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December 14, 2010

**VIA Electronic Filing**  
Ms. Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**Re: Docket No. C-2010-2211742  
Anna & James Jones v. Aqua PA, Inc.  
Preliminary Objections of Aqua PA**

Dear Secretary Chiavetta:

Enclosed please find the original of the Preliminary Objections of Aqua Pennsylvania, Inc. to the Formal Complaint of Anna & James Jones in the above-referenced proceeding.

As indicated on the Certificate of Service, a copy has been served upon the Complainant.

Very truly yours,

Reger Rizzo & Darnall LLP

  
Margaret A. Morris, Esquire

Enclosures

cc: Anna & James Jones [w/enc.]

**Re: Docket No. C-2010-2211742  
Anna & James Jones v. Aqua PA, Inc.  
Preliminary Objections of Aqua PA**

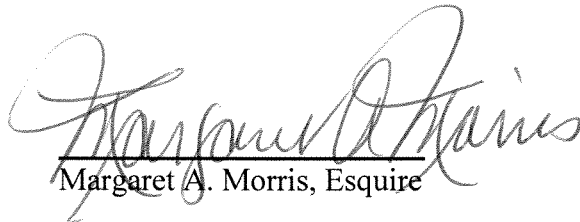
**CERTIFICATE OF SERVICE**

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

**Via First Class Mail**

Anna & James Jones  
247 Lunn Blvd.  
Farrell, PA 16121

Dated: December 14, 2010

  
Margaret A. Morris, Esquire



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ANNA &amp; JAMES JONES</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>Docket No. C-2010-2211742</b>
<b>AQUA PENNSYLVANIA, INC.</b>	:	
<b>Respondent</b>	:	

**PRELIMINARY OBJECTIONS**

TO: The Pennsylvania Public Utility Commission

Aqua Pennsylvania Inc. (“Respondent”) hereby moves, pursuant to 52 Pa. Code § 5.101, to dismiss with prejudice, the requested relief that the Respondent be ordered to pay damages for items lost as alleged in the Formal Complaint filed on November 27, 2010 (“Complaint”), in the above captioned proceeding, and in support thereof, the Respondent states as follows:

A. Summary of Argument

1. The Complainant alleges that as a result of a water main break in the street, items were lost in the basement and seeks damages for those items which were lost or replaced. Complaint, ¶ 5.

2. The Commission, as a creature of the Legislature, does not have the authority to grant the requested relief.

B. Procedural History

3. On November 27, 2010, the Complainant filed a Formal Complaint with the Commission under Docket No. C-2010-2211742, a copy of which is attached hereto as Exhibit "A".

4. The Complainant seeks a hearing, *inter alia*, before the Commission to award damages for lost or replaced items resulting from water in the basement.

C. The Requested Relief Should Be Dismissed Since The Commission Does Not Possess The Requisite Authority To Grant The Requested Relief.

5. Since the Commission is a creature of statute, it has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication. *Allegheny County Port Authority v. PA P.U.C.*, 427 Pa. 562, 237 A.2d 602 (1967).

6. The enforcement and remedial powers of the Commission, although formidable, are not those of a court. The Commission is empowered to correct, by regulation or order, abuses in the provision of service. *Feingold v. Bell of Pennsylvania*, 447 Pa. 1, 383 A.2d 791, 794 (1972).

7. The statutory array of the Commission's remedial and enforcement powers do not include the power to award damages to a private litigant for breach of contract by a public utility. *Id.*

8. The remedial and enforcement powers vested in the Commission by the Public Utility Law were designed to allow the Commission to enforce its orders and

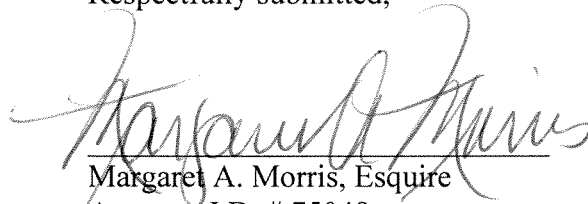
regulations, but not to empower the PUC to award damages or to litigate a private action for damages on behalf of a Complainant. *Id.* at 795.

9. In the instant matter, the Complainant has improperly sought an award of damages since the Commission lacks the statutory power to confer such an award.

10. Therefore, the request for damages should be dismissed with prejudice in the absence of a hearing.

**WHEREFORE**, for the foregoing reasons, Aqua Pennsylvania, Inc. respectfully requests that this Honorable Court, in the absence of a hearing, dismiss with prejudice the request for damages as set forth in the Complaint of Anna & James Jones.

Respectfully submitted,



Margaret A. Morris, Esquire

Attorney I.D. # 75048

Cira Centre, 13<sup>th</sup> Floor

2929 Arch Street

Philadelphia, PA 19104

(215) 495-6524 (voice)

(215) 495-6600 (fax)

[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Dated: December 14, 2010

Counsel for Aqua Pennsylvania, Inc.

**Anna & James Jones v Aqua Pennsylvania, Inc.**  
**Docket No. Docket No. C-2010-2211742**

## **EXHIBIT A**

### **PUC Formal Complaint**

BCS: 2742680

**COPY**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Formal Complaint Form**

Please print in ink or type.

C-2010-221742

**1. CUSTOMER (COMPLAINANT) INFORMATION**

Your name, mailing address, county, telephone number, utility account number and service address:

Name ANNA & James Jones

Street/P.O. Box 247 Lunn Blvd. Apt # \_\_\_\_\_

City FARRELL State PA. Zip 16121

County Mercer

Daytime Telephone Number Where We Can Contact You: (724) 342-2363

E-mail Address (optional): None

Utility Account Number (from your bill) AGUA 001068838 0776570

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

RECEIVED  
2010 NOV 22 AM 10:27  
SECRETARY'S BUREAU

**2. FULL NAME OF UTILITY COMPANY (RESPONDENT):**

AGUA Pennsylvania, Inc. Craig Nelson (610) 645-1072

**3. TYPE OF UTILITY (check one)**

- ELECTRIC
- GAS
- WATER
- TELEPHONE (local, long distance)
- STEAM HEAT
- WASTE WATER
- MOTOR CARRIER (e.g., taxi, moving company, limousine)

10801

4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.

- Other (explain). *Flooding from water main on street; that flooded my basement.*
- B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

I want the PUC to order Aqua water to reimburse me for the following items I lost and had to buy:

washer  
dryer

humidifier, hauling & furnace checked. There is additional items I lost that can't be replaced.

I called Aqua Aug. 25th on 26th; Claim Dept. Ben George from 1st. General came out the week of Aug. 29th to assess the damage. After he finished, I asked him can I move things out. He told me not to take anything out of the basement & don't move anything. He never called back to let me know nothing. My family heard what he told me. I had to buy the appliances, they didn't want after that. He never sent any one out to check them. I've 0 times I had to call Mr. George. Both times I got a man a maid.

I talked to Mr. Nelson twice  
he really lied to me. The last  
time I talked to Mr Nelson was  
Sept. 10, He asked me in a  
nasty tone who gave you  
authority to buy a washer  
& dryer?

I called Central Heating  
to get my furnace checked  
plus my freezer is ruined  
because Mr. George  
didn't inspect nothing.

I am still waiting and  
nothing has been done. I  
wouldn't want this to happen  
to anyone.

We didn't know how long  
the water had been running  
because my neighbor notified  
me. This happened at night.  
In our opinion this matter  
was handled unprofessional. We  
were treated like Katrina  
victims. James S. & Lenna Jones

In response to Agua's claim that my porch sloped down and rain water

seeped in my basement is not true.

My porch does not slope and

Also we did not have rain this summer. Mercer County was under a drought this summer.

**6. PROTECTION FROM ABUSE**

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES   
NO

**7. PRIOR UTILITY CONTACT**

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)   
NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

**8. LEGAL REPRESENTATION (IF ANY)**

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (If Known) \_\_\_\_\_

**9. VERIFICATION AND SIGNATURE**

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

**Verification:** 1 Anna & James Jones, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Anna Jones & James Jones 11-19-10  
(Signature) (Date)

\_\_\_\_\_  
Title of authorized employee or officer

**10. FILING**

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

**Keep a copy of your complaint for your records.**



ROBERT A. HAMMOND  
P.O. Box 312  
West Pittsburg, PA 16160  
PHONE: (412) 735-4194  
FAX: 1-866-418-9262  
rahammon@travelers.com

August 25, 2010

James S. & Anna R. Jones  
247 Lunn Blvd.  
Farrell, Pa. 16121

Claim # HDW 2650  
Underwriting Company: The Charter Oak Fire Insurance Company  
Date of Loss: 08/15/2010

Dear James S. & Anna R. Jones

On behalf of The Charter Oak Fire Insurance Company (hereinafter "Travelers"), I write in response to your notice of the above captioned claim and your request that Travelers provide you with insurance coverage for the Claim.

You have asked that Travelers indemnify you under the following Homeowner's Policy: HO-3 ( 06/02 ) Homeowners Policy, Policy Number 948088672-633-1. This Travelers Homeowner's Policy, in effect from 07/02/2010 to 07/02/2011, provides open-risk coverage subject to exclusions and limitations and contains a limit of liability in the amount of \$ 235,000.00 on the building.

The issue is whether there is coverage under the above referenced Homeowner's Policy for the incident which occurred on 08/15/2010, when you reported that a water main in the street broke and your basement was flooded.

According to your Homeowner's Policy, loss caused by flood, surface water, or water or water borne materials below the surface of the ground which seeps through the foundation is not covered.

Our investigation found:

A municipal water line in the street in front of the house ruptured and repairs have been completed. The basement was damaged by water which seeped through the foundation.

Therefore, pursuant to your policy provisions, specifically,

#### **SECTION I – PERILS INSURED AGAINST**

#### **COVERAGE A- DWELLING AND COVERAGE B- OTHER STRUCTURES**

1. We insure against risk of direct physical loss to property described in Coverages A and B.

2. We do not insure, however, for loss:

- a. Excluded under Section I – Exclusions;

## SECTION I – EXCLUSIONS

A. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

### 3. Water Damage.

Water Damage means:

- a. Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
- b. Water or water-bourne material which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump or related equipment; or
- c. Water or water-borne material below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure;

Also, under SECTION I – CONDITIONS, which reads in part:

- 7. **Suit Against Us.** No action can be brought against us unless there has been full compliance with all of the terms of this policy and the action is started within two years after the date of loss.

Unfortunately we must regretfully inform you that we cannot provide coverage for this incident. Further, Travelers will not provide you with indemnification at any time for this loss.

Travelers expressly reserves all of the rights and defenses the company may have under your policy of insurance and applicable law. This correspondence is not intended, nor shall it be construed to be an exhaustive listing of policy terms, conditions, or exclusions which might effect coverage under your policy. Travelers reserves the right to supplement this denial of coverage should facts and/or circumstances, not currently known to Travelers, indicate the applicability of additional terms and/or exclusions.

Should you have any questions or wish to bring to my attention additional facts that might alter this decision, please do not hesitate to contact me at the numbers listed above.

Sincerely,



Robert A. Hammond  
Property Claim Representative  
The Charter Oak Fire Insurance Company

cc: File  
Allen Agency Inc. of Pa.

**APPLICABLE IN PENNSYLVANIA**

**Any person who knowingly and with intent to injure or defraud any Insurer files an application or claim containing any false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000**

