

Brian J. Knipe  
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May 9, 2011

**VIA HAND DELIVERY**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
Harrisburg, PA 17120

**RECEIVED**

MAY - 9 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

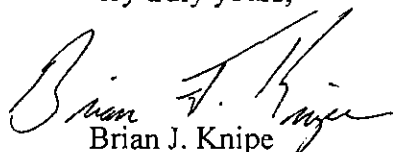
Re: *Robert Brandon v. Pennsylvania-American Water Company*,  
Docket No. C-2011-2219828

Dear Secretary Chiavetta:

I have enclosed for filing, on behalf of Pennsylvania-American Water Company, an original and three (3) copies of the *Answer and New Matter of Pennsylvania-American Water Company to the Addendum to the Formal Complaint of Robert Brandon* and the *Preliminary Objections of Pennsylvania-American Water Company to the Addendum to the Formal Complaint of Robert Brandon*.

Copies of these documents are being provided in the manner indicated on the attached Certificates of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY PC

BJK/kra  
Enclosures  
cc: Certificates of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT BRANDON	:	
Complainant	:	
	:	
v.	:	Docket No. C-2011-2219828
	:	
PENNSYLVANIA-AMERICAN WATER	:	
COMPANY	:	
Respondent	:	

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that you are required to file an Answer to the enclosed Preliminary Objections of Pennsylvania-American Water Company within **ten (10) days** from the date of service of the Preliminary Objections. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Pennsylvania-American Water Company, and where applicable, the Administrative Law Judge presiding over the case.

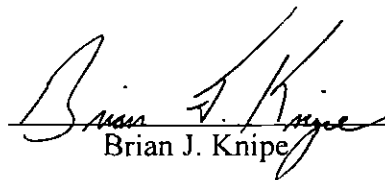
**File with:**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**With a copy to:**

Brian J. Knipe, Esq.  
Buchanan Ingersoll & Rooney PC  
17 North Second Street, 15th Floor  
Harrisburg, PA 17101-1503

Dated: May 9, 2011

  
\_\_\_\_\_  
Brian J. Knipe

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PA PUC  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT BRANDON	:	
Complainant	:	
	:	
v.	:	Docket No. C-2011-2219828
	:	
PENNSYLVANIA-AMERICAN WATER	:	
COMPANY	:	
Respondent	:	

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**PRELIMINARY OBJECTIONS OF PENNSYLVANIA-AMERICAN  
WATER COMPANY TO THE ADDENDUM TO THE  
FORMAL COMPLAINT OF ROBERT BRANDON**

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Pennsylvania-American Water Company ("Pennsylvania-American" or the "Company"), by and through its attorneys and pursuant to 52 Pa. Code § 5.101, files these preliminary objections to the Addendum filed by Robert Brandon ("Complainant") to his pending formal Complaint. Complainant filed the Addendum, which was date-stamped April 18, 2011 by the Commission's Secretary's Bureau, but did not serve it on Pennsylvania-American.<sup>1</sup> The Addendum requests that the Commission direct Pennsylvania-American to relocate approximately 90 feet of water distribution main, which Complainant alleges the Company installed on his property outside the right-of-way.

Pennsylvania-American moves to dismiss Complainant's Addendum for lack of subject matter jurisdiction. As explained below, Complainant has filed the same claim in civil court in Butler County, Pennsylvania, seeking a monetary award of \$5,000.00. The civil matter is scheduled for a hearing on June 6, 2011. This claim is properly heard in the civil court, which

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<sup>1</sup> Counsel for Pennsylvania-American came upon this filing on April 29, 2011, while checking the Commission's on-line docket. While the Addendum was never served on the Company and is not endorsed with the required notice to plead, Pennsylvania-American is filing these Preliminary Objections, as well as an Answer to the Addendum, within 20 days from April 18, 2011, the day the filing was date-stamped by the Secretary's Bureau.

has exclusive jurisdiction over substantive determinations of property rights and easements, such as whether Pennsylvania-American's facilities are situated within its right of way. The Commission, which is already hearing Complainant's formal Complaint regarding inadequate service in connection with the installation of the water main, has no jurisdiction to hear Complainant's real property claims that the Company's line is trespassing on Complainant's property.

In support of its Preliminary Objections, Pennsylvania-American states as follows:

1. On January 10, 2011, Complainant filed a formal Complaint with the Commission, alleging the Company provided inadequate service in connection with the installation of a water distribution main along Complainant's property in North Duffy Road, Center Township, Butler County.

2. On or about April 18, 2011, Complainant filed an Addendum to his formal Complaint, which alleges that approximately 90 feet of the water main is buried outside the right-of-way on Complainant's property. Complainant filed the Addendum for the purpose of requesting that the Commission order the Company to relocate its line within the right-of-way.

3. On April 26, 2011, Complainant commenced a civil action in Butler County, Pennsylvania by filing a complaint against Pennsylvania-American in Magisterial District Court 50-3-02. The civil complaint similarly alleges that Pennsylvania-American buried 90 feet of its water main on Complainant's property without authorization, and seeks an award of money damages in the amount of \$5,000.00. A copy of Complainant's civil complaint is attached as **Exhibit A**.

4. A hearing on the civil complaint is scheduled for Monday, June 6, 2011 at 1:30 p.m. before the Honorable Lewis E. Stoughton, where the parties will properly litigate the issue

of whether approximately 90 feet of water main is buried on Complainant's property outside the right-of-way. *See Ex. A.*

**FIRST PRELIMINARY OBJECTION —  
LACK OF COMMISSION JURISDICTION OVER  
REAL PROPERTY DISPUTES  
(52 Pa. Code § 5.101(a)(1))**

5. Pennsylvania-American incorporates by reference the averments contained in Paragraphs 1-4 as if fully set forth herein.

6. Complainant's formal Complaint alleges dissatisfaction with the adequacy of work performed by Pennsylvania-American or its contractors in installing a water distribution main on Complainant's property.

7. In contrast, the gravamen of Complainant's Addendum is to ask the Commission to render a decision pursuant to the provision of a right-of-way, for the purpose of directing the Company to relocate its main.

8. The claim asserted in the Addendum is already scheduled to be heard in a civil court, which is the proper forum for the parties to litigate Complainant's real property claim.

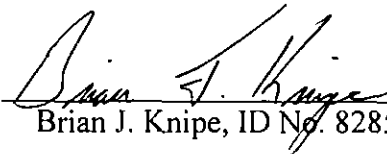
9. Substantive determinations of property rights and easements, including whether a utility's facilities are situated within the utility's right of way, are within the exclusive jurisdiction of the civil courts, and outside the Commission's subject matter jurisdiction. *See, e.g., David Stefanoski v. Pennsylvania American Water Company*, Docket No. C-20078219 (Opinion and Order entered Sept. 22, 2008), slip op. at 3; *Tod and Lisa Shedlosky v. Pennsylvania Electric Company*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008), slip op. at 6-7; *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Opinion and Order entered July 11, 2003), slip op. at 5.

10. Because the Commission does not have jurisdiction over the Addendum's request that the Commission direct Pennsylvania-American to relocate a water main allegedly installed on Complainant's property outside the right-of-way, Complainant's Addendum should be dismissed and the claim should be allowed to proceed in the civil courts where it is properly litigated.

WHEREFORE, Respondent, Pennsylvania-American Water Company, respectfully requests that this Honorable Commission grant its preliminary objections to the Addendum to the formal Complaint of Robert Brandon at Docket No. C-2011-2219828, and dismiss Complainant's Addendum so that this dispute may be litigated exclusively in the civil courts.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY, P.C.

By:   
Brian J. Knipe, ID No. 82854

17 North Second Street, 15th Floor  
Harrisburg, PA 17101-1503  
Phone: (717) 237-4820  
Fax: (717) 233-0852  
[brian.knipe@bipc.com](mailto:brian.knipe@bipc.com)

Dated: May 9, 2011

Attorneys for Pennsylvania-American  
Water Company



**Civil Action Hearing Notice**

Robert C Brandon  
v.  
Pa American Water Co.

Mag. Dist. No:	MDJ-50-3-02
MDJ Name:	Honorable Lewis E. Stoughton
Address:	112 N. Main Street P.O. Box 249 Chicora, PA 16025
Telephone:	724-445-3366

Pa American Water Co.  
c/o Brian J. Knipe, Esq.  
Buchanan, Ingersall, & Rooney  
17 N. Second St. 15th Floor  
Harrisburg, PA 17101

Docket No: MJ-50302-CV-0000119-2011  
Case Filed: 4/26/2011

A civil complaint has been filed against you in the above captioned case.

A Civil Action Hearing has been scheduled to be held on/at:

Date: Monday, June 6, 2011	Place: Magisterial District Court 50-3-02 112 N. Main Street P.O. Box 249 Chicora, PA 16025 724-445-3366
Time: 1:30 PM	

**Notice To Defendant**

If you intend to enter a defense to this complaint, you should so notify this office immediately at the above telephone number.

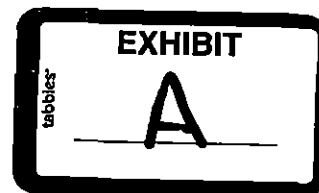
**You must appear at the hearing and present your defense. Unless you do, judgment may be entered against you by default.**

If you have a claim against the plaintiff which is within magisterial district judge jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

Pursuant to Pa.R.C.P.D.J. No. 342(B)(2), no claim by the defendant will be permitted in a supplementary action filed for failure of judgment creditor to enter satisfaction.

**Notice To Plaintiff**

Pursuant to Pa.R.C.P.D.J. No. 318, you or your attorney will be notified if the defendant gives notice of his/her intention to defend.



If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.



Civil Complaint

Mag. Dist. No:	MDJ-50-3-02
MDJ Name:	Honorable Lewis E. Stoughton
Address:	112 N. Main Street P.O. Box 249 Chicora, PA 16025
Telephone:	724-445-3366

PLAINTIFF: NAME and ADDRESS  
ROBERT C. BRANDON  
499 N. DUFFY RD  
BUTLER, PA 16001-1141

DEFENDANT: NAME and ADDRESS  
PA. AMERICAN WATER CO.  
40 BRIAN J. KNIPE, ESQ  
BUCHANAN, INGERSOLL & BOONICK  
17 N. SECOND ST. 15TH FLOOR  
HARRISBURG, PA 17101

Docket No: CV-0000119-2011

Case Filed: APR 11 2011

Social Security Numbers and financial information (e.g. PINs) should not be listed. If the identity of an account number must be established, list only the last four digits. 204 Pa.Code §§ 213.1 - 213.7.

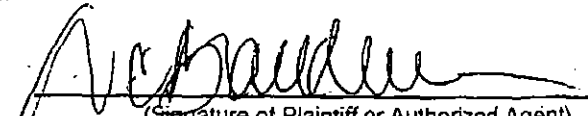
	AMOUNT	DATE PAID
FILING COSTS	\$ 141.00	4 / 27 / 2011
POSTAGE	\$ 15.00	/ /
SERVICE COSTS	\$	/ /
CONSTABLE ED.	\$	/ /
TOTAL	\$ 156.00	4 / 27 / 2011

Pa.R.C.P.D.J. No. 206 sets forth those costs recoverable by the prevailing party. Plus Court Costs

To The Defendant: The above named plaintiff(s) asks judgment against you for \$ 5,000.00 together with costs upon the following claim:

- ① UNAUTHORIZED BURIAL OF 90 FEET OF WATERLINE ON THE PLAINTIFF'S PROPERTY LISTED ABOVE.
- ② UNAUTHORIZED PARKING AND STORAGE OF 5 PIECES OF LARGE CONSTRUCTION EQUIPMENT ON PLAINTIFF'S PROPERTY
- ③ UNAUTHORIZED DIGGING UP OF 10 FEET OF CEMENT DRIVEWAY ON PLAINTIFF'S PROPERTY AND UNSATISFACTORY REPLACEMENT.

I, ROBERT C. BRANDON verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.

  
 (Signature of Plaintiff or Authorized Agent)  
724-382-4942

The plaintiff's attorney shall file an entry of appearance with the magisterial district court pursuant to Pa.R.C.P.M.D.J. 207.1

If you intend to enter a defense to this complaint, you should notify this office immediately at the above telephone number. You must appear at the hearing and present your defense. Unless you do, judgment may be entered against you by default.

If you have a claim against the plaintiff which is within the magisterial district judge jurisdiction and which you intend to assert at the hearing, you must file it on a complaint for at this office at least five days before the date set for the hearing.

If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT BRANDON	:	
Complainant	:	
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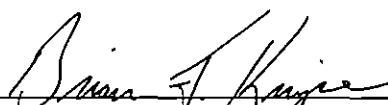
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

**Via First-Class U.S. Mail**

Robert C. Brandon  
499 N. Duffy Road  
Butler, PA 16001-1141

Dated this 9th day of May, 2011.

  
\_\_\_\_\_  
Brian J. Knipe, Esq.

Counsel for  
Pennsylvania-American Water Company

**RECEIVED**  
**2011 MAY -9 PM 4:01**  
**PA PUC**  
**SECRETARY'S BUREAU**