

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ORIGINAL

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 : Docket Nos.
Hubert J. Franklin, Jr. v. Conneaut Lake : C-20029158
Park and Carol McClenahan v. Conneaut Lake : C-20029214
Park, Inc. Trustees. :
 Billing dispute. :
 :
 Initial telephonic hearing. :
 :
 ----- X

Pages 10 through 68

State Office Building
300 Liberty Avenue
11th Floor
Hearing Room No. 1
Pittsburgh, Pennsylvania

DOCUMENT

Wednesday, February 25, 2004

Met, pursuant to notice, at 10:01 a.m.

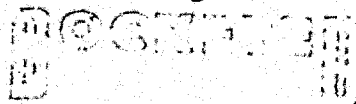
BEFORE:

JAMES D. PORTERFIELD, Administrative Law Judge

APPEARANCES:

HUBERT J. FRANKLIN, JR.
208 Bainbridge Drive
Aliquippa, Pennsylvania 15001
(pro se)

CAROL McCLENAHAN
582 Mohawk School Road
Edinburg, Pennsylvania 16116
(pro se)



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1 APPEARANCES CONTINUED:

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5 (For Conneaut Lake Park, Inc.)
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WITNESS INDEX

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Carol McClenahan				
(By the Judge)	16	--	--	--
(By Mr. Gregg)	--	24	--	--
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NUMBER

FOR IDENTIFICATION

IN EVIDENCE

(None)

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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE JAMES D. PORTERFIELD: Good
3 morning. I'm Administrative Law Judge James D. Porterfield,
4 the presiding officer assigned by the Office of
5 Administrative Law Judges, the Pennsylvania Public Utility
6 Commission to hear the matter captioned Hubert J. Franklin
7 versus Conneaut Lake Park, Inc. Trustees at Docket C-20029158
8 and Carol McClenahan versus Conneaut Lake Park, Inc. Trustees
9 at Docket C-20029214.

10 It being February the 25th, 2004, now shortly after
11 10:00 a.m., it's the date, time, and place set pursuant to
12 notice of the parties dated most recently February 13th,
13 2003. Ms. McClenahan, excuse me for interrupting myself. I
14 just noticed there is another hearing notice scheduling your
15 hearing for April the 16th.

16 MS. MCCLENAHAN: I was unaware of that.

17 JUDGE PORTERFIELD: There has to be something wrong
18 with that. There's so many hearing notices in this case. I
19 know there is another one scheduling you today, but anyway,
20 in any event, this morning Carol McClenahan has entered an
21 appearance in her own behalf, Hubert J. Franklin, Jr., an
22 appearance in his own behalf, and William J. Gregg, Esquire
23 an appearance on behalf of the respondent, Conneaut Lake Park
24 Inc. Trustees.

25 These complaints have not been formally consolidated,

1 because I'm not sure if there are common facts or common
2 issues. Consequently, we're going to undertake to deal with
3 the complaint, Mr. Franklin's complaint in any event. I'm
4 sorry. We're going to deal with Miss McClenahan's complaint
5 first.

6 Initially, that complaint was assigned to
7 Administrative Law Judge John Corbett, Jr., Esquire, and it
8 was subsequently assigned to me to be dealt with a companion
9 complaint to Mr. Franklin's.

10 The McClenahan complaint was filed on January the
11 13th, 2003, and the complaint alleges that apparently
12 Conneaut Lake charged or it undertook to charge customers for
13 water line repairs, and the complainant alleges that the line
14 repairs had already been paid for by homeowners, and I don't
15 know -- do you still have a complaint against the Conneaut
16 Lake, Miss McClenahan?

17 MS. McCLENAHAN: Yeah. My situation has not changed.
18 The line repairs were --

19 JUDGE PORTERFIELD: Let me administer an oath or
20 affirmation with you. Then you can kind of backtrack and go
21 through your complaint. I see you have an addendum to it
22 that's rather lengthy with some backup. Would you raise your
23 right hand, please.

24

25

1 Whereupon,

2 CAROL McCLENAHAN,

3 having been duly sworn, testified as follows:

4 DIRECT TESTIMONY

5 JUDGE PORTERFIELD: Would you state your full name and
6 address, please.

7 MS. McCLENAHAN: Carol Ann McClenahan. 582 Mohawk
8 School Road, Edinburg, PA 16116.

9 JUDGE PORTERFIELD: Is that the service address of --
10 the address at which you received service from Conneaut
11 Lake?

12 MS. McCLENAHAN: No, it's not.

13 JUDGE PORTERFIELD: Is it a recreational home, the
14 service area, the place where you receive service from
15 Conneaut Lake?

16 MS. McCLENAHAN: Yes. It's a summer cottage.

17 JUDGE PORTERFIELD: Located, I presume, in or about
18 Conneaut Lake?

19 MS. McCLENAHAN: Yes.

20 JUDGE PORTERFIELD: Tell me when your complaint -- the
21 facts that led up to your complaint first occurred.

22 MS. McCLENAHAN: Well, it all began in the summer of
23 2001 when the line had started to leak and cause erosion of
24 the road and large puddles. One of the other neighbors who
25 is more of a full-time resident than we are took it upon

1 himself to try to figure this situation out with the park.

2 The park told them that they were not responsible for
3 maintaining the water line leakages and that we, the
4 homeowners who used the water from that line, would have to
5 pay for it. So this all happened in small increments. They
6 patched twice.

7 JUDGE PORTERFIELD: When you say they, who is they?

8 MS. McCLENAHAN: Mike Pierce, I believe, who is the
9 park overseer of the water line, I guess. He's in
10 conjunction with the park somehow. He's an excavator, I
11 believe. He was the one contacted to do the repairs.

12 JUDGE PORTERFIELD: Was this a public road or private
13 road?

14 MS. McCLENAHAN: Well, that's something that I
15 couldn't answer really. I don't know.

16 JUDGE PORTERFIELD: You don't know whether it's a
17 township road, a state road, or part of a development?

18 MS. McCLENAHAN: It's a road that leads to the Fish
19 Commission boat launch ramp.

20 JUDGE PORTERFIELD: The Pennsylvania Fish Commission?

21 MS. McCLENAHAN: Yes.

22 JUDGE PORTERFIELD: Is it a paved road?

23 MS. McCLENAHAN: Not all paved. Part of it is paved,
24 part of it is not. It veers off like -- the line they
25 replaced is half under the paved section and half under the

1 dirt section.

2 JUDGE PORTERFIELD: In what municipality or
3 governmental unit do you actually live? When I say live,
4 your recreational cottage, what municipality?

5 MS. McCLENAHAN: It's township --

6 JUDGE PORTERFIELD: What is it called?

7 MS. McCLENAHAN: Can you help me? Is that Summit
8 Township?

9 MR. FRANKLIN: Summit Township.

10 JUDGE PORTERFIELD: Summit Township?

11 MR. FRANKLIN: Right.

12 JUDGE PORTERFIELD: We're having a little trouble with
13 our connection with Ms. McClenahan.

14 MS. McCLENAHAN: I'm sorry.

15 JUDGE PORTERFIELD: Do you know, Summit Township, does
16 it maintain the road where the water line is?

17 MS. McCLENAHAN: I don't believe anyone maintains the
18 dirt section. I do not know who maintains the paved section.

19 JUDGE PORTERFIELD: In any event, so as far as you
20 know, you receive water service from Conneaut Lake Park?

21 MS. McCLENAHAN: Right.

22 JUDGE PORTERFIELD: You were told back in 2001 that
23 the homeowners were responsible for repairing a distribution
24 line, a leak in the distribution line; is that correct?

25 MS. McCLENAHAN: Correct.

1 JUDGE PORTERFIELD: Did in fact the homeowners repair
2 this leak?

3 MS. McCLENAHAN: Yes. We paid for the repair.

4 JUDGE PORTERFIELD: To whom did you pay?

5 MS McCLENAHAN: Let me check my billings. I think it
6 was Mike Pierce again. I believe it was Mike Pierce.

7 JUDGE PORTERFIELD: So far as you know, Mike Pierce is
8 associated with Conneaut Lake Park, Inc.?

9 MR. FRANKLIN: He's a contractor.

10 MS. McCLENAHAN: Yes.

11 JUDGE PORTERFIELD: He's a contractor?

12 MS. McCLENAHAN: He's not only employed by them. No.
13 He's a private business who does work for the park. Yes, it
14 was Michael J. Pierce Contracting.

15 JUDGE PORTERFIELD: So what is your complaint?

16 MS. McCLENAHAN: My complaint is I pay a water fee, an
17 annual water fee, like everyone else who was on that water
18 line. And because of some stipulation that the park has told
19 these people who dealt with the other neighbors who were in
20 contact with the park over these issues, that years ago when
21 that water line was installed by a Mrs. Berger, they told her
22 they would provide water, but they would not maintain the
23 line.

24 Now, this is a story that has come about over the last
25 two years since these leaks started to occur that I never

1 knew up until then, because our water line leaks had been
2 priorly repaired by the park. And it was just since 2001
3 that this story about the Berger line not being maintained by
4 the park has come to surface, to my knowledge.

5 I want to know if it's there, is it legal for me to be
6 paying the same amount of water fee every year as everyone
7 else using the park's water but not getting maintenance on a
8 leak on the line when everyone else is?

9 JUDGE PORTERFIELD: I understand your complaint now.
10 Basically, you're being discriminated against unfairly
11 because for the very same fee some customers receive
12 maintenance on the distribution lines and you do not.

13 MS. McCLENAHAN: Every customer receives maintenance,
14 except seven of us.

15 JUDGE PORTERFIELD: There are seven on this so-called
16 Berger line?

17 MS. McCLENAHAN: True.

18 JUDGE PORTERFIELD: Could you estimate what you have
19 -- to your knowledge, you didn't pay anything for
20 maintenance on the line before 2001?

21 MS. McCLENAHAN: No, I did not.

22 JUDGE PORTERFIELD: How long have you -- what is the
23 address of the service property?

24 MS. McCLENAHAN: It's -- I'm trying to think of that
25 address. It's -- 11057 I think is the house number, and the

1 street name is Charles Street. It has -- that's another one
2 of these things that's changed over the years. Since I don't
3 ever receive mail there, I really am not sure what it's
4 listed as.

5 JUDGE PORTERFIELD: 11057 Charles Street, that's in
6 Conneaut Lake, PA?

7 MS. McCLENAHAN: Yes. I'm not sure if that's
8 accurate. Put a question mark beside that. I'm not sure.

9 MR. FRANKLIN: It's a road that's used by --

10 JUDGE PORTERFIELD: Is this Mr. Franklin?

11 MR. FRANKLIN: Yes. It's a road used by the Fish
12 Commission that goes into the Fish Commission lodge, and this
13 road is an extension of that road going into the Fish
14 Commission lodge.

15 JUDGE PORTERFIELD: The road kind of veers off into
16 the Fish Commission and --

17 MR. FRANKLIN: It's a straight road.

18 JUDGE PORTERFIELD: It's a straight road. Okay.

19 MR. FRANKLIN: The road comes off of Comstock.

20 JUDGE PORTERFIELD: Comstock?

21 MR. FRANKLIN: Right. The main road coming in from
22 this road that comes off on it to the Fish Commission's is
23 Comstock.

24 JUDGE PORTERFIELD: Mr. Franklin, I'm being out of
25 order here asking you a couple questions, but you may know.

1 Do you know if the Pennsylvania Fish Commission receives
2 water from Conneaut Lake?

3 MR. FRANKLIN: No.

4 JUDGE PORTERFIELD: You don't know?

5 MR. FRANKLIN: They don't receive water.

6 JUDGE PORTERFIELD: What is their source of water
7 supply, do you know?

8 MR. FRANKLIN: Out of the lake.

9 JUDGE PORTERFIELD: Out of the lake?

10 MR. FRANKLIN: They have nothing there that needs
11 water, and these johns that they put in are self-contained.

12 JUDGE PORTERFIELD: I see. Thank you. When did you
13 acquire -- provisionally we'll call it the Charles Street
14 property, Miss McClenahan, when did you acquire that
15 property?

16 MS. McCLENAHAN: 1990.

17 JUDGE PORTERFIELD: As we said before, it wasn't until
18 2001 that there were any major leaks in the distribution line
19 to your knowledge; is that right?

20 MS. McCLENAHAN: No. That's not quite right. There
21 were several leaks prior to 2001 which were fixed by the
22 park.

23 JUDGE PORTERFIELD: Whether by contractor or park
24 personnel?

25 MS. McCLENAHAN: I think it was park personnel, but I

1 wasn't there at the time. I can't say for sure.

2 JUDGE PORTERFIELD: But in 2001 some representative of
3 the park told you or told homeowners similarly situated that
4 it was your responsibility to repair the distribution line
5 leaks?

6 MS. McCLENAHAN: That's right.

7 JUDGE PORTERFIELD: Just while I'm thinking out loud,
8 if it costs Conneaut Lake Park money to supply water, they're
9 losing water. Conneaut Lake Park -- I mean, do you
10 understand that, Miss McClenahan?

11 MS. McCLENAHAN: They've lost lots of water over the
12 years, because those leaks became almost like, not just
13 puddles, but they were huge, huge, wet areas that leaked the
14 whole season.

15 JUDGE PORTERFIELD: Could you estimate how much you
16 paid whether Mr. Pierce or whomever to repair leaks between
17 2001 and the present?

18 MS. McCLENAHAN: Almost \$700 was my share. Multiply
19 that by seven and you'll get your total.

20 MR. FRANKLIN: I would like to interject here, too,
21 Judge. This road is also used by the Fish Commission. They
22 have a parking area right in front of the lodge area, and
23 also Summit Township has fire trucks that come in there and
24 fill up their trucks on top of this road, which are very
25 heavy.

1 JUDGE PORTERFIELD: They're filling up their trucks
2 out of the lake?

3 MR. FRANKLIN: Yes. They park in this area, usually
4 this road. Any contractor who is building houses also use
5 it.

6 JUDGE PORTERFIELD: Your point in part is that the
7 heavy fire trucks and so forth could the damage distribution
8 lines?

9 MR. FRANKLIN: That's correct.

10 MS. McCLENAHAN: Just the general traffic, there's a
11 lot of boat launch traffic going over this line daily.

12 MR. FRANKLIN: In fact, they have to worry about these
13 trucks moving into their -- they have a fence there, backing
14 into it, breaking it periodically.

15 JUDGE PORTERFIELD: The Fish Commission?

16 MR. FRANKLIN: Well, the people that use the launch,
17 the fishermen.

18 MS. McCLENAHAN: It's our fence that we're getting
19 knocked down occasionally by people.

20 JUDGE PORTERFIELD: Mr. Gregg, do you have any
21 questions for Ms. McClenahan?

22 MR. GREGG: Yes, Judge. I have a few questions for
23 Mrs. McClenahan.

24 CROSS-EXAMINATION

25 BY MR. GREGG:

1 Q First of all, Mrs. McClenahan, I'm not sure if you
2 made this clear or not, but it's correct, is it not, that as
3 of August of 2002 you and the other property owners have been
4 notified that Conneaut Lake Park has assumed ownership and
5 maintenance of that water line; correct?

6 A No. Your date is wrong. I believe it was -- no.
7 That's right. It was August 2002. You're correct.

8 Q That was because as of August of 2002 the
9 contractor was going to stand behind it for one year?

10 A Right.

11 Q Following that one year then the park as of 2003
12 would be fully responsible?

13 A Correct.

14 Q So in terms of any future problems, we wouldn't
15 anticipate that the owners themselves would have any -- bear
16 any expense in this regard. Do you agree with that?

17 A Well, that's my understanding, yes. Has it been
18 carved in stone? I don't know.

19 Q It is in writing though; is that correct?

20 A Well, I have a copy of that, and it is signed by
21 -- let me see who signed that.

22 Q I have one that's signed by Gene Rumsey, general
23 manager. Is that the one you have?

24 A I'm still turning to it. Yes, Gene Rumsey. It is
25 addressed to Michael Pierce. It's not addressed to me.

1 Q Mike Pierce was the contractor that you folks
2 hired. Now, am I correct then that the basis for the park
3 stating now that they will assume responsibility for that
4 water line is that now the line has been repaired and brought
5 up to proper specifications? Is that your understanding of
6 how that came about?

7 A My understanding is that the line has been
8 replaced with brand new line.

9 Q Correct. You mentioned that you had heard this
10 story within the past two years about what happened years ago
11 and that the fact that the line was installed and that the
12 park said that they would sell water but they wouldn't
13 maintain it. Is that what you're telling the Judge is the
14 story you've now heard?

15 A I heard that in 2001 for the first time about the
16 maintenance part.

17 Q Actually, that's consistent with -- and I think
18 they're made part of record, Judge, but there is a series of
19 letters that Ms. McClenahan had provided --

20 JUDGE PORTERFIELD: I think that was Mr. Franklin that
21 provided those letters. Maybe it was Ms. McClenahan. Are
22 they attached to the complaint?

23 MR. GREGG: Yes, Your Honor.

24 MS. McCLENAHAN: Those are my letters, I believe.

25 JUDGE PORTERFIELD: Perhaps we could identify it.

1 This is a bit strange, Mr. Gregg, but pleadings in the PUC
2 proceedings are not part of the record unless so made. What
3 I'll do is identify Ms. McClenahan's complaint and the
4 attachments as ALJ Exhibit No. 1.

5 MR. GREGG: Okay.

6 JUDGE PORTERFIELD: Similarly, I'll identify Mr.
7 Franklin's complaint as ALJ Exhibit No. 2 so we can get those
8 into the record. Go ahead. I'm sorry.

9 BY MR. GREGG:

10 Q Do you have those series of letters with you
11 today, Mrs. McClenahan?

12 A Yes, I do.

13 Q Could I ask you first to refer to the April 18th,
14 2001 letter that was written by Tom and Patty Baldwin?

15 A Okay.

16 Q Are they one of the seven property owners?

17 A Yes, they are.

18 Q When it says, "Dear Neighbor," that would refer to
19 you and the others that they were corresponding with?

20 A Yes.

21 Q If you turn your attention to the second
22 paragraph?

23 A All right.

24 Q The second line there, if you could read that
25 whole second line into the record?

1 A "It appears that the problem is the old
2 one-and-a-half inch" --

3 Q You've got a different letter than I'm looking
4 at. Sorry.

5 JUDGE PORTERFIELD: I'm looking at one that begins,
6 "We are your neighbors."

7 MR. GREGG: Yes.

8 JUDGE PORTERFIELD: You were referring to the second
9 paragraph, Mr. Gregg?

10 MR. GREGG: Right.

11 JUDGE PORTERFIELD: Beginning, "Sometime the week
12 of"?

13 MR. GREGG: Yes.

14 JUDGE PORTERFIELD: Do you have that letter, Ms.
15 McClenahan?

16 MS. McCLENAHAN: No. I have one that's -- wait a
17 minute. Here it is. I'm sorry. I was on the subsequent
18 one. The second line of the second paragraph.

19 BY MR. GREGG:

20 Q Yes. Yes, ma'am.

21 A "Park authorities turned off the water and refused
22 to repair the line because they do not own the water lines on
23 our street."

24 Q If you go further down where it says, "discussed
25 the situation with park employees," continue reading that.

1 A "We visited the park office and discussed the
2 situation with park employees, who related that a private
3 owner had the lines installed many years ago with the
4 stipulation that the park was not responsible for maintenance
5 of the lines and that our only connection with the park is
6 that they supply the water through our lines."

7 Q So that's consistent with the story that you had
8 been hearing about the park's responsibilities; is that
9 correct?

10 A That's consistent with the story, as you called
11 it, from 2001. Correct. I have asked you, Mr. Gregg, to
12 produce the papers that are showing this on the Berger file.
13 I have not heard from you.

14 Q That was probably because we received a letter
15 from you on February 15th and hadn't had the opportunity to
16 get it back to you at this point.

17 A That's because I responded on the letter that you
18 sent me that I received on February, I think it was, 7th.

19 Q My letter to you is dated February 3rd; is that
20 correct?

21 A That's somewhere in there. I would have to find
22 that in my car here. I'm sitting in my front seat of my car,
23 remember.

24 Q Yes.

25 A I do have it here in front of me.

1 Q Let me ask you then in general terms was the
2 letter that I gave you consistent with the same version that
3 you had heard from your own neighbors there, Mr. and
4 Mrs. Baldwin, concerning the history of the Berger line?

5 A There were a few discrepancies.

6 Q Let me go one step forward with you. In your same
7 packet that you submitted to the Public Utility Commission,
8 could you turn to the letter that was written by Chuck and
9 Mary Lou Oskin. It's an undated letter, but it would be the
10 first letter from the Oskins, and it starts with, "Dear
11 Neighbor, I'm sure by now you have seen the notice from" --

12 A I have it. That's one I was looking at first.

13 Q Again, would you turn your attention to the second
14 line of the second paragraph. Could you read that?

15 A "In talking to Don Shock (phonetic), park
16 maintenance, and Mike Pierce, owner, Oakland Beach Water
17 Company, it appears that the problem is the old
18 one-and-a-half inch iron pipe which connects to the park line
19 at the valve near the pump house."

20 Q Continue.

21 A "The park line ends at the valve, and they will
22 not take responsibility for the maintenance of the, quote,
23 unquote, private line which serves all of us."

24 Q That seems to indicate by the term private line
25 that it was the understanding, the park's understanding, that

1 you folks privately would be responsible for maintaining that
2 line?

3 A Correct. This is all the park's understanding.

4 Q If you would turn in that same letter to the
5 next-to-the-last paragraph and read that one.

6 A "In an attempt to find a long-term solution to
7 this problem, I asked Mike to propose a fix that would make
8 this problem go away and be acceptable to the park so that
9 they would assume maintenance of our lines. For now we are
10 only repairing the leak and filling the hole."

11 Q Now, you at your expense and the other owners's
12 expense replaced the line; is that correct?

13 A Yes, we have.

14 Q And consistent with that statement that's in that
15 letter, now the park has accepted and assumed maintenance of
16 the line, is that correct?

17 A Yes, it is.

18 Q One of the policies of the Pennsylvania Utility
19 Commission, one of the policies of Conneaut Lake Park, Mrs.
20 McClenahan, is to try to resolve our differences. I'm not
21 sure the Judge would view this as proper matter for this
22 hearing or not.

23 JUDGE PORTERFIELD: I do.

24 BY MR. GREGG:

25 Q We have made an offer to you, and I'm not sure if

1 you actually responded to it or not.

2 A Yes, I did, in my letter to you.

3 Q That means that you would reconsider it pending
4 your receipt of further documentation?

5 A Yes. All I'm asking for is to see where this
6 agreement with Mrs. Berger is in writing. I would like to
7 see that agreement.

8 MR. GREGG: We do have a file that we were able to
9 retrieve, Your Honor, and it wasn't that easy because there
10 are correspondences with this Mrs. Berger, who was the
11 original developer that put in this private line, that date
12 back to the early 1960s. My letter was incorrect when I said
13 the 1970s, Mrs. McClenahan. This goes back to the 1960s.

14 MS. McCLENAHAN: That was the one --

15 MR. GREGG: Mrs. McClenahan had asked that we provide
16 her with that, and Mrs. ReBrussier had some difficulty in
17 locating it, but we do have it now. If it would make any
18 difference after today that we provide what's in that file to
19 Mrs. McClenahan, we'd be happy to do so.

20 MS. McCLENAHAN: Yeah I'd like to see that.

21 BY MR. GREGG:

22 Q Just so I'm clear now, you and your property
23 owners in that area were not under any mandatory tapping
24 requirement; were you?

25 A You mean to this reconstructed line?

1 Q No, to the old line or the present line, you were
2 not compelled to buy water from the park?

3 A When the house was built, I don't know what the
4 situation was. When we bought the house, it had water from
5 the park.

6 Q But if you so chose, you could drill your own well
7 there; could you not?

8 A Yeah.

9 Q In fact, there are several property owners on your
10 line that have their own private wells?

11 A True.

12 Q So you're not held captive by the park so the only
13 option you have is to buy their water?

14 A No. That's not my only option, but I do pay a
15 maintenance fee, at least that's what I thought that's what
16 it was, a water fee.

17 Q Am I correct just in trying to analyze your
18 complaint vis-a-vis Mr. and Mrs. Baldwin's letter and
19 Mrs. and Mr. Oskin's letter, am I correct logically assuming
20 that your position on this must be different than what Mr.
21 Baldwin and Mrs. Baldwin and what Mr. and Mrs. Oskin believe?

22 A We have been property owners for quite a bit
23 longer than Mr. and Mrs. Oskin and Baldwin have been. Mr.
24 Oskin and Mr. Baldwin are the ones who were the voice for all
25 of us. All right? We didn't elect them to be our voice.

1 They just so happened to be residential occupants more
2 frequently than we were, so they were the ones who dealt with
3 the park.

4 Q Okay. I guess my point was they seem to have a
5 different acknowledgment of what the history of facts are
6 than you seem to have?

7 A They have accepted what the park has told them,
8 Mr. Gregg. I have been told things by the park in the past
9 that I later found out were not accurate. That's why I guess
10 I'm a little more skeptical than they are.

11 Q Okay. I just wanted to make sure I was clear that
12 you're taking a different position than your neighbors.

13 JUDGE PORTERFIELD: If I may interject here, as I
14 understand it, Mr. Gregg, you are going to send
15 Ms. McClenahan some documentation on the Berger agreement?

16 MR. GREGG: Yes. It's not an agreement. It's a
17 series of correspondence.

18 JUDGE PORTERFIELD: From which an understanding might
19 be inferred?

20 MR. GREGG: Yes.

21 MS. McCLENAHAN: It does state in there then that
22 Mrs. Berger has agreed, and this is a genuine document from
23 the 1960s; correct?

24 MR. GREGG: Yes.

25 MS. McCLENAHAN: Okay.

1 JUDGE PORTERFIELD: You'll review that and let me
2 know, Ms. McClenahan, whether or not you wish to have the
3 complaint adjudicated. In other words, if you're satisfied
4 that Conneaut Lake is acting properly relying on this
5 understanding that it was a private line with no maintenance
6 obligation, only a duty to supply water, your complaint might
7 go away. Do I understand correctly?

8 MS. McCLENAHAN: Yes.

9 MR. GREGG: Thank you. That's all the questions I
10 have then for Mrs. McClenahan, Your Honor.

11 JUDGE PORTERFIELD: Are you going to offer vis-a-vis
12 Mrs. McClenahan's complaint any testimony from
13 Mrs. ReBrussier?

14 MR. GREGG: I think we're satisfied that the issues
15 are established, Your Honor No.

16 JUDGE PORTERFIELD: Okay, Mr. Franklin?

17 MR. FRANKLIN: Yes.

18 JUDGE PORTERFIELD: Did I administer an oath or
19 affirmation to you? No? Would you raise your right hand
20 please. The court reporter is helping me out. She told me I
21 didn't. Would you raise your right hand, please.

22 Whereupon,

23 HUBERT J. FRANKLIN, JR.,

24 having been duly sworn, testified as follows:

25 DIRECT TESTIMONY

1 JUDGE PORTERFIELD: The last time you really scared me
2 when you said if this things keeps dragging on you might not
3 be alive. Here we are. We're both alive, and aren't we
4 happy about that today? Do you remember telling me that?

5 MR. FRANKLIN: Yeah.

6 JUDGE PORTERFIELD: Go ahead. Mr. Franklin, if you
7 would state your full name and mailing address, please.

8 MR. FRANKLIN: Hubert J. Franklin, Jr. 208 Bainbridge
9 Drive, Aliquippa, PA 15001.

10 JUDGE PORTERFIELD: You're the complainant against
11 Conneaut Lake Park, Inc. Trustees; is that correct?

12 MR. FRANKLIN: That's correct, whoever was in charge.

13 JUDGE PORTERFIELD: What is the address of the service
14 property in the Conneaut Lake area? I presume you have a
15 property there?

16 MR. FRANKLIN: I do. 12626 Center Street, Conneaut
17 Lake.

18 JUDGE PORTERFIELD: Describe for me your complaint in
19 essence.

20 MR. FRANKLIN: In 1999 a bill I received from a man in
21 charge was Harris, Gary Harris. I think his manager was
22 Perkio.

23 JUDGE PORTERFIELD: Perkio?

24 MR. FRANKLIN: I think she was handling the affairs
25 then. The bills were coming out at 3 and 600. Then they

1 dropped it down to 2 and 4.

2 JUDGE PORTERFIELD: I'm not with you, sir. The
3 bills --

4 MR. FRANKLIN: The bills coming out for the water park
5 the beginning of the year --

6 JUDGE PORTERFIELD: The bill for your property?

7 MR. FRANKLIN: Right.

8 JUDGE PORTERFIELD: Are you billed quarterly,
9 monthly?

10 MR. FRANKLIN: They give it to you on a yearly basis.
11 If you pay it in the front, they gave you a 20 percent
12 discount.

13 JUDGE PORTERFIELD: It's a flat rate?

14 MR. FRANKLIN: Right.

15 JUDGE PORTERFIELD: Go ahead. In 1999 you got a bill
16 for approximately, what, \$600?

17 MR. FRANKLIN: Well, they changed it and went to 4 and
18 \$300.

19 JUDGE PORTERFIELD: They changed it when?

20 MR. FRANKLIN: During the summertime.

21 JUDGE PORTERFIELD: Do you recall what your first bill
22 in 1999 was?

23 MR. FRANKLIN: I know I settled for \$200.

24 JUDGE PORTERFIELD: You settled?

25 MR. FRANKLIN: They accepted \$200 for the billing for

1 that year.

2 JUDGE PORTERFIELD: You know, I wish Pittsburgh would
3 negotiate with me over my water bill. You negotiated a rate
4 with them?

5 MR. FRANKLIN: They said they'd accept it.

6 JUDGE PORTERFIELD: When about --

7 MR. FRANKLIN: It seems like anyone that went up there
8 and negotiated, they felt sorry for them. I guess that's the
9 way they worked. I don't know. I'm not quite sure of that.
10 Anyway, in my respect, they said it was 4 and \$300. So I
11 went up and I says, "All right. I'm willing at this point to
12 give you \$200 until we find out what the real rates are going
13 to be."

14 JUDGE PORTERFIELD: So for a whole year of water you
15 paid \$200?

16 MR. FRANKLIN: No, for a season. I'm up there for
17 three months.

18 JUDGE PORTERFIELD: Do you have water available to
19 you, or is it literally shut off?

20 MR. FRANKLIN: We shut our own off.

21 JUDGE PORTERFIELD: You shut your own off, drainpipes
22 and so forth?

23 MR. FRANKLIN: That's correct. So during that period
24 of time, I decided we've got to find out what is the proper
25 rate and are they certified. So I sent in a complaint to the

1 PUC in the year 1999.

2 JUDGE PORTERFIELD: Yes.

3 MR. FRANKLIN: They received it, and they sent to a
4 Jordan Stone, who'd become the new custodian of the park, the
5 information. He at the time took it, and from what I
6 understand everything I received henceforth I sent to the
7 PUC. I would call them up, tell them I got this information.
8 They said, "Forward it to us."

9 In the meantime I asked them, I says, "Do you want me
10 to pay it?" They says, "You can't pay it," because they
11 haven't been certified and there was no rate set. I says,
12 "Well, I'm going to get troubles again. This is the way
13 it's going to go." So I didn't pay anything. So the next
14 year, even after --

15 JUDGE PORTERFIELD: Now we're into the year 2000?

16 MR. FRANKLIN: I sent you a whole chronological list.

17 JUDGE PORTERFIELD: You have to walk me through it.

18 MR. FRANKLIN: All right.

19 JUDGE PORTERFIELD: I have your packet of materials
20 here

21 MR. FRANKLIN: I should have sent even to Mr. Gregg --

22 JUDGE PORTERFIELD: You didn't send him a copy? He
23 hadn't entered an appearance yet when you sent me this.

24 MR. FRANKLIN: No.

25 JUDGE PORTERFIELD: Why don't you -- do you have your

1 packet of materials there?

2 MR. FRANKLIN: Right here. I'm looking at it here.

3 JUDGE PORTERFIELD: Walk me through.

4 MR. FRANKLIN: 7/99 filed a complaint with the
5 Bureau 7/1999 complaint directed to the Erie office. They
6 in turn sent it to the Harrisburg office. 1/12/2000 received
7 notice PUC would handle the complaint, meeting planned for
8 Mr. Stoney Jordan, trustee."

9 JUDGE PORTERFIELD: Could you speak up a little bit,
10 sir. I'm having a little trouble hearing you.

11 MR. FRANKLIN: This meeting is to establish service
12 rates. I was advised by the PUC not to pay the water bill
13 from Conneaut Lake Park until the PUC set the proper rates.
14 At this time I was billed \$300 seasonal rate plus the
15 discount. On 1/31/2001 I telephoned the PUC who stated they
16 have not received any response from the Conneaut Lake Park
17 Water. I was advised not to pay the water bill until the
18 application was complete and approved.

19 MR. GREGG: I'm going to object to the testimony, Your
20 Honor. Clearly it's hearsay, and it goes to a very important
21 issue in the case, unless Mr. Franklin can document who it is
22 telling him and we have an opportunity to cross-examine that
23 person.

24 MR. FRANKLIN: 3/17/2001.

25 JUDGE PORTERFIELD: Where are you, Mr. Franklin?

1 MR. FRANKLIN: Year 2001.

2 JUDGE PORTERFIELD: Are you looking at a letter or
3 something?

4 MR. FRANKLIN: It was chronological order.

5 JUDGE PORTERFIELD: I know the first letter is 2003.
6 So it's not chronological. I see. You have a chronological
7 list of PUC contacts?

8 MR. FRANKLIN: Right.

9 JUDGE PORTERFIELD: Attached to that letter?

10 MR. FRANKLIN: Right. It goes right down the list.
11 2001, received a letter from Conneaut Lake Park Trustees. I
12 was billed for past year and this year \$300 seasonal rate.

13 JUDGE PORTERFIELD: There is no point in reading that
14 one. What we'll do is subject to hearsay objections --

15 MR. FRANKLIN: All this information was sent out to a
16 Mrs. Judy Carolson and Mr. Stan Brad (phonetic), who the
17 attorneys were at the PUC.

18 JUDGE PORTERFIELD: What I'll do, Mr. Gregg, you
19 obviously don't have a copy of this packet as it is; do you?

20 MR. GREGG: No, I don't.

21 JUDGE PORTERFIELD: What I'll do is after the hearing
22 I'll have it copied and sent to you, and I understand the
23 hearsay objections. It's perhaps background information, and
24 the hearsay objection will stand. If there is something
25 that's critical, perhaps we would have to schedule another

1 hearing on Mr. Franklin's complaint for cross-examination or
2 whatever.

3 In any event, let's get down hard and clear what your
4 complaint is, Mr. Franklin. Your complaint so far as I
5 understand it is that there wasn't a rate on file with the
6 PUC. So you didn't feel that there was a legitimate rate
7 that Conneaut Lake Park could charge you?

8 MR. FRANKLIN: That's correct. That's what the PUC
9 told me, too. They said legally they couldn't charge for
10 water until they had certification.

11 JUDGE PORTERFIELD: They should give you free water,
12 you think?

13 MR. FRANKLIN: No. I didn't say that.

14 JUDGE PORTERFIELD: But the PUC told you they couldn't
15 charge you anything?

16 MR. FRANKLIN: Until the certification. They said you
17 might have to go back and pay for water.

18 JUDGE PORTERFIELD: I see. The PUC did advise you
19 that you could be retro billed?

20 MR. FRANKLIN: But I was concerned even at that time,
21 I says, going back, that's going to build this water bill up
22 to a pretty --

23 JUDGE PORTERFIELD: Sure.

24 MR. FRANKLIN: I'm willing to pay. Not that I'm
25 trying to get away from this arbitrarily.

1 JUDGE PORTERFIELD: I understand.

2 MR. FRANKLIN: That's not my point.

3 JUDGE PORTERFIELD: I don't think anybody is accusing
4 you of that.

5 MR. FRANKLIN: My point was okay, let's settle the
6 thing. I even went back and I says, all right, if it's \$150
7 and they gave me 15 percent off, I would have paid it each
8 year.

9 JUDGE PORTERFIELD: What point are you unhappy about
10 now? You negotiated a rate for 1999.

11 MR. FRANKLIN: Mr. Gregg sent me a letter saying the
12 board he was talking to at Conneaut Lake would take \$600.
13 That's --

14 JUDGE PORTERFIELD: I'm trying to turn up my volume.
15 I can't get it up any higher. Mr. Franklin, you negotiated a
16 water rate, an annual water rate for 1999; is that correct?

17 MR. FRANKLIN: I paid what they told me to pay.

18 JUDGE PORTERFIELD: No. You paid them what you told
19 them you would pay.

20 MR. FRANKLIN: And they accepted it. That was
21 Mrs. Perkio.

22 JUDGE PORTERFIELD: So you don't have any complaint
23 about that year?

24 MR. FRANKLIN: That's done. That's finished. We're
25 talking from '99 on.

1 JUDGE PORTERFIELD: Okay. So the year 2000.

2 MR. FRANKLIN: 2000, I didn't pay it.

3 JUDGE PORTERFIELD: You didn't pay anything?

4 MR. FRANKLIN: No.

5 JUDGE PORTERFIELD. 2001.

6 MR. FRANKLIN: Didn't pay it.

7 JUDGE PORTERFIELD: You didn't pay anything?

8 MR. FRANKLIN: No.

9 JUDGE PORTERFIELD: 2002?

10 MR. FRANKLIN: 2002 is when the order came in.

11 JUDGE PORTERFIELD: What order?

12 MR. FRANKLIN: From the PUC.

13 JUDGE PORTERFIELD: What did you pay in --

14 MR. FRANKLIN: They filed it on 4/24.

15 JUDGE PORTERFIELD: What happened?

16 MR. FRANKLIN: The application, according to this, was
17 filed on 4/24.

18 JUDGE PORTERFIELD: Of 2002?

19 MR. FRANKLIN: Right.

20 JUDGE PORTERFIELD: What did you pay for water in
21 2002?

22 MR. FRANKLIN: \$150 with a discount for the year 2003.

23 JUDGE PORTERFIELD: You paid 150 for the year 2002 and
24 with paying that you got a discount --

25 MR. FRANKLIN: 2003. 2004 I paid for.

1 JUDGE PORTERFIELD: You have paid this year?

2 MR. FRANKLIN: Right.

3 JUDGE PORTERFIELD: How much have you paid this year?

4 MR. FRANKLIN: \$150. In other words, if they would
5 have done what the PUC said, put the application and filed,
6 \$150 would have started and I would have been paying this
7 right along. They dragged their feet. They did everything
8 in the book. Even information out of the Tribune was sent
9 down to them about the way the park was being operated at the
10 time. I had no idea what was going to go on.

11 JUDGE PORTERFIELD: What do you think you owe for
12 2000, 2001?

13 MR. FRANKLIN: I'm willing to pay the 150 less the
14 discount.

15 JUDGE PORTERFIELD: For both years?

16 MR. FRANKLIN: Yeah.

17 JUDGE PORTERFIELD: How much was the discount for in
18 2003?

19 MR. FRANKLIN: They were giving -- one year was 20
20 percent, one year was 15 percent.

21 JUDGE PORTERFIELD: So in the one year, the -- you
22 paid 150 and then you got a 20 percent discount on the
23 following year?

24 MR. FRANKLIN: Yeah. I think it depended on how hard
25 up for money they were.

1 JUDGE PORTERFIELD: Well, Mr. Gregg has represented
2 that there is a tariff on file. This tariff on file, Mr.
3 Gregg, so far as you know, this applies to the application
4 territory?

5 MR. GREGG: Yeah. That includes Mr. Franklin. Yes.

6 JUDGE PORTERFIELD: Okay. So I guess my question to
7 you, Mr. Franklin, is what is your complaint?

8 MR. FRANKLIN: Well, my complaint had already been
9 settled when they certified it.

10 JUDGE PORTERFIELD: Certified what?

11 MR. FRANKLIN: The park for the water.

12 JUDGE PORTERFIELD: Whenever the application was
13 granted?

14 MR. FRANKLIN: And when that was certified, it was in
15 2002.

16 JUDGE PORTERFIELD: Okay.

17 MR. FRANKLIN: That was satisfied then. Up until
18 then, as the PUC told me, I didn't pay the bill because they
19 didn't do anything to hurry the certification up. In fact, I
20 think if you got down to Harrisburg and look at some of the
21 records, you'll find out they have very many difficulties
22 trying to put this thing together. As you say, hearsay and
23 they say. Well, get it from the people down there and I'm
24 sure you'll find out.

25 JUDGE PORTERFIELD: I can't -- this is a hearing. I

1 can't call the people in Harrisburg and find out. Okay.

2 MR. FRANKLIN: I'm willing to pay, as I said, what I
3 owe because I'm not that type of person.

4 JUDGE PORTERFIELD: You don't sound like that kind of
5 person, Mr. Franklin.

6 MR. FRANKLIN: They also insinuated that they owned
7 the sewer. The sewer is not owned by them. We're not even
8 inside the park. We pay Conneaut Lake's borough every year
9 on time with their discount.

10 JUDGE PORTERFIELD: Are you located in Conneaut Lake
11 Borough, or you just receive sewer service from Conneaut Lake
12 Borough?

13 MR. FRANKLIN: We just receive their sewage service.

14 JUDGE PORTERFIELD: I see. You're located in Summit
15 Township similar to Mrs. McClenahan?

16 MR. FRANKLIN: Right. We're located outside the park,
17 near the Fish Commission area.

18 JUDGE PORTERFIELD: So your complaint would be
19 completely satisfied if Conneaut Lake were willing to accept
20 somewhere in the neighborhood of \$300 for the years 2000,
21 2001; is that correct?

22 MR. FRANKLIN: That's correct.

23 JUDGE PORTERFIELD: Anything else you want to add, Mr.
24 Franklin, before Mr. Gregg has an opportunity to ask you
25 questions?

1 MR. FRANKLIN: The question came up, someone asked me
2 this, if I do something wrong there is a penalty and a fine.

3 JUDGE PORTERFIELD: Not always. If you spit on the
4 sidewalk, nobody jumps on you.

5 MR. FRANKLIN: If I break the law.

6 JUDGE PORTERFIELD: Okay. Go ahead.

7 MR. FRANKLIN: Certification was made by the park.
8 They dragged their feet. Where do they come in on this?
9 Does anything happen there? Not that I care. I was just
10 curious.

11 JUDGE PORTERFIELD: Well, first of all --

12 MR. FRANKLIN: It seems like everything is on the
13 consumer.

14 JUDGE PORTERFIELD: I don't know all the facts. I
15 don't know many of the facts in this case. But let me ask
16 you this, Mr. Franklin. You sound like a thoughtful, sincere
17 person that wants to understand. First of all, you
18 understand that Conneaut Lake Park -- and I don't know all
19 the details -- is asking to serve customers outside of their
20 area. That's why they had to make an application. Do you
21 understand that?

22 MR. FRANKLIN: I understand.

23 JUDGE PORTERFIELD: So they're taking the initiative
24 to do that. Would you prefer them to say, "We don't want to
25 serve those people"?

1 MR. FRANKLIN: They were doing that before, Judge.

2 JUDGE PORTERFIELD: What's that? Oh, I understand
3 they were doing it before, but the law requires that they be
4 certified or it be certified to provide that.

5 MR. FRANKLIN: -- window --

6 JUDGE PORTERFIELD: Pardon?

7 MR. FRANKLIN: They didn't have a separate meter on
8 the water pipes, and they sent an engineer up there and found
9 out they did have a separate electric unit there to take care
10 of and they could tell how much was used. There's all these
11 little things in there that sort of fudged it up a little
12 bit.

13 JUDGE PORTERFIELD: If Conneaut Lake Park were willing
14 to accept in the neighborhood of \$300 for your water usage,
15 you would withdraw your complaint?

16 MR. FRANKLIN: Withdraw, I'd send it to them, and I'd
17 want Mr. Gregg to send me a letter saying I'm fully in
18 compliance, up to date, when I send a check to them, because
19 I don't want to go through this again.

20 JUDGE PORTERFIELD: Mr. Gregg, do you have any
21 questions for Mr. Franklin?

22 MR. GREGG: I just have a few questions, Judge.

23 CROSS-EXAMINATION

24 BY MR. GREGG:

25 Q First of all, Mr. Franklin, I'm not sure if Judge

1 Porterfield has been to Conneaut Lake Park or not but --

2 JUDGE PORTERFIELD: Not for a few years.

3 BY MR. GREGG:

4 Q Basically, you live in an amusement park; is that
5 right?

6 A No.

7 Q You live in amusement park area; is that correct?

8 A I live outside the boundaries, yes.

9 Q That water system that Conneaut Lake Park
10 maintains is to provide for Conneaut Lake Park's facilities;
11 is that right?

12 A In the surrounding areas.

13 Q Their buildings, they have a water slide,
14 concession stands, restaurants, hotels; is that right?

15 A And they have rooming houses and cottages inside.
16 They have a trailer park that they supply water to.

17 Q Sure. It just so happens that interspersed within
18 the amusement facility the restaurants, the hotels, and so
19 forth are private ownership cottages like you have; is that
20 right?

21 A Right.

22 Q You elected, did you not, when you purchased your
23 property to purchase the park's water?

24 A At the time it was owned by a family by the name
25 of Flynn.

1 Q Flynn family, that's right. But they --

2 A The Flynnns come down and they says, "Yes. We'll
3 put you in. There's no problem at all. Tap in."

4 Q You could have drilled a well; right? They
5 wouldn't have had a problem with that?

6 A That's the option. Right.

7 Q How long have you owned your property, Mr.
8 Franklin?

9 A Since back in the late '80s, I guess.

10 Q You knew and you have kind of made it a personal
11 project of yourself, but you knew when the Flynn family owned
12 the property and so on as ownership changed that it wasn't a
13 PUC water supplier? You knew that; right?

14 A No. I didn't know it. No. I wasn't made aware
15 of that.

16 Q So you thought this was a PUC regulated utility
17 that you were purchasing from --

18 A Being a large park, I thought they followed the
19 rules and regulations like anyone else did.

20 Q It only so happened that when you disagreed with
21 how much they wanted you to pay that you made a research
22 project out of this?

23 A No. All I wanted was to find out what is the
24 regular price. The surrounding area, I checked with
25 Meadville and checked the areas around here and what the

1 water rates were, and it seemed to me that there was a
2 discrepancy between the yearly rate, three months, or
3 seasonal rate.

4 Q They provide water on a year-round basis, don't
5 they, to people that live there year-round?

6 A They do that live up there, I guess.

7 Q You're the one who only elected to use your
8 cottage for three months out of the year?

9 A That's correct.

10 Q Is that right?

11 A That's correct. I even have a letter here that's
12 mailed out implying that they were even servicing us with
13 sewer systems.

14 Q You agree that there have been a series of
15 different owners since you elected not to pay back in 2000?

16 JUDGE PORTERFIELD: Series of different owners of
17 Conneaut Lake Park?

18 MR. GREGG: Yes, Your Honor.

19 JUDGE PORTERFIELD: Got it. Go ahead, Mr. Franklin.

20 A The sewer sent this letter out.

21 Q I'm not asking you about the sewer. I'm asking
22 whether or not you were aware --

23 A It ties in with it, because the water and the bill
24 were there at the same time. In this they're making a
25 statement that if you don't pay your bill, we're going to

1 plug up your sewer.

2 Q That hasn't been the position of the current owner
3 or any --

4 A I know, but I'm just talking about before you got
5 into it, Mr. Gregg.

6 Q Are you aware that the park is owned by a
7 nonprofit corporation basically owned by the community itself
8 as a community amusement park?

9 A Right now I don't know who's in charge of it. I
10 have no idea, but I do believe they're trying to keep it
11 together and do the job.

12 Q You knew there have been significant financial
13 problems that the park has had over the past few years, is
14 that right?

15 A Right, because I'm looking at -- right now I
16 pulled a packet out of what was in the Tribune about an
17 increase that the manager wanted.

18 Q By the way --

19 A Pay raises and all that.

20 Q Just to put one thing on the record here, do you
21 acknowledge that you received a letter from me dated February
22 3rd, 2004?

23 A Yes, I do.

24 Q Do you also acknowledge that you did not respond
25 to that letter?

1 A I did not respond.

2 Q Thank you. I'm looking at an invoice. I'm not
3 sure since I don't have the --

4 A The reason I didn't respond is because the Judge
5 had already set up the meeting.

6 JUDGE PORTERFIELD: This isn't a meeting. It's a
7 hearing, Mr. Franklin.

8 A Hearing.

9 JUDGE PORTERFIELD: Go ahead.

10 A This is the second hearing on it.

11 JUDGE PORTERFIELD: No. The other was a prehearing
12 conference.

13 MR. FRANKLIN: Well --

14 JUDGE PORTERFIELD: It wasn't an evidentiary hearing.
15 Go ahead.

16 A For a lack of terminology.

17 Q In my letter I said that Conneaut Lake Park would
18 like to resolve any problems they have concerning your
19 previous water billing; did I not?

20 A That's right. In the meantime I was down with a
21 cold.

22 Q I'm looking at an invoice. I'm not sure if this
23 is in your packet or not or in the judge's packet, but
24 there's an invoice dated November 13th, 2002. It states
25 seasonal water service at \$150 and a past due balance of

1 1,200. Do you have that one?

2 A Yeah.

3 Q The one I'm looking at shows that you paid with
4 the discount 127.50 on December 9th, 2002?

5 A For the coming year, yeah.

6 Q I wanted to clear that up. When you paid that on
7 December 9th, 2002, that was for the 2003 water service; is
8 that correct?

9 A Correct.

10 Q We have nothing on our records showing that you
11 actually made a payment that would have been credited to the
12 2002 season. Do you have that?

13 A The 2002 bill was sent out, and you pay it in
14 2002, but it's for the next year.

15 Q So the Judge came up with an incorrect
16 interpretation. The true facts are you paid nothing for
17 2000, nothing for 2001, and nothing for 2002?

18 A All right. So what's your point?

19 JUDGE PORTERFIELD: The point is I was under the
20 impression that you made a payment for the 2002 with a
21 discount for 2003, but in fact what you did was paid 2003,
22 according to what Mr. Gregg's representing, with a discount
23 possibly for 2004. Is that correct, Mr. Gregg?

24 MR. GREGG: Yeah. That's my belief.

25 MR. FRANKLIN: What is your bottom line then?

1 BY MR. GREGG:

2 Q My bottom line is you say you feel that there is
3 an obligation that you owe for the past years when you have
4 paid nothing.

5 A Then what do I pay?

6 Q That's for somebody else to determine, I guess.
7 There's three years, in other words, that you paid nothing?

8 A All right. Then what do I pay?

9 Q We made you an offer; is that correct?

10 A Yes.

11 Q Have you rejected that offer?

12 A Based on the fact that there were discounts at
13 that point, and I would have paid that bill with discounts.
14 It would have been lesser than that.

15 Q You keep talking about blaming the park for
16 dragging their feet in this matter, but actually you're
17 trying to use the fact that the park dragged their feet to
18 your benefit; aren't you?

19 A Mr. Gregg, please, I don't like your insinuations.

20 Q We've got --

21 A You're pushing a point there that I'm not in that
22 category at all that you're trying to establish. I know
23 you're trying to get your points across, but I'm not that
24 type of person to begin with. All I am is I'm trying to
25 establish a rate. I would have paid it. The dragging of the

1 feet or whatever came to the PUC because they said they sent
2 the information and never got anything from it. I called
3 again. They never got anything from it. I says, "What do I
4 do in the meantime?"

5 "Don't do anything until you hear from us." So let's
6 not get into this thing of putting me in a spot like I'm the
7 one that's dragging anything.

8 Q Let me ask you this question: You're aware that
9 since February of 2002 the park has been subject to a tariff
10 as issued by the Pennsylvania Utility Commission? You knew
11 that; didn't you?

12 A I didn't know that.

13 Q You did not know that. Okay. Since you have
14 known it, you haven't taken any steps to pay what you believe
15 is owed for these three years; have you?

16 A I was waiting to get the final answer from the
17 Judge to find out what I owe.

18 MR. GREGG: I would like, Your Honor, to receive the
19 packet from Mr. Franklin, because I would like to settle this
20 matter, but we can't reconcile his payment schedule with the
21 fact that we were showing a past due balance of \$1,200. Part
22 of that might be our fault because we have had several
23 different operators of Conneaut Lake Park even since 1999.

24 JUDGE PORTERFIELD: I understand there have been some
25 financial problems up there, and oftentimes when that happens

1 paper trails can go awry. It will not prejudice me. What
2 was the offer you made to Mr. Franklin?

3 MR. GREGG: I was basing it on the fact that we showed
4 \$1,200 as owed. We offered him a \$600 --

5 JUDGE PORTERFIELD: Buy-out just to close it down?

6 MR. GREGG: Yeah, cut it in half.

7 JUDGE PORTERFIELD: You might have difficulty
8 documenting the \$600 -- I mean, the \$1,200?

9 MR. GREGG: I would say that may be -- I can ask Ms.
10 ReBrussier.

11 MS. McCLENAHAN: Excuse me, Judge. I'm still here.
12 Do I need to remain on this line?

13 JUDGE PORTERFIELD: Mrs. McClenahan, I don't see that
14 you do. Is there anything else you want to add this
15 morning?

16 MS. McCLENAHAN: All I want to confirm is that I will
17 get the Berger line file papers in the mail from Attorney
18 Gregg.

19 JUDGE PORTERFIELD: Okay. Go ahead.

20 MS. McCLENAHAN: And if they state as he is telling me
21 they state that that agreement was made back in the '60s and
22 that's -- is that legal, Judge, in your --

23 JUDGE PORTERFIELD: I can't -- I'm not going to go
24 there. I'll deal with that on a complaint basis, but that's
25 up to you to evaluate. I can't give you legal advice.

1 MS. McCLENAHAN: See, that was my whole -- this is how
2 this all began. Remember? I just wanted to know can they
3 legally do this to me.

4 JUDGE PORTERFIELD: Legally do what to you?

5 MS. McCLENAHAN: Make me pay for maintenance of a
6 line.

7 JUDGE PORTERFIELD: If it wasn't their line, it would
8 seem -- I'm speaking as a layperson now. I'm not giving you
9 legal advice, but if you're convinced it's a private line or
10 if I were convinced it's a private line, the private line
11 means I have to maintain it or somebody has to maintain it.

12 MS. McCLENAHAN: Water companies do do that then?

13 JUDGE PORTERFIELD: Well, if it's a private line, it's
14 not the water company's line. Usually water companies aren't
15 charities and doing work for nothing.

16 MS. McCLENAHAN: Okay.

17 JUDGE PORTERFIELD: I'm just talking thinking out loud
18 off the top of my head. That's not a legal analysis.

19 MS. McCLENAHAN: Yeah. All right. Well, if I get
20 these papers and then I agree that it's okay, this case will
21 be considered closed; is that correct?

22 JUDGE PORTERFIELD: Yes. You can write me a note or
23 give me a call within, say, 30, 45 days.

24 MS. McCLENAHAN: Okay.

25 JUDGE PORTERFIELD: Thank you.

1 MS. McCLENAHAN: The April 16th date you mentioned at
2 the beginning, I should ignore that? I haven't heard
3 anything about that.

4 JUDGE PORTERFIELD: Please ignore it. I just happened
5 to notice the date on it now as we started this hearing. So
6 if you have anything that's dated -- in fact, there is
7 something seriously wrong. Those dates go back to 2003. The
8 hearing notice is February 2003, and the hearing is April
9 2003.

10 MS. McCLENAHAN: Yeah. It's been postponed.

11 JUDGE PORTERFIELD: Okay. Okay. That's my fault.

12 MS. McCLENAHAN: Okay.

13 JUDGE PORTERFIELD: I just came across a hearing
14 notice yesterday that was dated 2003 that should have been
15 dated 2004. Those dates are correct as shown on that
16 notice. Anyway, please let me know within, say, 45 days
17 about the status of your complaint. You may want to withdraw
18 it if you're convinced that Conneaut Lake didn't have any
19 maintenance responsibilities on that so-called private line
20 or Berger line. Okay?

21 MS. McCLENAHAN: Okay.

22 JUDGE PORTERFIELD: Thank you.

23 MS. McCLENAHAN: If I do not receive satisfaction,
24 then I'll continue my complaint.

25 JUDGE PORTERFIELD. Fine. Thank you. Good luck to

1 you and best wishes with the surgery.

2 MS. McCLENAHAN: Thank you.

3 JUDGE PORTERFIELD: Good day.

4 MS. McCLENAHAN: Good-bye.

5 JUDGE PORTERFIELD: Okay. Back to Mr. Franklin, I'm
6 trying to think where we were. We were talking about the
7 source of the \$1,200 balance. One thing before I forget, Mr.
8 Gregg, would you also send me a copy of Conneaut Lake's
9 tariff on file?

10 MR. GREGG: Yes.

11 JUDGE PORTERFIELD: Mr. Franklin, were you surprised
12 when you saw an invoice for \$1,200?

13 MR. FRANKLIN: I was naturally shocked. Other things
14 that came out of this office --

15 MR. GREGG: Judge, let me ask Mr. Franklin.

16 BY MR. GREGG:

17 Q Were you not getting invoices right along that
18 showed an increasing balance for each year?

19 A But some of them are incorrect.

20 Q It wasn't that you received a bill at the end of
21 2002 for \$1,200 and that was your first notice of a
22 delinquency. Don't give the Judge that impression, Mr.
23 Franklin.

24 A I'm not giving any impression. I'm trying to say
25 that some of them were incorrect. I had to mail them back.

1 They'd say, "We had yours mixed up with something else," and
2 then they'd send the correct one out.

3 Q That may be, but were you not getting annual bills
4 that showed an increasing balance that you owed?

5 A Yes, I was.

6 MR. GREGG: Okay.

7 MR. FRANKLIN: Why don't we wind this up then, Judge?

8 JUDGE PORTERFIELD: I'm going to take a look at the
9 tariff. Mr. Gregg hasn't presented any kind of defense to
10 your complaint yet. If you want to resolve this thing for
11 whatever, that can be done now or later and get rid of the
12 complaint. If you didn't pay water for at least three years
13 and maybe before, it would seem to me you owe something.

14 MR. FRANKLIN: I'm saying that. What do I owe, what
15 you say I owe, and percentages in there?

16 JUDGE PORTERFIELD: Forget the percentages.

17 MR. FRANKLIN: Discounts.

18 JUDGE PORTERFIELD: Forget the discounts. I don't
19 know if it's in the tariff or not and whether the tariff's
20 retroactive. What do you think the service was worth? Make
21 an offer.

22 MR. FRANKLIN: The first time I did I took the \$400
23 and divided by 12 and it come out to 30 some dollars a
24 month. I says a hundred dollars. Then when the PUC come out
25 with 150, I says all right. I'd still take advantage of the

1 discount. If I take --

2 JUDGE PORTERFIELD: Forget the discount. Let's not
3 complicate things.

4 MR. FRANKLIN: It comes down to about \$480.

5 JUDGE PORTERFIELD: Would you withdraw your complaint
6 if you paid \$500?

7 MR. FRANKLIN: I'm going on the basis of the discount.

8 JUDGE PORTERFIELD: Please forget the discounts. If I
9 write a decision, discounts are not going to be part of it.
10 You should want to walk away from here starting a new day and
11 being square with the water company. If you're not willing
12 to pay \$500 for three years of water service, that's fine.

13 MR. FRANKLIN: All right. I'll --

14 JUDGE PORTERFIELD: Mr. Gregg hasn't agreed to accept
15 that.

16 MR. FRANKLIN: Why don't we do this --

17 MR. GREGG: We'd accept 500 to get Mr. Franklin's
18 matter settled.

19 MR. FRANKLIN: You'll accept the 500?

20 MR. GREGG: We would accept 500. Mr. Franklin has a
21 motivation to try to have done better than anybody else in
22 this community. So he'll have succeeded in that regard, Your
23 Honor.

24 MR. FRANKLIN: Will you accept the 500 then?

25 MR. GREGG: Yes.

1 MR. FRANKLIN: Will I get a letter of confirmation?
2 How do you want this 500? Do I have to pay it right away?

3 MR. GREGG: Yes.

4 MR. FRANKLIN: Will I get a confirmation from you, Mr.
5 William Gregg, when I send a check to you confirming that
6 everything has been paid up until this year?

7 MR. GREGG: Yes.

8 MR. FRANKLIN: Clearly?

9 MR. GREGG: Yes.

10 JUDGE PORTERFIELD: No weasel words there; were there,
11 Mr. Franklin.

12 MR. FRANKLIN: Pardon?

13 JUDGE PORTERFIELD: No weasel words there. Yes is a
14 yes.

15 MR. FRANKLIN: It wasn't like that in the past.

16 JUDGE PORTERFIELD: Maybe it's a new day and with the
17 new people in and so forth.

18 MR. GREGG: I have explained to Mr. Franklin that it's
19 a new day and there's a whole different group of people that
20 are running the park.

21 MR. FRANKLIN: All right. I'll send a \$500 check, and
22 I'm sending it directly to you, Mr. Gregg.

23 MR. GREGG: Yes, sir.

24 MR. FRANKLIN: Also, Judge, if you would confirm the
25 same thing to me.

1 JUDGE PORTERFIELD: I'm not going to confirm anything,
2 Mr. Franklin. That's not my role. The understanding is on
3 the record and I have no --

4 MR. FRANKLIN: So I don't have to go through this
5 again and again --

6 JUDGE PORTERFIELD: The facts are on the record. Mr.
7 Gregg has accepted on behalf of his client \$500 to bring you
8 up to the year 2004; is that correct, Mr. Gregg?

9 MR. GREGG: Yes.

10 MR. FRANKLIN: I'll have the check in the mail to you.

11 JUDGE PORTERFIELD: May I take it then that you will
12 withdraw your complaint today on the record, Mr. Franklin?

13 MR. FRANKLIN: As soon as he receives -- I receive
14 the --

15 JUDGE PORTERFIELD: Settlement in full?

16 MR. FRANKLIN: From him, right.

17 JUDGE PORTERFIELD: Would you copy me in on that, Mr.
18 Gregg?

19 MR. GREGG: Yes, Judge.

20 JUDGE PORTERFIELD: In view of that resolution, I will
21 not send you a copy of Mr. Franklin's packet, if that's okay.

22 MR. GREGG: That's fine.

23 MR. FRANKLIN: It would have been good if you would
24 have had them in the beginning. That would have been nice.

25 JUDGE PORTERFIELD: What I'm getting from Mr. Gregg is

1 a copy of Conneaut's tariff on file, and that's in part to
2 resolve the application matter, and a copy of his letter to
3 Mr. Franklin indicating the \$500 brings him current up
4 through 2003. Okay?

5 MR. FRANKLIN: I'd paid for four.

6 JUDGE PORTERFIELD: Pardon?

7 MR. FRANKLIN: I paid for this year. I'm on the books
8 on that. I would like to know what was that tariff that I
9 keep hearing you talk about? What was that consisting of?

10 JUDGE PORTERFIELD: A tariff is a -- that is the
11 authority of the water company to bill you and collect.
12 There has to be a valid tariff on file or there should be.
13 That's not to say -- whether or not a tariff is on file is a
14 matter between the Commission and the utility. Customers can
15 pick up the ball on that, but it's somewhat technical but
16 not. I'm using weasel words now.

17 MR. FRANKLIN: I wasn't aware -- Mr. Gregg asked me,
18 and I wasn't aware of those tariff proceedings.

19 JUDGE PORTERFIELD: He's sending me a copy of whatever
20 is on file. Thank you, Mr. Franklin. Best wishes to you and
21 for good health and longevity, et cetera. I appreciate you
22 resolving this matter with Conneaut Lake.

23 MR. FRANKLIN: Thank you.

24 JUDGE PORTERFIELD: With that I'll bid you good day,
25 and good day, Mr. Gregg and Ms. ReBrussier.

1 MR. GREGG: Thank you, Your Honor.

2 JUDGE PORTERFIELD: Good day. Based on resolution of
3 the complaints, what was previously identified as ALJ Exhibit
4 No. 1, Mrs. McClenahan's complaint, and what was identified
5 as ALJ Exhibit No. 2, Mr. Franklin's complaint, I have
6 withdrawn those exhibits from the record.

7 (Whereupon, this hearing was adjourned at 11:09 a.m.)
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C E R T I F I C A T E

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically by
me, and thereafter reduced to typewriting by me or under my
direction; and that this transcript is a true and accurate
record to the best of my ability.

COMMONWEALTH REPORTING COMPANY, INC.

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Sarah A. Noroski

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