

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Jules Falcone

v

Aqua Pennsylvania, Inc.

C-20055300 and  
Z-01761777

ORDER DENYING  
REQUEST FOR CONTINUANCE

DOCUMENT  
FOLDER

Mr. Jules Falcone's ("Complainant") formal Complaints at Docket Nos. C-20055300 and Z-01761777 were filed on September 14, 2005, and May 9, 2005, respectively. I consolidated the complaints as well as disposed of preliminary motions by interim order dated December 27, 2005. By Hearing Notice dated November 23, 2005, Mr. Falcone's initial hearing was scheduled for January 30, 2006. By correspondence dated January 23, 2006, Ms. Frances P. Orth, Esquire, counsel for Aqua Pennsylvania, Inc. ("Aqua" or "Company" or "Respondent"), requested that the initial hearing be changed to a telephonic prehearing conference to clarify the disputes and possibly resolve the matters. That request was granted as evidenced by the hearing notice dated January 26, 2006, changing the proceeding scheduled for January 30, 2006, from an initial hearing to a telephonic prehearing conference.

The prehearing conference did not yield a resolution to the disputes and a telephonic initial hearing was set for March 27, 2006. A Notice of Appearance was filed on February 9, 2006, by Mr. Thomas T. Niesen, Esquire to appear as counsel for Aqua in these matters. The initial hearing commenced as scheduled on March 27, 2006, with Mr. Niesen appearing in-person for the Company and Mr. Falcone appearing by telephone. Mr. Falcone had not allotted more than two hours for the hearing and had scheduled a doctor's appointment which he needed to attend after noon. On March 27, 2006, shortly after noon the hearing adjourned to be resumed on a further hearing date.

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A Hearing Notice dated March 30, 2006, indicated that a further hearing is scheduled for this proceeding on Monday, April 24, 2006, at 10:00 a.m. On April 7, 2006, I received a request from Mr. Niesen to reschedule the hearing to the first week in May 2006, as Ms. Orth, has a continuing legal education ("CLE") commitment previously scheduled for April 24, 2006, and cannot reschedule her CLE commitment. The correspondence I received indicated that a copy of this request was sent to the Complainant.

Pursuant to Commission regulation at 52 Pa. Code § 1.15(b), "... requests for continuance of hearings ... shall be by motion in writing, timely filed with the Commission stating the facts on which the application rests. ... The requests should be submitted at least 5 days prior to the hearing date." I am considering this request as a motion for continuance of the scheduled hearing. I note that while the request to reschedule the hearing is timely, it did not state the position of the Complainant. Because my decision on this request does not prejudice Mr. Falcone from the status quo and time is of the essence regarding this request, I am rendering my disposition without the benefit of knowing Mr. Falcone's disposition to the request. This matter is now ripe for review.

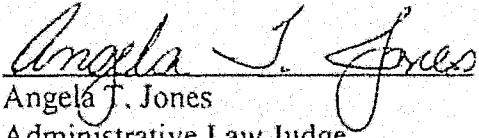
I do not find that the rationale presented in the request to reschedule is compelling or reasonable. Ms. Orth, did not present the case for the Company at the previous evidentiary hearing. Mr. Niesen appeared and was ready to advocate for the Company in these disputes. If not for the length of the hearing and Mr. Falcone's time constraints, Mr. Niesen would have been the sole counsel to represent the Company at the evidentiary hearing. The Company does not state in its request that Mr. Niesen is unavailable, only that Ms. Orth is unavailable. I do not find Ms. Orth's absence as a bar prohibiting the Company to proceed in the scheduled evidentiary hearing since Mr. Niesen has shown capable of presenting the Company's case. Furthermore, if not for the request of the Company, Mr. Falcone's first evidentiary hearing would have been January 30, 2006. Even if there had been cause to schedule a further hearing after January 30, 2006, it is reasonable to assume that the evidentiary hearing would have concluded before May 2006. Enough time passed. Any further delay by the Company of Mr. Falcone's formal Complaints without just cause is not reasonable.

THEREFORE,

IT IS ORDERED:

1. That the request for continuance submitted by Mr. Thomas Niesen, Esquire at Docket Nos. C-20055300 and Z-01761777 is denied.
2. That this matter remains scheduled for hearing on April 24, 2006.

Date: April 10, 2006

  
Angela J. Jones  
Administrative Law Judge

# OALJ Hearing Report

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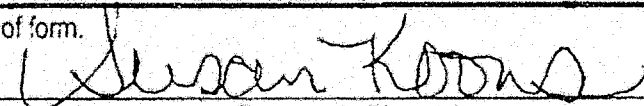
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		Testimony Taken:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Hearing Concluded:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Location:	Philadelphia, PA	Further Hearing Needed:	<input type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:		
Date	April 24, 2006	RECORD CLOSED:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ALJ:	Angela T. Jones	DATE:	6-9-06	
		Briefs to be Filed:	<input type="checkbox"/>	<input type="checkbox"/>
Reporting Firm	Sargents Court Reporting	DATE:		
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<div style="font-size: 2em; font-weight: bold; text-align: center;">DOCUMENT FOLDER</div>		REMARKS:	RECORD TO CLOSE DATE	
			MAIN BRIEF RECEIVED.	

PLEASE PRINT CLEARLY - Incomplete information may result in delay of processing.

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	City:      State:      Zip:	
Telephone:	E-mail Address:	Fax Number:

Check this box if additional parties or attendees appear on back of form.

11/27/06

  
 Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

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CHARLES E. THOMAS  
(1913 - 1998)

June 8, 2006

HAND DELIVERY

James J. McNulty  
Secretary  
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Commonwealth Keystone Building  
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Harrisburg, PA 17105-3265

DOCUMENT  
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SECRETARY'S BUREAU

In re: Docket No. C-20055300  
Docket No. Z-01761777  
Jules Falcone v. Aqua Pennsylvania, Inc.

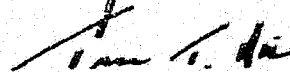
Dear Secretary McNulty:

Enclosed for filing are an original and nine (9) copies of the Brief of Aqua Pennsylvania, Inc. in the above matter. A copy of the Brief is being served upon the persons and in the manner set forth on the Certificate of Service attached to it.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Thomas T. Niesen

Encl.

cc: Certificate of Service (w/encl.)  
Frances P. Orth, Esquire (w/encl.)

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Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge  
Angela T. Jones, Presiding

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JULES FALCONE

v.

AQUA PENNSYLVANIA, INC.

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Docket No. C-20055300

Docket No. Z-01761777

DOCUMENT  
FOLDER

BRIEF OF  
AQUA PENNSYLVANIA, INC.

ORIGINAL

**DOCKETED**  
JUL 21 2006

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Pa. I.D. No. 31379  
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Pa. I.D. No. 68824

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DATED: June 8, 2006

TABLE OF CONTENTS

	<u>Page</u>
I. HISTORY OF PROCEEDING AND STATEMENT OF THE CASE .....	1
II. PROPOSED FINDINGS OF FACT .....	2
III. DISCUSSION .....	10
IV. PROPOSED CONCLUSIONS OF LAW .....	14
V. CONCLUSION .....	15

TABLE OF AUTHORITIES

	<u>Page</u>
<b>CASES:</b>	
<i>Samuel J. Lansberry, Inc. v. Pa. P.U.C.</i> , 578 A.2d 600, <i>alloc. den.</i> , 602 A.2d 863 (Pa. Cmwlth. 1992) .....	10
<i>Se-Ling Hosiery, Inc. v. Margulies</i> , 364 Pa. 45, 70 A.2d 854 (1950) .....	10
 <b>STATUTES:</b>	
Public Utility Code	
66 Pa. C.S. §332(a) .....	10
66 Pa. C.S. §1501 .....	10

## I. HISTORY OF PROCEEDING AND STATEMENT OF THE CASE

This proceeding involves the formal Complaints of Jules Falcone against Aqua Pennsylvania, Inc. ("Aqua") concerning water service to 257 Highland Avenue, Wayne, Pennsylvania. On July 15, 2005, Mr. Falcone filed a Complaint before the Public Utility Commission ("Commission") at Docket No. Z-01761777, disputing billing charges for water usage. Aqua filed an Answer in opposition to the Complaint with New Matter and a Motion to Dismiss the Complaint as moot.

Subsequently, on September 14, 2005, Mr. Falcone filed a second Complaint at Docket No. C-20055300, alleging property damage and seeking reimbursement for related expenses. Aqua filed an Answer in opposition to this second Complaint with New Matter and a Motion to Dismiss the Complaint for lack of jurisdiction.

Thereafter, Aqua filed a Motion to Consolidate the two Complaints. By Interim Order dated December 27, 2005, Administrative Law Judge Angela T. Jones consolidated the Complaints, disposed of preliminary motions and dismissed Mr. Falcone's request to award compensation for property damage and plumbing expenses and compensation for lack of water service.

Evidentiary hearings were held on March 27 and April 24, 2006. Mr. Falcone appeared at the hearings, telephonically and in person, respectively, and testified in support of his Complaint. Aqua presented the testimony of William Miller, Derrick McBride, Bernadette Latrechiano, and Lawrence J. Doyle and, by subpoena, the testimony of Scott L. Horn and Steven Amarant, in support of its position and in opposition to the Complaints.

This Brief is submitted in accordance with the briefing schedule established at the conclusion of the evidentiary hearings. As set forth herein, Aqua's actions were just and reasonable and consistent with the requirements of the Public Utility Code.

## II. PROPOSED FINDINGS OF FACT

### The Parties

1. Complainant in this proceeding is Jules Falcone. Mr. Falcone resides at 257 Highland Avenue, Wayne, Pennsylvania, where he receives water service from Aqua. T1. 6-7; T2. 5-6, 12.<sup>1</sup>

2. Aqua Pennsylvania, Inc. is a Pennsylvania public utility that provides water service to various locations in the Commonwealth of Pennsylvania, including service to 257 Highland Avenue. T1. 6-7.

### Matters Re Sewer and Water Lines

#### **The Damage to the Sewer and Water Lines**

3. In July 2004, Aqua contracted with Michael F. Ronca and Sons, Inc. ("Ronca") to install a water main in Highland Avenue in Radnor Township. T2. 32-33; Aqua Exhibit 3. During the installation, Ronca hit and damaged the main sewer trunk line in the street unknowingly disconnecting the sanitary lateral to 257 Highland Avenue from the trunk line. Aqua Exhibit 3. Although the trunk line was repaired, the sanitary lateral to 257 Highland Avenue that had unknowingly become disconnected was not reconnected to the trunk line. Aqua Exhibit 3; Aqua Answer and New Matter at 2.<sup>2</sup>

4. On March 25, 2005, a Radnor Township representative noticed sewage coming out of the trap at 257 Highland Avenue and onto the lawn. T1. 20, 88-89. Mr. Falcone was advised of a possible health code violation and informed that it was his responsibility to remedy the situation. T1. 20.

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<sup>1</sup> The transcripts of the two hearings are numbered individually rather than consecutively. References in this brief to "T1" are to the transcript of the hearing of March 27, 2006. References to "T2" are to the transcript of the hearing of April 24, 2006.

<sup>2</sup> Aqua's Answer and New Matter was admitted into the record at pages 28-29 and 45-46 of the transcript of the March 27, 2006 hearing

5. At the request of Complainant Falcone, on March 28, 2005, Horn Plumbing snaked the sewer line at 257 Highland Avenue and determined that the sewer problem was under the street and not on the property at 257 Highland Avenue. T1. 20, 65-66. Horn Plumbing advised Mr. Falcone that the problem was not his responsibility and contacted Radnor Township. T1 at 20, 67.

6. The Radnor Township Sewer Authority ("Sewer Authority") became involved and employed Ply-Mar Construction ("Ply-Mar") to make repairs to the sewer line. T1 at 89-91.

7. While digging for the repair, on April 7, 2005, Ply-Mar struck the water service line at 257 Highland Avenue with a backhoe, damaging the water service line on both Aqua's side and Mr. Falcone's side of the curb stop. T1. 94; T2. 24-25. The damage to the line interrupted water service to 257 Highland Avenue. T2. 29.

#### **The Repair of the Sewer and Water Lines and Service Restoration**

8. A water service line runs from the main in the street into the customer's residence. Aqua maintains the portion of the water service line from the water main to the curb stop, while the customer's service responsibility extends from the curb stop into the residence. T2. 24-25.

9. On April 7, 2005, Radnor Township called Aqua to notify Aqua about a service leak. T2. 23-24. Immediately thereafter, on that same day, April 7, 2005, Aqua dispatched a service crew to repair damage to the water line at 257 Highland Avenue. T2. 24.

10. The Aqua service crew installed a new corporation in the main, approximately five feet of copper piping, and a curb stop. T2. 25. A corporation is a fitting that screws into the main and allows the service line to be connected to it. T2. 25.

11. The work to fix Aqua's copper service line was completed on April 7, 2005 in three and one-half hours and was documented by the service crew foreman, as required, on the daily work order for that date. T2. 26-29; Aqua Exhibit 2. Aqua maintains all daily work order records as part of its normal course of business. T2. 28-29.

12. Separately, on April 7, 2005, Ply-Mar replaced the sewer trap and the sewer lateral. T1. 91; T2. 24-25. Sewer service was reestablished as of April 7, 2005. T1. 95-96. The repair work took approximately twelve hours to complete and was finished that same day. T1. 92; Complainant Exhibit C4.

13. Upon Aqua replacing the new corporation, piping, and curb stop, water was available to the curb stop. T2. 25. The Sewer Authority hired Horn Plumbing to repair the customer's water service line. T1. 67. That same day, April 7, 2005,<sup>3</sup> Horn Plumbing connected a special purpose, pure-water hose to the curb stop to provide temporary water service to the property until permanent repair of Mr. Falcone's portion of the line could be completed. T1. 74-75.

14. On April 8, 2005, Horn Plumbing returned to the property and installed a new, three-quarter inch copper water service line from inside the basement foundation wall to the Aqua curb stop. T1. 67-68, 72-75; Complainant Exhibit C4. Horn Plumbing then disconnected the temporary, special purpose, pure-water hose. T1. 75.

15. All in all, Mr. Falcone was without water service for no more than an approximate 5 hour period on April 7, 2005. T2. 29.

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<sup>3</sup> There is some discrepancy in the record about the date of the repairs (but not about the time it took to complete the repairs). Mr. Horn testified that a temporary water line was hooked up on April 5, 2005 and then disconnected on April 6, 2005 when Horn Plumbing installed a new waterline on Mr. Falcone's side of the curb stop. In actuality, the dates of these events were April 7 and April 8, 2005, respectively. This is corroborated by the testimony of Aqua witnesses Amarant and Miller, the Aqua daily work order for April 7, 2005 (See Aqua Exhibit 2), and Ply-Mar Construction invoice number 2039, dated May 6, 2005, which contains a line item for April 7, 2005 for repair crew work (See Aqua Exhibit 3).

16. Aqua did not super chlorinate the water as part of the water service line repair process. T2. 30, 36. Likewise, Horn Plumbing did not perform any chlorinating of the pipe or of the water during the course of its work. T1. 74. Mr. Horn explained that it is extremely uncommon to put chlorine in water when installing a new water service line on a customer's property. T1. 81.

17. The temporary, special purpose, pure-water hose line installed by the Sewer Authority contractor, Horn Plumbing, did not create a green substance, a chlorine-like odor, or a chalky substance in Mr. Falcone's water. T1. 81. Mr. Horn explained that the green substance appearing in Mr. Falcone's water following the repair is scaling that had built up on Mr. Falcone's own plumbing pipes in his residence and that it is not chlorine. T1. 81-84.<sup>4</sup>

#### **Costs Paid by Ronca, Aqua's Contractor**

18. Radnor Township paid all of the cost of repairing the sewer and water lines totaling \$8,554.00, including \$2,650.00 to Horn Plumbing and \$5,904.00 to Ply-Mar. T1. 76, 95; Complainant Exhibit C4. Ronca ultimately reimbursed Radnor Township for the full amount. T1. 95; T2. 32-33, Aqua Exhibit 3.

19. Radnor Township also assumed the costs for two emergency call outs of its crew, as well as the costs for restoration of Mr. Falcone's lawn and shrubbery, estimated at \$160.00. Aqua Exhibit 3.

20. Mr. Falcone was never billed for the cost of repairing the damaged sewer and water service lines and was never responsible at any time for any of the above related expenses. Not being able to produce a deed or lease establishing an interest

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<sup>4</sup> Mr. Falcone's claim concerning rocks in the toilet was not supported by probative evidence. Mr. Falcone testified that a plumber told him there were rocks in the toilet but he himself never saw any rocks. T2. 16.

in the property at 257 Highland Avenue as addressed below, it is questionable whether Mr. Falcone would have been responsible for the cost of the repairs in any event.

**Mr. Falcone's Move-In Date for Service to 257 Highland Avenue**

21. Complainant Falcone has lived at 257 Highland Avenue throughout his entire life. T2. 9. His current driver's license, issued on October 6, 2000, identifies 257 Highland Avenue as his place of residence. T2. 7-8; Complainant Exhibit C1.

22. Complainant Falcone presently resides at 257 Highland Avenue. T2. 5-6. He acknowledged that he lived at 257 Highland Avenue for at least part of the time from October 2000 through June 2004. T2. 12. During this time, Mr. Falcone used water at the property to cook, to bathe, and for other residential purposes. T2. 12.

23. Mr. Falcone has no deed or lease to occupy the property. T2. 13. The record reflects that Mr. Falcone's grandfather, also named Jules Falcone, was the homeowner at 257 Highland Avenue until his passing in June 2001. T2. 6, 10. Mr. Falcone, the grandfather, had an open and active account with Aqua at the time of his death.

24. Mr. Falcone's father, Flavio Falcone, who passed away in the Fall of 2004, also resided at the property. T2. 10. Mr. Falcone's grandmother, Ellen Falcone, who passed away in the Summer of 2004, also resided there. T2. 11. It was after the passing of Mrs. Falcone in June 2004 that Complainant Falcone attempted to set up an account with Aqua for water service to 257 Highland Avenue property. T2. 49, 64.

25. At that time, the grandfather's account had an unpaid balance of \$613.80. T2. 49, 64-65.

26. A new customer wishing to open an account with Aqua must provide a copy of his lease (or alternatively a settlement statement or a deed if owner of the property), two forms of identification, and a daytime telephone number. T2. 46-47.

These documents establish and provide proof of residency for the individual seeking to establish water service at a certain property and thus permit Aqua to set a firm date of effective residency and responsibility for payment of water service. T2. 47-48, 54.

27. In the event an estate is contested, the procedure for providing the proper paperwork to Aqua to set up an account is for the executor of the estate or the trustee to provide documentation which establishes responsibility for the estate. T2. 57. The estate's account, however, will be set aside and a new account will be opened if the new occupant of the property can provide documentation that the estate is, in fact, in probate or is contested. T2. 58. Aqua will then establish a new account for the new occupant based on the effective date of the dispute. T2. 58-59.

28. The grandfather's estate did not apply for service after his death in June 2001. T2. 48. As a result, water service continued to be billed to the account of Jules Falcone, the grandfather. T2. 65.

29. Aqua instructed Complainant Falcone of the requirements needed to establish a firm date for his new water service account and asked that he send the necessary documents on three separate occasions in 2004 - once in June 2004 and twice in August 2004 - and several times in 2005. T2. 47, 62.

30. Complainant Falcone has not, to date, sent proper documentation establishing residency at 257 Highland Avenue, either in the form of a settlement statement or deed or lease. T2. 47, 50, 62. He has also not provided any documentation evidencing that his grandfather's estate is under dispute. T2. 59.

31. After not receiving information from Complainant Falcone and in an effort to resolve the issue of the appropriate move-in date, Aqua established an account for Complainant Falcone at 257 Highland Avenue with a move-in date of July 1, 2004 but did not begin billing for water usage until August 20, 2004. T2. 50, 66-67; Aqua Exhibit

5. Aqua extended this courtesy to Mr. Falcone, despite not receiving a settlement sheet or deed or a lease establishing a clear move-in date. T2. 50.

32. Aqua also credited Mr. Falcone's account for payments made on Mr. Falcone's grandfather's account between July 1, 2004 and August 15, 2005. T2. 67-68; Aqua Exhibit 5.

33. The end result of the foregoing benefitted Mr. Falcone in two ways:

- a. First, Aqua opened Mr. Falcone's account with a credit balance of \$337.09. T2. 67-68; Aqua Exhibit 5. When offset against the balance outstanding, Mr. Falcone had a credit of \$87.19. T2. 68; Aqua Exhibit 5.
- b. Second, \$613.80 remains as an outstanding balance on Mr. Falcone's grandfather's account for water consumption between October 2000 and June 30, 2004. T2. 64-65. Mr. Falcone resided at 257 Highland Avenue and consumed water there during this period. T2. 12.

#### The Automatic Meter Radio Frequency Transmitter

34. Aqua utilizes a radio frequency meter reading system to determine actual water usage amounts at Mr. Falcone's residential property. T2. 90. A radio frequency transmitter located at the house interprets the reading from Mr. Falcone's water meter in the house and transmits that reading through radio frequency meter waves to a transmitter in the Aqua field service truck on the street. T2. 90-91.

35. Aqua witness Doyle explained that when the Aqua computer system identifies three identical meter readings in a row, signifying zero consumption for two consecutive months, a service order is automatically generated to repair the device at the property. T2. 94. Each service order also automatically generates a postcard to be sent to the customer requesting access to repair the meter reading system. T2. 94, 105-06.

36. On April 22, 2005 and May 23, 2005, Aqua radio frequency meter reading system transmitted two consecutive zero consumption readings for 257 Highland Avenue. T2. 70, Aqua Exhibit 4. As a result, on June 24, 2005, a service order and the first of three postcards were generated and sent to Mr. Falcone requesting access to repair the system. T2. 95, 105.

37. Subsequently, on August 24, 2005, the June 24, 2005 service order was cancelled because of the pending Complaint. T2. 95. Ms. Latrechiano, after unsuccessfully attempting to contact Mr. Falcone, generated a second service order to go out and repair the radio frequency transmitter. T2. 95, Aqua Exhibit 9.

38. Aqua attempted to gain access to the property to fix the defective meter reading system on September 3, 2005, but was unsuccessful. T2. 96. Accordingly, Aqua left a door hanger to remind Mr. Falcone that it was trying to gain access. T2. 96. Mr. Falcone refused access until the hearing date. T2. 96.

39. Another service order to fix the meter reading system was generated December 8, 2005. T2. 99; Aqua Exhibit 10. In conjunction with this service order, postcards were sent out on December 9 and December 27, 2005 and January 10, 2006. T2. 96, Aqua Exhibits 11-13. The December 8, 2005 service order was ultimately cancelled on January 25, 2006. T2. 96.

40. A third service order was issued on January 25, 2006 in accordance with the Interim Order issued on December 27, 2005. T2. 96-97.

41. On January 31, 2006, Aqua accessed the property and repaired the radio frequency transmitter. T2. 97.

### III. DISCUSSION

#### A. Burden of Proof

Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a), provides that the proponent of a rule or order has the burden of proof. As the proponent of a rule or order, Complainant has the burden of proof in this proceeding and, therefore, the duty to establish facts by a "preponderance of the evidence." *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, *alloc. den.*, 602 A.2d 863 (Pa. Commw. 1992).

#### B. Statutory Requirements

The Public Utility Code requires that every public utility furnish adequate, efficient, safe and reasonable service. Specifically, Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, provides, in part, that:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service shall be in conformity with the regulations and orders of the commission.

Complainant Falcone has failed to show that Aqua's service was in any way deficient under the statutory requirements. Indeed, as set forth in the following subsections, Aqua's service to 257 Highland Avenue was at all times adequate, efficient, safe and reasonable.

C. Aqua Provided Adequate, Efficient, Safe and Reasonable Service In Respect to the Repair of Water and Sewer Lines and Restoration of Water Service

Ronca unknowingly disconnected the sewer lateral from the sewer trunk line. When the problem was discovered, repairs to the sewer line were immediately undertaken. When the water line was damaged, repairs were immediately undertaken. Nothing in the record suggests otherwise.

Aqua dispatched its service crew to 257 Highland Avenue on April 7, 2005, after receiving the call from Radnor Township notifying Aqua of damage to the waterline. Aqua worked on the line from 2:00 P.M. to 5:30 P.M. on April 7, 2005, which included overtime hours, repairing the service line.

Water service was reconnected to 257 Highland Avenue on April 7, the same day the damage occurred, when Horn Plumbing established the temporary water service line. The job was completed by Horn Plumbing the next day. The entire effort, by everyone involved, was both timely and adequate.

The water service which was restored was safe and fit for ordinary usage and consumption. There was no super chlorinating of water which could have caused taste or odor dissatisfaction. Aqua did not receive any calls from neighbors in the area concerning a chlorine taste or odor. It is extremely uncommon to put chlorine in the water when installing a new service line, and it did not occur here. Any substance appearing in Mr. Falcone's water was due to scaling build up in Mr. Falcone's own plumbing pipes in his home.

Mr. Falcone did not pay any of the cost of any part of the repair to any portion of the sewer lateral or water line at 257 Highland Avenue. All cost was billed directly to Radnor Township, which, in turn, sought and received reimbursement from Aqua through its contractor, Ronca.

Aqua submits that a violation of Section 1501 requires more than a showing of damage to a water and sewer line. Difficulties such as these sometimes occur. The real test is how the problem is addressed. Here, the evidence of record demonstrates that Aqua's response to notice of the water and sewer line damage was immediate and, therefore, adequate, efficient, safe and reasonable. Mr. Falcone's Complaints, accordingly, should be dismissed.

**D. Aqua's Effort to Address a Move-In Date Was Adequate, Efficient, Safe and Reasonable**

After exerting substantial time and effort trying to obtain information from Mr. Falcone that would identify the appropriate move-in date for service in his name to 257 Highland Avenue, Aqua established an account for him with a move-in date of July 1, 2004. This was extremely fair and reasonable to Mr. Falcone.

With a move-in date of July 1, 2004, and with usage not being billed by Aqua until August 20, 2004, Mr. Falcone had a credit of \$337.09 upon the opening of the account. More significantly, as of July 1, 2004, the service account at 257 Highland Avenue had a balance due to Aqua of \$613.80. Mr. Falcone was living at the property during the period during when this significant arrearage accrued and rightfully would be responsible in whole or in part for that arrearage. His own driver's license issued in 2000 identifies 257 Highland Avenue as his place of residence.

Mr. Falcone has failed to demonstrate any violation of the Public Utility Code in regard to the establishment of an account in his name for service to 257 Highland Avenue. In fact, he has benefitted significantly from the way Aqua created the account.

**E. Aqua's Repair of the Radio Frequency Device Was Adequate Efficient, Reasonable and Safe**

Beginning in April 2005, the radio frequency meter reading at 257 Highland Avenue generated identical meter readings for three consecutive months. In June

2005, after receiving the third identical reading, Aqua, through its customer information system, initiated efforts to gain access to 257 Highland Avenue to identify and correct the problem with the radio frequency device.

Over the next several months, service orders were generated and friendly reminder postcards sent. Mr. Falcone could have resolved the matter of access at any time during this period by arranging a convenient time for him to allow access to the property, and Aqua respectfully submits that Mr. Falcone was obligated to allow access<sup>5</sup> even if he personally may have felt no obligation to do so. See T.2. 18-19. Ultimately, with the assistance of Judge Jones, Aqua was allowed access to the property and then repaired the device to working order.

Mr. Falcone has failed to demonstrate any violation of the Public Utility Code in regard to the repair of the radio frequency meter reading device and/or Aqua's effort to establish an account in his name for service to 257 Highland Avenue. In fact, he has benefitted significantly from the way Aqua created the account.

**F. Conclusion**

Mr. Falcone contends that the circumstances concerning Aqua's service to 257 Highland Avenue constitute a pattern of inadequate, unsafe and unreasonable service in violation of Section 1501 of the Public Utility Code. The evidence of record does not support Mr. Falcone's contention whether the matters are considered individually or collectively. Mr. Falcone's Complaints should be dismissed.

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<sup>5</sup> See, in this regard, Rule 55 of Aqua's Tariff which lists the reasons for which a customer's water service may be terminated. Particularly, subsection (e) gives Aqua the authority to terminate service "for the refusal of reasonable access to property for purposes of inspecting or for reading, caring for, removing, or installing meters, including remote and automatic meters. . ." Similarly, 52 Pa. Code § 56.81 authorizes the termination of water service for, *inter alia*, "[u]nreasonable refusal to permit access to meters, service connections and other utility property for the purpose of maintenance, repair or meter reading "

#### IV. PROPOSED CONCLUSIONS OF LAW

1. Complainant has the burden of proof in this proceeding and the duty to establish facts by a preponderance of the evidence. 66 Pa. C.S. §332(a).

2. Complainant has not presented evidence that support his contention that Aqua has demonstrated a persistent pattern of inadequate, unsafe and unreasonable service to 257 Highland Avenue.

3. Aqua provided adequate, efficient, safe and reasonable service in respect to the repair of water and sewer lines and restoration of water service to 257 Highland Avenue in compliance with Section 1501 of the Public Utility Code.

4. Aqua's effort to address a move-in date and establish an account in the name of Complainant Jules Falcone at 257 Highland Avenue was adequate, efficient, safe and reasonable in compliance with Section 1501 of the Public Utility Code.

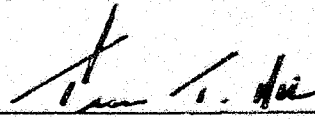
5. Aqua's effort to gain access to 257 Highland Avenue and the repair of the radio frequency device was adequate, efficient, reasonable and safe in compliance with Section 1501 of the Public Utility Code.

6. The Complaints of Jules Falcone at C-20055300 and Z-01761777 are dismissed.

V. CONCLUSION

The Complaints of Jules Falcone at C-20055300 and Z-01761777 should be dismissed as set forth above.

Respectfully submitted,

By 

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DATED: June 8, 2006  
AQJA Main Brief(Final).wpd

Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge  
Angela T. Jones, Presiding

JULES FALCONE

v.

AQUA PENNSYLVANIA, INC.

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:  
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:  
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Docket No. C-20055300  
Docket No. Z-01761777

CERTIFICATE OF SERVICE

I hereby certify that I have this 8<sup>th</sup> day of June, 2006, served a true and correct copy of the Brief of Aqua Pennsylvania, Inc., upon the persons and in the manner indicated below:

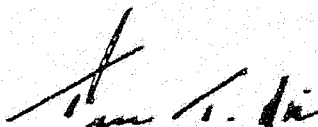
BY OVERNIGHT DELIVERY

Honorable Angela T. Jones  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130

Jules Falcone  
257 Highland Avenue  
Wayne, PA 19087

SECRETARY'S BUREAU

2006 JUN -8 PM 4:24



Thomas T. Nielsen

