

March 22, 2010

Independent Expert on the Issue of  
Human Rights Obligations Related to  
Access to Safe Drinking Water and Sanitation  
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To whom it may concern:

My name is Frederick F. Butler. Until March 1, 2010, when I retired, I was a Commissioner of the New Jersey Board of Public Utilities, serving in that capacity since 1999 when I was appointed by the Governor of New Jersey and confirmed by the state Senate. The Board regulates private, investor-owned providers of public utility services, including energy, telecommunications, water and wastewater companies.

I am also the immediate past president (2008-9) of the National Association of Regulatory Utility Commissioners (NARUC). Founded in 1889, NARUC is a non-profit organization dedicated to representing the state public service commissioners who regulate the utilities, primarily private, investor-owned utilities, that provide essential services such as energy, telecommunications, water and transportation. NARUC's membership consists of commissioners from all 50 states in the United States as well as numerous affiliated national and international governmental agency officials. Although state commissions regulate investor-owned utilities, such utilities are not members of NARUC.

NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. Under state law, NARUC's members have an obligation to ensure the establishment and maintenance of utility services as may be required by law and to ensure that such services are provided at rates and conditions that are fair, reasonable and non-discriminatory for all consumers.

I am also past chairman of the NARUC Committee on Water. The importance NARUC ascribes to the provision of water and wastewater services through private investor-owned public utilities is exemplified by the fact that the Water Committee has been a standing committee of the organization for many years.

I am writing to you as a result of articles that have recently appeared in Global Water Intelligence, which indicate you, on behalf of the United Nations High Commissioner for Human Rights, are looking into the role of the private water sector in delivering water and wastewater service. Based on my experience, the continued participation of the private sector in the provision of water and wastewater services is essential to preserve and extend access to high quality service to customers. This is true not only for New Jersey, but for many other areas of the United States as well as other countries. Conversely, prohibiting or dis-incenting the private water sector from participation in the provision of these essential services will have highly perverse and adverse impacts on the ability to attract the capital and operating expertise necessary to extend and maintain quality service in the future.

The majority of water service in the U.S. is provided by some form of government ownership – which serves about 85 percent of the U.S. population. Nonetheless, a significant portion of the country's population, over 30 million people, depends on involvement of private, investor-owned companies for their water and/or wastewater service. Where these companies own the assets that provide the services, they are generally regulated by state public utility commissions that are members of NARUC.

In fact, in New Jersey alone, approximately half the total population of the state, or about four million people, receives water and/or wastewater service from private, investor-owned water utilities regulated by the New Jersey Board of Public Utilities. This has been the case for more than 100 years.

Two of the primary challenges facing the water and wastewater industries in the U.S. today, whether governmentally or privately owned, are replacement of aging infrastructure and compliance with increasing water quality standards issued by the USEPA pursuant to the Safe Drinking Water Act. All water service providers servicing at least 25 people or having at least 15 service connections must comply with these quality

standards, whether governmentally or privately owned. Nationally, over 20 years, the USEPA has estimated that the cost of infrastructure replacement and quality standards could require investment approaching \$1 trillion.

Private, investor-owned water and wastewater companies in New Jersey have been instrumental in the past in raising the capital necessary to provide high-quality, reliable service which complies with all applicable state and federal standards. They will be essential players in the future in raising the capital and providing the operating expertise to meet the challenges of the future. In addition, these companies have been leaders in promoting new technologies that can help meet not only the infrastructure and quality requirements, but water supply issues, such as water treatment, reuse, and recycling as well. Some of these companies have also been at the forefront of addressing issues such as conservation, global climate change and the nexus between water service and energy production and usage.

It may interest you to know that the process public utility commissions utilize to set rates and otherwise regulate private utilities is highly transparent and places the burden of proving that proposed rates are just and reasonable on the utilities. Utilities, including water utilities, must satisfy this burden through submission of massive amounts of testimony and evidence, all of which will be subject to cross examination in public evidentiary proceedings.

In New Jersey, the Office of Consumer Advocate, a state agency whose head is appointed by the governor of New Jersey, works with the regulatory board to represent the interest of consumers in rate and other regulatory proceedings. In addition, any other entity or individual affected by the proposed rate also has the right to intervene and fully participate in the hearings. This includes the right to obtain information from the utility and submit their own testimony and evidence to challenge the utility, including cross examining utility or other witnesses.

The Board itself weighs all the evidence, determines whether the utility has met its burden of proof and decides the issues based on the evidence presented and the overall public interest. Any party that does not agree with the Board's decision can appeal the decision to the New Jersey Courts. This regulatory process insures that utility rates are

fair and reasonable to customers and are sufficient to attract necessary capital; that the utility continues to provide high-quality, reliable service; that customers are well-represented and their interests are fully considered in the hearing process; and that decisions are made in the overall public interest and based on evidence presented through the hearing process.

In my view, the private sector has and must continue to play an important role in assuring access to high-quality, reliable water and wastewater services. Please don't hesitate to contact me if you have further questions.

Very truly yours,

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