public Advocate's Office-- They are supposed to be the watchdogs. These are supposed to be the people who make sure that we get our fair share, or our fair shake, of anything so enormous as the transfer of 700 acres from public domain into private industry, and that is really where it went.

We, as private citizens, don't have the wherewithal to pursue a tax appeal like this. You mentioned something that we are going to hear more about later; that yes, the Hackensack Water Company does have tax appeals. We are going to show that they have tax appeals every year, in every community that has any of their lands. They take every municipality to court every year. They drag all of us through the courts, and they wind up with settlements that are below, supposedly, fair market value of the property. They are not good neighbors. They are not interested in helping defray taxes in the communities they are in. They are interested in profit, and their profit is having their own lawyers on retainer, the tax lawyers that are there, to go in. It is not going to cost them any more or any less in any given year to have a tax appeal in these communities.

So what happens is, a lot of the tax assessors in the communities -- and we are going to hear from them in a little while -- wind up going through the motions, going through the process, and they get so frustrated by it. I know the tax assessors I talk to are totally frustrated by the Water Company, because they get away with murder, especially now, transferring at these low, low prices.

What I want you to listen to today, is the testimony we will hear next from Greg Gage, from Bergen SWAN, who has looked at the transfers, the appraisal values of those transfers, and has then gone back and looked at where those lands came from. He's got some interesting numbers for us. On the basis of what you hear, hopefully we will be able to help some of the tax assessors in the towns.

But, I know what you're saying. We've got to work together. We've got to get these formulas down. The Water Company has taken major advantage of all of us. So, if you have anything else--

MR. LEODORI: I will just wait by if there are any questions.

ASSEMBLYMAN ROONEY: Okay. Does anyone have any questions at this point? (no response)

MR. LEODORI: Thank you.

ASSEMBLYMAN ROONEY: We will now hear from Greg Gage, from Bergen SWAN. Greg, are you still here, or did you pass out? (affirmative response from audience) I want to thank Greg, who has done a lot of the research for me. We got the information from Jean Fox of the BPU, at my office, and Greg has been good enough to sit down and do the actual legwork and the work going through the Tax Board. So, I am going to turn it over to him at this time.

G R E G O R Y G A G E: Well, first of all, I would like to thank--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Chairman Rooney, could he be identified for those of us who--

ASSEMBLYMAN ROONEY: This is Greg Gage, who is the President, I believe, of Bergen--

MR. GAGE: No, not President.

ASSEMBLYMAN ROONEY: Oh, I'm sorry.

MR. GAGE: I am just a representative of Bergen SWAN.

ASSEMBLYMAN ROONEY: Greg is a representative of Bergen SWAN -- Save the Watershed Action Network. I believe there are many people from the group here tonight. They have been very, very much in the forefront of preserving the land that was proposed to be transferred.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Thank you.

MR. GAGE: The first thing I want to say is, thanks to lots of people of Bergen SWAN who make up our ranks, and who have helped to bring this information to all of us, I am up here bringing it forth to you right now. Really, this represents the work of a lot of people who have worked hard on this issue for the last year-and-a-half, and longer.

I guess there has been talk tonight about the value of these lands, or the undervalue price that was attributed to them over the years. I just want to bring-- I have had, you know, I don't know if it is the pleasure of going through these appraisal reports right here, but they are many pages thick. I will just bring out a few of the instances which show that the land was grossly undervalued, in my opinion. For one, the land in Emerson, which right now has what I believe is a $180 million office complex slated for its use. When it was assessed for its highest and best use, that was at $8000 an acre, in the town of Emerson. And, you know, being a long-term resident of this area, where I have just seen land prices go up, up, up, up, this does not match the surrounding areas -- what the value of land is in these areas.

In Haworth, there is a plot called D-1 in the Havens and Emerson Report, which was transferred for $5000 an acre. This is land along Lakeshore Road, which is basically lakefront

property in the middle of Bergen County, in an affluent community, at $5000 an acre in 1984. There is something wrong there.

The Woodcliff Lake property that we talked about before, where 23 acres were transferred at, you know, $40,000 an acre, which is higher than some of the other land, but still a lot less than the value that they could have attained for it-- It was two years later that they sold that land for $7.2 million, recouping a major share of the $10.6 million they paid for the whole 700 acres, on just 23 acres.

We have land in Old Tappan that a company by the name of Arrid, Incorporated (phonetic spelling) sold to Hackensack Water Company in 1977, at $38,000 an acre. This is a portion of plot G-3, as identified in the Havens and Emerson Report. In 1984, this same land -- G-3 -- was sold from Hackensack Water Company to Rivervale Realty for $12,000 an acre, at a net loss. If we are looking at the highest and best use of this land, or what the property around it was going for at the time-- I mean, this very property was sold on the open market -- or actually, not on the open market; I should correct myself there-- We have the deed from Arrid, and it was sold to Hackensack Water Company under the threat of eminent domain. Okay, they had no choice. They had to sell to the Water Company. The Water Company was buying it as recently as '77. We have indications in the early '80s, where they were buying land to expand their buffer, and then, just a few short years later, they determined it was no longer needed, and they are reaping huge profits on these very lands. Something is wrong there.

On the question of the Hackensack Water Company putting up its land for sale on public bid, they would have gotten more money there, you know, so they thought it would be best to sell the land, or transfer the land to their environmentally sensitive sister company, Rivervale Realty, as

they have often stated. They wanted to do that because they felt a close association between Rivervale Realty and the Hackensack Water Company would ensure that these lands would be developed in a sensitive way, with the Hackensack Water Company providing oversight, helping to direct its development, and because Rivervale Realty would be sensitive to this.

But at the same time, Rivervale Realty has sold off some of this land to third parties, as I said before, at huge profit -- realizing huge profits when selling to third parties. In Woodcliff Lake, there is land that the Havens and Emerson Report said-- It said there should be, I believe, a 100-foot buffer around from the 100-year flood plain in Woodcliff Lake. Rivervale Realty sold off a portion of K-2 that, according to documents from the Board of Public Utilities, didn't even belong to Rivervale Realty. It belonged to the Hackensack Water Company. Now that land happens to belong to a third party, and I don't know what can be done about that at this point.

The point I guess I would like to make here is, if Rivervale Realty and Hackensack Water Company were really the good environmentalists they claim they are, and the reason they should be associated with each other, then why isn't the Hackensack Water Company overseeing what Rivervale Realty is doing? Rivervale Realty has represented before various towns portions of land to be developed, and they have, in the cases through Emerson, where the three office buildings are-- They had the preliminary site approvals in and the major subdivision approvals in before the most recent wetland laws took effect. So, I think we have come to the point where we know the value the wetlands play in water quality, and the State has enacted legislation that addresses that.

But unfortunately here, we have pieces of property that have been grandfathered, because they had applications pending before the legislation took effect. But if they were,

indeed, the good environmentalists they claim they are, why can't they adhere to the spirit, if not the letter of the law, even if it does not legally apply to them? We know the value the wetlands provide in water quality. Don't build on them. It's simple.

It is our position that this original 700 acres of land should have probably never been transferred over in the first place. We think it is unsound; that it will cause further water degradation. The Havens and Emerson Report itself, the report that allowed the transfer to take place, states that water degradation will happen as the lands are developed. But in the end, it still allowed the transfer to take place.

We feel the Board of Public Utilities was more concerned with cutting the rate base than looking out at the environmental consequences that this land transfer might pose. We know that the amount of money that was cut from the rate base was $615,000, and that represents a small portion of-- I haven't worked out the numbers exactly, but from what I hear, it is like 17 cents per household we saved by transferring this land. So, were we really transferring this land to cut the rate base at the time and save rates? At those kinds of numbers, you really have to question, was that in the best interest of the public? Again, I would have to say, "No."

In the Havens and Emerson Report, which originally allowed this transfer to take place, there is testimony that came before the Board of Public Utilities in the past year on the golf course issue. And Dr. Applenorth (phonetic spelling), who is the technical engineer who signed the Havens and Emerson Report, and oversaw it, stated there that it would take 15 to 20 years to assess whether the 250-foot buffer was adequate. We don't have that long to wait. Once the buildings are up, they're up. It is going to be real hard to tear them down. They shouldn't go up. We should not be playing that kind of a game with our water quality.

The Havens and Emerson Report based a lot of its information on laws and regulations that were within the State of Connecticut, when they were looking at this issue themselves. One important law that New Jersey lacked that the State of Connecticut had, was the right of first refusal by the State. There is legislation pending in Trenton now that is going to correct that, but at the time we lacked that. If we are going to base our report and our laws on the State of Connecticut, then we should have the laws of the State of Connecticut at our disposal. We didn't have one very important one that would have, I think, in many ways given us a way out of this whole predicament that we have come to be in. It should be noted that New Jersey has, even to this date, really no watershed regulations; what is a necessary buffer around reservoirs. That is being addressed in legislation now, and in the DEP, but as of right now, there are no regulations.

The Havens and Emerson Report, within it, talks about the fact that it should not be the sole basis -- sole report used as the basis of a land transfer, but it was. It says that further studies need to take place. Well, some towns have gone in for further studies, and what is a necessary buffer around the watershed.

I am going to bring Emerson back up, where the three office buildings are. The town of Emerson hired an independent consultant, Dr. Gordon. It just so happens that Dr. Gordon is also an independent consultant paid by the Hackensack Water Company, too. Is he all that independent? I don't know. It doesn't sound like it to me, but, you know-- We don't have independent studies on these lands, which we need.

We also have the case where the Havens and Emerson Company's lab has been recently bought by the Hackensack Water Company -- United Water Resources. So, you know, it happened after the fact, but there is too much holding hands going on, as far as I am concerned.

As far as the Hackensack Water Company and Rivervale Realty, the Havens and Emerson Report says that it is important that they be good neighbors with the communities. I know some of the things that are going on. They are dangling COAH in front of planning boards now. As you heard before, they have fought paying taxes in the various towns over the years. In the town of River Vale, the Planning Board stood up and said, "We don't want you building houses upon this gas pipe line" -- the main trunk of a gas line that comes from Texas to supply the Northeast with natural gas. The Planning Board made its opinion known on that. Rivervale Realty has sued them, and brought them to court. So, are they being good neighbors? I would have to say, "No."

As far as Rivervale Realty, one of the things that has come to our attention, again on this Emerson property where the three office buildings are going-- The Havens and Emerson Report asked that there be a 500-foot buffer around the reservoir due to the poor drainage of the soil. Well, Rivervale Realty represented to the town of Emerson that they owned from 250 feet out. They did this when they had their major subdivision approvals and minor subdivision approvals, and their preliminary site approval for the three office buildings. They went with all those approvals and represented to the town that they owned from 250 feet out, and not 500 feet out.

The Water Company never challenged them on this, but they are, in effect, building on land that is not theirs. This I think is an important point that needs to be addressed further, in that particular town.

Also, another parcel in Emerson, where there is a drainage ditch, where the Havens and Emerson Report asks for a 250-foot buffer around the drainage ditch-- Rivervale Realty has again represented, in preliminary plans to the town, that they are planning on building on lands that the Havens and Emerson Report says should not be built upon.

Getting down, I guess, to the heart of this, is the conflict of interest that exists between these two companies. United Water Resources was formed with the idea and the potential that money would come in from Rivervale Realty. There is nothing more to it than that. The land transfers were going through the Board of Public Utilities, and the ideas, in 1983, and at the same time, United Water Resources was formed. They knew when it was happening. It was nothing more than a corporate shell game to hide money from the ratepayers and the public, and transfer land from a regulated utility to an unregulated utility.

It is our feeling that if the Water Company was really looking after our water quality, they would fighting development along the shores of our reservoirs. As I said, the Hackensack Water Company has let Rivervale Realty proceed with plans to build on land that they don't even own. I have a friend who works for the New York City Department of Water up in the Catskills, and they have extensive acreage around their reservoir system. He is actually paid to do a similar job to what I do voluntarily. He goes up and down -- paid by the water company -- streams and tributaries looking to see where development is; looking at tax maps, applications before planning boards; and finding, on behalf of the water company, development that is taking place within its watershed buffer areas. It sounds something very simple. I think our water companies should be doing similar things, but what has happened is, indeed, that the Water Company has allowed Rivervale Realty, because of their interrelationship with Rivervale Realty-- You know, in these instances I have stated, they let Rivervale Realty proceed with plans to build on land that they don't even own. That only happens because there is no arm's length between these two companies. They are letting things slip through that they should not.

Another thing Hackensack Water Company should be doing -- and it is asked for in the Havens and Emerson Report-- In practically all cases, the present zoning should be maintained to ensure proper water quality. Rivervale Realty has gone before each of the towns and has requested, in a number of these towns, that the zoning be changed. In Emerson, it was changed from a conservation zone to a high density housing and commercial use -- three office buildings, a million square feet of office. Again, the Water Company did not challenge or fight Rivervale Realty when they went to push for rezoning of the land. The Havens and Emerson Report says that proper zoning should be maintained.

We feel the Hackensack Water Company's prime concern should be to provide clean water, and that they should be doing everything they can to protect this water. That is their duty. They are entrusted with a public resource; that is what they should be doing. Rivervale Realty, on the other hand, is a company that is nothing more than a watershed buffer development corporation, set up to make money developing lands that have been former buffer lands around the reservoirs.

There is a problem here. There is another conflict between these two companies that needs to be addressed. It should be remembered that the Hackensack Water Company has an obligation to protect our water; that it has special privileges such as guaranteed profits from the State; and that the power of eminent domain it has, is something that other companies don't have. It has certain privileges that you and I, or your other average companies would not have. It should be remembered that our money helped to build the Hackensack Water Company to be a strong company. It was our money over the years that helped to buy these lands to protect our water quality, and somewhere along the line we feel that our trust has been betrayed.

This land is very important to us. The original 700 acres is the most environmentally sensitive land. It has the potential of being a park in the center of Bergen County to meet the open space needs of Bergen County, along with -- and at the same time, protecting our water. It makes simple sense. I think this is the route we should pursue in the future, because we need to save these lands.

ASSEMBLYMAN ROONEY: Thank you, Greg. We appreciate your work and your testimony.

Just a couple of quick comments I would like to make to highlight-- The Emerson properties were $8000 an acre, and Haworth-- I believe all of us here know where Emerson is. It is right across the road practically. Haworth -- the D-1 -- is $5000 per acre along the Lakeshore Drive, as you said. The Woodcliff Lake property was transferred at $40,000 an acre, and that $7.2 million, I believe, was 27 acres, wasn't it?

MR. GAGE: No. It was 23 acres that was sold for $40,000 an acre, or $940,000 total. Then, a couple of years later, sold to Emerald Hills for $7.2 million.

ASSEMBLYMAN ROONEY: Which comes out to $266,000 per acre.

MR. GAGE: No, it comes to over $300,000.

ASSEMBLYMAN ROONEY: Oh, I'm sorry. Did I do that twice? No, 23 acres, I'm sorry. I used the 27 that I was working on; $7.2 divided by 23 -- $313,000 per acre. That's correct -- $313,000 per acre. The other one was the G-3 property. What town was G-3?

MR. GAGE: G-3 is up in Old Tappan.

ASSEMBLYMAN ROONEY: Right. That was condemned by the Water Company?

MR. GAGE: No, it wasn't condemned. It was with the threat of eminent domain.

ASSEMBLYMAN ROONEY: All right.

MR. GAGE: It was not condemned.

ASSEMBLYMAN ROONEY: They purchased it at $38,000 per acre, and then transferred it five years later at $12,000 per acre.

MR. GAGE: Yes. Actually, it was more than five years.

ASSEMBLYMAN ROONEY: Yeah. So it's 1977 versus 1984.

MR. GAGE: '84, yes. It should be noted, I just brought out a couple of examples. There is lots of other land that goes for a variety of prices between, I think, $40,000 and as low as $4000 in various towns. It seems that some of the larger acreages, especially in Old Tappan, were $7500 an acre. It all depends-- You know, some were high; some were low. But the larger parcels seemed to be very low.

ASSEMBLYMAN ROONEY: The reason I am stressing this is, as I said, we have asked the Public Advocate, the Attorney General, the SCI, to monitor these transcripts, which we will deliver to them. These are the items that are in question. As you said, there is more information available. It is available to anyone who wants to go through the trouble that Greg did, going through six or seven inches worth of paperwork there. We knew some of the highlights, but Greg has been willing to sit down and take the hours necessary to do this and compare it with the sales.

Again, I want to commend you, and thank you, for doing that as a volunteer in this area; as he said, as a volunteer, when other companies have been paid to do it.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Mr. Rooney, has SWAN got an address that we could get on the record?

ASSEMBLYMAN ROONEY: Yes. They will be happy to take membership. Applications will be passed out. (laughter)

UNIDENTIFIED SPEAKER FROM AUDIENCE: No, I meant for the people who--

ASSEMBLYMAN ROONEY: Can we put that on the record, Greg? Why don't you-- Do you have a post office--

MR. GAGE: It's P.O. Box 597, Ho-Ho-Kus, New Jersey. It's Bergen SWAN -- Save the Watershed Action Network, P.O. Box 597, Ho-Ho-Kus, New Jersey, 07423.

ASSEMBLYMAN ROONEY: For anyone who didn't get that, Bergen SWAN, P.O. Box--

MR. GAGE: We do have, for anyone who is interested, literature which we would be willing to hand out, which would help you to become better informed on what is going on.

UNIDENTIFIED SPEAKER FROM AUDIENCE: You might as well take advantage of the mike.

MR. GAGE: Since I have the advantage of the mike, there is a chance for the general public to show its discontent with the plans of the Water Company at the Annual Stockholder Meeting on May 8, at nine a.m. -- in the morning. In Haworth, we have some flyers that we are willing to hand out to people on that also. We would like to see people there to show their discontent over this issue.

ASSEMBLYMAN ROONEY: Is that a session day? I'm sure it is.

MR. GAGE: It probably is; it is a Monday morning. Take off for it. It is something important to do.

ASSEMBLYMAN ROONEY: They always have their meetings-- I want to also--

ASSEMBLYMAN HUDAK: I have a question.

ASSEMBLYMAN ROONEY: Oh, excuse me, Greg.

MR. GAGE: Yes?

ASSEMBLYMAN ROONEY: You have a question from Assemblyman Hudak.

MR. GAGE: Okay.

ASSEMBLYMAN HUDAK: Greg, you know, eminent domain is primarily given -- or the properties of State, county, and municipal governments -- is given to other organizations such as the Hackensack Water Company, but I know there are other water companies that don't have that right of eminent domain.

You mentioned the fact that under the threat of eminent domain, they purchased some property for $38,000 and sold it for $12,000 to their holding company.

MR. GAGE: Yes.

ASSEMBLYMAN HUDAK: How do you know that as a fact? Is that just hearsay, or do you know--

MR. GAGE: No, I have documents here--

ASSEMBLYMAN HUDAK: Oh, you do have documents.

MR. GAGE: --and the appraisals and the deeds of transfer from--

ASSEMBLYMAN HUDAK: So what we are really saying is, we have a public entity -- Hackensack Water -- given the right of eminent domain, which is primarily given for the right of the people of the State.

MR. GAGE: Yeah.

ASSEMBLYMAN HUDAK: And they are using that power, or the threat of that power to buy some property at a given number, and then reselling it to a private agency, or a private company--

MR. GAGE: That is unregulated, yes.

ASSEMBLYMAN HUDAK: --which is Rivervale. All right, I just wanted to get that on the record.

ASSEMBLYMAN ROONEY: Yeah. You understand it pretty well, George, I think. We talked about it earlier, and you saw the--

MR. GAGE: I completely agree that the Hackensack Water Company should have the right of eminent domain, if they are operating on the public's behalf.

ASSEMBLYMAN HUDAK: Exactly, for the public good.

MR. GAGE: But, they betrayed our trust here, and we feel strongly about that.

ASSEMBLYMAN ROONEY: We thank you very much, Greg.

MR. GAGE: You're welcome.

ASSEMBLYMAN ROONEY: Does anyone else have any questions for Greg? (no response)

We would like to take the League of Women Voters next -- Sally Weller. The League of Women Voters? There we are.

MR. ZARILLO: Assemblyman, may I--

ASSEMBLYMAN ROONEY: Yes, I'm sorry.

MR. ZARILLO: Just one point for Assemblyman Hudak: All public utilities are invested with the authority, statutorily, of eminent domain.

ASSEMBLYMAN HUDAK: All public utilities?

MR. ZARILLO: All public utilities.

ASSEMBLYMAN HUDAK: All right. That wasn't the assumption I had from comments that were presented. Okay.

MR. ZARILLO: They are vested with the public interest, and they have the authority -- the ability to exercise eminent domain.

ASSEMBLYMAN ROONEY: Let me also go over--

ASSEMBLYMAN HUDAK: Is that under statute?

MR. ZARILLO: Yes, it is.

ASSEMBLYMAN ROONEY: I am going to give a rough order of what I have in sign-in slips. We will hear from Sally Weller, League of Women Voters; Harold Jonassen, Borough of Closter Tax Assessor; Mayor Gus D'Ercole, Borough of Norwood, who will also represent their tax assessor. Also, John Campbell, Tax Assessor, Woodcliff Lake. Then we have Henry Gripenburg, representing himself; and Kathryn Brenington, an interested citizen from Harrington Park. Those are the balance of the slips I have. If there is anyone else who signed a slip, or who didn't sign a slip but would like to be heard, please fill out one of these forms.

Sally Weller, League of Women Voters?

**S A L L Y W E L L E R:** Thank you. The League of Women Voters of Pascack Valley and the League of Women Voters of Northern Valley adopted the following position in February

1989. The position is based on State and National League positions.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Can't hear you.

MS. WELLER: Oh, you can't hear?

ASSEMBLYMAN ROONEY: You need both microphones.

MS. WELLER: Oh, I'm sorry. I will just go on.

The League of Women Voters of Northern Valley and the League of Women Voters of Pascack Valley support the retention and protection of watershed lands owned by Hackensack Water Company and Rivervale Realty. The League of Women Voters has concluded that the sale for development of these watershed parcels would jeopardize the supply and quality of the river itself, as well as the drinking water.

As you deliberate A-4365 and similar bills, the two Leagues ask that you consider the following comments:

Watershed lands transferred from a water utility to a real estate or other non-utility entity are no longer regulated by the Board of Public Utilities. Thus, such land transfers should not be permitted, unless the State assures protection for lands deemed vital to water supply and water quality. This means that clear and enforceable definitions of watershed and of watershed protection need to be established by the State. We believe that vital watershed lands should be zoned for preservation that excludes development.

Thank you very much.

ASSEMBLYMAN ROONEY: Thank you. Any questions?

ASSEMBLYMAN SCHUBER: I just laud the League for their fine position. It is in keeping with the fine tradition of what I know the League stands for, and we thank you very much.

MS. WELLER: Thank you.

ASSEMBLYMAN ROONEY: I would just like to say, I do have a statement-- Oh no, not from the League, but I have a statement from Mr. Capece, representing the Water Company. Frank, you didn't sign a slip, but do you wish to read that

into the record later? I will call you after the next speaker, if you like, to read it into the record.

F R A N K C A P E C E, J R., E S Q.: (speaking from audience) Assemblyman, my name is Frank Capece. I am an attorney. I was requested by your staff person for some documentation. In response to that request, we submitted an eight-page memorandum. We were not requested to give testimony this evening.

I would point out for the record, Mr. Chairman, as you well know, we spent a lot of time in this borough--

ASSEMBLYMAN ROONEY: Just one second. Are you picking this up on the tape? (negative response from hearing reporter) You're not? Could you come up to the microphone, so that we don't have to have her take it in longhand, please, Frank? You know the procedure better than anyone, having been in this borough hall many times before.

MR. CAPECE: I would point out to you that I have been in this borough hall so often, that at dinner at the pizzeria, they know me on a first-name basis.

Mr. Chairman, I will be brief. The point of the matter is that we have given extensive testimony on this subject, a number of times in this very building, innumerable times in Trenton. Our policy has been generally at these public hearings not to participate, unless asked specific questions, because, in fact, the purpose of this public hearing is the assimilation of information.

I would point out, though, Mr. Chairman, that every time we were asked to respond to specific questions, we tried to do so. I would point out to you tonight, Mr. Chairman, that I have -- even though I do not take shorthand -- tried to record each of the questions, and certainly will be responding to those questions as quickly as we can; certainly before the public hearing and before the transcript is received.

I would make just two brief comments, though, Mr. Chairman: Many of these issues, as Assemblyman Schuber accurately pointed out, are issues that we have discussed before. I think that for me to repeat my own testimony isn't necessary, and I really don't think you want me to do that tonight. I would point out, though, that we listened with great interest to Mr. Zarillo's testimony, which I think candidly articulated the legal issues. I think that is the critical distinction here. I think we understand the issues here. I would just ask you, Mr. Chairman, that in your future hearings, that extensive consideration be given to the obligation of a private company, under 14A -- corporation statutes of this State -- and their obligations to the shareholders.

I am not going to be critical of environmentalists. I am not going to be pro corporation, or vice versa. But I would point out to you that there are very specific corporate responsibilities of any company. Those responsibilities I believe to have been met by the company, as have the environmental issues. But I would ask you tonight, Mr. Chairman, that any specific questions you do want raised, I will try to respond to them. You were very specific before into questions that you wanted answers to. I think I have taken pretty thorough notes. I must say that many of these questions have come up before. I will try my best, but I give you my word, I drove even further than Assemblyman Hudak to be here tonight. I am here, and I think that in a spirit of cooperation that we have tried to--

I understand the sentiments that run very high on this subject, but in response to those questions, I just give you my word, as someone who has appeared before you before, that we will continue to respond, and we will do it promptly, and we will do it for the record.

ASSEMBLYMAN SCHUBER: Frank -- if I might, Mr. Chairman--

ASSEMBLYMAN ROONEY: Just in defense of Assemblyman Hudak, he doesn't get paid any extra for coming here tonight. So--

ASSEMBLYMAN SCHUBER: Mr. Chairman, if I might, I think we have gone through this with Frank before, but I will repeat it: I think we have a difference of opinion as to whether this is a private corporation or not. I think strictly under the terms of the law it might necessarily be, but the fact of the matter is, isn't the issue here-- Doesn't it have a greater responsibility to the public, given the nature of its operation and the monopoly it has, and what it has at its disposal? I think, really, that is the philosophical argument we are talking about tonight. And I think, therefore, to just confine it to the strict letter of what a statute may say with regard to how you incorporate a corporation, and what that says with regard to that, I don't think is really telling the full story about what a utility is all about.

I think that is a difference of opinion that we will continue to have.

MR. CAPECE: I agree with that, Mr. Schuber.

ASSEMBLYMAN ROONEY: I haven't had my shot at this stand, Mr. Capece. I do have questions, as you notice. I said it last Friday at the Earth Day at Ramapo College, I am a capitalist. I believe in the free enterprise system, and I believe that every corporation is in business to make a profit. Anyone who tells you differently, is absolutely wrong.

However, the issue here, the issue that has been running through this hearing, is whether public land that is acquired at practically no value whatsoever -- or no cost to a company whatsoever, should be transferred into another division of that same company at virtually no cost to them, or at one-tenth of market value, and then have that company develop the land, and then turn around and use it for private gain. That is the question here, and that is where we have a

difference, as to where the private corporation has a right to maintain a profit. The profit is being made at the expense of the public, both the ratepayers, the taxpayers, and under the guise of public interest. That is where we have a major difference.

MR. CAPECE: Assemblyman, I am going to break my promise to your aide, Ms. Chichester, where I said that tonight I was going to be a good listener. I would just point out to you one issue that I think has to be raised here. The philosophical arguments will be raised here tonight, and that is not really my purpose. But I am deeply concerned over one specific legal issue. Assemblyman Schuber and I have sparred about this on numerous occasions. I don't mean to pick on Assemblyman Schuber, but I know for a fact that he does an awful lot of work before planning boards.

I want to make this one point, and I say this respectfully, but I say it under the law: To speculate in valuations of property, and I don't do very well evaluating property-- I looked back after our last hearing, and I think I got a B minus in the course on valuation in law school. But I want to point out to you that to attempt to use some potential value of property on some potential action of a planning board which may or may not take place, I believe to use it to apply retroactively, is fraught with peril, and I don't think it is what the Constitution of this State says.

I think Mr. Zarillo, far more articulately than I -- -- I took more notes when he spoke than anyone -- set forth that issue. I think I have to emphasize that one sole point to you. I think it is improper under the law to attempt to ascribe a value to property for some event that may or may not happen. I say that as a fellow who appeared before the planning board in a municipality just last week of one of the members of this Committee. The planning board activities are something that I do not think that anyone can properly predict what may or may not happen.

Now, I understand the difference of opinion, but I would not have slept tonight if I didn't get across that one legal issue to you. But I again want to make my promise to you: We are going to respond to all of your questions. Had you invited us tonight-- I think we have come every time we have been invited. Knowing your diligence on this issue, I suspect there are going to be plenty of other opportunities when you are going to personally invite me to come and testify. We will do that.

ASSEMBLYMAN SCHUBER: I think in all fairness, though, the record should also indicate that whether the fact is that-- You can argue about whether we can speculate as to what the value might be with regard to pending planning board action, but it is also conversely wrong if a particular piece of property is undervalued from what it truly should be.

I think if we were to look-- I'm sure some of the assessors will provide some interesting information with regard to this. I think it will be interesting to determine what type of comparable sales were out there at the time some of these appraisals were made; what was the nature of the activity. I think the individual from the Public Advocate indicated there were not a great deal of 200-acre sales going around, which could be used as comparables at the time.

So, I mean, while you might -- there may be some merit -- and I don't grant that there is -- to your first argument, I would indicate to you that conversely the fact of undervaluing the property purposely, I think, is just as unfair, if not maybe more unfair, than the former.

MR. CAPECE: Assemblyman, I look forward tonight to learning more, and I suspect you do, too, on the whole subject of valuation. I think it is a subject we all have a lot to learn about.

ASSEMBLYMAN ROONEY: Thank you, Mr. Capece.

At this time, we will call Mr. Harold Jonassen, from the Borough of Closter.

H A R O L D J O N A S S E N: It's Jonassen -- J-O-N-A-S-S-E-N. Got it?

ASSEMBLYMAN ROONEY: We have your sign-in slip, Harold. Thank you.

MR. JONASSEN: I will confine my remarks mainly to one particular piece of property which is owned by Hackensack Water. Part of it was transferred to Rivervale Realty.

Now, although I am also the assessor in Emerson, I just received that appointment on April 3, so I haven't been able to locate any information, or what have you, regarding what happened in Emerson. I gather it was not to Emerson's benefit. Perhaps I shouldn't say that, but in any event, there is nothing I can comment on as far as the past history of that. The assessor retired at the end of the year, and he had been ill for some time, so what happened, I don't know.

As far as the Borough of Closter is concerned, we have this one large tract, the large reservoir over here. We have 160 acres of it. Back in 1970, as Mr. Leodori said-- Hackensack Water, of course, always appeals everything ad nauseam, so they appealed that particular one in the '70s. Since Hackensack Water is our largest taxpayer, the Borough attorney and myself spent three months photographing trees to show that, no, they are not under water. We really did our job. We even had the benefit of an aerial survey. And we went to Tax Court. Although the courts are supposed to determine what should be the true value of land, or, let us say in this particular case, the judge was hesitant, and he suggested that we sort of field goal this one.

Well, all right, so we got together and, although we didn't score a touchdown, we did get a field goal. Hackensack won some; we won what we considered was fair, and we settled it at that particular point.

Then '83 came along, the next reassessment program, and Hackensack called us, and said, "Rather than go through

extensive litigation, why don't we see if we can settle this beforehand?" which we were happy to do. After several conferences, we finally did decide, in 1983, what was a fair price for marginal land, for upland, and for underwater land.

After a while, they didn't quite like that marginal too much, so they said, "Let's make it just two categories of land and underwater land." Well, okay, there are always arguments. We toured, at least the portion that is in Closter. We took a drive with a member of Hackensack Water, and he showed us how impossible it was to develop this land, and so on and so forth. He was right in some instances; I won't deny that, but there was also a lot of good upland there. We arrived at a compromise, and that was it.

Sure enough, when appeal time came in 1984, in comes the appeal from Hackensack Water. I called them, and I said, "Hey, remember, we had an agreement." And I'll say this much for them, they said, "You're right," and the next day they withdrew it. I was surprised, but they were very honorable in this particular situation.

Now, in 1984 -- towards the end of 1984 -- they transferred -- it was a sale -- land, or transferred something, from Hackensack Water to Rivervale Realty. The reason I say "something" is, they did not identify what they were transferring. I decided what they transferred, and I put an assessed value of $200,000 on this particular unknown property that they said they were transferring. As expected, I got an appeal in 1986 from Hackensack Water on this. They wanted it reduced to zero. Well, I obviously couldn't do that, so again we went to court. But, before we got to court, we had to go through a whole battery of interrogatories. We met everybody from -- well, everybody in an official capacity at Hackensack Water, and we kept pressing the one point. There was no sale price. You don't really need a sale price in this particular situation, but you do need to identify what was transferred.

They refused to do it, refused to do it, and finally they said, "All right, we are going to withdraw the appeal."

So, at the present time, under benefit of assessing them twice on the same amount of property, which I don't mind, I will continue to do so, if they continue to refuse to identify what they actually transferred. I know it's strange, but that is the way it worked out.

Your problem with this particular large reservoir piece, as far as the Borough of Closter is concerned, is that there is no road frontage. And as you know, if property or acreage is on an improved road, it is worth infinitely more; like, we have some properties that are worth $90,000, $100,000 an acre. For the acreage that is behind that, we cannot charge that full $90,000 or $100,000 any more. We have to give it a lower rate, sometimes 50%, sometimes even 60% lower. But when it is on an improved road, yes, then we can charge the full $90,000 to $100,000 per acre. That is what was the going rate in Closter at that time.

ASSEMBLYMAN ROONEY: What year was this?

MR. JONASSEN: It was 1983.

ASSEMBLYMAN ROONEY: A hundred thousand an acre?

MR. JONASSEN: Yes, ah, $90,000.

ASSEMBLYMAN ROONEY: Ninety -- well, $90,000 an acre?

MR. JONASSEN: Right.

ASSEMBLYMAN ROONEY: Not $15,000 an acre?

MR. JONASSEN: No, not $15,000.

That's it. If you have any questions--

ASSEMBLYMAN ROONEY: Does anyone have any questions from the Committee? (no response) Thank you, Harold. We really appreciate it.

MR. JONASSEN: All right, thank you very much.

ASSEMBLYMAN ROONEY: Mayor Gus D'Ercole, from the Borough of Norwood.

MAYOR GUS D'ERCOLE: (speaking from audience) Mr. Chairman, at this time I would like to just say--

ASSEMBLYMAN ROONEY: Gus, please come up to the microphone; otherwise, you won't be on tape.

MAYOR D'ERCOLE: (complies) After ringing in here tonight, I was asked if I would testify, and I said, "Yes." I asked the young lady to withdraw my name, because I am not prepared at this time with the facts and figures that would help in this situation at all.

ASSEMBLYMAN ROONEY: I noticed that Mr. Guercio was here also. Could you give us a rough idea of any of the--

MAYOR D'ERCOLE: Well, the whole text tonight is not whether we are being assessed or under-assessed. The text here tonight, as I see it, is that the Water Company undervalued their property, for whatever reason. We had to pay back, in 1982, some $250,000 to the Water Company, and then again this year, we had a settlement of a total of $500,000.

ASSEMBLYMAN ROONEY: These are the things we want to hear, Gus -- the problems the local municipalities have had on assessments, and the fact that just about every year, from what I have heard from your assessors, they appeal.

MAYOR D'ERCOLE: Every year that we have a reevaluation, or every time we have a reassessment, we get beat over the head. You know, to compare with the actual figures--

ASSEMBLYMAN ROONEY: We are going to leave the transcript open for those of you who may have additional information, facts, or figures you may want to contribute. You can send them to my attention, or to Cindy Lombardi's attention, at the Office of Legislative Services. These would be included at a later date as part of the public hearing. We are allowed to do that, to leave the transcript open tonight. I am not sure, but we are probably not going to hear all of the testimony tonight, although we may. And then we will probably have either one more session--

MAYOR D'ERCOLE: I am not prepared to give you actual figures, because I wasn't aware that this was what the hearing was about. I just came to see what it was about, but from what I hear so far, somebody has been asleep, and it sure as hell wasn't us.

ASSEMBLYMAN ROONEY: Thank you, Gus. We appreciate your coming, and Mr. Guercio also.

Let's see, we have John Campbell, Tax Assessor from Woodcliff Lake. Mr. Campbell, thank you for coming. We appreciate it.

**J O H N C A M P B E L L:** Thank you for inviting me.

Would you want me to start off with my experience with the Hackensack Water Company?

ASSEMBLYMAN ROONEY: It would help, as this is what we are here--

MR. CAMPBELL: I'd rather not be too redundant on what Mr. Jonassen said. Basically, we had a reevaluation. We sat down with the Hackensack Water Company and negotiated a number. We came to an agreement. We thought it was all settled. On August 14, we were notified that they were appealing their taxes. The number we arrived at was approximately $3,500,000. The number they thought the value of their property was, was $105,000. This is for a reservoir in Woodcliff Lake, 23 acres of upland. You mentioned the numbers before. We sat down with one of their attorneys, and with their expert, and tried to negotiate a number.

They were willing to settle if we would take a million dollars off their assessment. I told them that I, personally, thought it was very unethical the way they operated, and that we would report to the Mayor and Council, but that I would not recommend a settlement.

We then went to the Tax Court. We got expert testimony. Mrs. Elizabeth Randall's firm-- Jim Stevens represented the Borough of Woodcliff Lake, and we were

successful at the Tax Board. We won the case. We won quite an additional amount of revenue. One problem we have is that we are a municipality. Now, naturally, after you win, you assume you won. Well, when you deal with the Hackensack Water Company, you now go to the Appellate Division. Now, we assumed we won at the Appellate Division. Our next step, we know, is that we are going to go to the Supreme Court. So I mean, it is really a frustrating affair.

I read your bill, but I am not too expert on bills. I would consider, possibly, some thinking on-- If we are talking about selling land off, like conservation land, or reservoir, or property owned by public utilities, we could consider something like in the Farmland Assessment Act, where more or less they pay taxes for that year and the two previous years, or some revenue so that the town may accumulate some taxation.

Mr. Rooney, that is my statement, but I would just like to say, you mentioned about the value of the property sold to Rivervale Realty from the Hackensack Water Company, and so forth and so on. In 1984, we had a reevaluation. Our assessment on vacant land at that time was $75,000 an acre. We could justify it. One of the gentlemen who spoke earlier here, talked about the Havens and Emerson Report, and also of the appraisals. The BPUC, I think, are at a little bit of a disadvantage. I think most of the people on that committee are not from Bergen County, and they are not aware of the values of the properties in Bergen County. I am active in the State and, you know, when we talk about acreage in Bergen County, we're talking about $400,000, $500,000 an acre. People in the southern part of the State look at you like you're crazy. It's a problem we have.

I also went through all the appraisals of Bergen County at the time. I went down to the BPUC, and they have the reports there -- the Emerson Report -- and they also have the appraisals by Mr. Stack and Mr. Summer. Dick Pietrowitz

was the attorney for them -- ah, was their expert. One of the things I objected to, after reading the report, was, when it came to Woodcliff Lake, the sales that the-- One report did not use any of the sales of vacant land in Woodcliff Lake, which I thought was detrimental to an appraisal.

Now, I am not knocking the BPU, because they've got to do a job and they are not real estate appraisers.

ASSEMBLYMAN SCHUBER: Whose appraisal was that, that didn't include that?

MR. CAMPBELL: Stack's.

ASSEMBLYMAN SCHUBER: Stack's?

MR. CAMPBELL: Yes. He is hired by the Hackensack Water Company; he is their expert. And when you go to court, his opinion is always that because the property is owned by the Hackensack Water Company, there is a 50% reduction right off the bat.

ASSEMBLYMAN SCHUBER: How much?

MR. CAMPBELL: Fifty percent.

ASSEMBLYMAN SCHUBER: Fifty percent?

MR. CAMPBELL: Fifty percent. Underwater land is assessed-- He appraises it as $500 per acre. It is a nominal fee. He says it is not worth nothing, but it is a nominal fee. And when our attorney questioned him on it, "How did you arrive at that?" he said, "I have it up here." (laughter) The judge didn't buy that. The judge didn't buy that, but that was--

ASSEMBLYMAN ROONEY: Just for the record, Mr. Campbell pointed to his head -- "I have it up here." (laughter) Just so we don't have any questions later, when I have to review the testimony.

MR. CAMPBELL: Like I say, we wouldn't crumble. We are, at the present time, in victory, but we are going to the next step. If we are victorious there, we assume we will go one more step.

ASSEMBLYMAN ROONEY: I just want to interject one thing: It is not true that the BPU members didn't have someone who was familiar with land in Bergen County, because there happened to be a "concerned" citizen who lived within three miles of Woodcliff Lake when the transfer occurred. He was a member of the Board of Public Utilities and signed this consent agreement in 1983. His name was Ed Hynes, who now happens to be a concerned citizen for this watershed being developed as it is, while he was the one who was responsible. And he was our Bergen County representative at the time. I don't even think that Bob Guido did anything as bad as this. In fact, Mr. Guido, contrary to public opinion, was on record as being opposed to these transfers, especially at these prices. There was testimony here earlier that he had some major problems with the recent appraisals of these lands.

So, just to clear the record, there was a member from Bergen County -- he lived in Upper Saddle River at the time -- who knew very well what the value of land in Bergen County was. I don't understand how an appraisal of $15,000 per acre could have been approved by someone with that background.

ASSEMBLYMAN SCHUBER: Mr. Campbell, in your--

MAYOR D'ERCOLE: (speaking from audience; no microphone) Mr. Chairman, I don't think you should be attacking Mr. Hynes. He isn't in the audience tonight.

ASSEMBLYMAN ROONEY: Mr. Hynes has been at previous sessions. He has been invited to come here also, and he knows the opinion.

MAYOR D'ERCOLE: I don't think you should attack him tonight. He should be here to answer-- (remainder of comment indiscernible)

ASSEMBLYMAN ROONEY: He knows of my opinion, and he is free to come here at any time and correct the record.

MAYOR D'ERCOLE: Well, he's not here right now. (remainder indiscernible)

ASSEMBLYMAN ROONEY: He was invited here, Mr. D'Ercole and, frankly, you are out of order, Mr. D'Ercole.

MAYOR D'ERCOLE: But you don't have to--

ASSEMBLYMAN ROONEY: You are out of order. I allowed it, but you are out of order.

ASSEMBLYMAN SCHUBER: Mr. Chairman, if I might ask a question of Mr. Campbell, which is simply this: In your case that you were talking about in the first portion of your testimony, the one with the Borough of Woodcliff Lake, who was the appraiser for the Water Company on that?

MR. CAMPBELL: Stack.

ASSEMBLYMAN SCHUBER: Stack?

MR. CAMPBELL: Oh, yes. He works for them. I mean, that's what he does. And we have had an appeal from him every year after that.

ASSEMBLYMAN ROONEY: Yes, ma'am?

D O L O R E S C O R D I E R: (speaking from audience) I am the Oradell Tax Assessor. I only came into Oradell as--

ASSEMBLYMAN ROONEY: Could you come up to the microphone? I don't have a sign-in sheet, so please identify yourself on the record. We are going through the tax assessors at the present time, and I am glad that you identified yourself as the Oradell Tax Assessor.

MS. CORDIER: I am the Oradell Tax Assessor. I did not sign in because I only came in as of May of '88, and I only became full Tax Assessor as of December '88.

ASSEMBLYMAN ROONEY: Could we have your name for the record, please?

MS. CORDIER: Dolores Cordier.

ASSEMBLYMAN ROONEY: Could you spell your last name?

MS. CORDIER: C-O-R-D-I-E-R.

ASSEMBLYMAN ROONEY: Thank you.

MS. CORDIER: The thing I wondered about was: What did they come to as a value for that land under the water?

MR. CAMPBELL: Approximately $18,000 an acre.

MS. CORDIER: Eighteen thousand an acre. I'm wondering when you're saying that most of the assessors had had appeals-- I haven't seen any appeals by the Hackensack Water Company for Oradell, and I am beginning to wonder why. And also the fact that--

ASSEMBLYMAN ROONEY: They are afraid of Mayor Hague. That is probably why. (laughter) They wouldn't dare.

MS. CORDIER: Also the fact that they are building a new building in this location, and I am beginning to wonder whether they are keeping a very low profile because of the new building. I'm wondering, because I am only starting to go through permits. I, you know, had farmed out a certain amount of permits for the evaluation team last year, because, like I said, I only came in in May. Now I am starting to go through a certain amount, and I am saying to myself, "How come I never saw a permit for the building?" which is not completed yet.

ASSEMBLYMAN ROONEY: I don't think that is part of our testimony here tonight.

MS. CORDIER: Well, that is the thing that I am wondering about -- the fact that they have never appealed Oradell; that they have, you know, kept a low profile.

ASSEMBLYMAN ROONEY: We would like to ask-- I, personally, would like to ask Mr. Campbell, on the--

MS. CORDIER: The one question I wanted to ask, was what the value under the water was. Thank you.

ASSEMBLYMAN ROONEY: Yeah, okay. Thank you.

Mr. Campbell, on the property that Mr. Gage cited earlier, where it was $40,000 an acre as a transfer price, and then was sold for $7.2 million-- Is this the 23 acres we are talking about?

MR. CAMPBELL: Absolutely; right.

ASSEMBLYMAN ROONEY: And we're talking about $313,000 an acre as the sale price.

MR. CAMPBELL: Well, you must realize, the first sale is non-usable; it is not considered a sale -- the one from the Hackensack Water Company to Rivervale.

ASSEMBLYMAN ROONEY: And you were supposed to get three years' back taxes on that.

MR. CAMPBELL: No, no, no. You mentioned this before, but I don't know where you got that from.

ASSEMBLYMAN ROONEY: I thought that was when it was transferred from--

MR. CAMPBELL: No, sir. You mentioned that, but it is not a-- I mean, I don't know who gave you that information.

ASSEMBLYMAN ROONEY: We were under the impression that there was--

MR. CAMPBELL: No, sir. There was nothing like that, that I know of. I mean, maybe-- I never heard of it before. If it was a farmland rollback, that is a different story.

ASSEMBLYMAN ROONEY: I understood that according to the -- was it the Green Trust? -- that any time it was changed from conservation to developable land, or, in a case like this, it was supposed to be three years' back taxes.

MR. CAMPBELL: One thing-- (Chairman consulting with Aide here) Mr. Rooney, one thing, there was no change of zoning. This is residential property. There was no change. The Hackensack Water Company owned this property. It is above Overlook Drive. You know, it's not--

ASSEMBLYMAN ROONEY: I am not going to belabor it, but I was under the impression that this was part of the agreement on a transfer; that when it was transferred to Rivervale Realty, that that became due. It may not be correct. We may have wrong information.

MR. CAMPBELL: I don't believe it is correct, sir.

ASSEMBLYMAN ROONEY: We will check it then. Thank you, Mr. Campbell.

MR. CAMPBELL: One other thing we mentioned about that property, that property was sold as undeveloped property. When the last person bought it, he bought it as developed, subdivided lots. So, the value has increased dramatically, because now it is subdivided property. Before, it was just 23 acres of woods. So, the value--

ASSEMBLYMAN ROONEY: In Woodcliff Lake?

MR. CAMPBELL: Yeah. The value changes dramatically when you subdivide. All right, sir?

ASSEMBLYMAN ROONEY: Thank you. Senator (speaking to Senator Contillo), let me just double check to see the agenda. I didn't have you signed in, but I would like to recognize you.

I will extend the courtesy to our. Senator from District 38, Senator Paul Contillo.

**S E N A T O R P A U L. C O N T I L L O:** It was not my intention to speak tonight, Assemblyman Rooney. I came to hear. As you know, I have a great interest in the watershed problem.

I have been sitting for a couple of hours -- maybe more -- waiting to hear about Assembly Bill -- whatever it is -- 4365. Let me just say to you, as Chairman of the Ethics Committee, I see an ethical problem with the Water Company trying to serve two masters and two purposes. There is no question that the water utility needs an advocate to protect itself from land development. In a sense, your bill is right on the money when it comes to that.

I have some questions about whether I would rather see Donald Trump or, you know, Sleeze and Company build around the water company, or the Hackensack Water Company. That creates a problem in my mind, and I am not sure how to deal with it. But there is no question that there is a conflict of interest, and it should be dealt with in your bill.

My second point -- and I will be very brief -- is, all of this is fine, but again we are sleeping at the switch,

because the time bomb is ticking. The moratorium we put into place for 18 months hasn't started yet, so we are down to a year and a few months, and they will have their property back, because the Governor's freeze on money and personnel has stopped the start of the work that has to be done within 18 months. And I am frightened, after all of the testimony I heard tonight. We've got to extend the moratorium, or implement the funding immediately.

I intend on Monday, when I go back to Trenton, to put in a bill that extends the moratorium until the work is completed, and removes the time limit, because the time limit is ticking away against us. We will lose it in a year and a few months if we don't do that.

The third item is, I have attended, over the last 15 or 20 years, many public hearings, and I have rarely seen a Chairman attack a person personally. I take offense. I think former Assemblyman Hynes, and Commissioner Hynes, should be here to defend himself, if you wish to question why he didn't act differently in 1983 and 1984. I, myself, Assemblyman Rooney, haven't asked you, "Were you asleep at the switch in '84?" You were here. You were Mayor of your town; you are an Assemblyman. Why are you waiting five or six years to act?

ASSEMBLYMAN ROONEY: I have a simple answer for that, Mr. Contillo: My town had no watershed properties, fortunately, because I wasn't aware of the transfer dollars. As I said earlier today, we had, supposedly, agencies in place to protect the public. What this Committee-- The only time that I found out the values of these properties, because as you know, when we sat at Assemblyman Schuber's meeting here in the Borough of Oradell-- I sat here, and I had my calculator out and started figuring the value of the property at 300 acres. I divided that into the $12 million that was proposed, and I was shocked that it was only $41,000 an acre, when I know the value of property here.

I also know-- At that time, I was privy to know that the buffers were supposed to be 500 feet, so they shouldn't have been land that was underwater. We're talking about facts that were brought out at a later date. It is the old adage: "Fool me once, shame on you. Fool me twice, shame on me." The second time around, we had a lot better information because the Legislature was not asleep at the switch.

I, along with Ben Mazur, sponsored some legislation to try to protect the people in my district from the Water Company. I sponsored that with Ben when they had an investigation called for on what they were doing in the Taj Mahal. I can show my support of that legislation. I was in the Minority at that time. I had no problems with sponsoring that. I also stood up when the Hackensack Water Company locked out their employees. I was the only legislator -- and I had been a legislator elect, at that time; I wasn't even sworn in -- who attended their union meeting down in the Borough of River Edge, and stook up and said, "This is wrong," about what they were doing. They were a monopoly, and they were locking out their own employees. They were having unequal pay for equal work, at that time, and I brought that issue out to the public, again as a Minority member of the Assembly.

As far as Mr. Hynes is concerned, he was at the last hearing. I said the same thing at that time. He was talking about now being a concerned citizen. He didn't have an answer for me then; he doesn't have an answer now. The fact was brought up on the record that we didn't have representation from Bergen County; that they didn't know the land values. I corrected that on the record. Mr. Hynes lived in Upper Saddle River, within a few miles of the property. He should have known the value. I wasn't privy to $15,000 an acre until recently. He was, at that time. That is all I have to say on the record.

There are other things I will question. I would like him to come to the next meeting, because I have some other questions to ask Mr. Hynes.

SENATOR CONTILLO: But for the record, Mr. Chairman, you represented District 39, where the bulk of the 700 acres were taken. I suggest to you that if you think Mr. Hynes was asleep at the switch, you may have been comatose.

ASSEMBLYMAN ROONEY: I had no control over that issue at the time, when Mr. Hynes did, Senator.

MR. ZARILLO: (speaking from audience) Assemblyman?

ASSEMBLYMAN ROONEY: Yes? From the BPU--

MR. ZARILLO: I certainly don't want to become involved in the discussion, but I think the record ought to be complete. There is a Board's Order dated December 17, 1984, that was signed by former President Curran, Commissioner Barbour, and Commissioner Hynes. Commissioner Hynes' statement-- With your permission, I would like to read it into the record: "Commissioner Hynes, joining with his colleagues in signing the Order above, adds his concurring opinion to emphasize the Board's authority and responsibility to monitor the transactions of United Water Resources, Inc. with respect to the land which was the subject of this Order. While agreeing that the terms of the Order are reasonable and the amount credited to ratepayers by the Board fully resolves all claims to gain arising from the disposition of the property, he believes that periodic evaluation of the terms of the transactions involving the land covered by this Order should be conducted by the Board staff. In his opinion, such evaluations are necessary to determine whether the appraisal methodology selected by the Board in this proceeding is appropriate for future conveyances of property by utilities under the Board's jurisdiction, for which waiver of the Board's advertising and bid regulations (N.J.A.C. 14:1-6.10) is sought."

That is part of the Board's official Order, Assemblyman.

ASSEMBLYMAN ROONEY: What does that have to--

MR. ZARILLO: I just wanted to read that into the record. I thought it would be appropriate. It is in the Order.

ASSEMBLYMAN ROONEY: It also says that Mr. Hynes agrees that the prices of the lands are reasonable that are being credited to the taxpayers. So it means he was aware of the price of $15,000 an acre. This is the point of this situation here tonight.

MR. ZARILLO: Assemblyman, I am not taking a position on the issue. I am just saying that that is in the Order, and I think that ought to be noted for the record.

ASSEMBLYMAN ROONEY: Thank you. Which proves exactly the point we are talking about.

We have Mr. Henry J. Gripenburg, from Haworth. Mr. Gripenburg?

**H E N R Y J. G R I P E N B U R G:** Thank you for allowing me to speak. I am nervous, but I have to fight for what I believe in.

I am a third generation Bergen Countyman. My grandparents moved to the area back in early 1910. My entire life has been spent in Bergen County. I have a business in Bergen County. I am raising a family in Haworth.

Water through the '40s, '50s, and '60s from the Hackensack Water Company, I felt, was excellent. Growing up with it, we were proud of what we were able to drink and use. During the '60s, you noticed degrading of the water. From the '60s to the present time, the water became less and less drinkable, in our opinion.

We heard the blaming was on development -- encroaching development on the watershed, yet this is all with the present watershed now in existence, not what they intend to develop. Most of my friends use bottled water. Local senior citizens, friends of mine, have to carry bottled water home. They have problems drinking the tap water when taking medication. It may

again be psychological. I don't know, but they do have a problem.

I would like to see water tests from the '60s to the present time, both in the rural water and the water that we consume. I would like that to be made available to the Commission, to show how the water has degraded over the past several decades.

Much of the land, I know, for the watershed was purchased by condemnation and subterfuge. This was obviously done to keep the costs down in purchasing the property. The Water Company paid us low taxes. They didn't pay for our streets, our sewers, our school systems. Yet now they want to take advantage of it to us.

I see also a real danger in the possibility of a stock takeover. Let's assume that the Water Company, making lots of money on the property, becomes a very prime target for some other firm. Let's assume they buy the company and, with all the profits from the land, they now say, "Well, we can't afford to run the water utility, because we don't have enough money," so they give it to the State to take over. That has happened to our trains; that has happened to our buses. Penn Central is a prime example.

If the Water Company can filter any water, as they claim, I would really like to know why the water has gotten as bad as it has. A lot of the areas in the watershed are close to sewers. In the Havens Report, there are instances of sewer discharges into our reservoirs. Some of our sewer company stations are within 50 feet of the reservoir at the present time. I can't believe this has occurred. I am really astounded by this situation.

Again, I would like the Commission to be able to get Water Company records showing the record -- I mean, the water quality, how it has changed over since the '60s, as I said, to the present time.

I would just like to repeat an old saying: "The land isn't owned by us. It is just borrowed from our children." Thank you very much.

ASSEMBLYMAN ROONEY: Thank you very much.

We have Kathryn Brenington. Ms. Brenington?

**KATHRYN L. BRENINGTON:** You know me better as "Kay."

ASSEMBLYMAN ROONEY: Okay, Kay. All right.

MS. BRENINGTON: I come to speak as an interested citizen; as an environmentalist; and as a very sober resident of Bergen County, because I have learned things here tonight from the testimony I have heard that have shocked even me, when we see ourselves being sold out by the greater interests of the Hackensack Water Company and their manipulations, and their very articulate and histrionic lawyers, and their backup group of good-looking women, bright, charming, and smiling.

The way I see it, it is a game that has gotten so big that it frightens me. It is bigger than the game of politics. It is bigger than the game of money. It is the game of power. I am very happy that there is this meeting tonight -- this hearing -- with the testimony coming forth. I think it is bigger than any one political party, because I think there has been some overtone of politics already here this evening. But I have seen it myself in functions which I have attended.

I am here to try to make life a little better, which I think is what everyone in this room is trying to do, in a responsible and honest way. We depend on our elected officials to help us do that. Thank you.

ASSEMBLYMAN ROONEY: Thank you very much.

MS. CORDIER: Excuse me, I have to make a correction.

ASSEMBLYMAN ROONEY: Yes? The Oradell Tax Assessor, Dolores.

MS. CORDIER: Right. I was thinking, because I had seen permits, and I'm sure it was maybe for the New Milford

Avenue part of the Oradell Water Company. When I was just looking at the map out there, that borderline is in Haworth, so maybe that is why I haven't seen anything on the new building. Okay?

ASSEMBLYMAN ROONEY: Sounds reasonable.

MS. CORDIER: I knew I had seen permits for something.

ASSEMBLYMAN ROONEY: Ron Vellekamp, Trustee, Hackensack River Coalition. Thank you for coming, Ron.

**R O N V E L L E K A M P:** Hello. My name is Ron Vellekamp. I am a Trustee of the Hackensack River Coalition. The Hackensack River Coalition is a State-incorporated, nonprofit, tax-exempt organization, which has interests in the entire Hackensack River watershed and area. Our purposes are to improve water quality; to preserve open space; and to encourage water-oriented recreation along the River.

The Hackensack River Coalition works with organizations such as the Bergen County Audubon, the North Jersey Sierra, the Environmental Defense Fund, and the New Jersey Conservation Foundation, and also with local groups such as Bergen County SWAN. In this particular area of saving the watershed, we have left a lot of work to Bergen County SWAN, as we are very busy all along the River.

The Hackensack River Coalition's executives have met several times with representatives of United Water Resources, trying to have positive input into the various land deals, acquisitions, and other things that are going on within United Water Resources, between the Water Company and Rivervale Realty. The Hackensack River Coalition believes it is not right to have a government-regulated utility monopoly running a real estate company. Undoubtedly, United Water Resources is primarily a profit-making corporation.

I have some statistics on the profit-making ability of United Water Resources from Standard and Poor's Report of February 12, 1988. They state that United Water Resources is

seeking to develop "some 1000 acres" of land located in Bergen and Passaic Counties, and in Rockland County, and that one of the reasons for sharply higher 1987 earnings, was the result of increased real estate activity during the fourth quarter. In a letter from the Dean Witter Reynolds Company, they state that United Water has split five times in the last eight years, and the growth in value is due to the stock splits, and has returned 20% annually in the past eight years. This is not a corporation which needs to make a little extra money for their stockholders. They are doing just fine by themselves. And once again, Dean Witter Reynolds states that United Water Resources: "Is Bergen County's largest landholder, and they are gearing up to develop over 1000 acres for commercial and residential use. This will significantly increase its earnings and dividend payouts in the next few years."

Personally, I do not feel that the Board of Public Utilities has done a good job in regulating United Water Resources. They have not taken into account the best interests of the people who drink the water. The Company and the Board of Public Utilities assert that since the area is primarily served by sanitary sewers, the previous amount of protected watershed is no longer needed, because present technology using chlorine or ozone can remove sufficient amounts of bacteria. However, the main problem in this day and age is not bacteria, but is non-point source pollution. This problem is exacerbated by any development of watershed lands. I have personally seen reports from the Hackensack Water Company, stating that heavy metals, such as mercury, cadmium, and lead, and other toxins -- carcinogens, such as benzene, and other things such as nitrates from fertilizers, are present in more than trace amounts in the water. These are things which cannot be taken out just by chlorine and by ozone. All right? I think this has to be taken into account.

I think it is hard for the Board of Public Utilities to regulate a company which, from what I have heard from several sources-- A significant portion of it is owned by the Kean family. I know this is never mentioned much, but I think it is a factor, either subconsciously or unconsciously. I think it is hard for regulators who are interested in their jobs to make a totally objective determination, with that in the back of their minds. I am not saying anyone is crooked, or that anyone is trying to unethically influence anyone, but I think that is a factor which should be considered. That, again, is my personal opinion.

I think it is wrong for the Board of Public Utilities to, in effect, give permission for a well-regulated utility monopoly to publicly condemn land, and then take that land and make unfair profits and give it to themselves and their shareholders. Also, the Green Space Plan, which was recently unveiled with a lot of media attention-- We feel that may be a carefully planned ploy to keep those lands out of public control, and to make a profit at the expense of the ratepayers, the wildlife -- which no one has mentioned yet, to my knowledge -- and the quality of life for the local residents. It is interesting that saving golf courses seems to be one of their goals, and calling those golf courses open spaces. In effect, those golf courses do not help the quality of the water at all, and may actually harm it. And, they do not provide any type of adequate habitat for any type of wildlife.

There should be standards set by the Legislature and by the Department of Environmental Protection, to guarantee that as much watershed as is available is kept, to protect the water quality in any given water system. Public interests, legally and morally, come above the interests of United Water Resources as a private company, and anyone with any common sense, who doesn't happen to have a degree in corporate law, realizes that there is an inherent conflict of interest to have

a water company and a real estate company under the same parent company.

It is an ethical problem, and I believe the members -- the hundreds of members -- of the Hackensack River Coalition, and the other organizations we work with, would be in favor of a bill limiting -- outlawing, actually -- the ability for publicly regulated monopolies, or utilities, to have also profit-making real estate companies under the same corporate corporation. Personally, as a teacher of civics at a local school, I think there are a lot of things going on here within the government and within these various commissions and authorities, which should be opened to further light of inspection by the public. The public, generally, knows very little. Most citizens don't even know that most of these commissions and authorities exist, no less what they do, and actually how they work.

I think we have to look carefully at all these different organizations and how they interact, and try to open this up for more public action. Thank you.

ASSEMBLYMAN ROONEY: Ron, I couldn't think of anything to sum it up-- We are going to hear additional testimony, but I think your testimony has summed up a lot of the things we have looked at here. I'm glad you visited the issue of the environment and what it does. Again, I have heard your statements before, and they couldn't be any more true than they are at this hearing. I appreciate your help, and again would like to cite that a golf course is not an answer to open space.

You're absolutely right; the pesticides and insecticides they use on those golf courses do pollute the water. They go right in, and it is very difficult to take them out. One of the hardest things to do is to get the lead out, in more ways than one. Lead seems to be increasing in our water supply. It has been pointed out that some of the water

supplies coming into our reservoir systems are passing over these old landfills. Bob Hennelly from the Paramus Post/Ridgewood News, has been able to pinpoint a lot of that and the reasons for it. We are in a crisis situation, and it cannot, as you said, be addressed by ozone or chlorine. There are going to have to be much more drastic steps taken. The true purification is to have a larger watershed area, so it can be purified by going through the earth, and getting itself purified.

The other thing I am glad you brought up, is that the BPU is not the environmental agency. Some of us are mistakening saying that was their responsibility. There has to be a partnership with the Department of Environmental Protection and the BPU. I don't want them to be beat up on for environmental reasons, because that is not their bailiwick. We have been lax in getting DEP involved in this much earlier. The moratorium, as Senator Contillo said, may not be long enough to have the environmental issues evaluated on this particular issue. We may have to look at that. I have no problem with co-sponsoring the bill in the Assembly, along with the rest of my colleagues, to give an extension to that moratorium.

So, I'm glad you addressed the environmental aspect, because we have been dwelling on the economic aspects for most of the evening. I appreciate it.

Does anyone have any comments or questions for Ron?

ASSEMBLYMAN SCHUBER: I think he summed it up very well.

ASSEMBLYMAN ROONEY: Very well. We also have two other people. Ms. Lamb, President of the Palisades Preservation Coalition.

**J U L I A L A M B:** I just want to give you an idea of what a watershed looks like. (holds up picture)

ASSEMBLYMAN ROONEY: Save the watershed; save water. Okay. There we are.

MS. LAMB: That came from the Hackensack Water Company--

ASSEMBLYMAN ROONEY: I recognize it well.

MS. LAMB: --when it was a company. I was on the Tristate League of Women Voters Water Study, and we published findings using the former Hackensack Water Company as a model, at the time. Some of us here were stockholders. Members of my family have been connected with the Hackensack Water Company for over 100 years. My sister's father-in-law was Treasurer of the Company. I had the greatest respect for it. Up until a very few years ago, their main object was water -- water supply and water quality. They boasted about the number of testings they did -- the guardianship of the watershed.

Perhaps we were remiss, as I think we were, when the Boy Scouts were given stewardship of land in the same watershed that drains into -- or pours into the valley and the reservoirs that exist now. We didn't realize that we shouldn't depend on companies that were set up to be corporations. We also didn't think that their change from, "Our main object is water--" Last year, they said, "Our main object is money." They were speaking to the stockholders; they were speaking to the people who had invested in the Company.

However, to have the same directors running a real estate company, taking from their watershed and violating their own stewardship of the watershed that was set up by special rates and special arrangements, special compensations, special dispensations from the towns that were giving up tax ratables, to provide a service for those of us in the entire watershed, in the entire Water Company's service area--

I think this recent breakage of their pipe-- I don't want to call attention to something that isn't exactly related, but it does show that something could happen to an absolutely essential resource. If we are talking about housing being essential, and everybody entitled to a house-- Everybody is

entitled to the highest and best water. However, when I went over to Parsippany some years ago to talk about water in this particular area, I was laughed out of there by Major Whipple, who said, "Don't get on my coattails for water. You've got so much water in this area, that you don't need to even talk about it."

That is the attitude that the Hackensack Water Company has had ever since it has been pumping from the Wanaque Reservoir and other places. So, in other words, we can charge more, we can get more. What they're doing is selling a commodity called "water." As the gentleman said, the land doesn't belong to us, the water comes from heaven and circulates around. There isn't one single drop more than there was at the time of Moses. So it is up to us to be protected by the BPU and the various other companies -- or, utilities, that are supposed to be sheparding along our finite supply. And if it is threatened by the development that is considered now--

I come from the City of Englewood, where we are in Tier One. We are so badly developed, that we haven't even the space to add onto, unless we tear down and then built up again, and all the rest. We are costing ourselves impossible amounts. I am really frightened by the King Midas touch; of them thinking they can turn something called water and watershed and land such as this, into money. It is really very, very frightening. I never, never thought that my friends, as directors of that Water Company, would be more concerned with making money now, than what they would do in another 100 years with this watershed, because they certainly can't get it from the Hudson River and the various other places. And to be so profligate as to give away-- If they didn't want it, or need it, or were told that that was more than they needed for buffer strips, or buffer areas-- They are making that arrangement, or that thought, with present-day or past-day arrangements about a watershed.

Their chemical thing-- That is another thing that somebody brought up. They can divest themselves of the whole Water Company, and that is a very frightening thing, because they have been very careful, and very good about developing and guarding the watershed, as well as their water and Water Company. But if it gets too big, and gets too diverse, and gets separated into real estate-- It's a very frightening thing. I liken it to selling a Van Gogh painting for $9 million a square inch, if you cut it up. But if you took the nose off the Mona Lisa-- The value of the total watershed is destroyed if we develop the very best part that must be kept as reservoirs and as watershed and as retaining center. I say the same thing about the Palisades watershed of the Boy Scout land, that has the water that is draining, meandering, retained, kept -- kept carefully. If you get it catapulting down into the reservoirs, there is going to be trouble with siltation and diversion and the whole bit.

I think what somebody said earlier about the teamwork that needs to be gotten-- When the waterman says, "Don't talk to me about water," he isn't concerned about the quality of water or the amount of water or anything, because it has been said, "Oh, we have so much more underground water supplies than in the southern parts of New Jersey."

But what I think we do have is Senators; we do have you all in the Legislature. I think it needs to be a regional approach; it needs to be a combined thing. I think it is ridiculous to have towns and water companies going into court and spending all their valuable money fighting one another, when the essential thing is water for everybody.

Thank you very much. I'm sorry to be so long.

ASSEMBLYMAN ROONEY: No, thank you very much. We really appreciate it.

MAYOR HAGUE: Ms. Lamb, may we see your picture?

MS. LAMB: Absolutely. This came from the Water Company, when I was working with them about safety. They don't want you to conserve water; they want you to spend, waste, and carry on now, because they have a product that they think they can get from Wanaque, or where have you.

I think it would be well if they got a transcript of this hearing.

ASSEMBLYMAN ROONEY: Anyone who wants a transcript will be able to get a transcript.

Nancy McDonough, from the Old Tappan Planning Board. I'm glad you could make it tonight. I know you are coming from a Planning Board meeting.

**N A N C Y M c D O N O U G H:** Thank you. I wanted just to bring to your attention, and it was pointed out to me that perhaps you would be interested in knowing, something that came before our Planning Board just last week. The Havens and Emerson reference is G-1; the block is 205, lot 4. I will tell you that this was just a preliminary hearing, and we just have a sketch. We have no details, but there were two questions that were asked of the developer, as he came to us. It is a small subdivision for four lots, I believe. But I asked him directly, "From whom did you acquire this land?" I was told, "From Rivervale Realty." I asked directly, "Is it a contract purchase, or is it an outright purchase?" And he said, "It is an outright purchase. We are the owners."

That concerned me because Old Tappan has the unfortunate distinction, I believe, of having been among the first to grant major subdivision approval to what is now called Water's Edge. During that period of time, and up until the present, that land was owned by Rivervale Realty. They applied for the subdivision, and obtained the subdivision, and thus could contend that they were maintaining control of the land and its development.

In the case of G-1, albeit small, they have turned over the land. I am presuming that what I was told was correct; that they have turned over the land outright, with no subdivision approval, thus leaving it to the developer's ends to obtain whatever approvals he can get from our town.

I am alarmed that that might be the trend; that as public sentiment goes further and further against Rivervale Realty, they might try to unload as much land as they possibly can. That is personal opinion, and probably fueled by utter panic, as a member of a Planning Board feeling choked to death by all of this. But I bring it to your attention.

I have a map for you. I have the developer's name, if you would be interested in having it.

ASSEMBLYMAN ROONEY: How many acres is that, Nancy?

MS. McDONOUGH: It's small; it's four or five. However, it is right on the reservoir. It's not large.

ASSEMBLYMAN ROONEY: What kind of a buffer do they have on there, if there is one?

MS. McDONOUGH: We have received no testimony on it at all. This was a preliminary hearing, so we haven't even discussed any of that. My concern, at first blush, was him saying that he bought it outright. We haven't even talked to him. This was a 10-minute preliminary hearing, with just the two pertinent questions: Rivervale Realty, and he is the outright owner. No approvals.

ASSEMBLYMAN ROONEY: One of the things I know for a fact, as a neighbor in Northvale, is that Old Tappan has no sewers. They have septic systems, and they have connected through Northvale for Heritage Manor, and through River Vale for some other developments. I think the Sundin (phonetic spelling) Farms Development is through River Vale. They have made arrangements with other communities -- bordering communities -- including Orangeburg, for the northern section. I know the area well.

One of the things that was testified to by the Water Company, is that they worked in the past with Rockland County and with Bergen County to get sewers so they wouldn't pollute the watershed. The understanding, I thought, in the Old Tappan properties, was to have them develop logically and with the environment in mind, particularly from the standpoint of handling the sewage, putting in some sort of a treatment plant, or making arrangements to connect up with the Bergen County Utilities Authority.

Obviously, this doesn't fall into that. This has just been sold. As you indicated, it looks like it is right up against the reservoir.

MS. McDONOUGH: Oh, yeah.

ASSEMBLYMAN ROONEY: There is no buffer. Well, it's not that there's no buffer, but there is a gravel road--

MS. McDONOUGH: That is not to suggest that the Planning Board wouldn't enforce one. That has had no Planning Board work on it, other than receiving it. But that is as it has been, preliminarily.

ASSEMBLYMAN ROONEY: Do you have any idea-- Lisa (referring to Assemblywoman Randall) is asking, do you have any idea when the transfer occurred from Rivervale Realty to this developer?

MS. McDONOUGH: I can tell you that Old Tappan has been one of the communities that has pursued, mostly to unmuddy the tax waters, the route of minor subdivisions. So, this land we dealt with -- G-1 -- I am going to say two months ago -- and that's ball park -- to minor it off. We had dealt with it that recently. This developer was in front of us last Wednesday night. So it was hardly before the ink was dry on the resolution to minor it off, that it was purchased. We have received legal counsel that the transfer had taken place long before the minor, so it may have nothing to do at all with the negotiation process.

But, Old Tappan has pursued minor subdivision of all of the transferred lands. We have not completed that work. We had been advised, interestingly, that, "Well, there would be no harm in you minoring off the lands, because if further legislation came around, it would always just revert back to Hackensack Water Company." Now, with the outright sale of the lands, that is going to make it quite tricky indeed to have it revert back, you know, if it is held by somebody else.

So, I don't know when the transfer from Hackensack Water to Rivervale Realty-- The Old Tappan minor subdivision was two to three months ago.

ASSEMBLYMAN ROONEY: Do you know what the sale price was, by any chance?

MS. McDONOUGH: No. Not that I wouldn't have loved to ask, and not that I might not yet, but I didn't have time.

ASSEMBLYWOMAN RANDALL: That transfer would have to be a recorded "transfer by deed" anyway, which would, presumably, be of public record.

MS. McDONOUGH: About the same time as all the rest of it. It wasn't a special transfer. But the only reason it came to our attention, was because we are minoring off so we can get clear tax records -- minoring it off. So, when it came back to us now with houses drawn on it, it looked very familiar.

ASSEMBLYMAN ROONEY: Greg Gage, the G-1 property-- Do you have any numbers in the data you have checked to find out what the transfer price was and what the sale price might have been?

MR. GAGE: (speaking from audience) In G-1?

ASSEMBLYMAN ROONEY: Yeah.

MR. GAGE: I'd have to look.

MS. McDONOUGH: Do you need the map? You may certainly have it.

ASSEMBLYMAN HUDAK: No contingencies at all in the purchase? Are there any contingencies at all in the purchase of that property?

ASSEMBLYMAN ROONEY: She said it was an outright sale.

MS. McDONOUGH: This was a preliminary hearing. He said he was the outright owner. I said directly, "Are you the contract purchaser, or the outright owner?" He said, "We are the outright owners." So, you know, I mean, the sale is done. I don't presume to know. I didn't ask. This was a preliminary hearing.

ASSEMBLYMAN HUDAK: Well, there still could be contingencies, even though he is the owner.

MS. McDONOUGH: Yes, you're correct. Give them the benefit of the doubt.

ASSEMBLYMAN ROONEY: Greg, do you have any numbers?

MR. GAGE: The number I have from the Alexander Summer and Company appraisal for G-1, is 3.9 acres at $30,000 an acre, or a total of $117,000, was what Rivervale Realty paid for it. (remainder of Mr. Gage's comment indiscernible; no microphone)

ASSEMBLYMAN ROONEY: The lots are still one acre in Old Tappan, right?

MS. McDONOUGH: In that zone, yes.

ASSEMBLYMAN ROONEY: In that zone. And what is the average price per acre, from your own experience on the Planning Board?

MS. McDONOUGH: I can't afford them, so I don't know.

ASSEMBLYMAN ROONEY: I think we're talking in the area of $400,000 an acre.

MS. McDONOUGH: We are talking an enormous amount of money.

ASSEMBLYMAN HUDAK: And how many acres?

ASSEMBLYMAN ROONEY: Three point nine acres -- four acres. This is prime, right up against the reservoir.

MS. McDONOUGH: Yes. The subdivision does pull an existing road out, so it runs parallel and closer to the reservoir also. That is how they are gaining access to what was once watershed, by bringing a road right up against the line.

ASSEMBLYMAN ROONEY: We are going to keep this as an exhibit. Just for the record, this is a map of the property that is Lapatka Associates, Paramus, New Jersey. It is 3.9 acres, block 205, lot 4, known as G-1 on the assessment maps of transfer by Hackensack Water to Rivervale Realty.

MS. McDONOUGH: Thank you.

ASSEMBLYMAN ROONEY: Does anyone else wish to be heard at this time? (no response) Any other testimony at this time? (no response)

If there is no other testimony, I want to thank everyone for coming. I want to particularly thank the Committee members. I would like to have wrap-up by the Committee members -- just their comments, or anything they would like to say. I will start with Assemblyman Hudak, and again, thank you for coming from Union County.

ASSEMBLYMAN HUDAK: Thank you, Mr. Chairman. At the onset of this Committee hearing today, you asked for some comments and I said I would rather reserve my comments until after we had the hearing.

What concerns me is that there was property from a private enterprise that was bought with a threat of eminent domain by a utility, not based on the premise for the public good. That same property that was bought at $38,000 an acre, is sold to a private enterprise for $12,000 -- to its holding company, which is a private enterprise.

Secondly, Mr. Chairman, I am interested in how real properties are assessed to that particular property. Is it assessed at $38,000? Is it assessed at $12,000 an acre? Or, is it assessed at its present market value of $300,000 an acre, according to some of the testimony that Mr. Gage presented today?

I would be most interested to know how many of the 700 acres that we talked about today -- or tonight -- were acquired by eminent domain. I don't know how we can find that out, but

I certainly would like to pursue that. It is very, very important, to my way of thinking, that we are giving the power of eminent domain to a utility company, which is using that public trust, not in the best interest of the public it is supposed to be serving.

Thank you.

ASSEMBLYMAN ROONEY: Thank you very much, George. Pat Roma?

ASSEMBLYMAN ROMA: First of all, I would like to thank you, Mr. Chairman, for putting this meeting together. Obviously, I would like to thank Mayor Hague, for allowing us the use of the facility.

We have had a number of hearings, and certainly every time we delve further into this issue we seem to learn a little bit more. Certainly, as Assemblyman Rooney indicated, at the prior hearing we began to get more and more details concerning valuations, and valuations can be somewhat subjective. But, given the fact that you have a captive audience when you have a valuation, perhaps that is what leads to some of the issues we have here. But I think that as we are going ahead with the testimony and gathering other information throughout the different communities, we are getting a better picture. If what we are talking about is the appearance of an impropriety, then perhaps that is what we are talking about as far as future legislation.

Again, I reiterate that the major issue is really the quality of life; the fact that many people have purchased real estate with the idea of having a clean environment. We heard testimony about pesticides and other possibilities, but here we have the opportunity to have legislation before something happens. As I indicated in my introductory remarks, all too often we have to look at a situation afterwards, and say, "What can we do to correct this?" I think we are on the right track, and with additional testimony, and your support, we will be in a position to issue that remedial legislation.

Thank you very much for being here.

ASSEMBLYMAN ROONEY: Thank you, Mr. Roma. My colleague, Assemblywoman Randall.

ASSEMBLYWOMAN RANDALL: Thank you, Mr. Chairman.

I certainly learned a lot this evening. I was sorry I missed some of the testimony. I look forward to reading the transcript, which I understand does not take too long, Mr. Chairman, to prepare; a couple of weeks ordinarily, because it has to be typed up. I'm sure the Chairman will make copies available to everyone.

Several key points, I think, did come up tonight: Number one, the discussion of an extension of the moratorium. Number two, I think the overriding validity of the public policy change we are contemplating in Mr. Rooney's legislation. I heard nothing to countermand the earlier sentiment I expressed, which is namely that I think the policy change we are discussing is valid and eminently supportable.

And finally, one of the issues that bothers me is the discussion of rollbacks. We all know that if you have farmland, and you are willing to keep it as farmland in this State, and farm it or let it lay fallow as open space, you will get the benefit of a tax break from our tax assessors in our communities, because we value the land treated as farmland. Ultimately, however, if you sell that farmland of yours off, you are going to get hit with a rollback tax. You had the benefit, perhaps for years, of low taxes, and you are going to be hit with a back assessment if and when you sell that farmland as developable property, and make a killing.

I don't see why we can't apply and extend that same principle to watershed property. I think we ought to explore that.

But, I thank you all for coming. I know you will hear more from our Committee, as we have heard from you tonight. Thank you.

ASSEMBLYMAN ROONEY: All right. I just want to make some closing comments on this. We have addressed, in the moratorium bill -- the 18-month moratorium -- the environmental concerns of getting closer and closer to our water supply. The 18 months, as we said earlier, may not be enough time to do the job -- the full assessment of what the encroaching development may cause on our water supply.

This bill addresses the economic situation; whether a private corporation should benefit -- profitably benefit -- from its role in a public situation, where they have acquired the lands under condemnation at very low values, where they have paid low taxes on it, and now they transfer it instead of going out on the open market. I can just look back at the '83, or even the '87 proposed transfers. If we looked at that and put some of that acreage up for public sale -- small sections of it at a time that were far enough away from the water supply -- the price would have been $100,000 to $150,000 in 1983; it would have been close to $400,000 in 1988.

We didn't do that. We allowed them to transfer it to themselves at these low numbers. We would have had to transfer less acreage if we had a fair market value, and transferred it privately and kept it away from the proximity to the watershed. The question that comes up-- I look -- and I am going to enter this also as an exhibit -- at the executives, the officers, and the directors of United Water Resources. I see Peter Del Col, Robert Duncan, Robert Gerber, Jon F. Hanson, and George M. Haskew on the directors; Onofrio Laurino, Donald Correll, and Patricia Davidson on the officers. That's under the UWR. I see the same names under Hackensack Water.

Then we go to Rivervale Realty, and we see the exact same names. There has to be a conflict on the basis that you have corporate officers who are running separate divisions, and that each must turn a profit. They have separate missions. These missions, these goals, are in absolute conflict with one another. That is the question we are looking at today.

I believe, and I believe the Committee believes, that this conflict of interest is wrong. It is wrong for the public of our area -- of this particular watershed area. I think it should be changed. I believe the bill is in order; that they do not belong in both businesses -- in the water business, and in the real estate business; that something has to happen, and perhaps it is time that we made them choose; choose either being in the water business or the real estate business. But, we must protect that land, which has already been transferred under the guise that it was transferred to the Rivervale Realty Company for orderly and proper development along the Hackensack Water system, so that they could make sure that our water supply was not in danger.

That is not happening. We are seeing rampant development. We are seeing the Green Acres Plan, or the Green Plan, or the Evergreen Plan, is really the "green bucks" plan. It is to put greenbacks, green bucks into the pockets of the United Water Resources. That is the opinion we are getting; that is what we are seeing, and I think it has been made obvious from the testimony tonight.

We will reconvene this Committee in Trenton for a final hearing on this bill. We are also going to make the transcripts available to those agencies which have asked to look at those transcripts, the SEC being one; the Attorney General's Office. The Public Advocate sat here through the entire session. He is here tonight. I think you know-- (indiscernible comment here from Mr. Makul, Public Advocate's Office; speaking from audience, no microphone)

I think you know the questions that are being asked, and we want the Advocate to look into it, because we are the--

I see a hand up.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Yes. I just want to know, can they build now, before this is all settled?

ASSEMBLYMAN ROONEY: Excuse me?

UNIDENTIFIED SPEAKER FROM AUDIENCE: Can they build now, before this is all settled?

ASSEMBLYMAN ROONEY: Some of the properties that have been transferred are up for subdivision in some of the municipalities. If those municipalities give them the subdivision site plans, and if they are determined to have been part of the lands that were properly conveyed. And that is another question we've got before the BPU. Which lands were properly conveyed? There are many, many questions on this. We really don't know the answer to that, but we're seeing that there already has been some development on some of the properties.

Also, the Board of Public Utilities in New York is looking at their own situation. They have a different agenda than we do. But, I thought the matter was serious enough to have a bill, and also to have a hearing on it.

I want to thank all of you for coming up. I think we have all learned something tonight, something we may not have wanted to learn.

I would like to close by asking our host, Mayor Hague, to have the last word.

MAYOR HAGUE: Well, as a citizen, a water user, and a stockholder of the Hackensack Water Company, I am particularly grateful to my legislators, who have been backing us and helping us to such an extent. I am also grateful to the other people -- public servants -- such as the BPU and our Public Advocate and all of the other people who have spoken here.

This, to me, is a very important issue. I think we have to look to the future of our children. The only two things we need in the future are air and water to live. And I think, really, we have to think of the future generations. We can't think of just the immediate money. That is what I have said in the past week or two -- week or two? month or two -- as I heard from Mr. Gerber about the Evergreen Formula. To me, it

has been evergreen bucks. I really worry about what is going to happen, and I appreciate all of the effort that has been put into it.

It has been a bipartisan effort up to this point, and I really hope it stays that way. I appreciate, so much, all that you have done.

ASSEMBLYMAN ROONEY: Thank you, again; thank you. (applause)

**(HEARING CONCLUDED)**

# APPENDIX

State of New Jersey

BOARD OF PUBLIC UTILITIES
1100 RAYMOND BLVD.
NEWARK, NEW JERSEY 07102

IN THE MATTER OF HACKENSACK WATER COMPANY

FINAL DECISION AND ORDER

BPU Docket No. 815-447
OAL Docket No. PUC 8172-81

(Service List Attached)

BY THE BOARD:

On May 11, 1981, Hackensack Water Company (Petitioner or Company), filed a petition with the Board pursuant to N.J.S.A. 48:2-21.1 seeking an interim increase in rates in the amount of $24,046,000 on an annualized basis. The Company further requested that this increase be subsequently made permanent. N.J.S.A. 48:2-21.

Pursuant to N.J.S.A. 52:14F-8(b), the Board retained jurisdiction over the interim portion of this matter. Following public hearings and the submission of revised financial data, the Board allowed interim rate relief to petitioner in the amount of $21,000,000 by Summary Decision issued September 11, 1981 and Interim Order Opinion issued October 14, 1981.

On February 17, 1982, Petitioner filed actual 1981 year-end financial data which reduced the Company's permanent rate relief request from $21,000,000 to $19,669,000. Thereafter, on February 18, 1982, the Division of Rate Counsel (Rate Counsel) filed a motion wherein it requested the Board to require the Petitioner to file revised tariffs reflecting an interim rate increase of $19,669,000 and to order the Company to refund to its customers the difference between that figure and the amount of interim relief permitted by the Board in its Orders of September 11 and October 14, 1981 ($21,000,000). As it was our opinion that the issue of customer refunds was better suited for resolution at the conclusion of the proceeding, said motion was denied by Order dated June 11, 1982.

While retaining jurisdiction over the interim portion of this proceeding, the Board, on November 25, 1981, transmitted the permanent base rate case to the Office of Administrative Law to be heard as a contested matter pursuant to N.J.S.A. 52:14F-1, et seq. We would note that on September 3, 1981, Petitioner had waived the statutory suspension period contained in N.J.S.A. 48:2-21(d) with regard to the base rate proceeding in consideration of the time that was necessary to consider and render a determination on the request for interim relief.

During the base rate proceeding the parties raised issues regarding test-year, rate base, operating income, rate of return and refunds to customers. The Initial Decision of the Administrative Law Judge (ALJ) was filed on July 23, 1982. The Board's Summary Decision and Order in this matter was issued on October 21, 1982.

/X

## TEST YEAR

There has been some controversy with regard to the proper test-year to be utilized in this matter. The ALJ and Rate Counsel have recommended a test-year ending December 31, 1981. Staff and the Company have proposed test-years ending June 30, 1982 and December 31, 1982, respectively.

After consideration of this matter, it is our opinion that the use of a test-year ending December 31, 1981 is reasonable and proper in this proceeding. We would note, however, that in determining the proper level of rate relief, this test year cannot be studied in a vacuum. Rather, in order to achieve equitable rates and be consistent with prior Board rulings, the test-year must be supported by actual data and adjusted for known and measurable changes. In the Matter of Elizabethtown Water Company, Docket No. 802-76 (November 19, 1980); In the Matter of New Jersey Bell Telephone Company, Docket No. 7711-1136, (January 31, 1978).

## RATE BASE

### Utility Plant in Service

For purposes of this proceeding, we accept as reasonable a level of utility plant in service at the end of the test year, December 31, 1981, in the amount of $157,955,000.

### Construction Work in Progress (CWIP)

On March 20, 1981, the Board issued a decision regarding the CWIP associated with the Wanaque South pipeline project. In the Matter of the Implementation of the Two Bridges/Ramapo Water Diversion Project, Docket No. 8011-870 et al (CWIP Order). Relevant portions of this Order are set out in the ALJ's Initial Decision at pages 11 and 12.

While of the opinion that Petitioner had not fully complied with the directives of the CWIP Order, Staff and Rate Counsel proposed inclusion of CWIP as of December 31, 1981 because the figures submitted were based upon actual expenditures and had been reviewed by the parties. The ALJ agreed that Petitioner had not yet complied with the Board's directives but included projected CWIP to March 30, 1982 as those numbers were to become actual by the time her Initial Decision was rendered.

At the time the Initial Decision was rendered, we would agree with the ALJ, Staff and Rate Counsel that the Petitioner was not in compliance with the directives contained in the Board's CWIP Order. We feel, however, that recent developments, such as the retention of an independent construction audit team and the imminent establishment of the Select Management Committee as required by our Interim Order Opinion in this docket dated October 14, 1981, have placed the Company in substantial compliance and allows the Board to include that CWIP expense which has been actually incurred through June 30, 1982. The Company is directed to submit to the Board that data necessary to enable the Board to render appropriate determinations in the future CWIP proceedings contemplated in our Order of March 20, 1981, Docket No. 8011-870, et al.

After careful consideration of this issue, the Board is of the opinion that it is appropriate in this matter to recognize actual CWIP expenses through June 30, 1982 in the amount of $7,858,000.

### Working Capital

Based on its lead-lag study, the Company proposes a working capital allowance of $8,042,000. Rate Counsel adjusted Petitioner's study for Gross Receipts and Franchise Tax prepayments, the lag in the monthly billing of customers and a two day mail float in the payment of expenses.

This proposal was accepted by the ALJ with adjustments for differences in expenses. Staff also accepted Rate Counsel's methodology with the exception of that portion calling for the two day mail float.

We accept the staff's position as reasonable except for materials and supplies which we would set at the December 31, 1981 test-year level. Therefore, the appropriate level of working capital allowance is $1,546,000.

Contract Retainages

While the amount of the contract retainages is not in dispute, the Company expresses the opinion that it should not be treated as a reduction of rate base. In general, contract retainages represent plant and CWIP which has been included in utility plant in service but which has not yet been paid for by the utility. Staff and Rate Counsel argue that it should be treated as a reduction in that it represents cost free capital upon which the petitioner should not be allowed to earn a return. The ALJ has rejected the position of Staff and Rate Counsel stating that there exists no mechanism by which to adjust rates once the level of retainages taken out of rate base have been subsequently paid.

After careful consideration of this issue, we find the position of Staff and Rate Counsel to be appropriate and consistent with prior Board Orders. Accordingly, contract retainages in the amount of $284,000 will be deducted from rate base.

Income Statement

Operating Revenues

For purposes of computing test year operating revenues, we are of the opinion that the actual pumpage figures available to the Board support the recommendation of Staff that the level of pumpage be set at 93 million gallons per day (MGD). This results in pro-forma present operating revenues of $48,335,000.

Streamflow Expense - Lake De Forest Allocation

In order that the Board may appropriately allocate the expenses associated with the Lake De Forest reservoir between the Petitioner and the Spring Valley Water Company, (Spring Valley), the Petitioner and Staff recommend the use of a 63.15% factor. This factor was presented by the Board's Staff before the New York Public Service Commission (PSC) in a proceeding involving Spring Valley. It was recommended by staff that 63.51% of the expenses for the Lake DeForest reservoir be allocated to the Hackensack Water Company.

Rate Counsel and the ALJ have recommended a 57.71% allocation factor which is based on a three year average.

For purposes of this proceeding we will accept the 63.51% figure presented by Staff before the PSC and recommended herein by Staff and the Company. This results in a stream flow expense of $1,403,000. In addition, we request Staff to explore the feasibility of the use of an average year approach in future cases.



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Purchased Power

During the course of the proceeding, all parties agreed to an appropriate purchased power expense of $4,204,000. Subsequently, the Company submitted updated figures reflecting a decrease of $311,000 brought about by the reduction in the levelized energy adjustment clause (LEAC) of Public Service Electric and Gas Company (PSE&G).

After a review of this data, the Board is of the opinion that this adjustment is appropriate and that $3,893,000 ($4,204,000 - 311,000) is a proper level of expense for purchased power.

Computil

We determine that this expense should be set at a level of $429,000 as it represents an actual known expense figure through June 30, 1982.

Purchased Water Expense

With regard to the appropriate expense level for purchased water from the Passaic Valley Water Commission, the Company's proposal of $1,275,000 is based on its actual 1981 purchase of 2,555,000 gallons plus an increase of $21,000 for 1982. Staff, Rate Counsel and the ALJ recommend the use of a four year average of 1,437,000 gallons in recognition of the fact that 1981 figures are extraordinary because of the then existing drought conditions.

We are of the opinion that the use of a four year average and recognition of the Passaic Valley Water Commission increase results in an expense of $915,000, which is reasonable and should be accepted.

Amortization Expense

The Company has proposed the use of a one year write-off for drought-related and rate case expenses with no recognition of the extraordinary gain realized from the sale of its Weehawkin property.

Rate Counsel and the ALJ recommend the use of a two year amortization period along with the offsetting of the gain for the sale of the property with the drought-related expenses. Staff agrees with Rate Counsel and the ALJ with regard to the offset of the gain from the property sale and the drought expenses but would amortize the Company's rate case expenses over one year.

We find Staff's methodology to be reasonable. However, in order to be consistent with recent orders in other proceedings decided subsequent to the submission of Staff's position in this matter, we will modify Staff's proposal to allow for the equal sharing of the Company's rate case expenses, exclusive of Rate Counsel's expenses, by the stockholders and ratepayers. In the Matter of the Petition of South Jersey Gas Company, Docket No. 818-754 and 828-711 (November 24, 1982). This treatment of the Company's rate case expenses is appropriate because a portion of that expense, which we have determined to be fifty percent, is a cost of maintaining the stockholder's investment which cost should reasonably be borne by the investor

Operation and Maintenance Expenses Related to Pumpage

This expense is based solely on power and chemicals. As we have accepted the level of pumpage to be 93 MGD and have noted the reduction in the PSE&G LEAC charges, we find the appropriate level for this expense to be $1,000.

Amortization of Revenue Tax

As stated above, the Board accepts Rate Counsel's adjustment to the petitioner's lead-lag study for Gross Receipts and Franchise

Taxes by which the Company would change from a cash to an accrual basis. Accordingly, the tax was taken out of the Company's working capital allowance calculation thereby reducing rate base. In order to be consistent with prior Board decisions, however, this action should be accompanied by a corresponding expense adjustment to the income side whereby the amount taken out of rate base is amortized over a ten year period. This results in an expense adjustment of $660,000 annually for ten years.

## Rate of Return

### Capital Structure

Based on our review of the record, we find the capital structure set forth below as reasonable and consistent with the Petitioner's method of financing its assets during the effective period of the new rates set herein.

| | Amount (000 omitted) | Percent | Cost |
|---|---|---|---|
| Long-Term Debt | $ 110,931 | 52.03% | 7.97% |
| Short-Term Debt | $ 5,675 | 2.66% | 14.50% |
| Preferred Stock | $ 25,970 | 12.18% | 8.54% |
| Common Equity | $ 70,641 | 33.13% | 15.50% |

It should be noted that Rate Counsel argued for a capitalization as of December 31, 1981; Staff recommended a capitalization based on June 30, 1982; while the Petitioner utilized a December 31, 1982 capitalization adjusted for anticipated changes. The amounts shown for long-term debt and preferred stock are consistent with the Staff's position. However, it should be noted, that these components of the capital structure did not generate significant controversy.

With respect to the amount of short-term debt, the recommendations ranged from $11,000,000 by Rate Counsel to zero by the Petitioner with the Staff extrapolating the trend of short-term debt to reflect its June 30, 1982 capital structure leading to a recommendation of $5,675,000. Our analysis of the arguments in the record convince us that the Staff's reasoning with regard to short-term-debt is consistent with the Board's theory of the case, i.e., test year ending December 31, 1981 adjusted for known and measurable changes. We therefore reject the positions of the ALJ, Rate Counsel and the Petitioner in this regard.

Turning to the amount to be included in the common equity component, we would note that this issue caused substantial arguments to be spread on the record. Briefly stated, the ALJ, Rate Counsel and the Staff did not include in their common equity calculations the prospective effects of a planned common stock offering by the Petitioner planned for the Fall of 1982. The ALJ in her July, 1982, Initial Decision rejected this adjustment as being speculative.

In our oral Decision of October 18, 1982, we concluded that market conditions were favorable and conducive to the sale of the common stock issue. We therefore included the forthcoming effect of the sale on the Petitioner's common equity component in the capital structure. Further, in our Summary Decision and Order issued October 21, 1982, we conditioned this inclusion on the Petitioner's completing the sale

within 90 days of the Order. We are now dealing with a known change in the capital structure given the successful issuance of common stock by the Company on November 8, 1982.

As a result of reflecting the November 8, 1982, common stock issue in the Petitioner's prospective capital structure, the consequent weights assigned to each component are shown below:

| | |
|---|---|
| Long-Term Debt | 52.03% |
| Short-Term Debt | 2.66% |
| Preferred Stock | 12.18% |
| Common Equity | 33.13% |

Costs of Capital

The cost rates to be assigned to each component of the capital structure are discussed below. The cost rates for long-term debt and preferred stock were generally agreed upon. We adopt the Staff's cost rates for these two components; 7.97% for long-term debt and 8.54% for preferred stock. Given the substantial downward changes in capital markets, we believe that a cost rate of 14.5% should be assigned to the short-term debt component. This is consistent with the ALJ, Rate Counsel and the Staff.

The cost of equity recommendations ranged from 13.5% (Staff and Rate Counsel) to 18.5-20.0% (Petitioner). Current and prospective market conditions, as described on the record, make the Petitioner's request unreasonable. Given the improved pumpage, AMBAC guarantees, and the unprecedented CWIP treatment, we believe that the risk of the firm has been reduced to a point where a 13.5% return on equity reasonably meets the expectation of investors. Further, by reflecting the common stock sale in the equity ratio, the Board has further assured investors of a reasonable opportunity to earn their allowed return.

In support of our finding that a 13.5% return on equity is appropriate, we note that Staff, Rate Counsel, and the ALJ supported this result with substantial analysis. Although there were differences on the technical mechanics of arriving at their recommendation, we are convinced that the totality of the record supports 13.5%, and clearly and convincingly rejects the Petitioner's proposal of 18.5%. We are confident that the prospective market conditions will validate the efficacy of our finding, and produce an environment within which the Company can raise capital at reasonable rates.

Based on the amounts included in the Board's capitalization for the Petitioner, and the estimated cost rates for each component, we find that an overall rate of return of 10.72% results, which we believe produce prospectively just and reasonable rates. (The calculation of the overall return is set forth in Schedule D).

REFUNDS

In the Board's Summary Decision and Order in this matter, the Board found that a refund for estimated excess revenues produced on the interim rates in the magnitude of $6.8 million was in order. The Board further stated: "The estimated refund of $6.8 million is subject to review, audit and modification when the Petitioner provides actual earnings under interim rates for the months of August, September and October." The Board further provided that refunds to customers shall be over a period of not more than two years and that refunds shall be subject to interest at the overall authorized rate of return from the time at which the Company exceeded a reasonable level of earnings until refunds are fully credited.

We are now of the opinion that the refunds should be fully credited by the end of the 1983 calendar year. Said refunds shall be reflected as a credit on those customer bills issued by the Company in the second, third and fourth quarters of 1983. The amount of refunds credited shall be reviewed at the end of the third quarter in order that any adjustments, if necessary, can be made on the fourth quarter bills.

Through a series of conferences ending December 17, 1982, with Board Staff and Rate Counsel, the Company has provided a series of schedules, attached hereto as Schedules I through 9A, providing a basis for the refund. We, therefore, have before us the actual revenue and earning result during the entire interim period which can be tested for reasonableness against the Board's final rate order herein.

The actual revenues, earnings and rate of return during the interim period have been appropriately adjusted for the rate treatment afforded to gross receipts taxes in the Board's Summary Order which is elaborated herein. This includes a change-over to accrual accounting with a rate base reduction and an expense amortization. This adjustment along with the replacement of actual results for the months of July, August, September and October demonstrates that beginning in June, 1982, the interim rates produced earnings in excess of the allowed return on equity of 15.5%. (Schedule 2 and 6A) Consequently, interest shall be accrued from June 30, 1982 (Schedule 7A) and over the period of time necessary to satisfy the entire refund (Schedule 9A).

Providing for full interest, and based upon actual revenues received and rate of return achieved during the interim period, a slight modification of the estimated refund of $6.8 million, to a total of $6,795,000 (Schedules 8 and 9A) results. Actually achieved rates of return were tested against the authorized rate with the excess operating revenues to be refunded. Thus, in addition to the decrease in rates provided in our Summary Decision and Order of approximately 15%, customers will additionally receive a credit on their bill. This credit for average usage of 3,300 cubic feet per quarter will decrease the quarterly bill of $53.88 by $8.25.

The Board carefully considered the position of Rate Counsel. Rate Counsel essentially submitted that the testing of interim rates in a final order must be based, as a matter of law, on the level of rates. That is, it is argued that since the Board has decreased interim rates by $9.3 million in its Summary Decision and Order, the level of refund must, by law, equal this amount.

The Board believes that it is not bound by any single methodology in testing the reasonableness of interim rates in our final order. The Board is not bound by any single formula or combination of formulae in determining rates so long as the total effect of the rate order is reasonable. In Re Hope Natural Gas, 320 U.S. 531 (1944). We have given appropriate consideration to balancing the burdens placed on petitioner's ratepayers against the continuing obligation of petitioner to provide safe, adequate and proper service. In re Jersey Central Power and Light Company, 85 N.J. 520 (1981). This includes the financial capability to construct and place in service the Wanaque South project (Two Bridges/Ramapo Water Project) according to the time-table specified. This project has been found essential to the citizens of North Jersey and the economy of the State.



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The Board believes, under the circumstances of this case, that the preferred methodology is to analyze the actual revenue realized, the actual income realized and the actual rate of return realized during the interim period. We then compute a refund based upon the excess operating revenues, earnings and rate of return achieved under interim rates against what we have authorized as reasonable. On the basis of a permitted rate of return on equity of 15.5% the operating revenues can be isolated on a monthly basis in excess of that found to be reasonable herein (Schedules 2 and 3). We further note that revenues, earnings and rate of return experienced during the interim period have been reviewed and tested by Board Staff on December 15 and 16, 1982. We believe that a full and detailed audit by the Board's Staff is required, however, we are satisfied that based upon Staff's preliminary review that the amount being ordered for refund herein is reasonable. Any changes resulting therefrom can be made during the refund period.

In short, we believe it appropriate in this docket to order a refund for those operating revenues above the level which we have found to be reasonable. As an illustration, if the interim rates, because of the company's dire financial condition during that time, produced operating revenues which resulted in a rate of return that never exceeded a reasonable level, the Board might not require any refund, even though future rates have now been set at a lower level (due to an improved financial condition of the company including higher usage). Further, it must be emphasized that our decisions in this matter do not represent a breaking away or divergence from past Board policy governing the approval of interim rate relief. It is the attending circumstances, rather than a change in policy, that has made this matter sui generis. The combination of drought conditions and the Company's obligation to construct the interconnecting pipeline in a timely fashion has made this matter atypical in comparison to most cases which come before the Board. Accordingly, the decisions in this matter shall not be considered precedent in future proceedings except those presenting similar fact patterns.

For these reasons, we have not followed Rate Counsel's methodology in this case. We have been, however, most sensitive to the requirements laid out in In re Sand Rates, 66 N.J. 12 (1974) with regard to the testing of interim rates against findings of reasonableness as to rate base, income and rate of return. We believe that we have acted within the Board's discretionary powers based upon the evidence in this case and Staff's review of actual earnings results. Rate Counsel reads In Re Toms River Water Company, 82 N.J. 212 (1980) to require acceptance of its position. The Court stated, at page 212, supra:

> Implementation of a new proposed tariff at the end of the suspension period can then be only provisional. Just as when the Board agrees to an interim adjustment of rates, the new rates bind neither the Board nor the public. See N.J.S.A. 48:2-21.1. After the Board finally determines a just and reasonable tariff schedule, the utility should be required to refund any excess income to the affected customers.

We do not read this holding to limit the Board's discretion to adopt the refund procedure expressed herein. Indeed, the mention of "excess income" gives recognition that it is the dollars earned in excess of reasonable levels — further measured by a testing of actual rates of return against the level set as reasonable by the Board — rather than the rate structures themselves — which is the significant factor. It is the earnings produced by the interim and final rate structures, rather than the difference in the interim and final rates, which we have used herein as the basis of testing for excessiveness.

In our Interim Order Opinion dated October 14, 1981, the Board recognized the major conservation effort on the part of the Petitioner's customers during the period of the drought. We stated therein at page 9 that:

> This Order cannot and will not undercut the public sacrifice of the company's consumers in conserving water. Their necessary sacrifice in conserving water and being required to pay higher rate levels must be met by equal diligence and sacrifice by the company. Not a dollar of the contemplated financing for Two Bridges construction costs must be wasted.

Accordingly, the Board declared that, for a period of at least one year and unless otherwise authorized by the Board in individual cases, remuneration for directors of the Board and senior executive staff remain at the then current levels and that no additional hiring take place. We further directed that charitable contributions be prohibited during this period.

While there has been an improvement in the Company's economic condition since October, 1981, we believe that the above quoted language from our Interim Order Opinion remains timely and appropriate. The continued obligation to construct the Wanaque South project and the refund to customers ordered herein requires the monitoring of all Company expenditures.

It is the policy of this Board to avoid interference in those matters which typically fall within the prerogative of management. We are of the opinion, however, that present circumstances warrant the continuation of the freeze on the salaries of Directors and senior executive staff, on the hiring of additional employees and on charitable contributions until further order of the Board. The Company's management may, however, review with the Board their present proposals in these areas for complete resolution of this matter.

After consideration of the entire record in this matter, the Board FINDS:

1. For purposes of this proceeding a test year ending December 31, 1981, adjusted for known and measureable changes is reasonable;

2. The reasonable level of utility plant in service is $157,955,000 and net investment rate base if $126,158,000;

3. The reasonable amount of test year operating revenues, as adjusted, is $48,335,000. Operating expenses, taxes and depreciation total $40,225,000 resulting in an operating income at present rates of $8,080,000;

4. The equitable overall rate of return is 10.72% based on a cost of equity of 15.5%;

5. When applied to the net investment rate base, the allowed rate of return results in an annual operating income of $13,524,000; The application of the revenue factor (2.1514 x) to the income deficiency of $5,444,000 ($13,524,000-8,080,000) results in an additional annual operating revenue requirement of $11,712,000;

6. The permanent rates as proposed by the Company would produce an overall rate of return in excess of the fair and reasonable rate of return found by the Board in this matter. Accordingly, the Company's proposed rates are unjust and unreasonable and therefore are DENIED;

7. By Decision, dated September 11, 1981, the Board authorized an interim increase in rates, subject to refund as required by law, in the amount of $21,000,000 in operating revenues on an annual basis;

8. The level of permanent rates set herein represents a decrease of $9,288,000 from interim rates;

9. Based upon Schedules 1-9A, attached hereto and incorporated herein, a refund in the total amount of $6,795,000 shall be credited to customer bills. Said refund shall be reflected as credits on those bills issued by the Company in the second, third and fourth quarters of 1983.

10. Any changes to the refund resulting from the Staff's detailed audit will be implemented prior to the completion of the refund;

11. Credits shall be listed separately on customer's bills with a notation that the refund was ordered by the New Jersey Board of Public Utilities.

At the conclusion of its last rate case, the Company was requested to justify its land holdings to the Board. The Board finds the Company's present real estate analysis regarding its protective land holdings to be substantially inadequate. Accordingly, Petitioner is directed to submit to the Board a detailed report on the justification of all protective lands and specific plans for all other lands held by the Company and reflected in rate base. Said report shall be submitted within ninety (90) days of the date of this Order. The Company shall coordinate this effort with the Director of the Division of Water and Sewer, the Director of the Division of Utility Finance, Accounts and Audits and the Board's Legal Division. A copy of all filings shall also be forwarded to the Division of Rate Counsel.

The Board accepted for filing the revised tariffs submitted by the Company effective for service rendered on and after November 1, 1982. Said tariffs shall remain in full force and effect except as modified herein with regard to the customer refunds.

DATED: January 12, 1983

BOARD OF PUBLIC UTILITIES
BY:

BARBARA A. CURRAN
PRESIDENT

GEORGE H. BARBOUR
COMMISSIONER

ATTEST

EDWARD H. HYNES
COMMISSIONER

TERESA M. SELLMEYER
ACTING SECRETARY

10X

SCHEDULE A

BPU Docket No. 815-447
OAL Docket No. PUC 8172-81

HACKENSACK WATER COMPANY

COMPUTATION OF RATE RELIEF

| | |
|---|---|
| Rate Base | $126,158 |
| Rate of Return | 10.72 |
| Operating Income Required | 13,524 |
| Operating Income at Present Rates | 8,080 |
| Income Deficiency | 5,444 |
| Revenue Increase (2.1514x) | $ 11,712 |

SCHEDULE B

BPU Docket No. 815-447
OAL Docket No. PUC 8172-81

HACKENSACK WATER COMPANY

RATE BASE

(000's Omitted)

| | |
|---|---|
| Utility Plant in Service | $187,955 |
| Additions: | |
| CWIP | 7,858 |
| Deferred Costs | 822 |
| Working Capital | 1,545 |
| Total Additions | 10,225 |
| Gross Rate Base | 198,181 |
| Deductions: | |
| Accumulated Depreciation | 33,558 |
| Deferred Tax Reserve | 3,403 |
| Contributions in Aid | 1,810 |
| Customer Deposits | 40 |
| Customer Advances | 2,918 |
| Contract Retainages | 294 |
| Total Deductions | 42,023 |
| NET INVESTMENT RATE BASE | $156,158 |

12X

SCHEDULE C

BPU Docket No. 815-447
OAL Docket No. PUC 8172-81
HACKENSACK WATER COMPANY

OPERATING INCOME

PRESENT RATES
(000's Omitted)

| | | | |
|---|---|---|---|
| Operating Revenues | | | $[illegible] |
| Operating and Maintenance Expenses | | | |
| DeForest Lake | $ 1,403 | | |
| Salaries | 10,500 | | |
| Purchased Power | 3,893 | | |
| Fuel Oil | 873 | | |
| Gasoline | 2[illegible] | | |
| Chemicals | 3[illegible] | | |
| Computer | 429 | | |
| Insurance | 311 | | |
| Medical and Group Insurance | 8[illegible] | | |
| Pensions | 1,314 | | |
| Rental Fees | 237 | | |
| Purchased Water | 91[illegible] | | |
| BPU Assessment | [illegible] | | |
| Interest on Customer Deposits | 1 | | |
| Employee Benefits | 79 | | |
| Amortization Expense | 297 | | |
| O&M Depreciation | 157 | | |
| Miscellaneous | 4,180 | | |
| O&M Related to Pumpage | 1 | | |
| Total Operating and Maintenance Expenses | | $26,700 | |
| Depreciation Expense | | 2,365 | |
| Taxes: Amortization of Revenue Tax | $60 | | |
| Real Estate Taxes | 1,713 | | |
| Payroll Taxes | 8[illegible] | | |
| Other Taxes | 69 | | |
| Revenue Taxes | $,728 | | |
| Federal Income Taxes | 1,0[illegible] | | |
| Total Taxes | | 11,189 | |
| Total Expenses, Taxes, and Depreciation | | | 40,2[illegible] |
| Operating Income | | | $ [illegible] |

[illegible]

[illegible] Docket No. [illegible]
GDAS. Docket No. [illegible]

HACKENSACK WATER COMPANY

CAPITAL STRUCTURE

| | BALANCE WITHOUT EQUITY ISSUE | PERCENT | COST | WEIGHTED COST |
|---|---|---|---|---|
| Long-Term Debt | $110,930 | 52.03% | 7.97% | 4.15% |
| Short-Term Debt | 5,675 | 2.66% | 14.50% | 0.39% |
| Preferred Stock | 25,970 | 12.18% | 8.54% | 1.04% |
| Common Equity | 70,641 | 33.13% | 15.50% | 5.14% |
| Total | $213,217 | 100.00% | | 10.72% |

XXI

[illegible] WATER COMPANY
Comparative Statements of Income
(In Thousands)

For the Twelve Months Ended

Source: Exhibit F 6

|  | September 30 1981 | October 31 1981 | November 30 1981 | December 31 1981 | January 31 1982 | February 28 1982 | March 31 1982 | April 30 1982 | May 31 1982 | June 30 1982 | July 31 1982 | August 31 1982 | September 30 1982 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
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[illegible]

[illegible]

[illegible]

| | September 30 | October 31 | November 30 | December 31 | January 31 | February 28 | March 31 | April 30 | May 31 | June 30 | July 31 | August 31 | September 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
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16X

MAMMOTH WATER COMPANY

Potential Revenue Refund Presented During Oral Arguments

(In Thousands)

For The Twelve Months Ended

| | September 30 1990 | October 30 1991 | November 30 1991 | December 30 1991 | January 30 1992 | February 28 1992 | March 30 1992 | April 30 1992 | May 30 1992 | June 30 1992 | July 31 1992 | August 30 1992 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| [illegible] | $ 0,[illegible] | $ 3,849 | $ 7,[illegible] | $ 0,[illegible] | $ 7,783 | $ 3,[illegible] | $ 0,[illegible] | $ 7,664 | $ 7,603 | $ 7,885 | $ 3,[illegible] | $ [illegible] |
| [illegible] | 2,554 | 3,293 | 4,104 | 3,[illegible] | 5,270 | 6,[illegible] | 6,252 | 7,275 | 9,307 | 9,293 | 10,390 | 10,[illegible] |
| [illegible] At 30 | $ (5,[illegible]) | $ (0,[illegible]) | $ (3,[illegible]) | $ (4,[illegible]) | $ (2,[illegible]) | $ (1,[illegible]) | $ (1,750) | $ (289) | $ 664 | $ 1,[illegible] | $ 2,096 | $ 3,[illegible] |
| [illegible] Refund | $ -0- | $ -0- | $ -0- | $ -0- | $ -0- | $ -0- | $ -0- | $ -0- | $ 2,230 | $ 2,756 | $ 3,387 | $ 6,[illegible] |

[illegible] Based on Minimum Capacity - Actual Net Income = Net Income Required)

XLI

Schedule No. 5

**[illegible] WATER COMPANY**
**Revenue Refund After Restatement**
**(In Thousands)**

For The Twelve Months Ended

| | September 30 1990 | October 31 1991 | November 30 1991 | December 31 1991 | January 31 1992 | February 28 1992 | March 31 1992 | April 30 1992 | May 31 1992 | June 30 1992 | July 31 1992 | August 31 1992 | [illegible] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| [illegible] | $ [illegible] | $ [illegible] | $ [illegible] | $ [illegible] | $ [illegible] | $ [illegible] | $ [illegible] | $ [illegible] | $ [illegible] | $ [illegible] | $ [illegible] | $ [illegible] | $ [illegible] |
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| | $ ([illegible]) | $ ([illegible]) | $ ([illegible]) | $ ([illegible]) | $ ([illegible]) | $ ([illegible]) | $ ([illegible]) | $ ([illegible]) | $ ([illegible]) | $ [illegible] | $ [illegible] | $ [illegible] | $ [illegible] |
| [illegible] | $ -0- | $ -0- | $ -0- | $ -0- | $ -0- | $ -0- | $ -0- | $ -0- | $ -0- | $ [illegible] | $ [illegible] | $ [illegible] | $ [illegible] |

[illegible] = Common Equity - Actual Net Income - Net Income Required)

XPX

Schedule No. 5

HA[illegible] WATER COMPANY
Revenue Refund Computation
as Presented on Registration Statement to SEC
For the Twelve Months Ended September 30, 1982
(In Thousands)

| | September After Restatement | Adjustment | September As Adjusted |
|---|---|---|---|
| Revenue | $ 65,640 | $ (6,045) | $ 59,595 |
| Total Operating Expenses | 42,475 | (842) | 41,633 |
| Operating Income | $ 23,165 | $ (5,203) | $ 17,962 |
| Federal Income Tax | 7,224 | (2,602) | 4,622 |
| Utility Operating Income | $ 15,941 | (2,601) | $ 13,340 |
| Other Income | 2,379 | — | 2,379 |
| Gross Income | $ 18,320 | $ (2,601) | $ 15,719 |
| Interest Expense | 6,545 | — | 6,545 |
| Net Income | $ 11,775 | $ (2,601) | $ 9,174 |
| Preferred Stock Dividend | 1,443 | — | 1,443 |
| Net Income Applicable to Common Equity | $ 10,332 | $ (2,601) | $ 7,731 |
| Common Equity Balance | $ 52,483 | | $ 49,382 |
| Return on Common Equity | 19.69% | | 15.50% |

1. Required Net Income for the Twelve Months Ended September 30, 1982:
   Required Net Income (x) = .155 ($52,483-10,332 - x)
   (x) = $4533 - .155x
   .845x = $5533
   Required Net Income (x) = $7731

2. Required Net Income for the Twelve Months Ended September 30, 1982 — $ 7,731
   Actual Net Income for the Twelve Months Ended September 30, 1982 — 10,332

   Overearnings — $ 2,601

   Revenue Refund for the Twelve Months Ended September 30, 1982 (@2.324) — $ 6,045

Schedule No. 6-A

**HACKENSACK WATER COMPANY**
**Revenue Refund Computation Consistent with Registration Statement Formula**
**For the Twelve Months Ended October 31, 1982**
**(In Thousands)**

| | Actual October 11 Restated* 1 Actual | Adjustment | October As Adjusted |
|---|---|---|---|
| Revenue | $ 60,756 | $ (101) | $ 60,655 |
| Total Operating Expenses | 42,170 | (14) | 42,156 |
| Operating Income | $ 18,586 | $ (87) | $ 18,499 |
| Federal Income Tax | 5,269 | (40) | 5,229 |
| Utility Operating Income | $ 13,317 | (47) | $ 13,270 |
| Other Income | 2,418 | — | 2,418 |
| Gross Income | $ 15,735 | $ (47) | $ 15,688 |
| Interest Expense | 6,712 | — | 6,712 |
| AFDC-Wanaque South Project | (45) | — | (45) |
| Net Income | $ 9,068 | $ (47) | $ 9,021 |
| Preferred Stock Dividend | 1,436 | — | 1,436 |
| Net Income Applicable to Common Equity | $ 7,632 | $ (47) | $ 7,585 |
| Common Equity Balance | $ 48,980 | | $ 46,933 |
| Return on Common Equity | 15.58% | | 15.50% |

* Restated for revenue based taxes in accordance with BPU Permanent Order and revenue refund accumulated through September 1982. Therefore the accumulated revenue refund through October 1982 is derived as follows:

| | |
|---|---|
| Revenue Refund for the Twelve Months Ended September 30, 1982 | $ 6,045 |
| Additional Revenue Refund for the Twelve Months Ended October 31, 1982 | 101 |
| Revenue Refund Accumulated through October 1982 | $ 6,146 |

20X

Schedule No. 7-A

**HACKENSACK WATER COMPANY**
**Summary of Revenue Refund**
**Estimated Through Year End 1982**

| | |
|---|---|
| Revenue Refund | $6,146,000 |
| Accrued Interest (through October 31, 1982) | 127,000 * |
| Balance @ October 31, 1982 | $6,273,000 |
| Accrued Interest (November & December 1982) | 110,000 * |
| Total Refund @ December 31, 1982 | $6,383,000 |
| Accrued Interest (January through March 1983) | 165,000 |
| Total Refund @ March 31, 1983 | $6,548,000 |

* Calculated from June 1982 at a rate of 10.72%

Schedule No. 8

# HACKENSACK WATER COMPANY
## Alternate Revenue Refund Methodologies
(In Thousands)

| | Thirteen Months Ended October 1982 |
|---|---|
| **REVENUE TEST** | |
| Authorized Revenue - Docket No. 815-447 (Computed on a thirteen month basis). | $ 65,051 |
| Actual Revenue Realized | 71,595 |
| Revenue Refund | $ 6,544 |
| **UTILITY OPERATING INCOME (RATE OF RETURN) TEST** | |
| Authorized Utility Operating Income - Docket No. 815-447 (Computed on a thirteen month basis) | $ 14,651 |
| Actual Income Realized (After restatement for change in tax accounting) | 17,392 |
| Overearnings | $ 2,741 |
| Revenue Refund ($ 2.1514 x ) | $ 5,897 |
| **EARNINGS TEST (RETURN ON EQUITY)** | |
| 1. Required Net Income for the Month of October 1982: | |
| Required Net Income (x) = .155/12 ($48,933-729 - x) | |
| (x) = $622 - .0129x | |
| .9871x = $622 | |
| Required Net Income (x) = $630 | |
| 2. Required Net Income for the Month of October 1982 | $ 630 |
| Actual Net Income for the Month of October 1982 | 729 |
| Overearnings for the Month of October 1982 | $ 99 |
| Revenue Refund for the Month of October 1982 ($2.1514x) | $ 213 |
| Revenue Refund for the Twelve Months Ended September 30, 1982 | 6,045 |
| Total Revenue Refund | $ 6,258 |

22X

Schedule No. 9-A

## Suggested Refund Methodology

**Description -** Refunds computed in same fashion as the Public Service Electric and Gas Company's refund through the Levelized Energy Adjustment Clause. The credit to the bills rendered on and after April 1, 1983, is to be based on the current consumption of the bill multiplied by a constant rate. The gross amount, the credit and the net amount to be paid will be itemized on the bill.

The credit will continue through the end of calendar 1983 or until the unpaid balance of the refund amount is depleted, whichever comes first.

Customers who have finalized accounts and are no longer customers will be given the opportunity to submit a claim for the refund due. These refunds will be computed manually based on the customers consumption during the interim rate period and the refund check or credit will be given in one lump sum.

The credits to bills will cease once the refund balance is depleted. The balance will be adjusted monthly to reflect all credits made and for the monthly accrual of interest on the unpaid balance.

**Advantages -** This plan will be implemented by April 1, 1983 at minimal cost. The plan would be the easiest to implement and administer. It would also be the easiest to explain to customers and the easiest for customers to verify as bills are received.

**Amount of Refund -**

| | |
|---|---|
| Balance @ 3/31/83 (see Schedule No. 7) | $8,548,000 |
| Assumed interest for nine months | 247,000 |
| Estimated total refund to customers | $8,795,000 |

**Refund Rate -** $2.60/thousand cubic feet

($8,795,000/3,624,723.94 x 3/4)

3,624,723.94 TCF = consumption based on BPU's Rate Order

**Example -**

| | |
|---|---|
| Current consumption = 3.3 TCF | |
| Current bill (3.3 @ $14.30/TCF) = | $47.19 |
| Facilities Charge | 6.69 |
| Gross Amount | $53.88 |
| Refund Credit (3.3 @ $2.50/TCF) = | (8.25) |
| Net Amount | $45.63 |

HACKENSACK WATER COMPANY

BOARD OF PUBLIC UTILITIES APPEARANCE LIST

DOCKET NO. 815-447

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AGENDA DATE: 12/8/83

8 Dec 83

State of New Jersey

BOARD OF PUBLIC UTILITIES
1100 RAYMOND BLVD.
NEWARK, NEW JERSEY 07102



LEGAL

| | | |
|---|---|---|
| IN THE MATTER OF THE PETITION OF HACKENSACK WATER COMPANY FOR AN INCREASE IN RATES | ) ) ) ) | ORDER ADOPTING INITIAL DECISION<br><br>BPU Docket No. 837-622<br>OAL Docket No. PUC 5644-83 |

John Stanziola, Supervising Rate Analyst, Division of Utility Finance and Audits, and Ed P. Kubala, Chief, Bureau of Water Tariffs and Rates, Division of Water and Sewer, on behalf of the Board of Public Utilities

Robert L. Duncan, Jr., Esq., by John P. Halvorsen, Esq., Saddle Brook, New Jersey, for Hackensack Water Company

Stephen B. Genzer, Deputy Public Advocate, Division of Rate Counsel, Department of Public Advocate, Newark, New Jersey.

BY THE BOARD:

On July 1, 1983, Hackensack Water Company (Company), a public utility subject to the jurisdiction of the Board of Public Utilities (Board), filed a petition pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:1-6.16, seeking an increase in annual revenues of approximately $10.9 million. This matter was transmitted to the Office of Administrative Law as a contested case to be scheduled for hearing.

Subsequent to prehearing conferences and properly noticed public hearings, the parties entered into and signed a written stipulation which is dispositive of all contested issues. On November 22, 1983, Administrative Law Judge Thomas A. Penn submitted to the Board his Initial Decision in this matter. Said Initial Decision adopted the stipulation of the parties in its entirety.

The parties have agreed to the use of a 1983 calendar test year with pro forma test year operating revenues at present rates set at a level of $64,020,000. Of this, $62,573,000 is at current rates with the balance reflecting the anticipated pro forma annualized revenues attributable to the quarterly compliance filings established in Docket No. 8011-870 regarding the construction work in progress associated with the Wanaque South diversion project.

The level of the Company's rate base as of December 31, 1983 has been set at $146,332,000. This amount reflects a downward adjustment in Water Plant in Service of $615,000 which reflects the removal from rate base of land identified in the Havens and Emerson Land Study as "beyond parameters." For purposes of stipulation, the parties have agreed to delete from rate base the unamortized portion of the American Municipal Bond Assurance Corporation (AMBAC) premium and include a zero cash working capital requirement.

The pro forma level of operating expenses, set at $46,689,000, reflects a reduction of some $221,000 in real estate taxes attributable to the land acreage removed from Water Plant in Service. No depreciation on contributed property is included in this amount and the Company has further agreed that it will not add to the accumulated depreciation reserve any depreciation on contributed property not allowed in this case or any previous case where such depreciation was disallowed.

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The parties have recommended an overall rate of return of 10.52% which incorporates a return on equity allowance of 14.10%. This, in conjunction with the other adjustments, results in an increased revenue requirement of $4,550,000.

We would note that while the overall increase in revenue is 7.3%, the increase in bills for residential 5/8" customers will range from 3% for those who use 1,200 cubic feet per quarter to less than 1% for those whose usage exceeds 4,500 cubic feet.

It is further recognized that any rates established pursuant to this stipulation do not include revenue recognition for construction expenditures now pending before the Board or to be filed in the future pursuant to Docket No. 8011-870. In addition, this Order will have no effect on the treatment to be accorded any gain that may be realized from the future sale or transfer of that land taken out of rate base.

After careful review and consideration of the entire record, the Board HEREBY FINDS that the written stipulation entered into and signed by the parties represents a fair and reasonable settlement of all contested issues. The parties are to be highly commended for the effort and cooperation that was necessary to achieve this agreement.

Accordingly, the Board HEREBY ADOPTS the Initial Decision.

The Company has filed revised tariff sheets which conform to the above findings and represent a further step toward a one block rate structure. Said revised tariff sheets are HEREBY ACCEPTED for filing to become effective for service rendered on and after the date of this Order.

DATED: December 8, 1983

BOARD OF PUBLIC UTILITIES
BY:

Barbara A. Curran
BARBARA A. CURRAN
PRESIDENT

George H Barbour
GEORGE H. BARBOUR
COMMISSIONER

Edward H. Hynes
EDWARD H. HYNES
COMMISSIONER

ATTEST:

Blossom A. Peretz
BLOSSOM A. PERETZ
SECRETARY



BPU. 837-622
OAL DKT. 5644-83

AGENDA DATE: 11/1/84

17 DEC 84



State of New Jersey

BOARD OF PUBLIC UTILITIES
1100 RAYMOND BLVD.
NEWARK, NEW JERSEY 07102

LEGAL

IN THE MATTER OF THE PETITION OF )
THE HACKENSACK WATER COMPANY )
FOR APPROVAL OF THE TRANSFER OF )
REAL PROPERTY )

DECISION AND ORDER

DOCKET NO. 8312-1096

(SERVICE LIST ATTACHED)

BY THE BOARD:

On January 12, 1983, the Board issued its Final Decision and Order in Docket No. 815-447 wherein the Hackensack Water Company (Company, Hackensack) was directed, in part, "to submit to the Board a detailed report on the justification of all protective land" held by the Company and reflected in rate base. This directive was issued with a view toward the eventual removal from rate base of that property owned by the Company no longer used and useful for the maintenance of water quality.

At the direction of the Board, the Company contracted with Havens and Emerson, Inc., Consulting Engineers, for the conduct of an independent study of the Company's protective lands. Said study, titled "Report on Watershed Management," was filed with the Board on August, 1983, and concluded that the Company possesses 717.91 acres of land no longer needed for the protection of its watershed or the maintenance of water quality. Accordingly, in Docket No. 837-622, decided on December 8, 1983, the Board adopted the stipulation of the parties which provided, in part, that this excess acreage be removed from the Company's rate base as of October 1, 1983.

On December 8, 1983, the matter now before the Board was initiated through the filing by the Company of a petition requesting approval for the transfer of the excess land to a non-utility subsidiary of Hackensack's parent corporation, United Water Resources, Inc. This petition also requested that the Board resolve the question of the entitlement of the ratepayers to any portion of the gain potentially realizable on the fair market value of this property as of the date of its removal from rate base which shall be considered to be October 1, 1983, for purposes of this proceeding.

Having carefully reviewed the petition and the report of Havens and Emerson, Inc., and having considered the recommendations of our Staff and the independent appraiser retained by the Board, we are of the opinion, and so find, that the subject property remains unnecessary for the protection of the Company's water system. As such, we believe that the proposed transfer will avoid both the possibility of any future costs to ratepayers and the application of regulatory resources in connection with this property.

While there is no existing case law in New Jersey on the issue concerning the proper treatment, for ratemaking purposes, of appreciated value derived from the transfer of non-depreciable property no longer used or useful in providing utility service, the Board has reviewed the available and pertinent decisions rendered in other jurisdictions. We note that the various decisions of the courts and utility commissions differ as to whether it is the utility's ratepayers or shareholders who ultimately benefit from such an appreciation in value.

27X

The authority and jurisdiction of the Board is derived from the provisions of N.J.S.A. 48:2-1, et seq. It is well settled that, by this delegation of authority, the Legislature intended this Board to have the widest range of regulatory power over public utilities including the necessary broad discretion by which to exercise that authority. Public Service Coordinated Transport v. State, 5 N.J. 196 (1950); Bergen County v. Department of Public Utilities, 117 N.J. Super 304, (App. Div., 1971). Accordingly, the Board cannot and should not be bound by any one particular methodology. Rather, the Board must be free to use its discretion and to call upon its expertise in an attempt to balance the needs of ratepayers and shareholders. See also, In re Jersey Central Power and Light Company, 85 N.J. 520 (1981); In the Matter of Hackensack Water Company, Final Decision and Order, Docket No. 813-447 (January 12, 1983).

Based upon the foregoing and the particular facts of the instant matter, it is the considered opinion of this Board that the Company's ratepayers are equitably entitled to a fair share of the gain potentially realizable on the fair market value of the subject property in return for their contribution toward the cost of maintaining this property during the period in which it was included in rate base. Toward this end, we determine a 50% sharing of the potential net gain on the fair market value of the subject property, as of the date of its removal from rate base, to be a fair and equitable sharing between the Company's ratepayers and the shareholders of its parent corporation. We believe that such a distribution will adequately compensate the ratepayers for their past contributions towards the maintenance of the property and will allow the Company its fair share commensurate with the risks borne by its shareholders, thereby satisfying the claims of said shareholders.

In order that the net gain which is to be shared equally by the ratepayers and shareholders may be calculated, the following definitions will be in effect.

The gain in value will be derived by deducting the appropriate costs from the fair market value of the property. For purposes of this Order, "costs" is defined as the sum of the original book value of all the property approved for transfer, plus expense allowances, which shall be limited to:

1. Real estate taxes accruing on the subject property from October 1, 1983, the date of its removal from rate base, until the date of this Order;

2. Reasonable professional fees incurred solely in connection with this petition, including fees of the Company and Board appointed appraisers, engineering fees (Havens and Emerson, Inc. and the reviewing engineering expert who will review the Havens and Emerson, Inc. report) and legal fees of the attorneys for the Company and for the Department of the Public Advocate. No allowances shall be made for surveyors' fees, or for any fees incurred in connection with any property approved for transfer after the date of this Order;

3. The amount payable as a Realty Transfer Tax (N.J.S.A. 48:15-5 et seq.) on a non-exempt transfer of real estate having a fair market value equal to the property approved for transfer; and

4. An amount equal to 5% of the fair market value of the subject property as an allowance for those standard fees and other expenses generally incurred in the realization of the fair market value.

The net gain, upon which the 50% sharing will be made, will then be derived by deducting the applicable tax allowance from the gain. Said tax allowance shall be the sum of the Federal Income Tax payable (at 1984 rates) and the New Jersey Corporate Business Tax payable by a domestic corporation, without further adjustment, on the taxable portion of the gain.

The fair market value of the subject property shall be establishe appraisals being prepared to MAI standards by William J. Stack, II, on behal Company, and Richard G. Pietrowitz, of Alexander Summer Company, who retained as the Board's independent appraiser in this matter. These appraisa completed within 60 days of this Order. The appraisers shall notify Staff up completion of the appraisals which are to be simultaneously submitted to th

In the event that the appraised values of the subject property as two appraisals are the same, that amount shall be conclusive as to fair marl the event that the appraised values are not in total agreement, and if the hi value does not exceed the lower appraised value by more than 20%, the ave two appraisal shall constitute the fair market value. Should there be a grea differential, the Board, comparing the two appraisal reports, shall determin appropriate fair market value.

The share of the net gain calculated pursuant to the foregoing m and attributable to the Company's ratepayers, shall be allocated to the bene ratepayers in a manner to be determined in the Company's next filed base r proceeding. The manner of this allocation shall include carrying charges ca Company's present authorized rate of return and accruing as of the date of shall be amortized over a five year period payable in equal annual amounts. consistent with the Board's determination that the ratepayers are to receiv of the potential net gain on the fair market value of the subject property.

In addition, if in any year the Company's actual operating revenu inclusion of the above referrenced credit, fall below a level necessary to ma investment in the Company, the Company may petition the Board for defer part of the credit for such year.

It is the considered opinion of this Board that the foregoing repr reasonable means by which to ascertain the fair market value of the subject will provide a fair and generous benefit to the ratepayers which shall be rea short period of time.

We would also note that the conclusions set out hereinabove, we only after a thorough review of the applicability, in this matter, of the Boa pertaining to bidding and advertising. N.J.A.C. 14:1-6.10. The purpose of t regulatory provisions is to ensure that a utility will receive the fair market property which it may sell. As the matter now before the Board does not e of property, we are in agreement with the Board appointed appraiser that t advertising regulations are not appropriate and should be waived in this pro the opinion of the Board that the utilization of professional appraisals repre reasonable alternative to bidding and advertising for purposes of determinin market value of the subject property in this matter.

Accordingly, the Board, pursuant to N.J.S.A. 48:3-7 and N.J.A.C HEREBY APPROVES the request of the Hackensack Water Company to tra acres of real property no longer used or useful for the provision of utility se non-utility subsidiary of United Water Resources, Inc., subject to the terms set out hereinabove. This approval shall also be subject to any adjustment reflect the final survey lines and descriptions drawn after completion of a s to delineate the precise bounds of the excess property as identified by Have Inc. These adjustments shall be filed with the Board as the survey results a for review as to conformity with the Havens & Emerson, Inc. report.

For informational purposes only, the Hackensack Water Compan the Board full access to any books and records of the United Water Resourc subsidiaries which pertain to any issue or transaction affecting or relating t Water Company and which may be deemed relevant by the Board, including dealt with in this docket.



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And it is FURTHER ORDERED that the shared amount
ratepayers under the terms of this Order shall be in full and final re
settlement of all claims to gain arising from the disposition of the p
transfer. The terms of this Order shall be binding in all subsequent
Board, notwithstanding the occurrence of circumstances in which th
United Water Resources, Inc., or its non-utility subsidiary designate
realize gains or incur expenses and costs which are greater or less t
under the terms of this Order. Ratemaking consideration shall be c
terms of this Order.

DATED: December 17, 1984

BOARD OF PUBLIC UTI
BY:

Barbara A.
BARBARA A. CURRAN
PRESIDENT

GEORGE H. BARBOUR
COMMISSIONER

Edward H. Hy
EDWARD H. HYNES
COMMISSIONER

ATTEST:

Michael S. Keszler
MICHAEL KESZLER
ACTING SECRETARY

Commissioner Hynes, joining with his colleagues in sig
adds this concurring opinion to emphasize the Board's authority an
monitor the transactions of United Water Resources, Inc. with res
was the subject of this Order.

While agreeing that the terms of the Order are reason
credited to ratepayers by the Board fully resolves all claims to ga
disposition of the property, he believes that periodic evaluations
transactions involving the land covered by this Order should be co
staff. In his opinion, such evaluations are necessary to determine
methodology selected by the Board in this proceeding is appropria
conveyances of property by utilities under the Board's jurisdiction
Board's advertising and bid regulations (N.J.A.C. 14:1-6.10) is soug

DATED: December 17, 1984

HACKENSACK WATER COMPANY

Docket No. 8312-1096

SERVICE LIST

STAFF OF THE BOARD OF PUBLIC UTILITIES

Gerald A. Calabrese
John Stanziola
Paul Giancaterino
Dr. Frederick Grygiel
Dr. Joseph Bowring
Edward D. Beslow, Esq.

HACKENSACK WATER COMPANY

Kenneth D. McPherson, Esq.
Waters, McPherson & McNeill
400 Plaza Drive
Secaucus, New Jersey 07094

DEPARTMENT OF THE PUBLIC ADVOCATE

Stephen B. Genzer, Esq.
Deputy Public Advocate
Department of the Public Advocate
Division of Rate Counsel
744 Broad Street - 30th Floor
Newark, New Jersey 07102

25 JUNE 85

State of New Jersey

BOARD OF PUBLIC UTILITIES
1100 RAYMOND BLVD.
NEWARK, NEW JERSEY 07102



AGENDA DATE: 5/30/85

LEGAL

| | | |
|---|---|---|
| IN THE MATTER OF THE PETITION OF THE HACKENSACK WATER COMPANY FOR APPROVAL OF THE TRANSFER OF REAL PROPERTY | ) ) ) ) | ORDER OF IMPLEMENTATION<br><br>BPU DKT. NO. 8312-1096 |

(SERVICE LIST ATTACHED)

BY THE BOARD:

The Board, by Decision and Order in this docket dated December 17, 1984, approved the transfer of the real property in question from the Hackensack Water Company (petitioner) to a non-utility subsidiary of United Water Resources, Inc. The above determination was based on the Board's conclusion that said property was no longer dedicated to the public use as utility property and had, consequently, been removed from rate base by Order of the Board of December 8, 1983, in Docket No. 827-322. The removal of this property from rate base was initiated by Board Order dated January 1983, in Docket No. 815-447 wherein the Board directed petitioner to submit a detailed report on the present justification for continuing to include all protective lands to its watershed in rate base. This removal of property from rate base resulted in a tangible benefit to petitioner's ratepayers, in that they would no longer have to support a rate of return on property which the Board deemed no longer necessary to provide utility service.

After full consideration of this docket, the Board, in its December 17, 1984 Order adopted a methodology to adequately and reasonably further compensate the ratepayers for their past contribution toward the use and maintenance of this property. The Board determined to allocate to the ratepayers a 50% sharing of the potential net gain on the fair market value on the property over its original cost. The corporate utility and its stockholders, subject to the above payment to ratepayers, necessarily maintain legal ownership and control of the property in question which is no longer dedicated to the public use or is necessary to provide utility services.

In conformance with the above Order, the petitioner, on March 20, 1985 submitted a detailed accounting of the appraised fair market value of the property, Board recognized expenses, including taxes, and the current net value of said property. The accounting was supplemented by submission of April 26, 1985 as result of staff requests at a conference held April 4, 1985.

There remains for Board consideration the position filed by Rate Counsel, April 19, 1985, and responded to by petitioner on April 26, 1985. This case was commenced by petition dated February 21, 1984. Rate Counsel, through its qualified expert consultant, states that the ratepayers' financial gain related to the property in question "should be maximized so that the ratepayers obtain the greatest benefit." To that end, Rate Counsel proposes an alternate methodology. In essence, Rate Counsel would hypothesize

an above-the-line gain to the utility, Hackensack Water Company, on the basis of the appraised value of the property. Based upon this premise, it is argued that any credit to the ratepayers would diminish the utility's net income and, consequently, result in federal income tax savings, which Rate Counsel submits should be passed on to the ratepayers. Rate Counsel's resulting conclusion would more than double the amount available to ratepayers and effectively credit to the ratepayers more than 100% of the net valuation of the property in question, according to the methodology the Board previously set.

Rate Counsel's methodology does not, in our view, comport with the sharing methodology intended by the Board which was to carefully balance the benefits that should flow to the ratepayers for the past use of this property, with the legal and property rights of the corporation and its shareholders in land no longer dedicated to the public use. We are dealing here with property that is in the private not public sector and can be dedicated to any lawful, private use according to corporate goals, no longer subject to utility regulation. The property has heretofore been removed from rate base and transferred in conformance with Board Orders to a private corporation and any gains or losses from the future disposition of this property are subject to the risks of the marketplace./1

Thus, the Board has determined that traditional rate-making utility principles do not apply. The transfer of said property, based on appraised value, should not be characterized as utility income to be "grossed up" for federal income and gross receipts and franchise taxes. We have accepted the appraised value to be deemed fair market value, and from this amount, recognized expenses, original cost, and necessary taxes have been deducted to arrive at a net valuation to be shared equally by the ratepayers and corporate interests. From the current valuation of this non-utility property, the Board has recognized a tax expense, and a net valuation to be shared by the ratepayers now, though revenues will not flow to the non-utility realty corporation until and unless the property is sold. Therefore, taxes should not be added to the appraised market price, as proposed by Rate Counsel, as may be the case in pricing a utility service.

As noted herein, this Order addresses the only question outstanding in this docket, namely, the accuracy of petitioner's calculations in conformance with the Board's directions. Petitioner's submission, as amended, has been reviewed by Staff and has been found acceptable, accurate and in conformance with the Board Order in this docket of December 17, 1984, with these modifications: (a) interest for the ratepayers shall be extended for the period from December 17, 1984, through July 1, 1985; (b) the refund shall be on a per customer account basis; (c) Rate Counsel expense shall be reduced to a level of $35,000. In addition, Staff has recommended approval of the petitioner's proposal for a one payment refund to customers of record as of April 30, 1985. Said refund shall be made by check to reflect an equal sharing of the net valuation of the property in question (50% of $5,382,398) which is set at the amount of $18.00 per customer.

We believe that a one payment check is the most appropriate method to implement our sharing methodology without delay. It will also allow the attending benefit to be received, to the greatest extent possible, by those ratepayers who had been contributing to the maintenance of the subject property during the period in which it had been included in rate base. We would note that the reference in our December 17, 1984 Order to a rate base preceeding was only to establish an amortization period in which the benefits would flow to the ratepayers. The purpose was to mitigate any unforseen adverse economic affects on the petitioner in that it was not possible. at that time, to quantify the amount of the net gain or to be assured of the petitioner's ability to compensate its ratepayers in one payment. There was never an intent that the methodology set out by the Board was to be given rate making treatment. Accordingly, the Board's Order of December 17, 1984, is modified herein only to the extent that the

/1 In Re Jersey Central Power and Light, 85 N.J. 520 at p. 530 (1981); Penna. Gas and Water Co. v. Penna. Public Utilities Comm., 456 A.2d 1126 (1983); Public Service Coordinated Transport v. State, 5 N.J. 196 at p. 217 (1950).

distribution of that portion of the proceeds to be shared by the ratepayers is authorized by means of a one payment check.

The Board is not bound to use any particular formula in arriving at what it considers a reasonable result. We believe that the sharing methodology established by the Board has a rational basis under the circumstances of this case. The position of Rate Counsel is inconsistent with our determinations in this docket. We therefore FIND and CONCLUDE that the petitioner's filing of March 20, 1985, as supplemented on April 26, 1985, and as modified herein, is reasonable and appropriate under the circumstances of this case and is HEREBY ACCEPTED. Federal Power Comm. v. Hope Natural Gas, 64 S. Ct. 281, at p. 287, 288 (1944); Public Service Coordinated Transport v. State, 5 N.J. 196 at p. 217 (1950).

The authority and jurisdiction of the Board is derived from the provisions of N.J.S.A. 48:2-1 et. seq. It is well settled that the Legislature intended the Board to have the widest range of regulatory power over public utilities, including the necessary broad discretion by which to exercise that authority. Public Service Coordinated Transport v. State, supra.; Bergen County v. Department of Public Utilities, 117 N.J. Super. 304 (App. Div., 1971).

In utilizing that discretion, the Board cannot and should not be bound by any particular methodology but must be free to call upon its expertise, on a case-by-case basis, to balance the needs of ratepayers and shareholders. In State v. N.J. Bell Tel. Co., 30 N.J. 16, 29 (1959), the New Jersey Supreme Court stated:

> The Board is not guided in its determinations with an individual formula which must be automatically applied in each instance. Rather, as stated by Mr. Chief Justice Vanderbilt in Public Service Coordinated Transport v. State...: "The determination...should reflect the reasonable judgment of the Board based upon all the relevant facts." (Citations omitted)

The New Jersey Supreme Court, in upholding the Board's decision to remove the TMI-1 nuclear reactor from rate base, In Re Jersey Central Power & Light Co., 85 N.J. 520, 531-32 (1981), more recently stated:

> In reaching this decision, the Board expressly recognized the need to balance the burden on rate payers with investor interest...We view the Board's action as innovative and a mutually fair interim solution to a critical problem well within the broad jurisdiction vested in the Board under the Department of Public Utilities Act. (Citations omitted) (Emphasis supplied).

The Board is of the opinion that its December 17, 1984 Order clearly follows the foregoing court test of balancing ratepayer and investor interests. We believe our action to be an innovative and mutually fair solution to an issue which is well within the broad discretion vested in this Board pursuant to N.J.S.A. 48:2-1 et seq. The Board directed methodology was to have been, and is, "in full and final resolution and settlement of all claims to gain arising from the disposition of the property approved for transfer." (Board's December 27, 1984 Order, this docket, at p. 4).

The Board, therefore, APPROVES the accounting submission by petitioner, as modified herein, as in accordance with the Board's Order in this docket of December 17, 1984 which permitted the transfer of this non-utility property to a non-regulated corporation and DIRECTS that payment issue to petitioner's customers of record as of April 30, 1985 in the amount of $18 by separate check on or before July 1, 1985. The Board's Order of December 17, 1984, in this docket, remains in full force and effect, except as supplemented and modified herein.

On June 4, 1985, petitioner submitted a statement in the form of revised journal entries as a result of the Board's decision in this matter. Staff has reviewed the revised journal entries and finds them to be in accordance with the terms of this Order.

DATED: June 25, 1985

BOARD OF PUBLIC UTILITIES
BY:

Barbara A. Curran

BARBARA A. CURRAN
PRESIDENT

George H. Barbour

GEORGE H. BARBOUR
COMMISSIONER

ATTEST

Blossom A. Peretz

BLOSSOM A. PERETZ
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utility Commissioners.

Blossom A. Peretz
Blossom A. Peretz
Secretary

## UNITED WATER RESOURCES AND SUBSIDIARIES

### United Water Resources

| Directors | Officers |
|---|---|
| Katharine L. Auchincloss | Robert A. Gerber, Chairman of the Board, President and Chief Executive Officer |
| Frank J. Borelli | George M. Haskew, Jr., Vice President |
| Peter Del Cel | Onofrio F. Laurino, Vice President-Legal Affairs |
| Robert L. Duncan | Donald L. Correll, Vice President-Treasurer and Chief Financial Officer |
| Robert A. Gerber | Donald L. Schlenger, Vice President-Business Development |
| Jon F. Hanson | Douglas W. Hawes, Secretary |
| George M. Haskew, Jr. | William D. Colford, Assistant Secretary |
| Douglas W. Hawes | Patricia Davidson, Assistant Secretary |
| Robert W. Kean, Jr. | Allan D Shakley, Assistant Secretary |
| Dennis M. Newnham | |
| H. Kent Vanderhoef | |
| Marcia L. Worthing | |

### Hackensack Water Company (Subsidiary of United Water Resources) and Spring Valley Water Company Incorporated (Subsidiary of Hackensack Water Company)

| Directors | Officers |
|---|---|
| Same as UWR | Robert A. Gerber, Chairman of the Board |
| | George M. Haskew, Jr., President |
| | Norman S. Nielsen, Senior Vice President-Administration |
| | Donald L. Correll, Senior Vice President-Finance, Treasurer and Chief Financial Officer |
| | Martha C. Green, Vice President-Public Affairs |
| | Douglas W. Hawes, Secretary |
| | John J. Turner, Controller |
| | William D. Colford, Assistant Secretary |
| | Patricia Davidson, Assistant Secretary |
| | Allan D. Shakley, Assistant Secretary and Assistant Treasurer |

In addition the following are officers of:

**Hackensack Water Company**

Thomas McKeon, Vice President-Operations

**Spring Valley Water Company Incorporated**

Mark D. Rothenberg, Vice President-Operations and General Manager

Corwick Realty Corporation (Subsidiary of Hackensack Water Company)

| Directors | Officers |
|---|---|
| Robert A. Gerber | Robert A. Gerber, President |
| George M. Haskew, Jr. | George M. Haskew, Jr., Executive Vice President |
| Harry A. Russo | Norman S. Nielsen, Senior Vice President |
| | Donald L. Correll, Sr. Vice President-Finance & Treasurer |
| | Douglas W. Hawes, Secretary |
| | Patricia Davidson, Assistant Secretary |

The Dundee Water Power and Land Company (Jointly owned subsidiary of United Water Resources and North Jersey District Water Supply Commission)

| Directors | Officers |
|---|---|
| Robert A. Gerber | Onofrio F. Laurino, President |
| George M. Haskew, Jr. | Frank A. Orechio, Vice President |
| Frank A. Orechio | Donald L. Correll, Secretary-Treasurer |
| Robert Rubino | |

Laboratory Resources, Inc. (Subsidiary of United Water Resources)

| Directors | Officers |
|---|---|
| Robert A. Gerber | Robert A. Gerber, Chairman |
| | Donald L. Hoven, President |
| | Dennis E. Dugan, Vice President |
| | Donald L. Correll, Secretary-Treasurer |

Pascack Land Company (Subsidiary of Hackensack Water Company)

| Directors | Officers |
|---|---|
| Robert A. Gerber | George M. Haskew, Jr., President |
| George M. Haskew, Jr. | Donald L. Correll, Secretary-Treasurer |
| Onofrio F. Laurino | Patricia Davidson, Assistant Secretary |

**Rivervale Realty Co., Inc. (Subsidiary of United Water Resources)**

| Directors | Officers |
|---|---|
| Alan M. Berman | Onofrio F. Laurino, President |
| Peter Del Col | Donald L. Correll, Secretary-Treasurer |
| Robert A. Gerber | Patricia Davidson, Assistant Secretary |
| Jon F. Hanson | |
| George M. Haskew, Jr. | |
| Onofrio F. Laurino | |

**Ridgeway River Company, Inc. (Subsidiary of Rivervale Realty Co., Inc.)**

| Directors | Officers |
|---|---|
| Onofrio F. Laurino | Onofrio F. Laurino, President |
| Donald L. Correll | Donald L. Correll, Secretary and Treasurer |
| | Patricia Davidson, Assistant Secretary |

**Riverdell Realty Company, Inc. (Subsidiary of Rivervale Realty Co., Inc.)**

| Directors | Officers |
|---|---|
| Onofrio F. Laurino | Onofrio F. Laurino, President |
| Donald L. Correll | Donald L. Correll, Secretary and Treasurer |
| | Patricia Davidson, Assistant Secretary |

**Fairview Home Development Corporation (Subsidiary of Rivervale Realty Co., Inc.)**

| Directors | Officers |
|---|---|
| Onofrio F. Laurino | Onofrio F. Laurino, President |
| | Donald L. Correll, Secretary and Treasurer |
| | Patricia Davidson, Assistant Secretary |

**UWR Development Corporation (Subsidiary of United Water Resources)**

| Directors | Officers |
|---|---|
| Robert A. Gerber | Robert A. Gerber, President |
| | Carl H. Grossman, Vice President |
| | Donald L. Correll, Secretary-Treasurer |
| | Patricia Davidson, Assistant Secretary |

Mid-Atlantic Utilities Corporation (Subsidiary of United Water Resources)

| Directors | Officers |
|---|---|
| George M. Haskew, Jr. | George M. Haskew, Jr., President<br>Donald L. Correll, Secretary-Treasurer<br>Patricia Davidson, Assistant Secretary |

Arlington Hills Water Company (Subsidiary of Mid-Atlantic Utilities Corporation)

| Directors | Officers |
|---|---|
| Same as Mid-Atlantic Utilities Corporation. | |

Arlington Hills Sewerage Company (Subsidiary of Mid-Atlantic Utilities Corporation)

| Directors | Officers |
|---|---|
| Same as Mid-Atlantic Utilities Corporation. | |

Great Gorge Sewer Company, Inc. (Subsidiary of Mid-Atlantic Utilities Corporation)

| Directors | Officers |
|---|---|
| Same as Mid-Atlantic Utilities Corporation. | |

Vernon Valley Water Company, Inc. (Subsidiary of Mid-Atlantic Utilities Corporation)

| Directors | Officers |
|---|---|
| Same as Mid-Atlantic Utilities Corporation. | |

Vernon Sewage Transmission Company, Inc. (Subsidiary of Mid-Atlantic Utilities Corporation)

| Directors | Officers |
|---|---|
| Same as Mid-Atlantic Utilities Corporation. | |

Metering Services Inc. (Subsidiary of United Water Resources)

| Directors | Officers |
|---|---|
| Robert A. Gerber | William H. Simmons, President<br>Donald L. Correll, Treasurer<br>Donald L. Schlenger, Secretary<br>Patricia Davidson, Assistant Secretary |

7-28-88

THE ASSEMBLY
STATE OF NEW JERSEY
TRENTON

JOHN E. ROONEY

ASSEMBLYMAN 39TH DISTRICT
BERGEN COUNTY
70 KINDERKAMACK ROAD
EMERSON, NJ 07630
201-967-6910

CHAIRMAN
COUNTY GOVERNMENT AND
REGIONAL AUTHORITIES COMMITTEE
VICE-CHAIRMAN
MUNICIPAL GOVERNMENT COMMITTEE

October 25, 1988

EDITOR:

Your editorial of Thursday, October 6,1988, entitled Open Space and Fairness failed to address the most important questions surrounding the controversy over the Hackensack Water Company's transfer of valuable and scarce land to its own holding company, Rivervale Realty Company.

I participated on an Assembly Committee Public Hearing for legislation to impose a moratorium on such transfers at which obvious discrepancies in fairness were uncovered by Assemblyman William P. Schuber. The Record did not attend that hearing which produced legislation approved by both houses of legislature and is now awaiting Gov. Kean's signature.

The most obvious aspect of the controversy is whether the Hackensack Water Company is in the water business or the real estate business. The proposed transfer of 287 acres of land appraised at $12 million amounts to $41,000 per acre, or approximately $10,000 per building lot. Currently, land in that area is selling for $250,000 to $400,000 an acre.

United Water Resources, the parent company of the Hackensack Water Company has a history of trading water supply for money at the expense of its ratepayers. Hackensack Water Company customers are not the first to be victims of this type of land transfer scheme.

In neighboring New York State, Hackensack Water Company's sister company, Spring Valley Water Company, internally transferred property to Rivervale Realty, for $304,000. Rivervale Realty turned around and promptly sold that property to a private developer for $1.8 million, or more than five times the original amount. Spring Valley ratepayers only had the benefit of the lower dollar figure to help keep their water bills down. All of this was done with the blessing of the PSC, New York's equivalent of our Board of Public Utilities (BPU).

In New York or in New Jersey, the internal transfer of land at far less than fair market value doesn't benefit the public environmentally or financially. Such conspiracies only line the pockets of Rivervale Realty Company and the stock holders.

On the question of fairness I would like to point out:

The appraisal of this property for internal transfer purposes is only 10 percent of the value of surrounding property;

The BPU held its hearings in Newark during a legislative session at which time and place residents and other interested parties,including legislators, were unable to attend;

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The proposed transfer is being acted upon without a Department of Environmental Protection (DEP) review of the land use or a required environmental impact study of the plan;

The sole engineering study of the plan was conducted by a company that had no experience in the area of watershed management and reported that it own study should not be the only consideration for the land transfers;

State, county or municipal officials have not been afforded the right of first refusal to purchase the land and retain it in its natural state before one of the last natural open spaces available in this overdeveloped county of ours is destroyed.

Our citizens are rightly concerned over the adverse effect any additional development will have on future water quality. When the water company proposed, years ago, it would eventually build on its unneeded lands, open space was still relatively plentiful and little was known or understood about the effects of road tar, oil and gasoline, salt and chemicals in rain water run off reaching our drinking supply.

The more we build, the greater the burden we place on our streams to carry off water which otherwise would have soaked into the ground and purified itself. Those swollen streams, into which our drainage systems dump, erode their banks, wash valuable soil into the water and pick-up untold pollutants as they rush toward the reservoir.

Dense development is now planned on the banks of that very reservoir from which we are already demanding maximum service.

There are two issues of great concern in this proposal, the run off and the rip off. Either way, the Hackensack Water Company and its stockholders win and the people lose. I urge the people of Bergen County to demand Governor Kean sign the bill presently on his desk. Unless he does, the Hackensack Water Company will win and the people will lose.

Sincerely,

John E. Rooney
Member of the General Assembly
District 39

TESTIMONY

BEFORE

NEW JERSEY STATE LEGISLATURE

ASSEMBLY COUNTY GOVERNMENT

AND

REGIONAL AUTHORITIES COMMITTEE

ON

ASSEMBLY BILL 4365

BY: Alfred A. Slocum
Public Advocate
April 26, 1989
Oradell Borough Hall
Oradell, New Jersey

#2X

GOOD EVENING CHAIRMAN HENDRICKSON AND MEMBERS OF THE COMMITTEE. THE DEPARTMENT OF PUBLIC ADVOCATE HAS SEVERAL COMMENTS ON ASSEMBLY BILL 4365. THE BILL WOULD REQUIRE PUBLIC UTILITIES OPERATING WATER SYSTEMS TO DISASSOCIATE THEMSELVES FROM, OR REMAIN FREE FROM ASSOCIATION WITH, REAL ESTATE COMPANIES WHILE THE BOARD OF PUBLIC UTILITIES (BPU) CONDUCTS AN ANALYSIS OF SUCH RELATIONSHIPS. THE BILL ALSO AUTHORIZES THE BPU TO TAKE ACTION AGAINST WATER UTILITIES WHICH FAIL TO SEVER SUCH RELATIONSHIPS, INCLUDING AUTHORITY TO PETITION THE COURTS TO APPOINT A CONSERVATOR TO OPERATE THE UTILITY. FINALLY, THE BILL DIRECTS THE BPU TO CONDUCT A STUDY AND TO MAKE RECOMMENDATIONS ON AVOIDING CONFLICTS OF INTEREST AMONG RELATED CORPORATIONS.

THE DEPARTMENT OF THE PUBLIC ADVOCATE THROUGH ITS DIVISION OF THE RATE COUNSEL IS AUTHORIZED TO INTERVENE OR BRING ACTION ON THE PUBLIC'S BEHALF IN ANY STATE PROCEEDING WHICH AFFECTS THE COSTS OF PRODUCTS AND SERVICES RENDERED TO THE PUBLIC THROUGH RATE SCHEDULES.[1] THE TRANSFER OF LAND BY A WATER UTILITY IS THE TYPE OF ACTION WHICH TRIGGERS THE RATE COUNSEL'S AUTHORITY TO INTERVENE REGARDING THE RATE LEVELS AND SERVICE REQUIREMENTS OF INDUSTRIES AND BUSINESSES UNDER STATE REGULATION.

1. N.J.S.A. 52:27E-18 ET. SEQ.

APPROXIMATELY SEVEN AND ONE HALF YEARS AGO, THE BPU ESTABLISHED A POLICY WHICH PERMITS WATER UTILITIES TO DISPOSE OF WATERSHED REAL ESTATE HOLDINGS WHICH WERE NOT "USED AND USEFUL" IN THE PROVISION OF SERVICE TO THE PUBLIC. THIS BPU POLICY NEVER SPECIFIED TO WHOM OR HOW LAND WAS TO BE TRANSFERRED, WHAT WAS TO BE PAID FOR SUCH LANDS, OR, TO WHOSE BENEFIT WOULD GO THE DIFFERENCE BETWEEN THE ORIGINAL COST OF THE LAND, PAID DECADES AGO, AND THE PRESENT MARKET VALUE OF THE LAND.

IN ADDITION, THE BPU PERMITTED WATER UTILITIES TO FORM HOLDING COMPANIES. THOSE HOLDING COMPANIES WOULD IN TURN FORM SUBSIDIARIES, INCLUDING SUBSIDIARIES ENGAGED IN REAL ESTATE DEVELOPMENT. IN RESPONSE TO WATER UTILITY REQUESTS TO DISPOSE OF WATERSHED LAND, THE BPU HAS CONSISTENTLY GRANTED WAIVERS OF THE PUBLIC UTILITIES RULES OF PRACTICE FOUND IN THE NEW JERSEY ADMINISTRATIVE CODE. THESE CODE PROVISIONS REQUIRE THAT THE SALE OF REAL PROPERTY WITH A NET BOOK COST OR FAIR MARKET VALUE OF MORE THAN $100,000 BE CONDUCTED UNDER A SEALED BID AUCTION PROCESS OPEN TO THE PUBLIC.[2]

2. N.J.A.C. 14:1-6.10(B). PETITIONS FOR THE APPROVAL OF SALE OR LEASE OF PROPERTY.

ANOTHER CODE PROVISION PERMITS THE DISPOSAL OF REAL PROPERTY NOT USED BY OR USEFUL TO A UTILITY, WITHOUT BPU APPROVAL, IF IT HAS A NET BOOK COST AND SALE PRICE NOT IN EXCESS OF $100,000.[3] THIS PROVISION IS INCONSISTENT WITH THE "FAIR MARKET VALUE" REQUIREMENT FOR OTHER PROPERTY SALES AND IS SUBJECT TO ABUSE SINCE THERE ARE NO GENERALLY ACCEPTED GUIDELINES FOR WHAT CONSTITUTES "USED OR USEFUL" WATERSHED PROPERTY AND MAY RESULT IN UNDERVALUED SALES TO THE DETRIMENT OF RATEPAYERS.

WHERE SUCH LAND TRANSFERS WERE APPROVED BY THE BPU, THE RATE COUNSEL INTERVENED TO ENSURE THAT AN EQUITABLE SHARE OF THE PROFITS FROM SUCH SALES WERE REFLECTED IN ADJUSTMENTS TO RATEPAYER FEES. OUR DEPARTMENT'S PHILOSOPHY IS THAT IF SUCH SALES ARE TO TAKE PLACE, 100 PERCENT OF THE GAINS REALIZED FROM SUCH SALES SHOULD INURE TO THE BENEFIT OF THE RATEPAYERS. THIS IS BECAUSE THE ACQUISITION COSTS OF LAND WHEN DEVOTED TO UTILITY SERVICE IS INCLUDED IN A WATER UTILITY'S RATE BASE AND THE UTILITY INVESTOR IS PAID A FULL RETURN ON HIS INVESTMENT YEAR AFTER YEAR. THE PROPERTY TAXES ARE ALSO PASSED ON IN THE RATE PAID BY UTILITY CUSTOMERS. IN FACT, ALL COSTS ASSOCIATED WITH THE ORIGINAL ACQUISITION AND HOLDING OF SUCH LAND ARE PASSED ON

3. N.J.A.C. 14:1-6.10(d)3.

TO THE RATEPAYER. THUS, WHEN AND IF SUCH LAND IS SOLD, WE BELIEVE THE RATEPAYER IS ENTITLED TO THE ENTIRE GAIN, AS, OVER THE YEARS, THEY PAID THE ENTIRE COST OF MAINTAINING OWNERSHIP OF THE PROPERTY. THIS IS JUST COMPENSATION FOR THE DECADES OF CONTRIBUTIONS RATEPAYERS HAVE MADE TOWARDS THE CARRYING COSTS ASSOCIATED WITH THESE PROPERTIES; DECADES DURING WHICH WATER COMPANY SHAREHOLDERS RECEIVED STEADY RETURNS ON THEIR INVESTMENTS. THE BPU, HOWEVER, HAS DECIDED THAT RATEPAYERS ARE ENTITLED ONLY TO 50 PERCENT OF THE NET GAINS AFTER EXPENSES. IN ONE SUCH TRANSFER, THE BPU'S RECOGNITION OF UNDOCUMENTED EXPENSES AND CHARGES FOR REAL ESTATE BROKERS, CAPITAL GAINS TAXES, CORPORATION TAXES AND ALIKE, RESULTED IN ONLY 30 PERCENT OF THE GROSS GAIN GOING TO RATEPAYERS. IN ANOTHER TRANSFER, WHERE THE BPU ELIMINATED UNDOCUMENTED EXPENSES, RATEPAYERS RECEIVED ABOUT 40 PERCENT OF THE GROSS GAIN.

HOWEVER, EVEN IF 100 PERCENT OF THE SALE GAINS ARE ATTRIBUTED TO THE RATEPAYERS, THEY MAY STILL NOT RECEIVE AN ADEQUATE SHARE OF THE TRUE VALUE OF THE LAND IF THE SALE PRICE IS NOT DETERMINED ON THE BASIS OF THE PROPERTY'S FAIR MARKET VALUE ON THE OPEN MARKET. BPU WAIVERS OF THE NEW JERSEY ADMINISTRATIVE CODE, WHICH REQUIRES SALES AT FAIR MARKET VALUE THROUGH A SEALED BID PROCESS OPEN TO THE PUBLIC, HAVE PERMITTED THESE WATER UTILITIES AND THEIR RELATED COMPANIES TO ENJOY A QUESTIONABLE LEGAL FICTION THAT AN "ARMS LENGTH" EXCHANGE HAS OCCURRED WITH THE STATES APPROVAL. THIS PRACTICE HAS LED TO UTILITIES AND THEIR RELATED COMPANIES RECEIVING 60 TO 70 PERCENT OF THE GAINS REALIZED FROM THE SALE OF WATERSHED PROPERTIES AND THE SUBJECT UNDERVALUED PROPERTY AS WELL, WHICH THEN CAN BE DEVELOPED SINCE IT IS NO LONGER UNDER THE JURISDICTION OF THE BPU.

IN 1988 A LAW WAS ENACTED WHICH PROHIBITS, FOR 18 MONTHS STARTING ON NOVEMBER 16, 1988, THE CONVEYANCE OF ANY LAND UTILIZED FOR THE PURPOSE OF THE PROTECTION OF A PUBLIC WATER SUPPLY BY ANY MUNICIPALITY, MUNICIPAL UTILITIES AUTHORITY, OR PUBLIC UTILITY.[4] THE APPLICATION OF THIS LAW TO HOLDING COMPANIES RELATED TO PUBLIC WATER UTILITIES HINGES ON THE DEFINITION GIVEN TO THE TERM PUBLIC UTILITY.

4. CHAPTER 163 OF THE NJ LAWS OF 1988; N.J.S.A. TEMPORARY AND EXECUTED 48:3-7, N.J.S.A. 48:2-23-1.

THE BILL BEFORE US COMPLEMENTS THE PREVIOUS LEGISLATION IN THAT IT PROVIDES THE BPU WITH AN IMPORTANT TOOL TO ENSURE THAT PUBLIC AND PRIVATE INTERESTS ARE NOT MERGED IN CORPORATE STRUCTURES WITH MIXED ALLEGIANCES. THIS POLICY GUIDANCE, HOWEVER, ACCORDING TO SECTION ONE OF THE BILL, IS PROVIDED ONLY "WHILE THE BPU PREPARES AN ANALYSIS OF, AND MAKES RECOMMENDATIONS CONCERNING THE REGULATION OF THESE RELATIONSHIPS."

ADDITIONALLY, THE ENFORCEMENT MECHANISM IN THE BILL, THE AUTHORITY TO SEEK CONSERVATORSHIP FOR NON-COMPLYING WATER UTILITIES WOULD NOT BE AVAILABLE UNTIL ONE YEAR AFTER THE EFFECTIVE DATE OF THE LEGISLATION, ACCORDING TO SECTION FIVE (A) OF THE BILL. THIS TIME LAG WOULD PERMIT WATER UTILITIES A SUBSTANTIAL PERIOD OF TIME IN WHICH TO DEVELOP OR CONTINUE RELATIONSHIPS WITH RELATED REALTY COMPANIES BEFORE THE STATE, THROUGH THE BPU, COULD ACT AGAINST SUCH AMALGAMATION OF CONFLICTING INTERESTS. EVEN AFTER A CONSERVATOR IS APPOINTED, SECTION SIX WOULD PERMIT RETURN OF THE UTILITY TO THE OFFENDING COMPANY AFTER A PUBLIC HEARING AND WRITTEN FINDINGS BY THE BPU THAT THE NON-COMPLYING UTILITY HAS PROVIDED <u>ASSURANCES</u> THAT DEFICIENCIES ARE CORRECTED RATHER THAN DEMONSTRATIONS THAT THEY ARE NO LONGER IN NON-COMPLIANCE.

THESE APPARENT AND POTENTIAL GAPS IN BOTH THE LAW PASSED LAST FALL AND THIS BILL ARE CLOSED WHEN THE PROHIBITIONS AGAINST SALES RUNS WITH THE WATERSHED PROPERTY ITSELF INSTEAD OF THE SELLER. IN ORDER TO PROTECT THESE LANDS, THE PROHIBITIONS MUST REMAIN IN EFFECT UNTIL RULES AND REGULATIONS ARE PROMULGATED BY THE BPU. A LEGISLATIVE MANDATE OF THIS NATURE WOULD BOTH OBVIATE THE NEED TO IDENTIFY THE POTENTIAL SELLER OF WATERSHED PROPERTY AND THE NEED TO RE-ENACT CONTINUING AUTHORITY SHOULD THE BPU OR DEP FAIL TO MEET THE DEADLINE FOR THEIR RESPECTIVE STUDIES.

A 1978 CONNECTICUT DISTRICT COURT CASE, AFFIRMED BY THE UNITED STATES SUPREME COURT, OFFERS LEGAL PRECEDENT ON THIS EXACT POINT. IN BRIDGEPORT HYDRAULIC CO. V. COUNCIL ON WATER CO. LANDS OF THE STATE OF CONNECTICUT,[5] THE LOWER COURT RULED THAT A GENERALLY IMPOSED MORATORIUM ON THE SALE OF WATER COMPANY LANDS REFLECTED THE PERMISSIBLE EXERCISE OF THE STATE'S POLICE POWER AND WAS NOT AN ARBITRARY INTERFERENCE WITH PRIVATE RIGHTS WHERE THE LEGISLATION WAS A REASONABLE RESPONSE TO THE PROTECTION OF HEALTH AND WELFARE BY PRESERVING WATER SOURCES FROM POSSIBLE POLLUTION PENDING STUDY IN GREATER DETAIL OF THE FEASIBILITY OF FUTURE PROTECTIVE LEGISLATION. THE STATE'S AUTHORITY TO PROTECT THE PUBLIC GOOD WAS UPHELD OVER THE OBJECTION THAT WATER

5. 453 F. SUPP. 942, AFFIRMED 99 S. CT. 606, 439 U.S. 999, 58 L. ED. 2D 674.

COMPANIES WOULD BECOME THE UNCOMPENSATED CUSTODIANS OF DE FACTO PUBLIC LANDS. AT THE TIME OF THE RULING, THE SALE OF WATERSHED PROPERTY IN CONNECTICUT ALREADY REQUIRED THE APPROVAL OF THE DEPARTMENT OF HEALTH.

NEITHER THE CURRENT BILL NOR THE WATERSHED MORATORIUM LAW PASSED LAST FALL DIRECTLY ADDRESS THE ADEQUACY OF WATER SUPPLIES. THE STATE OF CONNECTICUT IN ITS GENERAL STATUTES OFFERS PROTECTION TO WATERSHED LANDS AND GUIDANCE TO STATE AGENCIES ON WATER SUPPLY AND QUALITY ISSUES, WHICH THIS COMMITTEE MAY WISH TO CONSIDER. IN CONNECTICUT THE STATE DEPARTMENT OF HEALTH SERVICES OVERSEES THE PUBLIC WATER SUPPLY SYSTEM. CONNECTICUT LAW CLASSIFIES WATERSHED PROPERTIES AS CLASS I AND CLASS II LAND.[6] CLASS I LAND GENERALLY INCLUDES ALL LAND WHICH IS EITHER WITHIN 250 FEET OF THE RESERVOIR'S HIGHWATER OR 100 FEET FROM ALL WATER COURSES OR 250 FEET FROM UNDERGROUND WATER WELLS. CLASS II LAND INCLUDES ALL LAND ON A PUBLIC DRINKING SUPPLY WATERSHED NOT INCLUDED IN CLASS II OR OFF THE WATERSHED BUT WITHIN 150 FEET OF A DISTRIBUTION RESERVOIR OR FIRST-ORDER STREAM TRIBUTARY TO SUCH A RESERVOIR.

6. SEE CONN. GEN'L STAT. ANN. TITLE 25 SEC. 37(c) FOR A DETAILED DESCRIPTION OF CLASS I AND II LANDS.

THE RELEVANT SECTION OF LAW GOVERNING THE DISPOSAL OF CLASS I WATERSHED PROPERTIES STATES THAT:

> NO WATER COMPANY SHALL SELL, LEASE, ASSIGN OR OTHERWISE DISPOSE OF OR CHANGE THE USE OF WATERSHED LANDS . . . WITHOUT A WRITTEN PERMIT FROM THE COMMISSIONER OF HEALTH SERVICES. SAID COMMISSIONER SHALL NOT APPROVE A PERMIT FOR THE SALE, LEASE OR ASSIGNMENT OF CLASS I LAND, EXCEPT AS PROVIDED . . ., AND SHALL NOT GRANT A PERMIT FOR A CHANGE IN USE . . . UNLESS THE APPLICANT DEMONSTRATES THAT SUCH CHANGE WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT UPON THE PRESENT AND FUTURE PURITY AND ADEQUACY OF THE PUBLIC DRINKING WATER SUPPLY . . .[7]

THE BURDEN OF PERSUASION AS TO THE ADEQUACY AND QUALITY OF WATER SUPPLIES ON CLASS I WATERSHED PROPERTY FALLS ON THE APPLICANT REQUESTING A PERMIT TO SELL OR CHANGE THE USE OF PROTECTED LAND. CONNECTICUT LAW REGARDING CLASS II LAND IS SLIGHTLY MORE PERMISSIVE BUT REQUIRES THE CONSIDERATION OF SPECIFIC CRITERION. THE LAW STATES THAT:

7. C.G.S.A., TITLE 25 SEC. 32(b).

THE COMMISSIONER . . . MAY GRANT A PERMIT FOR THE SALE, LEASE, ASSIGNMENT OR CHANGE IN USE OF ANY LAND IN CLASS II SUBJECT TO ANY CONDITIONS OR RESTRICTIONS IN USE WHICH THE COMMISSIONER MAY DEEM NECESSARY TO MAINTAIN THE PURITY AND ADEQUACY OF THE PUBLIC DRINKING WATER SUPPLY GIVING DUE CONSIDERATION TO:

(1) THE CREATION OF POINT OR NON-POINT SOURCES OF CONTAMINATION;

(2) THE DISTURBANCES OF GROUND VEGETATION;

(3) THE CREATION OF SUBSURFACE SEWAGE DISPOSAL SYSTEMS;

(4) THE DEGREE OF WATER TREATMENT PROVIDED; AND

(5) ANY OTHER SIGNIFICANT POTENTIAL SOURCE OF CONTAMINATION OF THE PUBLIC DRINKING WATER SUPPLY.[8]

8. IBID., C.G.S.A. SEC. 32(c).

THE BURDEN OF PROOF IS SIMILARLY ON THE APPLICANT TO DEMONSTRATE THAT THERE IS NO SIGNIFICANT ADVERSE IMPACT UPON THE PURITY AND ADEQUACY OF THE PUBLIC DRINKING SUPPLY AS A RESULT OF THE SALE, LEASE ASSIGNMENT OR CHANGE IN USE OF CLASS II WATERSHED LAND. THE CONNECTICUT LAW FURTHER STATES THAT THE APPLICANT MUST SHOW "THAT ANY USE RESTRICTIONS WHICH THE COMMISSIONER REQUIRES AS A CONDITION OF GRANTING A PERMIT CAN BE ENFORCED AGAINST SUBSEQUENT OWNERS, LEASEES AND ASSIGNEES."[9]

THE CONNECTICUT LAW ALSO SAFEGUARDS LAND TRANSFERS BETWEEN WATER COMPANIES AND MUNICIPALITIES AND PROTECTS AGAINST POTENTIAL SPECULATION BY PROVIDING THAT:

9. IBID., C.G.S.A. SEC. 32(e).

> THE COMMISSIONER MAY GRANT A PERMIT FOR THE SALE OF CLASS I OR II LAND TO ANOTHER WATER COMPANY OR TO A MUNICIPALITY IF THE PURCHASING ENTITY AGREES TO MAINTAIN THE LAND SUBJECT TO THE PROVISIONS OF THIS SECTION, ANY REGULATIONS ADOPTED PURSUANT TO THIS SECTION AND THE TERMS OF ANY PERMIT ISSUED PURSUANT TO THIS SECTION. SUCH PURCHASING ENTITY MAY NOT SELL, LEASE, ASSIGN OR CHANGE THE USE OF SUCH LAND WITHOUT OBTAINING A PERMIT PURSUANT TO THIS SECTION.[10]

IN CONCLUSION, I WOULD LIKE TO SUMMARIZE THOSE POINTS I HAVE MADE WHICH WILL STOP THE SPECULATION ON, AND IMPROVE OUR ABILITY TO PROTECT, WATERSHED PROPERTIES.

10. IBID., C.G.S.A. SEC. 32(d).

FIRST, THE BPU MUST STOP GRANTING WAIVERS TO ADMINISTRATIVE CODE PROVISIONS WHICH REQUIRE A SEALED BID AUCTION PROCESS OPENED TO THE PUBLIC FOR THE SALE OF WATERSHED LAND WITH A FAIR MARKET VALUE OF $100,000 OR MORE. ADDITIONALLY, ALL WATERSHED PROPERTY SHOULD BE SOLD AT FAIR MARKET VALUE. SECOND, 100 PERCENT OF THE GAINS FROM THE SALE OF SUCH PROPERTIES, MINUS REASONABLE EXPENSES, MUST INURE TO THE BENEFIT OF RATEPAYERS. THIRD, ANY PROHIBITIONS ON THE SALE OF OR SPECULATION ON WATERSHED LAND WOULD PROVIDE MORE PROTECTION TO PUBLIC INTERESTS IF IT RAN WITH THE LAND ITSELF AND NOT AGAINST PARTICULAR PUBLIC OR PRIVATE ENTITIES. FINALLY, THE LAWS OF THE STATE OF CONNECTICUT OFFER POLICY GUIDANCE ON SUPPLY AND WATER QUALITY ISSUES WHICH WARRANT FURTHER STUDY.

THANK YOU.

LEAGUE OF WOMEN VOTERS
OF
NORTHERN VALLEY

ALPINE
CLOSTER
CRESSKILL
DEMAREST
DUMONT
HARRINGTON PARK
HAWORTH
NORTHVALE
NORWOOD
OLD TAPPAN
ROCKLEIGH

TESTIMONY FOR HEARING APRIL 26, 1989 ON A 4365 - An Act concerning the ownership of water supply public utilities and supplementing chapter 19 of Title 43 of the Revised Statutes.

The League of Women Voters of Pascack Valley and the League of Women Voters of Northern Valley adopted the following position in February 1989. The position is based on state and national League positions.

> The LWV of Northern Valley and the LWV of Pascack Valley support the retention and protection of watershed lands owned by Hackensack Water Co. and Rivervale Realty. The LWV has concluded that the sale for development of these watershed parcels would jeopardize the supply and quality of the river itself as well as drinking water.

As you deliberate A 4365 and similar bills, the two Leagues ask that you consider the following comments.

Watershed lands transferred from a water utility to a real estate or other non-utility entity are no longer regulated by the Board of Public Utilities. Thus, such land transfers should not be permitted unless the state ensures protection for lands deemed vital to water supply and water quality. This means that clear and enforceable definitions of watershed, and of watershed protection, need to be established by the state.

We believe that vital watershed lands should be zoned for preservation that excludes development.

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**MEMORANDUM OF LAW**

**Assembly Bill 4365**

This is a preliminary review of A-4365 with respect to the public hearing to be conducted by the Assembly County Government and Regional Authorities Committee on Wednesday, April 28, 1989. These are our comments:

**POINT I: THE PROPOSED BILL WOULD HAVE CRITICAL NEGATIVE PUBLIC POLICY CONSEQUENCES**

The proposed bill, in its statement of intent, (Section 1.), finds a "potential for conflicts of interest" through the enterprise activities of holding companies that also engage, through separate subsidiaries, in regulated private utility activity. Pending requested analysis and recommendations from the Board of Public Utilities (BPU, Board) and the BPU's completion of a study within two years from the bill's effective date (Section 7) certain holding companies must first divest themselves of all real estate enterprise activities (Section 4c)

or face revocation of their franchises to engage in the provision of utility services in New Jersey (Section 3a).

At the outset, it is critical to recognize that diversification is part of the national and State fabric in the utilities industry. Virtually all telecommunications, electric, gas and water companies operating in New Jersey are part of diversified privately capitalized corporations.[1] This bill impacts billions of dollars in private investment in assets dedicated both to public uses and enterprise activities. It can also affect the safe, adequate and proper service being rendered to virtually every citizen in this State.

As addressed below, the draconian, measures contemplated (divestiture, revocation of certificates, appointment of conservators) are not directed to meet known harms but merely "potential" conflicts of interest as yet to be identified by a BPU study. As noted herein, the relationships between utilities and affiliated companies is already fully and pervasively regulated by state law, in order to protect the public interest.

Should all of New Jersey telephone utilities be placed in receivership because affiliates engage in enterprise activities? Should every electric utility affiliated corporation in this State be broken-up because they too engage in enterprise real estate activities? Virtually all of New Jersey's privately

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[1] The formation of holding companies for utility and other affiliates have been specifically approved by BPU orders, pursuant to N.J.S.A. 48:3-7, 10, with findings that such approvals are in the public interest.

supplied water utility service is conducted through corporations long established in enterprise activities - American Water Works, Monmouth Consolidated, Elizabethtown, and United Water Resources.

Is it good government to put at risk the savings of millions of New Jersey citizens in utility stocks and bonds? Shareholders in major New Jersey utility related corporations are typically the small investor looking for security, not the specter of forced divesture, revocation of franchises or receiverships. Is it good government to force a restructuring of every major New Jersey utility corporation? The utility infrastructure of the State and its connection to economic stability and growth would be put at risk to meet unidentified public policy considerations.

Therefore, the first consideration of the Legislature ought be, whether this proposed legislation is good public policy, and whether the potential for harm to the public good, clearly outweighs any positive public purpose it could serve.

POINT II: THE PROPOSED BILL WOULD DEPRIVE NEW JERSEY CITIZENS OF THEIR CONSTITUTIONAL RIGHT TO BE PROTECTED FROM THE CONFISCATION OF THEIR PROPERTY

A basic protection provided by the United States Constitution to its citizens is the requirement that all legislation need be reasonable. In legal terms, this requires that any restriction of right imposed by a statute must have a rational relationship to a real and legitimate governmental

objective. Legislation which lacks this basic feature becomes arbitrary and violative of the substantive due process requirements of the Fourteenth Amendment.

This is the law of this State as set forth in Sabato v. Sabato, 135 N.J. Super 158 (1975). The means selected must have a real and substantial relationship to a demonstrated public purpose. Here the means proposed is the forced divesture of lawful enterprise activities under sanction of re-ocation of property rights heretofore granted for utility franchises by N.J.S.A. 48:2-14. Such grave sanctions can only be imposed to preclude compelling public harm. Yet here, the harm is not even identified, and only a "potential" for conflicts is cited.

Indeed, the purpose of the bill is left for future study and potential identification by the Board. (Section 7) No compelling state objective has been identified or demonstrated that could conceivably support the extreme measures proposed. See N.J. Sports and Exposition Authority v. McCrane, 61 N.J. 1 (1972).

Indeed, the likelihood may well be that the Board would find that the pervasive powers it has heretofore been granted to control relationships between utilities and other affiliated corporations are fully sufficient. The Board diligently and continuously monitors "potential" conflicts of interest. But recommendations and identification of a specific harm must constitutionally precede the adoption of these most restrictive and far reaching means available i.e., divestiture and/or revocation of franchises.

Title 48 of New Jersey Statutes Annotated prohibits any utility from encumbering, mortgaging or transferring its property without prior Board approval. (N.J.S.A. 48:3-7) It further requires that any service or contract between public utilities and affiliates be subject to prior Board approval. (N.J.S.A. 48:3-7.1) It further prohibits the loaning of money or property by a public utility to an affiliated corporation without prior Board approval. (N.J.S.A. 48:3-7.2) In addition, the stock of a public utility cannot be assigned or transferred to any corporation, which would result in a majority interest without prior Board approval. (N.J.S.A. 48:3.10).

In summary, intercorporate relationships which might result in a conflict of interest are already required by law to have prior BPU approval. This is a rational approach to the potential for conflict. However, the public purpose in guarding against "possible" conflicts in a particular transaction, cannot legally justify the forced divestiture of legal enterprise activities and/or the revocation of utility franchises. The millions of New Jersey citizens who have savings in utility related stock would see their savings eroded. The mere consideration of concepts such as "breaking up" utilities, revocation of franchises, receiverships, could panic the utility market. This approach does not appear reasonable on its face and, as a matter of constitutional law, flies in the face of the most basic rights guaranteed by the Fourteenth Amendment of the United States Constitution.

POINT III: THE PROPOSED BILL IS CLEARLY SPECIAL LEGISLATION IN THAT IT IS TARGETED AT DIVESTITURE FOR ALL WATER UTILITIES WHILE THE POTENTIAL FOR CONFLICT APPLIES EQUALLY TO ALL UTILITIES

The Constitution of the United States guarantees that each citizen subject to State legislation shall be treated alike under like circumstances and conditions. Cold Indian Springs Corp., v. Ocean Township, 154 N.J. Super 75 (L. Div. 1979) affirmed 161 N.J. Super. 586 and 410 (App. Div. 1979) 81 N.J. 502 (1980). This requires in legal terms that all persons or corporation similarly situated shall be treated alike. Cleburne v. Cleburne, 473 U.S. 429 (1985).

The proposed language of the bill identifies its purpose as to avoid a potential for conflict between utility enterprises and affiliated real estate enterprises. (Section 1) The concept supports no distinction between the obligations of rendering one kind of utility service (water service) and rendering others (such as telecommunications or electric). All public utilities dedicate private capital for the public use. Every major New Jersey public utility has affiliates engaged in enterprise activities, including real estate development. The concept is the same, no matter what the utility service.

Yet in this proposed bill, all water utilities are singled out. There is nothing inherent in the nature of water utility service as distinct from communication or electric services that could reasonably differentiate the nature of the

public obligation, so as to preclude affiliated real estate enterprises for water companies and not for other regulated utilities. As stated in Point II above, it is constitutionally impermissible to deprive a private corporation and its shareholders of its ability to engage in competitive enterprise activities because a separate affiliated corporation engages in the private regulated utility industry.

In addition, legislation must treat similarly situated utilities alike or it becomes "special legislation" which is clearly impermissible. If there was indeed a identifiable evil in utilities being affiliated with real estate enterprises, then all such utilities must be similarly treated under the equal protection requirements of the Fourteenth Amendment of the United State Constitution.

## CONCLUSION

For the foregoing reasons, developed in the course of this preliminary review, it is respectfully our view that the negative consequences to New Jersey, its economic health, and the welfare of its citizens far outweighs the speculative public good which this bill would address. In additional, the proposed bill violates the most basic rights in property and citizen's capital, guaranteed by the Fourteenth Amendment of the United States Constitution. The expert body entrusted with public utility regulation has continually analyzed and where appropriate, approved, the right of utility related enterprises to diversify into competitive enterprise activities. If further

study is required, it must constitutionally precede and demonstrate the compelling need for further legislative proposals.

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Dated: April 26, 1989