

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ORIGINAL

ROBERT & LINDA MAGLIOLA
v.
PENNSYLVANIA AMERICA
WATER COMPANY

Docket No.: C-20067054

Telephonic Hearing

Pages: 1 - 28

Commonwealth Keystone Building
400 North Street
Hearing Room #3
Harrisburg, PA 17120

Monday, January 8, 2007
Commencing at 10:00 a.m.

BEFORE:

SUSAN D. COLWELL, Administrative Law Judge

APPEARANCES:

LINDA MAGLIOLA
1822 Stuyvesant Avenue
East Meadow, New York 11554

**DOCUMENT
FOLDER**

SETH A. MENDELSON, Esquire
Pennsylvania American Water Company
800 West Hershey Park Drive
Hershey, PA 17033
For the Respondent

DOCKETED
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REPORTER: LORI A. BEHE
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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JUDGE SUSAN D. COLWELL:

This is the time and the place set for a telephonic hearing in the matter of Robert and Linda Magliola versus Pennsylvania American Water Company filed at PUC Docket Number, C-20067054. I am Administrative Law Judge Susan Colwell appointed by the Pennsylvania Utility Commission to preside in this matter. It is being taken down by a court reporter, so I ask you to take turns speaking, speak slowly and clearly.

Okay. Ms. Magliola, would you like to tell us what your complaint is?

MS. MAGLIOLA:

Okay. I received a letter on April 5th.

JUDGE:

Oh, wait a minute. I'm sorry. I have to swear you in first.

MS. MAGLIOLA:

I'm sorry.

JUDGE:

No, it's my fault.

1 LINDA MAGLIOLA, HAVING FIRST BEEN DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 -----

4 JUDGE:

5 Thank you very much. Please state your
6 name and address for the record.

7 A. Linda Magliola, 1822 Stuyvesant Avenue,
8 S-T-U-Y-V-E-S-A-N-T, Avenue, East Meadow, New York,
9 11554.

10 JUDGE:

11 Thank you. Now, go ahead and tell me
12 about your complaint.

13 A. Okay. On April 5th of 2006, I received a letter
14 from the Pennsylvania Water Company. And it stated
15 that I would get a credit of \$820, which is Exhibit
16 One that I had presented.

17 And I had called for months to find out about this
18 credit. I didn't understand it. As you can see, I
19 have a lot of written notes on the letter because I
20 couldn't get an answer on why I was getting this back
21 and when I was getting it back. So on September 11th,
22 I addressed the letter to the president of the water
23 company. And that's --- let's see, my Exhibit Two I
24 sent a letter to him requesting an explanation of what
25 it was because I could not get any satisfaction in all

1 the phone calls I made.

2 I received another --- I received a letter on the
3 27th, which is Exhibit Three. And I was told that I
4 would receive a check shortly and that the money was
5 due --- it was a refund for billing --- billing from
6 December 21st, 1995 through March 16th, 2006 for
7 property that I owned in Pennsylvania. The property
8 that I owned was deemed not buildable sometime in the
9 early 1980s.

10 JUDGE:

11 Who deemed it ---?

12 A. So therefore, ---.

13 JUDGE:

14 Ma'am, excuse me. One second.

15 A. Yes?

16 JUDGE:

17 Who deemed it unbuildable?

18 A. There was something to do with environmental and
19 not having enough --- I don't know if it was sewage or
20 some kind of environmental issue. The Wild Acres had
21 a certain amount of people in and I guess the
22 processing plant could only process so many houses, so
23 this property was ---. Right after we bought it we
24 were told it was unbuildable.

25 JUDGE:

1 I see. Okay. Go ahead.

2 A. Exhibit Four is just a letter just to show you how
3 long we had the property, what that is all about.

4 So I owned the property since 1981. And when I had
5 asked the Pennsylvania Water Company if I'm receiving
6 this money back from 1995, I didn't understand why
7 wasn't I getting anything back from when I first
8 started paying the bills.

9 And Exhibit Five is just some samples of the bills
10 that I was paying. It was \$18.75 a quarter. I was
11 told in one of the letters that that they weren't
12 responsible for anything before 1995. That the
13 Hickory Water Company --- was it Hickory Water Company
14 --- and the Delaware Water Company, at one time, they
15 said that they bought the assets, I guess, not the
16 liabilities, which I didn't understand. I thought
17 that once you bought a company you got everything. So
18 that was --- that was my complaint. I just wanted to
19 find out who is responsible. I couldn't find anything
20 on the Hickory Water Company being in business through
21 the Internet. So that --- that was my complaint. I
22 was looking to get some money owed me from 19 ---
23 around 1983 to 1995 when they took over.

24 JUDGE:

25 Okay. And let's ---.

1 A. And then ---.

2 JUDGE:

3 Okay.

4 A. I'm sorry.

5 JUDGE:

6 No, that's all right. Go ahead.

7 A. I just wanted to find out who was responsible and
8 if I would --- if they were responsible and they had
9 told me, no, they weren't. So that was my complaint.
10 Someone should be responsible.

11 JUDGE:

12 Okay. Let's go over your exhibits then.
13 I just want to make sure the record is clear. Your
14 Complainant's Exhibit Number One is a letter dated ---
15 let me look, dated April 5th, 2006.

16 (Complainant's Exhibit One marked for
17 identification.)

18 A. And that's the initial --- I never sent the
19 initial letter. That was sent to me. I didn't
20 initiate this and I think Mr. Mendelsohn, at one time,
21 thought I had initiated --- is the one who started the
22 process, which I wasn't.

23 JUDGE:

24 Okay. And I'm just trying to identify
25 your exhibits. Exhibit Number Two is a letter dated

1 September 11, 2006.

2 (Complainant's Exhibit Two marked for
3 identification.)

4 A. Yes.

5 JUDGE:

6 To Mr. Correll?

7 A. Yes.

8 JUDGE:

9 From you?

10 A. Yes. And that is the president of the company,
11 just stating my case.

12 JUDGE:

13 Okay. And your Complainant Exhibit
14 Number Three is a letter from PA American Water to you
15 dated September 27th, 2006. Your Exhibit Number Four
16 is a letter dated September 13th, 1981.

17 (Complainant's Exhibits Three and Four
18 marked for identification.)

19 A. Right. And that's just, as I said, the reference
20 of how long I've had the property.

21 JUDGE:

22 Okay. And can you explain what Exhibit
23 Five is, please?

24 (Complainant's Exhibit Five marked for
25 identification.)

1 A. Well, Exhibit Five is just --- it's a sample of
2 the water bills over the years. Just from --- it went
3 from Delaware --- I think I have it circled on page
4 two as Delaware Water Company, then Hickory Water
5 Company. It's just how much I was paying quarterly.
6 It was just a sample. I have all my bills. This is
7 just a sample of the some of the bills that I received
8 and just to show where the change of name came in,
9 from Delaware to Hickory ---

10 JUDGE:

11 I see.

12 A. --- and to Pennsylvania.

13 JUDGE:

14 Okay. Do you have anything else you want
15 to tell me at this point?

16 A. No, that's it.

17 JUDGE:

18 Okay. We're going --- Mr. Mendelsohn, do
19 you have any objection to the admission of Complaint's
20 Exhibits One, Two, Three, Four and Five?

21 ATTORNEY MENDELSON:

22 Your Honor, I don't intend on it, but I
23 would like to just address Exhibit One. I do not have
24 a specific objection to the admission of what the
25 company has told her in that letter. I would object

1 to the written comments because those comments are not
2 relevant to the issue before us today.

3 A. Those comments were just --- well, I had written
4 on that page all the people that I spoke to from my
5 records.

6 ATTORNEY MENDELSON:

7 First, I'd like to ask Your Honor if Ms.
8 Magliola would concur with allowing Exhibit One to be
9 admitted, but for the written comments because she is
10 not --- her complaint is not the timeliness of the
11 refund to her.

12 A. No. No. The comments on that page are
13 specifically for my record.

14 JUDGE:

15 All right.

16 A. It's ---.

17 JUDGE:

18 So what he's asking you is if --- if you
19 would agree that if this page is admitted without your
20 personal notations and handwriting, would you be okay
21 with that?

22 A. I would be okay with that. It doesn't have any
23 relevance to that. I was just annoyed that it took so
24 long for me to get an answer and this is --- you know,
25 I just wanted documentation for myself of all the

1 people that I spoke to.

2 JUDGE:

3 Okay.

4 A. It really doesn't have any relevance to you.

5 JUDGE:

6 Okay. So if we remove the handwritten
7 notes, then Exhibit One is not objectionable?

8 ATTORNEY MENDELSON:

9 That is correct, Your Honor. Thank you.

10 JUDGE:

11 Okay. Then that's what we'll do. We'll
12 amend Complainant's Exhibit One to be without the
13 handwriting and I will not pay any attention to those
14 then. Do you have any objection to the rest of those
15 exhibits, Mr. Mendelsohn?

16 ATTORNEY MENDELSON:

17 I do not, Your Honor.

18 JUDGE:

19 Okay. Then all five of them are
20 admitted. Do you have any other questions for
21 Ms. Magliola?

22 ATTORNEY MENDELSON:

23 Just a few.

24 CROSS EXAMINATION

25 BY ATTORNEY MENDELSON:

1 Q. Ms. Magliola, good morning, ma'am.

2 A. Good morning.

3 Q. When did you learn that the property was seemed to
4 be unbuildable?

5 A. Let me see. I probably don't have that with me
6 here at work. It was shortly after we purchased it.
7 I would say probably --- I mean, I could get the
8 documentation. I don't have it with me. I would say
9 probably in 1983. Because the letter had stated that
10 we were going to get the water and everything and then
11 everything --- then we found out that we couldn't
12 build. The builder went out of business and then they
13 had the whole environmental thing. I can find some
14 documentation on it.

15 Q. Ms. Magliola, did you receive the exhibits that I
16 filed in this case?

17 A. Yes.

18 Q. The one was the purchase agreement between my
19 company and the predecessor company?

20 A. Yes, I did.

21 Q. And the other was a copy of the Pennsylvania
22 Public Utility Commission approval of the sale?

23 A. Yes.

24 Q. Have you ever attempted to contact Robert Boland?

25 A. No, I haven't. I tried to look at the Hickory,

1 you know, look for Hickory Water Company, which I
2 could not. I mean, I couldn't find anything. I was
3 just trying to go through the Internet.

4 Q. Have you attempted to do that using the name
5 Robert Boland at all?

6 A. No, I haven't.

7 Q. And you continued to pay the availability charges
8 even after you had learned your property was deemed to
9 be unbuildable?

10 A. Yes, because I was getting bills every quarter.
11 Because at one time, and this was many years ago, I
12 was told that it was an availability charge and
13 they're allowed to charge that. So I really had
14 nothing, you know, I had no reason to question it.

15 Q. Did ---?

16 A. I mean, the whole thing came up questioning it
17 when I got a letter from Pennsylvania Water Company.

18 Q. Ma'am, did you ever file a formal complaint
19 against Hickory Water Company or Robert Boland
20 regarding these availability charges?

21 A. No, I didn't.

22 Q. Okay.

23 ATTORNEY MENDELSON:

24 Your Honor, I have no further questions.

25 JUDGE:

1 Okay. Thank you, Ms. Magliola. Now, I'm
2 going to have Mr. Mendelsohn put on his case. Go
3 ahead, Mr. Mendelsohn.

4 ATTORNEY MENDELSON:

5 Thank you, Your Honor. Your Honor
6 Pennsylvania America Water would call Chuck Johnston.

7 JUDGE:

8 Okay. Mr. Johnston. Would you raise
9 your right hand, please?

10 -----

11 CHARLES JOHNSTON, HAVING FIRST BEEN DULY SWORN,
12 TESTIFIED AS FOLLOWS:

13 -----

14 JUDGE:

15 Thank you. Please go ahead, Mr.
16 Mendelsohn.

17 ATTORNEY MENDELSON:

18 Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY ATTORNEY MENDELSON:

21 Q. Would you please state your name for the record?

22 A. My name is Charles William Johnston, Johnston with
23 a T.

24 Q. And sir, who is your current employer?

25 A. My current employer is American Water Works

1 Service Company.

2 Q. And how long have you been employed by American
3 Water --- by the Service Company?

4 A. I've been employed by American Water for 24-plus
5 years.

6 Q. And when we say the Service Company, sir, is that
7 a division of American Water?

8 A. Yes.

9 Q. And what state do you primarily work in?

10 A. Pennsylvania.

11 Q. What do you do for the company?

12 A. I'm the manager of business development and I
13 develop our acquisitions strategy, contact targets
14 that we're interested in purchasing, get the
15 acquisition under agreement and close the transaction.

16 Q. Mr. Johnston, in 1994 were you employed by
17 American Water?

18 A. Yes.

19 Q. And what were your job duties then?

20 A. I was the director of business development and
21 again it was to develop the strategy, contact targets
22 that were --- we were interested in acquiring, get the
23 acquisition under agreement and close the transaction.

24 Q. Okay. Mr. Johnston, now you had an opportunity to
25 hear Ms. Magliola's testimony today?

1 A. Yes.

2 Q. Okay. Were you involved in the purchase of the
3 Hickory Water Company which serves Wild Acres where
4 her property was located?

5 A. Yes, I was.

6 (PAWC Exhibit One marked for
7 identification.)

8 BY ATTORNEY MENDELSON:

9 Q. I'd like to turn your attention to what's been
10 marked as PAWC Exhibit Number One. Can you tell us
11 what this document is?

12 A. It is the executed asset purchase agreement for
13 the Hickory Water Company, Incorporated, the Coconut
14 Farms East Water Company, Incorporated and the Silver
15 Water Company, Incorporated.

16 Q. Sir, I'd like to direct your attention to page
17 eight, number nine, where it says the function of
18 liability.

19 A. I have that in front of me.

20 Q. Okay. When the water company purchases an asset
21 like this, does it assume the liabilities that the
22 predecessor company had?

23 A. In this particular instance, as stated on page
24 eight of PAWC Exhibit Number One, it was understood by
25 the seller and purchaser that we as Pennsylvania

1 America Water were purchasing assets only and did not
2 assume any obligations or liabilities of the seller.

3 Q. Mr. Johnston, is this a true and correct copy of
4 that purchase agreement from October 1994?

5 A. Yes, it is.

6 Q. Did the Pennsylvania Public Utility Commission
7 later approve Pennsylvania American Water Company's
8 purchase of these three water companies?

9 A. Yes, it did.

10 ATTORNEY MENDELSON:

11 Your Honor, I would move into evidence
12 PAWC Exhibit Number One, the purchase agreement. As
13 for PAWC Exhibit Number Two, I would ask that it be
14 admitted pursuant to 42 PACS 6104 that being an
15 official record of a governmental agency.

16 (PAWC Exhibit Number Two marked for
17 identification.)

18 JUDGE:

19 Well, I don't know if that gives you any
20 stronger case or not, but it certainly appears to be a
21 Commission order and we can admit that. Ms. Magliola,
22 do you have any objection to the admission of PAWC
23 Exhibits One and Two?

24 MS. MAGLIOLA:

25 No, I don't.

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JUDGE:

All right, then they're admitted.

ATTORNEY MENDELSON:

Great. Your Honor, I have no further questions for Mr. Johnston.

JUDGE:

Ms. Magliola, do you have any questions for Mr. Johnston?

MS. MAGLIOLA:

No, I don't.

JUDGE:

Okay. Do you have another witness, Mr. Mendelsohn?

ATTORNEY MENDELSON:

I do, Your Honor, but I don't believe that it's an issue that is relevant now to these proceedings.

MS. MAGLIOLA:

Can I ask a question?

JUDGE:

Yes.

MS. MAGLIOLA:

Mr. Mendelsohn, what was the name that you said? Mr. Boland?

ATTORNEY MENDELSON:

1 In Exhibit Two, the first page, the
2 history of the proceedings where the Commission talked
3 about our purchase, it says the president of each
4 transferer is Robert Boland.

5 MS. MAGLIOLA:

6 Ok, Boland. So he is --- he was the
7 president of the Hickory Water Company?

8 ATTORNEY MENDELSON:

9 According to --- Ms. Magliola, according
10 to Exhibit Two. According to what the Commission
11 determined.

12 MS. MAGLIOLA:

13 Now, is that --- this might not have any
14 relevance. Is this normal practice that only assets
15 are bought from a company? And where are the
16 liabilities left? I mean, where do they come in?

17 ATTORNEY MENDELSON:

18 Your Honor, I'm going to have
19 Mr. Johnston answer that.

20 JUDGE:

21 Okay. That's fine.

22 A. Generally, it's our practice to purchase assets
23 from a corporation and the liabilities are left with
24 the seller to the extent that --- to the extent those
25 liabilities encumber the assets and we need to get

1 those assets free and clear. We pay off those
2 liabilities that are known and recorded in the
3 courthouse. We pay them off at closing so that we can
4 get the assets free and clear of anything that
5 encumbers us.

6 MS. MAGLIOLA:

7 You pay off the liabilities?

8 A. We pay off those liabilities that encumber the
9 assets so that we can get those assets free and clear
10 of liens.

11 MS. MAGLIOLA:

12 Well, wouldn't something that's owed to a
13 property owner be part of a liability that was
14 responsible by anyone buying the assets?

15 A. No. The liens and encumbrances that I'm referring
16 to, for example, would be a mortgage that would be
17 recorded in the courthouse and encumber the assets so
18 that we would pay off that mortgage at closing so that
19 we can get the assets free and clear.

20 MS. MAGLIOLA:

21 Okay. Thank you.

22 JUDGE:

23 Okay. From where I'm sitting, here's
24 what I see. Unfortunately, Ms. Magliola, you should
25 have questioned your payments of the quarterly bill

1 right after it became obvious that you couldn't build
2 on your lot. In terms of what the Commission can
3 actually do for you, if you look at the last page of
4 the pre-hearing order that I sent you and under
5 paragraph number nine, there's a statutory section in
6 the Pennsylvania Public Utility Code which states that
7 we can't give you anything unless it's brought within
8 three years --- unless your action is brought within
9 three years. And Pennsylvania American has already
10 paid you ---

11 MS. MAGLIOLA:

12 Right.

13 JUDGE:

14 --- all the way back to 1995, which means
15 that they have given you more than I would be
16 authorized to tell them to give you.

17 MS. MAGLIOLA:

18 Uh-huh (yes).

19 JUDGE:

20 So I can write an order saying that and
21 pretty much giving them a pat on the back because they
22 did more than they would have been legally obligated
23 to do, at least under the Code. If that's what you
24 want?

25 MS. MAGLIOLA:

1 Oh, when I --- like I said, we did
2 question it years ago. And we were told --- you know,
3 we didn't go any further with it. We were told they
4 were allowed to do that and that was it. There was no
5 reason --- I would have never even brought this up if
6 I didn't get the letter originally from Pennsylvania.
7 It would not have been an issue. We would've just
8 kept on paying, I guess.

9 JUDGE:

10 Well, I'm happy to see that Pennsylvania
11 American is acting in such a responsible fashion by
12 looking at the records and determining that your
13 payments were unnecessary and should be returned to
14 you.

15 MS. MAGLIOLA:

16 Uh-huh (yes).

17 JUDGE:

18 That's a nice thing to see a utility do.

19 MS. MAGLIOLA:

20 Yes.

21 JUDGE:

22 As well ---.

23 MS. MAGLIOLA:

24 I work for a utility.

25 JUDGE:

1 Do you?

2 MS. MAGLIOLA:

3 Yes, I do.

4 JUDGE:

5 Okay.

6 MS. MAGLIOLA:

7 Not the water company, though.

8 JUDGE:

9 I'm always happy when I see the utilities
10 acting above and beyond what they're legally required
11 to do under the Code. But I can't require them to pay
12 any further than they already have. There's
13 nothing ---

14 MS. MAGLIOLA:

15 Okay.

16 JUDGE:

17 --- really I can make them do or that the
18 Commission will be able to, under the law as it
19 exists.

20 MS. MAGLIOLA:

21 And even if I was able to find this
22 Mr. Boland, wherever he might be, since this has a
23 time element it would not do me any good anyway;
24 right? You said three years?

25 JUDGE:

1 Three or four years, depending on which
2 of these limitations that --- yeah, you're out of
3 time ---

4 MS. MAGLIOLA:

5 Right.

6 JUDGE:

7 --- in terms of the Public Utility Code.
8 That's what the Public Utility Code says.

9 MS. MAGLIOLA:

10 Right. Okay.

11 JUDGE:

12 If you had any other legal remedies, I am
13 not legally authorized or even able to tell you what
14 they might be.

15 MS. MAGLIOLA:

16 Uh-huh (yes).

17 JUDGE:

18 So you'd have to see somebody who knew
19 better than I did and see if it was worth your while
20 to go after him if you could, in fact, find him.

21 MS. MAGLIOLA:

22 Right.

23 JUDGE:

24 And so ---.

25 MS. MAGLIOLA:

1 Correct.

2 JUDGE:

3 So at this point, you have the option of
4 either withdrawing your complaint on the record or
5 having me write a decision which recommends that
6 Pennsylvania American get a pat on the back. It's up
7 to you.

8 MS. MAGLIOLA:

9 Well, listen, they worked this hard, they
10 might as well get a pat on the back.

11 JUDGE:

12 Okay.

13 MS. MAGLIOLA:

14 Utilities need all the help they can get.

15 ATTORNEY MENDELSON:

16 We appreciate that.

17 JUDGE:

18 All right. I'm happy to do it.

19 MS. MAGLIOLA:

20 Okay.

21 JUDGE:

22 Does anybody have anything else that we
23 need to put on the record today?

24 ATTORNEY MENDELSON:

25 We do not, Your Honor.

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MS. MAGLIOLA:

No, Your Honor.

JUDGE:

All right, then, let's go off the record.

OFF RECORD DISCUSSION

JUDGE:

All right. We're back on the record.

Ms. Magliola?

MS. MAGLIOLA:

Okay. I'll withdraw my complaint.

JUDGE:

All right. Thank you very much. Is there anything else we need to put on the record today?

MS. MAGLIOLA:

I don't. Anyone want some property in Wild Acres?

ATTORNEY MENDELSON:

Nothing else from us, Your Honor.

JUDGE:

All right. Thank you. We're off the record again.

* * * * *

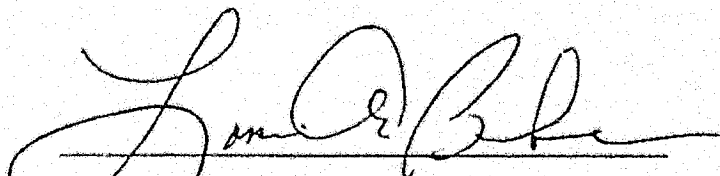
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C E R T I F I C A T E

I hereby certify, as the
stenographic reporter, that the foregoing
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to the best of my ability.


Court Reporter

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JAN 24 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

P.O. Box 578, Alton IL 62002
1-800-565-7292

04/05/2006

Magliola, Robert
1822 Stuyvesant Ave
East Meadow NY 11554-3945

Account Number: 24-0423222-1
Premise Number: 240221638
Sc21Bn2101Lt041

RECEIVED

JAN 24 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Customer:

We have investigated your account and concluded that you are entitled to a credit adjustment. Your account was adjusted on Wednesday, April 5, 2006 in the amount of \$820.15, which represents correction to bill.

We trust you will find this adjustment satisfactory. Should you have any questions, please feel free to contact our Customer Service Department at 1-800-565-7292. We are available to assist you 24 hours per day, 7 days a week for your convenience.

Sincerely,

Customer Service

9/6 - Jennifer

Carl 4/14

7/5 12:40 EDT
Mike - giving info
to bureau, she wasn't
at desk. He assured me today
she would call back today.

- 4/13 put -

Yolande 5/5
waiting for
info from
local office

Moochies
7/6 - 12:20 EDT - Kerry (male)
bureau met Rich Sup.
He's in Florida, Owens
in Illinois

6/9/06 - 7:35 AM

MISTY

She thought the 14.60
was a result of my last
payment

Dear

Dear Dean is the
supervisor who is going
to handle this I should be getting

Another Letter

(9/11) (2x)
Called 9/7 + 9/8
ext message (2x)
866-957-2886
ext 462

7/2 Marilyn transferred
me to
Laurie
Supervisor
Legal Issue
2 weeks

EXHIBIT
Complaint
7
1-8-07/3/06

17107803
RWE Group
C-20067054
01-08-07 HBG hearing

September 11, 2006

Mr. Donald L. Correll, President
P.O. Box 578,
Alton, Illinois 62002

Re: Acct. # 24-0423222-1

Mr. Correll:

On April 5, 2006 we received a letter stating that we were entitled to a credit adjustment and we would receive \$820.15 which represents correction to a bill, see attached. This service is to a piece of property in Dingman's Ferry, Pa, which is an unbuildable parcel. We have been paying for water since the early 1980's.

On April 13, my husband spoke to an associate named April and she was to get back to him concerning this letter. On April 14, I spoke to Carl and asked more questions and wanted to have someone explain what this was all about. He knew nothing about this and couldn't tell me anything. On May 5th, I spoke to Yolanda, who informed me that they were waiting for information from the local office. June 9, my husband called and spoke to Misty because we received a check for \$14.60 and wanted to know what this was. She thought it was a refund of our last payment, and after looking into it, this was correct. He asked about the check for \$820.15 and she told us that a Gwen Dean is the supervisor handling this and we should expect another letter. Our question to everyone was how did you arrive at the figure of \$820.15.

After not hearing from Gwen, I called on July 5 and spoke to Mike. He told me Gwen wasn't at her desk but he was passing this information to her. He assured me she would call back that day. (No call). July 6, I spoke to Kerry and I again explained this whole tail of woe for the 6th time. He tried to transfer me to Gwen but she wasn't at her desk. Then I found out that his group was in Florida and Gwen was in Illinois, which explains a lot about out-sourcing. (Again no call). I called on July 7 and spoke to Marilyn and I asked to speak to Gwen's supervisor since I wasn't getting any answers. She transferred me to Laura Graham who finally after all these months was able to tell me what was going on. She told me that there were legal issues and they should be settled in about two weeks. After all these phone calls, I appreciated finally getting some answers.

So now it has been two months and still no phone calls, no letters. September 6, I spoke to Jennifer and explained I wanted to speak to Laura Graham. On 9/7, I called Laura and left a message on her voice mail, explained who I was and why I was calling to refresh her memory. (No call back). I called on 9/8 twice and left messages and where she could reach me, still no call. Today 9/11, I once again called Laura and left 2 messages and you guessed it, no call back. Disgusted, I called your Customer Service Department and spoke to a girl named Allyson who kindly gave me your name.

DOCKETED
FEB 13 2007

C-2006 7054
01-08-07 HBE hearing

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JAN 24 2007

**DOCUMENT
FOLDER**

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT
Complaint #2
1-8-07
PENNSA 800-611-6889

After 5 months and 13 phone calls later, we still don't have answers, you call this Customer Service. A simple phone call telling us the status would have sufficed. It shouldn't amaze me at the incompetence of big business these days, they preach Customer Service but don't deliver it.

We would appreciate an explanation on this issue.

Linda & Robert Magliola

Linda Magliola & Robert Magliola

1822 Stuyvesant Ave.,

East Meadow, NY 11554

(516) 794-5029

attach:

September 27, 2006

Mr. & Mrs. Robert Magliola
1822 Stuyvesant Avenue
East Meadow, NY 11554

RE: Water Account #24-0423222-1 for Unbuildable Property and Account Status
Premise Address: Sc21Bn2101L1041, Dingmans Ferry PA, 18328

Dear Mr. & Mrs. Robert Magliola:

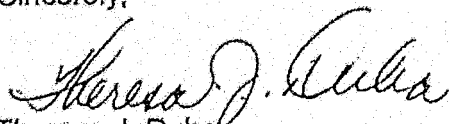
Thank you for your September 11 letter to Don Correll, President and CEO of American Water, regarding the above referenced account. Please accept our sincere apology for the delay you experienced in getting this account closed, the charges credited and refunded to you.

Your account has been closed as of March 16, 2006 and a credit entered and refunded for \$820.15, which reimburses the charges billed from December 21, 1995 through March 16, 2006. Per our previous telephone discussions, I had mentioned that Pennsylvania American Water limitation may start as of the date of the acquisition in 1995.

Please be advised that American Water Company has no legal responsibility to refund dollars collected for availability charges until such time as the Company has knowledge that the property is unbuildable. Hickory Water Company was acquired by Pennsylvania American Water on December 31, 1995. Pennsylvania American Water is not honoring, and has no legal responsibility to honor, any request for refund beyond the time in which it acquired Hickory Water's assets.

Thank you for bringing this issue to our attention and giving us the opportunity to resolve this matter for you. If you have any further questions or concerns, please contact me at 866-957-2886, extension 4613.

Sincerely,



Theresa J. Duba
Sr. Customer Care Specialist
American Water - Alton Call Center
1410 Discovery Parkway Alton, IL 62002
T: (618) 433- 4613
F: (618) 433- 4664
E: tduba@amwater.com

cc: Don Correll, President and CEO of American Water
Daniel Warnock, Regional President of American Water, Southeast Region
Giann Milton, Vice President Customer Service, Alton Call Center, Alton, IL

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JAN 24 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT
Complaint #3
1-8-07/Ad

DOCUMENT
FOLDER

DOCKETED
FEB 13 2007

C-20067054
01-08-07 HBG hearing

Marcón, Inc.

DEVELOPERS OF WILD ACRES LAKES

P.O. Box 460 • 155 Willowbrook Boulevard
Wayne, New Jersey 07470
TELEPHONES: 201-785-3400 • 212-594-1060



*Mailed
10/31/06*

Sept. 13, 1981

Mr. & Mrs Robert Magliola,

In answer to your question, the water and sewerage will be operable on or before March of 1982.

Enclosed please find a page from the New York Offering Statement, with the price of your lot, Lot 44, Block 2101, Section 21.

wrong lot #, should be 41

This never happened

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JAN 24 2007

Thank You, PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Ron Powers

Land Sales Manager:

**DOCUMENT
FOLDER**

DOCKETED
FEB 13 2007

C-20067054
01-08-07 HEG HONG

EXHIBIT
Complainant #4
1-8-07
PENNSYLVANIA PUBLIC UTILITY COMMISSION

1/10311983 110183120183 AUG THRU OCT

18.75

18.75

Exhibit 5

111
11/20/83

CURRENT	1 - 30	31 - 60	61 - OVR	TOTAL DUE
18.75	.00	.00	.00	18.75

IF YOU HAVE ANY QUESTIONS CONCERNING THIS BILL, PLEASE CALL (717)-421-5819

ITEM NUMBER	ITEM DATE	NET. DUE BY	PURCHASE ORDER/ CROSS REFERENCE	DIVISION	ITEM AMOUNT	BALANCE
2-1/4-30-84	050184	053184	FEB THRU APR		18.75	18.75

H 12/8
5/19/84

CURRENT	1 - 30	31 - 60	61 - OVR	TOTAL DUE
18.75	.00	.00	.00	18.75

IF YOU HAVE ANY QUESTIONS CONCERNING THIS BILL, PLEASE CALL (717)-421-5382 DELAWARE WATER CO

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JAN 24 2007

DOCKETED
FEB 13 2007

C-20067054
01-08-07 HB6 hrng

PA PUBLIC UTILITY COMMISS
SECRETARY'S BUREAU

EXHIBIT
Complaint #5
1-8-07

PERIOD 800-635989

DOCUMENT FOLDER

SERVICE TO:

MAGLIOLA ROBERT
1822 STUYVESANT AVE
E MEADOW NY 11

DUE DATE
03/01/85

ACCOUNT NUMBER
21-2101-041

PREVIOUS BALANCE 18.75
PAYMENT 12/23/84 18.75
BALANCE FORWARD 0.00
11/01/84 THRU 11/31/85 18.75

AMOUNT DUE
18.75
BILLING DATE
02/08/85

089
3/6/85

BILLING SERVICE 717-629-5970
WATER SERVICE 717-828-8306

DELAWARE WATER CO. INC.
P.O. BOX M STROUDSBURG, PA, 18360

SERVICE TO:

MAGLIOLA ROBERT
1822 STUYVESANT AVE
E MEADOW NY 11854

DUE DATE
06/01/85

ACCOUNT NUMBER
21-2101-041

PREVIOUS BALANCE 18.75
PAYMENT 03/09/85 18.75
BALANCE FORWARD 0.00
02/01/85 THRU 04/30/85 18.75

AMOUNT DUE
18.75
BILLING DATE
05/01/85

6/2/85
1480

BILLING SERVICE 717-629-5970
WATER SERVICE 717-828-8306

DELAWARE WATER CO. INC.
P.O. BOX M STROUDSBURG, PA, 18360

NOTE - change
Company name

SERVICE TO:

MAGLIOLA ROBERT
1822 STUYVESANT AVE
E MEADOW NY 11554

DUE DATE
11/20/85

ACCOUNT NUMBER
21-2101-041

PREVIOUS BALANCE 18.75
PAYMENT 08/30/85 18.75
BALANCE FORWARD 0.00
08/01/85 THRU 10/31/85 18.75

AMOUNT DUE
18.75
BILLING DATE
11/01/85

1553
11/17/85

Same
address

BILLING SERVICE 717-629-5970
WATER SERVICE 717-828-8306

HICKORY WATER CO. INC.
P.O. BOX M STROUDSBURG, PA, 18360

←

December 20, 2006

VIA UPS OVERNIGHT DELIVERY

The Honorable Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

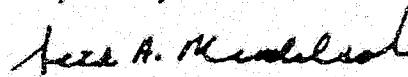
Re: Robert & Linda Magliola v. Pennsylvania-American Water Company
Docket No. C-20067054

Dear Judge Colwell:

Pursuant to the December 7, 2006, Prehearing Order for the above-captioned case, I have enclosed three (3) copies of Pennsylvania-American Water Company's Exhibits 1 and 2, which may be offered into evidence during the initial telephone hearing in the above captioned case scheduled for Monday, January 8, 2007, at 10:00 a.m.

As evidenced by the enclosed Certificate of Service, all parties to this proceeding have been duly served.

Respectfully submitted,


Seth A. Mendelsohn

Enclosures

cc: James McNulty, Secretary (Certificate of Service Only)
Robert & Linda Magliola
Judy Jordan

OFFICE OF THE
SECRETARY
PUC
DEC 21 11:22:29

Pennsylvania American Water

Seth A. Mendelsohn
Corporate Counsel
800 West Hersheypark Drive
Hershey, PA 17033 USA
T 717 533-5000
F 717 531-3252
E seth.mendelsohn@amwater.com
I www.pawc.com

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION


ROBERT & LINDA MAGLIOLA, :
Complainant :
v. : DOCKET NO. C-20067054
PENNSYLVANIA-AMERICAN WATER :
COMPANY, :
Respondent :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of 52 Pa. Code § 1.54:

VIA OVERNIGHT MAIL

Robert & Linda Magliola
1822 Stuyvesant Avenue
East Meadow, NY 11554


Seth A. Mendelsohn, Esquire
Pennsylvania-American Water Company
800 West Hershey Park Drive
Hershey, Pennsylvania 17033
(717) 533-5000

Dated this 20th day of December 2006.

OFFICE OF THE SECRETARY
PUBLIC UTILITY COMMISSION

06 DEC 21 PM 12:25

PURCHASE AGREEMENT

PA PUC

THIS AGREEMENT, made and entered into as of the 17 day of October, 1994, by and between HICKORY WATER COMPANY, INC., POCONO FARMS EAST WATER COMPANY, INC., and SILVER WATER COMPANY, INC., corporations organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter referred to as "Sellers"), and PENNSYLVANIA-AMERICAN WATER COMPANY, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter referred to as "Purchaser"),

**DOCUMENT
FOLDER**

WITNESSETH

WHEREAS, Sellers are the owners of three public water supply systems which service parts of Coolbaugh Township, Monroe County, and Delaware Township, Pike County, Pennsylvania, and;

WHEREAS, Purchaser is the owner of a public water supply system serving various areas in Pennsylvania, and;

WHEREAS, Sellers are willing to sell the assets of their public water supply systems to Purchaser, and Purchaser is willing to purchase said assets.

NOW, THEREFORE, this Agreement witnesseth that for and in consideration of the respective covenants and agreements of the parties hereinafter set forth, the parties hereto, intending to be legally bound hereby, do covenant, contract and agree as follows:

1. ACQUISITION OF SELLERS' WATER SYSTEM PROPERTIES. Subject to the terms, representations and conditions set forth in this Agreement, Sellers agree to sell and Purchaser agrees to purchase all of the physical plant,

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FEB 13 2007

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JAN 24 2007 PAWC EXHIBIT NO. 1

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT
PAWC
#1
1-8-07
PENICAD 800 631-6283

C-20067054
01-08-07
HBG hrng

property, equipment, and facilities comprising the existing water supply systems owned and operated by Sellers for providing water service to the public in and about Coolbaugh Township, Monroe County, and Delaware Township, Pike County, Pennsylvania (the "Water Systems"), free and clear of all liens and encumbrances whatsoever. The Water Systems shall include, without limitation, all land and land rights, structures, and improvements (including buildings and fixtures, and including all land and land rights, structures, and improvements owned by Delaware Utilities, Inc.), wells, springs and reservoirs, if any, supply mains, equipment, tanks, transmission and distribution mains, services, meters, hydrants, valves, fittings, materials and supplies applicable to Sellers' water supply systems, related facilities, and appurtenances, rights, titles, and interests of Sellers in and to such land, franchises, licenses, easements, rights of way, and permits as related to Sellers' water supply systems. Sellers shall deliver a general warranty deed to Purchaser for all real estate involved in this transaction.

2. PURCHASE PRICE FOR THE WATER SYSTEMS. The total purchase price of the Water Systems is Seven Hundred Fifty Thousand (\$750,000) Dollars, payable on the date of Closing. It is further understood and agreed that all obligations of any nature whatsoever, whether owed to Sellers by others or owed by Sellers to others, on date of Closing shall be and remain with Sellers. Accounts receivable for water services rendered by Sellers through the close of business on the date of Closing shall belong to Sellers, and accounts receivable for water services rendered thereafter shall belong to Purchaser.

3. REPRESENTATIONS AND WARRANTIES OF SELLERS. Sellers represent and warrant to Purchaser that:

3.1. Sellers are validly existing and are duly authorized to own and operate the Water Systems.

3.2. Sellers have good and marketable title to the Water Systems, free and clear of all liens and encumbrances whatsoever.

3.3. The execution, delivery, performance and acceptance of this Agreement by Sellers has been duly authorized by all necessary action; this Agreement constitutes a valid and binding obligation of Sellers enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement by Sellers will not violate any provision of law.

3.4. As of Closing, the execution, delivery and performance of this Agreement by Sellers will not conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, the terms of any agreement or instrument to which Sellers are a party.

3.5. Sellers have not knowingly violated any local, state or federal law, rule or regulation with respect to the use of the Water Systems in the manner in which the Water Systems are now being used.

3.6. There is no known action or litigation pending and none are known to be threatened against or affecting the Sellers in any court or before any commission, board or other administrative agency, and there are no known laws, ordinances, regulations or official orders now in effect or pending which would adversely affect in a material way the Water Systems or the use of

the Water Systems in the manner in which they are now being used, except as set forth at Exhibit A attached hereto and made a part hereof.

3.7. To the best of the Sellers' knowledge, information and belief, as of the date of this Agreement, there are no toxic or other dangerous conditions of the property, no assessments for public improvements have been made affecting the property, or any part thereof, which remain unpaid, and no notice of any government or any other authority has been served upon Sellers or any one on Sellers' behalf, including notices relating to violations of environmental contamination, building and safety, or fire ordinances which remain uncorrected. Sellers shall be responsible for any and all notices served upon Sellers after the approval of this Agreement and until the date of Closing and for the payment of any assessments and charges made of any public improvements made after the approval of this Agreement and until the date of Closing.

3.8. The certificate of Sellers' to be delivered to Purchaser in accordance with the provisions hereof shall be true and correct as of the Closing date.

4. COVENANTS OF SELLERS. Sellers covenant and agree that pending the Closing:

4.1. Sellers will operate the Water Systems only in the ordinary course of business and in accordance with all applicable local, state, and federal laws, rules and regulations.

4.2. Except normal and usual commitments for the purchase of materials and supplies, no contract or commitment shall be entered into by or on behalf of the Sellers relating to the Water Systems which would materially affect

the operation of the Water Systems after Closing, except for those commitments approved in writing by Purchaser.

4.3. Sellers will take all action necessary to cause the release, cancellation and discharge of any and all liens or encumbrances, so that as of the Closing, the Water Systems will be free and clear of any and all such liens and encumbrances.

5. MANAGEMENT, OPERATION AND MAINTENANCE SERVICES. Upon Closing, Purchaser, at its sole cost, will undertake to provide all management, operation and maintenance of the Water Systems, and Purchaser will provide all facilities needed to serve the Water Systems.

6. COMMISSION APPROVAL. The parties recognize and expressly agree that the consummation of this transaction is conditioned upon approval by the Pennsylvania Public Utility Commission ("Commission"). Sellers and Purchaser covenant and agree to diligently and expeditiously file and proceed with the necessary proceedings to obtain the approval of the Commission for: (a) the acquisition by Purchaser of the Water Systems; (b) the right of Purchaser to provide water service to the public in the area of the Water Systems in Coolbaugh Township, Monroe County, and Delaware Township, Pike County, in which Sellers are presently authorized to serve; and (c) the right of Purchaser, as of the Closing date, to provide water service to Sellers' customers. Purchaser agrees that, within 30 days of the execution of this Agreement, Purchaser shall initiate the necessary proceedings to obtain the approval of the Commission. Time is of the essence of this Agreement. Sellers, by this Agreement, covenant and agree to provide such information, documents and assistance as may be reasonably requested

by Purchaser in connection with any such proceedings and to otherwise cooperate in the initiation and prosecution of any such proceedings.

7. CONDITIONS TO PURCHASER'S OBLIGATIONS. The obligations of Purchaser under this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions:

7.1 Sellers' representations and warranties contained in this Agreement shall be true at and as of the time of Closing as though such representations and warranties were made at and as of such time, and Sellers shall deliver to Purchaser a certificate executed by its proper representatives, and dated the Closing date, to such effect.

7.2. Sellers shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, and Sellers shall deliver to Purchaser a certificate executed by its proper representatives, and dated the Closing date, to such effect.

7.3. All necessary action shall have been taken to cause the release, cancellation and discharge of any and all liens and encumbrances so that as of the Closing, the Water Systems shall be free and clear of any and all such liens and encumbrances, and the Sellers shall have provided Purchaser with such opinions, instruments or documents as Purchaser may reasonably request, and in form and substance satisfactory to Purchaser, evidencing the release, cancellation and discharge of any and all liens and encumbrances and that the Water Systems are not subject to any liens or encumbrances.

7.4. The Commission shall have approved by the issuance of a certificate of public convenience, the acquisition by Purchaser of the Water Systems and the right of Purchaser to provide water service to the public in the area presently being served by Sellers.

7.5. Each Seller shall have delivered to Purchaser: (a) a certificate, executed by its authorized representative and in form and substance satisfactory to Purchaser, listing (i) the amount of its net outstanding long-term debt or notes, if any, (ii) all unexpired customers' advances for construction and unexpended contributions in aid of construction as of the Closing date, and (iii) any and all additions or retirements to the Water System during the period from the date of this Agreement to the Closing date, together with the cost thereof; and (b) copies of any deeds, easements or other agreements affecting the Water System.

7.6. Each Seller shall have delivered to Purchaser a certificate listing all materials and supplies owned by Seller as of the Closing and applicable to Seller's Water System.

7.7. Each Seller shall have delivered to Purchaser the opinion of its Counsel, in form and substance satisfactory to Purchaser, to the best of Counsel's knowledge based on the information available to Counsel, with respect to the matters referred to in subsections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7 and 7.3 hereof.

7.8. Each Seller shall have delivered to Purchaser the deeds, easements or assignments of easements, bills of sale, and such other instruments

or documents, if any, in such form as will permit the operation of the Water System after Closing.

7.9. Each Seller shall have delivered to Purchaser a copy of the Resolutions, certified by its proper representative, approving the execution, delivery and performance of this Agreement, together with the certificate of its proper representative that said Resolutions are in full force and effect and were duly adopted.

8. CLOSING. The Closing, as referred to in this Agreement shall be held at such time and place as may be fixed by the parties hereto, and shall be held within ninety (90) days of executing this Agreement or within thirty-five (35) days following the date on which all of the conditions set forth in Sections 3, 4, and 7 of this Agreement have been met, whichever is later. Provided, however, that if Closing does not occur within six months from the date of the Agreement, either party may cancel the Agreement by giving written notice to the other party, and neither party shall be further obligated to the other party under this Agreement.

In addition to such other instruments and documents as are to be delivered to Purchaser by Sellers on or prior to the Closing, as provided herein, Sellers shall deliver to Purchaser at the Closing all books and records and other documents maintained by Sellers relating to the Water Systems.

9. ASSUMPTION OF LIABILITIES. It is understood and agreed that Purchaser is purchasing assets and does not assume any obligations or liabilities of Sellers. Sellers will not terminate or fail to renew any of its insurance coverage prior to Closing.

10. RISK OF LOSS. Sellers assume all risks of destruction, losses or damage to Water Systems due to fire or other casualty up to the Closing. In the event any of the Water Systems shall be destroyed or damaged prior to the Closing, the part or parts so destroyed or damaged shall be replaced or repaired by Sellers at their sole cost and expense, unless Purchaser agrees that the purchase price provided herein may be reduced by an amount equal to the estimated cost of replacement or repair of the part or parts so destroyed or damaged; provided, however, if any such destruction or damage shall, in the opinion of Purchaser, be so extensive as to materially and adversely affect the operating condition of the Water Systems, then and in that event, Purchaser shall not be obligated to consummate the purchase and sale contemplated herein, and Purchaser shall not have any obligations whatever to Sellers by reason hereof.

11. ACCESS AND INFORMATION. Sellers will give to authorized representatives of Purchaser full access during normal business hours throughout the period prior to Closing to all the properties, books, contracts, commitments, and records of Sellers relating to the Water Systems, and furnish Purchaser during such period with all such information relating thereto as Purchaser may reasonably request.

12. INDEMNIFICATION BY SELLERS. Sellers will indemnify and hold harmless Purchaser at all times after the date of this Agreement, against and in respect of any and all damage or deficiency resulting from any misrepresentation, breach of warranty or nonfulfillment of any agreement or covenant on the part of Sellers as set forth in this Agreement.

13. REALTY TRANSFER TAXES. Sellers and Purchaser agree to each pay one-half of any realty transfer taxes that may be due or owing as the result of the within transaction, and the parties agree to prorate any property taxes.

14. SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations, warranties and agreements made by Sellers and Purchaser in this Agreement or pursuant hereto shall survive the Closing.

15. PENNSYLVANIA LAW TO GOVERN. This Agreement is being delivered in the Commonwealth of Pennsylvania and shall be construed and enforced in accordance with the laws of such State.

16. SECTION HEADINGS. The Section headings herein have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

17. NOTICES. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed, first class, postage prepaid, registered mail, return receipt requested:

To Sellers: PO Box 608
Mt. Pocono, PA 18344

To Purchaser: 800 West Hersheypark Drive
Hershey, PA 17033

18. SUCCESSORS AND ASSIGNS. This Agreement shall inure to the benefit of and be binding upon the successors and assignees of Purchaser and Sellers.

ATTEST:

Robert H. Boland
Secretary

HICKORY WATER COMPANY, INC.

Robert H. Boland
President

[SEAL]

ATTEST:

Robert H. Boland
Secretary

POCONO FARMS EAST WATER COMPANY, INC.

Robert H. Boland
President

[SEAL]

ATTEST:

Robert H. Boland
Secretary

SILVER WATER COMPANY, INC.

Robert H. Boland
President

[SEAL]

ATTEST:

J. Redmond
Secretary

PENNSYLVANIA-AMERICAN WATER COMPANY

W. M. ...
(Vice) President

[SEAL]

Robert H. Boland
Secretary

JOINED AND ENTERED INTO BY
DELAWARE UTILITIES, INC.

Robert H. Boland
President

- (a) Order of the Delaware River Basin Commission, Docket No. D-87-31 CP Renewal with respect to Hickory Water Company, dated April 28, 1994.
- (b) Complaint of Benasa Realty Company v. Hickory Water Company before the Pennsylvania Public Utility Commission at Docket No. C-00946070.
- (c) Complaint of Benasa Realty Company v. Silver Water Company before the Pennsylvania Public Utility Commission at Docket No. C-00946073.
- (d) Opinion and Order of Pennsylvania Public Utility Commission in Citizens Savings Association v. Hickory Water Company at Docket No. C-00934805.
- (e) Opinion and Order of Pennsylvania Public Utility Commission in Thomas J. DeRosa v. Hickory Water Company at Docket No. C-00924536.

EXHIBIT A

ADDENDUM TO PURCHASE AGREEMENT

WHEREAS, on October 17, 1994, PENNSYLVANIA-AMERICAN WATER COMPANY ("Purchaser") and HICKORY WATER COMPANY, INC., POCONO FARMS EAST WATER COMPANY, INC., and SILVER WATER COMPANY, INC., entered into a Purchase Agreement wherein Sellers agreed to sell the assets of their public water supply systems which service parts of Coolbaugh Township, Monroe County, and Delaware Township, Pike County, Pennsylvania, and Purchaser agreed to purchase the said assets, under certain terms and conditions; and

WHEREAS, under Paragraph 6 of said Purchase Agreement, the necessary proceedings to obtain the approval of the Pennsylvania Public Utility Commission ("Commission") for the consummation of the transaction were to be initiated within 30 days of the execution of the Purchase Agreement; and

WHEREAS, the parties desire to extend the date for the initiation of the necessary proceedings to obtain Commission approval to 15 days following execution of this Addendum; and

WHEREAS, the parties desire to condition said extension of time upon certain additional terms and conditions.

NOW, THEREFORE, it is agreed by and between the parties hereto in consideration of the mutual covenants contained, as follows:

1. Paragraph 6 of the Purchase Agreement is amended to extend the date for making application to the Commission for approval of the sale and purchase of the Water Systems to no later than fifteen (15) days following execution of this Addendum.
2. Purchaser agrees that it shall, at the time of Closing, reimburse Sellers for all documented costs reasonably incurred by Sellers to install meters on existing Hickory Water Company, Inc., connections after the execution of this Addendum, in order to comply with the schedule for installing meters set forth at Paragraph g of the Decision of the Delaware River Basin Commission at Docket No. D-87-31 CP Renewal, dated April 28, 1994, a copy of which is attached hereto as Exhibit A.
3. The parties further agree that if Commission action on the applications is delayed because protests are filed to the Purchaser's proposed

phase-in of its rates, but no protests are filed against Purchaser's right to acquire the Water Systems, or Purchaser's right to provide service in Sellers' existing certificated territory, or Sellers' right to abandon service in its certificated service territory, the parties will request that the issues pertaining to rates be bifurcated from the remaining portion of the applications before the Commission, and, to the extent permitted by the Commission, the parties agree to Close the transaction upon approval by the Commission of Purchaser's right to acquire the Water Systems, Purchaser's right to provide service in Sellers' existing certificated territory, and Sellers' right to abandon service in its certificated service territory, regardless of the status of that portion of the applications relating to the phase-in of rates.

ATTEST:

Kelce H. Beland
Secretary

(SEAL)

HICKORY WATER COMPANY, INC.

Kelce H. Beland
President

ATTEST:

Kelce H. Beland
Secretary

(SEAL)

POCONO FARMS EAST WATER COMPANY, INC.

Kelce H. Beland
President

ATTEST:

Kelce H. Beland
Secretary

(SEAL)

SILVER WATER COMPANY, INC.

Kelce H. Beland
President

ATTEST:

Kelce H. Beland
Secretary

(SEAL)

JOINED AND ENTERED INTO BY
DELAWARE UTILITIES, INC.

Kelce H. Beland
President

ATTEST:

A. Redmond
Secretary

(SEAL)

PENNSYLVANIA-AMERICAN WATER COMPANY

W. W. ...
(Vice) President

DOCKET NO. D-87-31 CP RENEWAL
DELAWARE RIVER BASIN COMMISSION
HICKORY WATER COMPANY
GROUND WATER WITHDRAWAL
DELAWARE TOWNSHIP, PIKE COUNTY, PENNSYLVANIA

PROCEEDINGS

This is an application submitted by the Hickory Water Company on August 9, 1993, for the renewal of an allocation of ground water and review of a ground water withdrawal project approved by the Delaware River Basin Commission (DRBC) on September 28, 1988. Condition "g" of the docket decision required that this project be reviewed within five years of the date of approval, and unless renewed, the approval would expire. The project wells were approved by the Pennsylvania Department of Environmental Resources (PADER) on October 8, 1987, (Permit No. 5286501), subject to the approval of the DRBC.

The application was reviewed for continuation of the project in the Comprehensive Plan and approval under Section 3.8 of the Delaware River Basin Compact. The Pike County Planning Commission has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on April 27, 1994.

DECISION

The project is approved pursuant to Section 3.8 of the Compact, subject to the following conditions:

- a. Approval is subject to all conditions imposed by the PADER.
- b. The wells shall be available at all times for inspection by the DRBC.
- c. The wells shall be operated at all times to comply with the requirements of the ground water policies and standards of the DRBC.
- d. During any 30-day period, the withdrawal from all wells shall not exceed 14.5 million gallons.
- e. The wells shall be equipped with readily accessible capped ports and drop pipes so that water levels may be measured under all conditions, as repairs or modifications are made at each existing well.

f. The project wells, and all existing wells and surface water intakes, shall be metered with an automatic continuous recording device that measures to within 5 percent of actual flow. A record of daily withdrawals shall be maintained, and monthly totals shall be reported to the Bureau of Water Supply and Community Health, PADER, annually.

g. Each new water service connection added shall include a water meter in accordance with DRBC's Resolution No. 73-1. All existing unmetered water service connections shall include a water meter by April 22, 1997, in accordance with DRBC's Resolution No. 87-7. Water charges for each service connection shall be based in part on metered usage. Hickory Water Company will install meters on all 958 existing connections in accordance with the following schedule:

<u>DATE</u>	<u>METERS INSTALLED</u>
April 22, 1995	315
April 22, 1996	630
April 22, 1997	958

Hickory Water Company will submit on or before the above dates annual progress reports demonstrating compliance with this condition.

BY THE COMMISSION:

DATED: APRIL 28, 1994



OCT 27 1995

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

October 26, 1995

REPLY PLEASE

A-212285F0019
A-212285F020
A-212285F021

VELMA REDMOND ESQ
PENNSYLVANIA AMERICAN WATER COMPANY
800 WEST HERSHEY PARK DRIVE
HERSHEY PA 17033-0888

Application of Pennsylvania-American Water Company

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on October 26, 1995 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

John G. Alford
John G. Alford
Secretary

law
encls
cert. mail

bcc: R.M. Ross R.W. Freeston
 J.E. Harrison R.L. Robowski
 D.V. Modeer N.O. Rowe

DOCUMENT
FOLDER

PAWC EXHIBIT NO. 2

DOCKETED
FEB 13 2007

RECEIVED
JAN 24 2007
PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

EXHIBIT
PAWC
#2
1-8-07
PEIGAD 800-631-6369

C-20067054
01-08-07
HBG hrng

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held October 26, 1995

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger
David W. Rolka
Robert K. Bloom

Applications of Pennsylvania-
American Water Company

A-212285F019
A-212285F020
A-212285F021

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for disposition are the Exceptions filed on September 28, 1995, by Murray F. Freeman and Richard M. S. Freeman ("Freemans") to the Initial Decision of Administrative Law Judge ("ALJ") Michael C. Schnierle which was issued on September 8, 1995. On October 10, 1995, Pennsylvania-American Water Company ("PAWC"), Silver Water Company, Inc., ("Silver"), Pocono Farms East Water Company, Inc., ("PFE"), and Hickory Water Company, Inc., ("Hickory") filed Joint Reply Exceptions.¹

HISTORY OF THE PROCEEDINGS

1. On January 9, 1995, PAWC filed Applications seeking Commission approval of its acquisition of the waterworks property and operating rights of Silver, at Docket No. A-212285F019, PFE, at Docket No. A-212285F020, and Hickory, at Docket No. A-212285F021. The president of each Transferor is Robert Boland.

¹ Silver, PFE, and Hickory are also referred to herein as the "Transferors".

2. On February 13, 1995, the Freemans jointly filed se, essentially identical Protests to all three Applications. on that date, Benasa Realty, Inc., filed a Protest to the S and Hickory Applications. Clean Treatment Sewage Treatment Co filed a Protest to the Silver Application. Delaware Sewer Co and Hickory Securities, Inc., filed Protests to the Hi Application. Benasa, Clean Treatment Sewage, Delaware Sewer Hickory Securities share the same address and attorney. Protests, while not identical, are similar in form and conte

3. Also, on February 13, 1995, Metropolitan-Ed Company ("Met-Ed") filed Petitions to Intervene in the Silver Hickory Applications. In each case, Met-Ed alleges that Transferor owes it money for electric service. PAWC filed An to all Protests, and also filed Motions to Dismiss some of t PAWC did not file Answers to Met-Ed's Petitions to Intervene

4. In addition to the foregoing Formal Plead letters were filed by two customers of Hickory, i. e., Lloy Findlay on January 18, 1995, and Linda Perlman on January 20,

5. By written Notice dated March 28, 1995, the Offi Administrative Law Judge informed the parties that a Prehea Conference, to be continued into hearing, would be held on 24, 1995, and that further hearings would be held on April 25 26, 1995.

6. By Order dated April 4, 1995, ALJ Schni consolidated the cases at Docket Nos. A-212285F019, F020, and and granted Met-Ed's Petitions to Intervene. The ALJ rese ruling on PAWC's Motions to Dismiss various Protests, and he

¹ PAWC filed Motions to Dismiss the Protests of Clean Treatment Sewage Treatment Company, Benasa Realty, Inc and the Protest of the Freemans.

reminded the parties of the Commission's regulations pertaining to hearing procedures and discovery.

7. On April 19, 1995, the ALJ received, by fax, a letter dated April 19, 1995, from the Freemans requesting a continuance of the hearings. The primary reason advanced by the Freemans was the desire to conduct discovery. By letter dated April 19, 1995, and delivered by fax on that date, PAWC objected to the requested continuance, arguing that all parties have had ample opportunity to conduct discovery.

8. By Order dated April 19, 1995, the ALJ denied the request for a continuance. Subsequently, by letter dated April 20, 1995, the Transferors stated their opposition to the continuance.

9. The Prehearing Conference scheduled to continue into hearing was held on April 24, 1995. PAWC, Met-Ed, Benasa, Clean Treatment Sewage, Delaware Sewer, and Hickory Securities were represented by counsel. The Freemans appeared pro se. During the Prehearing Conference, Benasa, Clean Treatment Sewage, Delaware Sewer, and Hickory Securities requested that their Protests be converted to Petitions to Intervene based on a Settlement which had allegedly been reached by the parties. Because of the Settlement, Benasa, Clean Treatment Sewage, Delaware Sewer, and Hickory Securities requested only that they be permitted to monitor the proceedings herein. Because no party opposed the request, the ALJ granted it. (Tr. 6-7, 32).

10. During the hearing, five witnesses testified. The record consists of a transcript of 137 pages and 17 exhibits. A Briefing Schedule was established at the conclusion of the hearing. The schedule required that PAWC and the Transferors file their Initial Briefs by June 12, 1995, and that the Freemans and Intervenors file Responsive Briefs by July 10, 1995. PAWC and the

Transferors were required to file Reply Briefs, if any, by July 24, 1995.

11. On June 12, 1995, PAWC and the Transferors timely filed a Joint Main Brief.

12. On June 20, 1995, Met-Ed filed a Petition for Leave to Withdraw as an Intervenor. That Petition was unopposed.

13. On July 17, 1995, the Freemans late-filed, without permission to do so, their Responsive Brief. On July 20, 1995, PAWC and the Transferors filed a letter in reply to the Brief of the Freemans.

14. The Initial Decision of ALJ Schnierle was issued herein on September 8, 1995. Responses to the Initial Decision were filed as noted above.

DISCUSSION

The Findings of Fact of ALJ Schnierle, as found on pages 4-5 of his Initial Decision, are hereby incorporated by reference unless modified expressly or by necessary implication by this Opinion and Order.

Premised on his review, evaluation, and analysis of the record as developed, the ALJ arrived at the following Conclusions of Law:

1. The Commission has jurisdiction over this proceeding by virtue of 66 Pa.C.S. §1102(a)(2) and (3).
2. An applicant for a certificate of public convenience authorizing it to enlarge its service territory is required to demonstrate a public need for the proposed service, and the financial and technical capacity of the applicant to meet the need in a satisfactory fashion.

3. When the assets and service territory of an existing utility are being transferred to another utility, there is a rebuttable presumption that need for the transferor's service continues.

4. When an existing utility is seeking to enlarge its service territory, there is a rebuttable presumption that the utility is fit to render the additional service.

5. There continues to be a need for the water service provided by the transferors in this case.

6. PAWC is fit to render the service presently rendered by the transferors.

7. The Freemans' claim of ownership in the Transferor utilities is contrary to the ruling of the Commonwealth Court in Public Service Water Co. v. Pa. Pub. Util. Com., 165 Pa. Commonwealth Ct. 463, 645 A.2d 423 (1994).

8. The Freemans' claim that Boland owes them money is irrelevant, as a matter of law, to any issue that may be adjudicated in this proceeding.

9. The Commission does not have jurisdiction to hear a claim by a protestant in a case such as this that the transferor owes money to the protestant. Accordingly, the Commission has no jurisdiction to hear the Freemans' claim that Boland owes money to them.

10. The Freemans' protest must be dismissed.

11. Approval of these applications is in the public interest.

(I.D., pp. 14-16)

Based on his discussion of the issues herein and his Conclusions of Law, the ALJ recommended, inter alia, that the Protests filed by the Freemans to the Applications be dismissed, that the Petition for Leave to Withdraw as an Intervenor filed by Met-Ed be granted, and that the Applications of PAWC at Docket Nos. A-212285F019, F020, and F021 be approved, and that the appropriate certificates of public convenience be issued. (I.D., pp. 16-18)

As noted above, PAWC, Silver, PFE, and Hickory filed Joint Reply Exceptions to the Exceptions filed by the Freeman herein. For the purposes of the discussion infra, PAWC, Silver, PFE, and Hickory will be collectively referred to as "PAWC and Transferors".

The Freemans filed six Exceptions to the Initial Decision, which can be summarized as follows:

1. The Initial Decision is incorrect in the statement, found on page 7, that the Freemans' claim to "equitable ownership" is meritless because it ignores the clear holding of the Commonwealth Court in the Public Service Water Company case, cited infra.
2. The Initial Decision is incorrect in the statement, found on page 8, that whether a Transferor allegedly owes another person money simply does not bear upon the issues in a case such as this.
3. The Initial Decision is incorrect in the statement, found on page 9, that the Commission has no jurisdiction to adjudicate purely private rights, as its duty is to determine the public interest.
4. The Initial Decision is incorrect in the statement, found on page 10, that the Protest of the Freemans must be dismissed due to their lack of standing as customers.
5. The ALJ incorrectly decided not to accept evidence on the issue of a constructive trust, or of an ownership interest. (I.D., p. 13).
6. The ALJ incorrectly decided not to accept the deed attached to the Freemans' Brief as a document to be incorporated into the record by judicial notice. (I.D., p. 14).

In Exception No. 1, the Freemans assert that an equitable interest, "not a record ownership interest", in the t

Transferors arose "from the payment to Robert Boland of funds pursuant to the agreement of sale and its related documents". (Exception No. 1, p. 1). The Freemans further assert that this equity interest "rises to the level of a constructive trust under the laws of equity", and also requires Robert Boland, as trustee, "to deal with the assets for the benefit of himself, and for the benefit of the beneficiary of the trust".³ (Exception No. 1, Id.) As a result, the Freemans request that we conduct further hearings on the issue of whether the constructive trust duty placed on Robert Boland as trustee, will be extinguished by the contemplated transfer of assets in the pending Applications.

PAWC and the Transferors rejoin that the ALJ has correctly held on this issue that neither of the Freemans has any interest in the three Transferors and, therefore, neither of the Freemans can have any interest in protecting the assets of those Transferors. Public Service Water Company v. Pa. Public Utility Commission, 165 Pa. Commonwealth 463, 645 A.2d 423 (1994). PAWC and the Transferors further assert that the only possible interest of the Freemans in this proceeding is Richard Freeman's position as an officer of Public Service.⁴ However, in that capacity, argue PAWC and the Transferors, Richard Freeman can only advance the interests of the company and not, as he attempts to do here, advance his personal interests. Moreover, assert PAWC and the Transferors, Public Service, the alleged beneficiary of the purported constructive trust, is not a party to this proceeding. Nor does any evidence appear in the record that Public Service has authorized either of the Freemans to represent the Company's interests herein.

³ By "the beneficiary of the trust" the Protestants are presumably referring to Public Service Water Company ("Public Service"), which was a party to the agreement of sale, but is not a party to the instant proceeding.

⁴ It is uncertain in the record as to whether Richard Freeman still holds any position with Public Service.

Furthermore, PAWC and the Transferors argue that, even if Public Service were a party to this adversarial proceeding, it would be required to be represented by counsel, and not by Richard Freeman, consistent with Section 1.21 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code §1.21(a).

We believe that it will be instructive, at this juncture, to recount the history of the involvement of the Freemans with the Transferors as articulated by the Commonwealth Court opinion in Public Service, supra, wherein the Court observed as follows:

In 1985 the commission issued certificates of public convenience to Robert Boland for three water companies which Boland owns, Silver, Hickory, and Pocono Farms Water Company. Without approval from the commission, Boland and Public Service entered into a sales agreement dated December 24, 1991, in which Public Service agreed to purchase all of Boland's shares of capital stock in the water companies. Pursuant to that agreement, Public Service agreed to pay Boland \$750,000 in installments over a three year period in exchange for the transfer of the assets of the water companies from Boland to Public Service. Paragraph 9 of the agreement, entitled "Default by Buyer", lists certain terms and conditions with which Public Service, as buyer, had to comply.

Public Service Water, 165 Pa. Commonwealth Ct. at 466-467.

Essentially, Public Service defaulted on the agreement, referred to in the above-quoted paragraph, which had been reached with Boland, by and among other things, failing to timely apply for certificates of public convenience authorizing the transfers. When Public Service finally did apply, the applications were protested. After hearing, we determined that Public Service had wrongfully assumed operation of the water companies, and we directed Public Service to return to Robert Boland the property of the water companies, and to perform other related acts. Public Service filed a Petition for Review, and the Commonwealth Court affirmed the Order of the Commission. In affirming the Commission, the Court ruled that the asset transfers to Public Service were unlawful

because the Public Utility Code requires that Commission approval be sought and obtained before such transfers can take place. Public Service Water, 165 Pa. Commonwealth Ct. at 471-472.

We find that the Freemans' claim to "equitable ownership" is meritless because it ignores the clear holding of the Commonwealth Court in the Public Service Water case, supra. (I.D., p. 7) In Public Service, supra the Commonwealth Court held, in pertinent part, that asset transfers from Robert Boland to Public Service were unlawful because the Public Utility Code requires that Commission approval be sought and obtained before such transfers can take place. Therefore, Public Service was never the lawful owner of the assets of the Transferors. Accordingly, we shall deny Exception No. 1.

We note that Exceptions Nos. 2 and 3 are interrelated, and, therefore, we will address them jointly. The crux of the argument in these Exceptions concerns the jurisdiction of the Commission over civil claims. As outlined above, in Exception No. 2, the Freemans argue that the ALJ had incorrectly assumed that civil claims have no bearing on a proceeding such as this, i.e., an Application proceeding. In Exception No. 3, the Freemans argue that the ALJ had incorrectly assumed that the Commission has no jurisdiction to adjudicate purely private rights.

In response to Exceptions Nos. 2 and 3, PAWC and the Transferors argue that the Commission has no jurisdiction to adjudicate the issue of a constructive trust under the laws of equity. PAWC and the Transferors further assert that, while the Commission possesses broad regulatory powers to carry out the legislative purpose of a complete system of regulating public utilities, as a creature of the General Assembly, the Commission has only the authority expressly conferred upon it by statute. This authority does not include jurisdiction over civil claims, and the Public Utility Code is similarly devoid of any authority for

the Commission to adjudicate allegations of a constructive trust, which is a remedial device of equity. PAWC and the Transferors add that, if such a trust arose as a consequence of the Agreement of Sale between Robert Boland and Public Service, it must be enforced by a suit in equity. Therefore, the proper forum is a Court of Common Pleas. 42 Pa. C.S. §931; Alpern v. Coe, 352 Pa. 208, 42 A.2d 542 (1945).

We note that in Exceptions Nos. 2 and 3, the Freemans are essentially contending that the ALJ erroneously determined that whether Boland owes money to the Freemans, as a result of prior dealings between Boland and Public Service, is irrelevant to the instant proceeding. Furthermore, the Freemans contend that the ALJ erroneously determined that whether the Transferors owe money to the Freemans is a matter beyond the jurisdiction of the Commission. Our review of the record as developed in this proceeding indicates that Public Service is not, and never was, the lawful owner of the assets of the Transferors, and that any claim which the Freemans may have against Boland is purely one of private contractual rights. (I.D., p. 9) Reading and Southwestern St. Ry. Co. v. Pa. Pub. Util. Comm., 168 Pa. Superior Ct. 61, 77 A.2d 102 (1950).

It is well settled that this Commission, as a creature of the Legislature, has only those powers expressly conferred on it by statute. Western Pennsylvania Water Co. v. Pa. Public Utility Comm., 10 Pa. Commonwealth Ct. 533, 311 A.2d 370 (1973). The Public Utility Code makes no mention of any jurisdiction of the Commission over issues of a constructive trust, which is a remedial device of equity. The record, in our view, does not support and otherwise justify a finding that the Freemans are the "equitable owners" of the assets of the Transferors. However, even assuming arguendo that the Freemans are the "equitable owners" of the assets of the Transferors, it is not within the purview of our jurisdiction to entertain this claim. The proper forum for the adjudication of such a claim is the Court of Common Pleas.

Alpern, supra.

Accordingly, we shall deny Exceptions Nos. 2 and 3.

The Freemans in their Exception No. 4 contend that the ALJ's decision to dismiss their Protest for lack of standing as customers is erroneous. The Freemans contend that the ALJ erred in not admitting into evidence an instrument signed by an officer of a government agency. Furthermore, the Freemans assert that ALJ Schnierle acknowledged that they (the Freemans) could have been owners of property owned by the Transferors only three days prior to the hearing in this proceeding. (Exceptions, p. 4).

In response, PAWC and the Transferors argue that the ALJ correctly decided not to accept the proffered document⁵ into evidence. PAWC and the Transferors rejoin that the document, not being a deed, was not the best evidence of ownership of real property. At best, it was mere evidence of the intention of the Freemans to purchase real property. PAWC and the Transferors further argue that there is no record evidence indicating that the Freemans ever did purchase the properties, nor did the Freemans petition the Commission to reopen the record in order that their deeds may be introduced as after-discovered evidence.

We find the ALJ's discussion on the issue of standing, on pages 9-10 of his Initial Decision, to be very instructive. In pertinent part, ALJ Schnierle observed that:

⁵ The document which the Freemans attempted to introduce into the record is a letter dated January 23, 1995, from the Pike County Tax Claim Bureau to the Freemans. It lists certain properties in Wild Acres and Marcel Lakes, along with a payment amount, and states that the Freemans' bid for the properties had been accepted. It then states "You have ten (10) working days to submit payment. Failure to do so voids all agreements."

Apparently in realization of their inability to successfully contest these applications as the owners of Public Service Water, the Freemans attempted to acquire standing as customers of one or more of the transferors by purchasing, from the Pike County Tax Claim Bureau, property in the service territories of the Hickory and Silver Water Companies (Tr. 118-120). In support of the Freemans' claim to be customers, Murray Freeman testified that he purchased land in the developments known as Wild Acres and Marcel Lakes. (Tr. 118). He was unable to produce deeds for the properties because he had not paid the purchase price until April 21, 1995, only three days before the hearing on April 24, 1995. (Tr. 119-120, 121) Thus, the Freemans, by Murray Freeman's own testimony, did not have standing as customers to file their protests in these cases, because they could not have been owners of the properties any earlier than three days before the hearing. Moreover, the Freemans had never made application for water service from these companies, had never been billed for water service from these companies, and had never paid for water service from the companies. (Tr. 95-103, 123-124). Thus, PAWC and the Transferors's motions to dismiss the Freemans' protests for lack of standing must be granted. (Emphasis Added)

Actually, the proffered letter dated January 23, 1995, is from the Pike County Tax Claim Bureau and is addressed to the Freemans. It lists certain properties in Wild Acres and Marcel Lakes, along with a payment amount, and states that the Freemans' bid for the properties had been accepted. It then states: "You have ten (10) working days to submit payment. Failure to do so voids all agreements." The Freemans failed to tender payment for the properties until April 24, 1995. As a result, the ALJ ruled that the subject letter was inadmissible into evidence.

Even if the ALJ had improperly admitted into evidence the

The Freemans, in our view, lack standing because they have failed to demonstrate an interest which is direct, substantial, immediate, and not a remote consequence of the action. Vm. Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975). Landlord Service Bureau, Inc. v. Equitable Gas Co., 79 Pa. P.U.C. 342 (1993). Robert Beisel v. Pennsylvania Power & Light Co., 78 Pa. P.U.C. 569 (1993). In order to have standing, a party must have a direct interest in the subject matter of the particular litigation, and the party's interest must be immediate and pecuniary, and not a remote consequence of the judgment. The interest must be substantial. Keystone Raceway Corp. v. State Harness Racing Commission, 405 Pa. 1, 7-8, 173 A.2d 97, 100 (1960).

We note that the Freemans failed to perfect their ownership of the properties in question. However, we hasten to point out that mere ownership of land within a certificated service territory of a utility is not the same as being a customer of that utility. We note further that the Freemans never made application for water service from the Transferors, have never been billed for water service, and have never paid for water service.

Accordingly, we conclude that the Freemans lack standing, and, therefore, their Exception No. 4 is denied.

Exceptions Nos. 5 and 6 concern the issue of the admissibility of evidence. Because of the interrelatedness of these Exceptions, we shall address them jointly. In Exception No. 5, the Freemans argue that the ALJ erred in refusing to accept evidence on the issue of the existence of a constructive trust or of an ownership interest. In Exception No. 6, the Freemans argue that the ALJ erred in not accepting the deed attached to the Brief as a document to be incorporated into the record by judicial notice. The Freemans, therefore, attached documents to their Brief purporting to show that the three Transferors' assets were sold to

a corporation controlled by Boland, i.e. Delaware Utilities, in August, 1994.

In response, PAWC and the Transferors first note that Briefs and attachments thereto are not evidence of record. City of Erie v. Pa. Public Utility Comm., 41 Pa. Commonwealth Ct. 194, 197-198, 398 A.2d 1084, 1086-1087 (1979). PAWC and the Transferors further assert that the documents attached to the Freemans' Brief should have been offered into evidence at the hearing on April 24, 1995, but they were not. In addition, it is argued that ALJ Schnierle could not base his decision on evidence outside the record. 66 Pa. C.S. §332(c) & §332(d).

It is well settled in the law that a presiding ALJ must determine what weight shall be given to the testimony and the evidence in the record. Danovitz v. Portnoy, 399 Pa 599, 161 A.2d 146 (1960).

We note that, on pages 13-14 of his Initial Decision, ALJ Schnierle made the following telling point:

Also during the hearing, the Freemans attempted to establish that, before entering into the agreements to sell the assets of the transferors to PAWC, Boland had already transferred, by sheriff's sale, those assets to another company controlled by him, Delaware Utilities. (Tr. 93, 100-102). The only sworn testimony presented by the Freemans in support of that claim was a statement by Murray Freeman that it was his "understanding that when a sheriff sale was held on the properties in question, that the purchaser was Delaware Utilities." (Tr. 122). The Freemans produced no documents in support of their claim. There is nothing in the record to even suggest that Murray Freeman had any personal knowledge of the matter to which he testified.

Pursuant to Section 332(c) of the Public Utility Code, 66 Pa. C.S. §332(c), attachments to Briefs are not evidence of record. In addition, even if Robert Boland had attempted to transfer the

assets of one or more of the subject utilities without first obtaining Commission approval, such a transfer would have been void ab initio. Public Service, supra, 165 Pa. Commonwealth Ct. at 472, 645 A.2d at 427.⁶ It is undisputed that no such Commission approval has ever been given. Therefore, the documents attached to the Freemans' Brief are of no legal consequence.

Accordingly, the Freemans' Exceptions Nos. 5 and 6 are denied.

CONCLUSION

We have reviewed the record as developed in this proceeding, including the Briefs, the ALJ's Initial Decision, and the Exceptions filed thereto. Premised on our review of the record, we conclude that the ALJ's Initial Decision is amply supported by substantial, credible, and probative evidence in the record. We further conclude that the Exceptions of the Freemans are not meritorious, and, as a result, they are denied;
THEREFORE,

IT IS ORDERED:

1. That the Exceptions filed on September 28, 1995, by Murray F. Freeman and Richard Freeman, to the Initial Decision of Administrative Law Judge Michael C. Schnierle, which was issued on September 8, 1995, be, and hereby are, denied.

⁶ "[T]his court concludes that the December 1991 sales agreement between Public Service and Boland is unlawful because §1102(a)(3) mandates that the [Commission] approve applications for certificates of public convenience before transferring assets of public utilities".
(Emphasis in original)

2. That the Initial Decision, issued herein on September 8, 1995, by Administrative Law Judge Michael C. Schnierle, be, and hereby is, adopted as the action of the Commission, consistent with this Opinion and Order.

3. That the Protests filed by Richard and Murray Freeman against these Applications be, and hereby are, dismissed.

4. That the Petition for Leave to Withdraw as intervenor, filed by Metropolitan Edison Company on June 20, 1995, be, and hereby is, granted.

5. That the Applications of Pennsylvania-American Water Company at Docket Nos. A-212285F019, F020, be, and hereby are approved, and that appropriate certificates of public convenience be issued authorizing:

(a) the transfer, by sale, of the waterworks property and rights of Silver Water Company, Inc., to Pennsylvania-American Water Company;

(b) the right of Pennsylvania-American Water Company to begin to offer or furnish water service to the public in portions of Delaware Township, Pike County, Pennsylvania;

(c) the permanent discontinuance by Silver Water Company, Inc., of all water service to the public;

(d) the transfer, by sale, of the waterworks property and rights of Pocono Farms East Water Company, Inc., a/k/a PFE Water Company, Inc., to Pennsylvania-American Water Company;

(e) the right of Pennsylvania-American Water Company to begin to offer or furnish water service to the public in portions of Coolbaugh Township, Monroe County, Pennsylvania;

(f) the permanent discontinuance by Pocono Farms East Water Company, Inc., a/k/a PFE Water Company, Inc., of all water service to the public;

(g) the transfer, by sale, of the waterworks property and rights of Hickory Water Company, Inc., to Pennsylvania-American Water Company;

(h) the right of Pennsylvania-American Water Company to begin to offer or furnish water service to the public in portions of Delaware Township, Pike County, Pennsylvania; and

(i) the permanent discontinuance by Hickory Water Company, Inc., of all water service to the public.

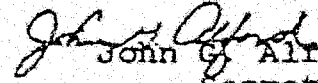
6. That Pennsylvania-American Water Company record these acquisitions as shown on the tentative pro forma balance sheets in Exhibit I of each of these Applications subject to revisions upon completion of its original cost rate studies.

7. That Pennsylvania-American Water Company file a tariff supplement or supplements adopting the current rates of Silver Water Company, Inc., Pocono Farms East Water Company, Inc. a/k/a PFE Water Company, Inc., and Hickory Water Company, Inc. in their respective service areas within sixty (60) days of the entry date of this Opinion and Order, and that Pennsylvania-American Water Company be, and hereby is, permitted to phase in its own tariff rates beginning January 1, 1996, as described in the Applications.

8. That approval of these Applications does not preclude the Commission from investigating during any formal proceeding the reasonableness of rate base claims resulting from the original cost studies done by Pennsylvania-American Water Company.

Tariff Section of the Office of Special Assistants be, and here
are, closed for Silver Water Company, Inc., Pocono Farms East Water
Company, Inc., a/k/a PFE Water Company, Inc., and Hickory Water
Company, Inc.

BY THE COMMISSION


John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: October 26, 1995

ORDER ENTERED: OCT 26 1995

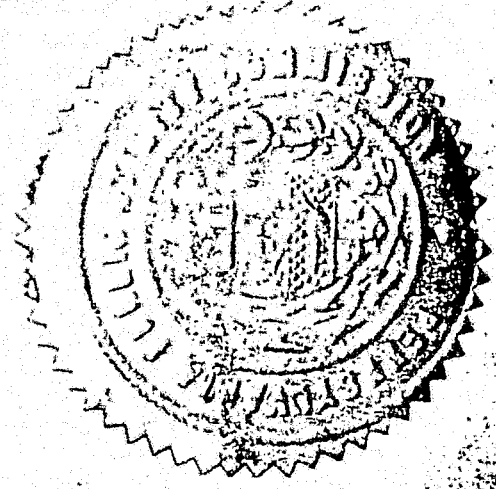
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF THE APPLICATION OF: A-212285F019

Application of Pennsylvania-American Water Company for (1) the transfer, by sale, of the waterworks property and rights of Silver Water Company, Inc. to Pennsylvania-American Water Company; (2) the right of Pennsylvania-American Water Company to begin to offer or furnish water service to the public in portions of Delaware Township, Pike County, Pa; and (3) the discontinuance by Silver Water Company, Inc. of all water service to the public.

The Pennsylvania Public Utility Commission hereby certifies that after an investigation and/or hearing, it has, by its report and order made and entered, found and determined that the granting of the application is necessary or proper for the service, accommodation, convenience and safety of the public and hereby issues to the applicant this **CERTIFICATE OF PUBLIC CONVENIENCE** evidencing the Commission's approval.

In Witness Whereof, The PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused these presents to be signed and sealed, and duly attested by its Secretary at its office in the city of Harrisburg this 26st day of October 1995.



John S. Agnew

Secretary

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

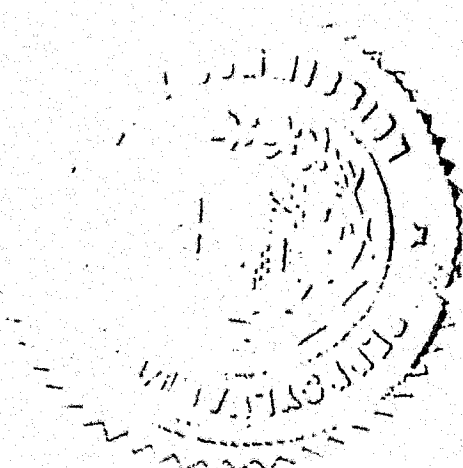
IN THE MATTER OF THE APPLICATION OF: A-212285F020

Application of Pennsylvania-American Water Company for (1) the transfer, by sale, of the waterworks property and rights of Pocono Farms East Water Company, Inc. a/k/a P.F.E. Water Company, Inc. to Pennsylvania-American Water Company; (2) the right of Pennsylvania-American Water Company to begin to offer or furnish water service to the public in portions of Coobagh Township, Monroe County, Pa; and (3) the discontinuance by Pocono Farms East Water Company, Inc. a/k/a P.F.E. Water Company, Inc. of all water service to the public.

The Pennsylvania Public Utility Commission hereby certifies that after an investigation and/or hearing, it has, by its report and order made and entered, found and determined that the granting of the application is necessary or proper for the service, accommodation, convenience and safety of the public and hereby issues to the applicant this **CERTIFICATE OF PUBLIC CONVENIENCE** evidencing the Commission's approval.

In Witness Whereof, The PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused these presents to be signed and sealed, and duly attested by its Secretary at its office in the city of Harrisburg this 26st day of October 1995.

John H. Afford
Secretary



PENNSYLVANIA
PUBLIC UTILITY COMMISSION

IN THE MATTER OF THE APPLICATION OF: A-212285F021

Application of Pennsylvania-American Water Company for (1) the transfer, by sale, of the waterworks property and rights of Hickory Water Company, Inc. to Pennsylvania-American Water Company; (2) the right of Pennsylvania-American Water Company to begin to offer or furnish water service to the public in portions of Delaware Township, Pike County, Pa; and (3) the discontinuance by Hickory Water Company, Inc. of all water service to the public.

The Pennsylvania Public Utility Commission hereby certifies that after an investigation and/or hearing, it has, by its report and order made and entered, found and determined that the granting of the application is necessary or proper for the service, accommodation, convenience and safety of the public and hereby issues to the applicant this **CERTIFICATE OF PUBLIC CONVENIENCE** evidencing the Commission's approval.

In Witness Whereof, The PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused these presents to be signed and sealed, and duly attested by its Secretary at its office in the city of Harrisburg this 26st day of October 1995.

John H. Alford

Secretary

