

ANDERECK, EVANS, MILNE, PEACE & JOHNSON, L.L.C.

ATTORNEYS AT LAW

EUGENE E. ANDERECK

TERRY M. EVANS

ERWIN L. MILNE

JACK PEACE

CRAIG S. JOHNSON

RODRIC A. WIDGER

GEORGE M. JOHNSON

BEVERLY J. FIGG

WILLIAM S. LEWIS

VICTOR S. SCOTT

COREY K. HERRON

700 EAST CAPITOL AVENUE

COL. DARWIN MARMADUKE HOUSE

P.O. BOX 1438

JEFFERSON CITY, MISSOURI 65102-1438

TELEPHONE 573-634-3422

FAX 573-634-7822

MATTHEW M. KROHN

LANETTE R. GOOCH

SHAWN BATTAGLER

ROB TROWBRIDGE

JOSEPH M. PAGE

LISA C. CHASE

JUDITH E. KOEHLER

ANDREW J. SPORLEDER

April 15, 2005

FILED

APR 15 2005

OF COUNSEL

MARVIN J. SHARP

PATRICK A. BAUMHOER

GREGORY C. STOCKARD (1904-1993)

PHIL HAUCK (1924-1991)

Secretary/Chief Administrative Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

**Missouri Public
Service Commission**

**Re: In the Matter of Nathan G. Godsy and Leah N. Godsy v. Philadelphia
Suburban Corporation d/b/a AquaSource Development.**

Dear Secretary:

Enclosed for filing please find an original and eight (8) copies of the Complaint.

Thank you for seeing this filed.

Sincerely,


Lisa Cole Chase

LCC:sjo

enclosure

CC: PSC General Counsel
OPC General Counsel
Nathan G. Godsy
Leah N. Godsy

FILED

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

APR 15 2005

Nathan G. Godsy and Leah N. Godsy,

Missouri Public
Service Commission

v.

Case No. _____

Philadelphia Suburban Corporation,
d/b/a AquaSource Development,
AquaSource/RU, AquaSource/CU,
AquaSource, and/or Aqua Missouri,
Inc.

COMPLAINT

COME NOW Nathan and Leah Godsy, pursuant to Sections 386.250, 386.390, 393.130, and 393.140 RSMo., and 4 CSR 240-2.070, 4 CSR 240-3.340, and 4 CSR 240-60.010 - .020, and for their Complaint, state to the Commission:

1. Complainants Nathan ("Nate") and Leah Godsy are homeowners who purchased the property at 711 Oak Point Road, Jefferson City, MO 65101. Complainant's used as their agent CK Signature Homes, Inc. ("Agent"), who was employed by the homeowners to manage the construction of their house at 711 Oak Point Road, Jefferson City, MO 65101 to be used as a single-family residential home by the Godsys. The Commission may contact the Complainants as follows:

Nathan and Leah Godsy
5214 Shadow Court
Jefferson City, MO 65109
(573) 694-4524

2. All communications and pleadings in this matter should be directed to:

Lisa Chase
Andrew Sporleder
Andereck, Evans, Milne, Peace & Johnson, L.L.C.
700 East Capitol
P.O. Box 1438

Jefferson City, MO 65102
Telephone: (573) 634-3422
Facsimile: (573) 634-7822
Email: lisachase@lawofficemo.com
Email: asporleder@lawofficemo.com

3. Complainants seek immediate relief from Philadelphia Suburban Corporation's refusal to provide sanitary sewer service to the property located at 711 Oak Point Road, Jefferson City, MO 65101.

4. Philadelphia Suburban Corporation is duly organized and existing under the laws of the Commonwealth of Pennsylvania, and is registered with the Missouri Secretary of State to do business in Missouri as a foreign corporation. Philadelphia Suburban Corporation purchased the stock of AquaSource Development Company, and AquaSource Utilities which held the common stock of AquaSource/CU and AquaSource/RU. Contact information for Philadelphia Suburban Corporation is:

Roy H. Stahl
Executive Vice President and Secretary
Philadelphia Suburban Corporation
762 W. Lancaster Ave.
Bryn Mawr, PA 19010

Terry Rakocy
President
Aqua Missouri, Inc.
5400 Bus. Hwy 50 W, Ste. 3
Apache Flats
Jefferson City, MO 65109

5. Because Philadelphia Suburban acquired the stock of the corporate parent of AquaSource/CU and AquaSource/RU, Commission approval was not sought for that stock purchase, however, the Commission did approve the stock purchase by Philadelphia Suburban Corporation (hereinafter referred to as "AquaSource") of the stock of AquaSource Development Company in Case No. WM-2003-0133 in an Order issued on April 1, 2003. In that Order approving the stock purchase, the Commission noted that "AquaSource Development Company is expected to operate in much the same manner as

it currently does and will continue to be fully subject to all applicable laws, rules, and policies governing the regulation of the Missouri public utilities."

6. AquaSource owns, operates, and maintains the only sanitary sewer service accessible to the property located at 711 Oak Point Road, Jefferson City, MO 65101. AquaSource owns and maintains a collecting sewer line that presently serves residential homes neighboring 711 Oak Point Road, Jefferson City, MO 65101. Complainants believe that no extension of the collecting sewer line would be required to serve 711 Oak Point Road, Jefferson City, MO 65101.

7. Prior to commencement of construction of the house, Complainants' Agent requested, and AquaSource granted, access to the sewer line system. In October 2004, Complainants' Agent paid their check to AquaSource, and AquaSource sold to CK Signature Homes, Inc. a valve for the connection to the main. Apparently the check was held by AquaSource until February 2005, with no word from October through February to Complainants or their Agent of any problems with hooking up the homeowners new home to AquaSource's sewer system. In February 2005, AquaSource attempted to revoke said access by returning the check for payment issued in October 2004. Pursuant to the tariff adopted by the company, under Rule 4(f) "new service connections shall be authorized when the service inspection fee is paid to the Company based on the Schedule of Service Charges." (Aqua Missouri, Inc. P.S.C. Mo. No. 2, Original Sheet No. SRR 16.) Upon the refusal of AquaSource to permit Complainants access to the sewer line system, Complainants have made a demand on AquaSource to act in accordance with its prior agreement.

8. Complainants' Agent has been in direct contact with the utility regarding their request for sewer service. Informally, Complainants' Agent has been verbally informed by AquaSource that its sewer facilities are inadequate to service the single residential home being built at 711 Oak Point Road, Jefferson City, MO 65101. Complainants' Agent has contacted the Department of Natural Resources to confirm this allegation, and has been informed that Aqua Source has not been told to cease hookups to their sewer system. The residence would be home to two individuals only at this time, the Complainants, and thus residential sewer service would be limited to these two individuals for at least the next year.

9. Pursuant to Section 393.130. RSMo., every sewer corporation is required to furnish such facilities as shall be safe and adequate and in all respects just and reasonable. No sewer corporation is permitted to directly or indirectly charge a greater or lesser rate than what it charges, demands, collects or receives from other persons for like and contemporaneous services provided under the same or substantially similar circumstances or conditions. Nor may a sewer corporation subject any particular person or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Pursuant to Commission rule 4 CSR 240-60.020, each sewer utility shall maintain and operate a sewage treatment facility of adequate capacity and comply with the laws and regulations of the state and local health authority.

10. Complainants' Agent paid the permit fee to AquaSource prior to commencement of construction under the belief that AquaSource would abide by its agreement to provide residential sewer service. Complainants and their Agent moved

forward on building the house at 711 Oak Point Road, Jefferson City, MO 65101 based, in part, on the representations of AquaSource. AquaSource's refusal to provide sewer service to the Godsys subjects the homeowners to undue and unreasonable prejudice and disadvantage when the same or substantially similar services are being provided to residences neighboring 711 Oak Point Road, Jefferson City, MO 65101.

11. Due to AquaSource's unwarranted refusal to provide sewer services, the Complainants have been left with a substantially completed home that is uninhabitable. Without sewer service, the Cole County building code inspectors will not issue a permit for residency, thereby depriving the homeowners of their ability to occupy their new home. The Complainants anticipated a move-in date of March 30, 2005. They have sought and received an extension on their construction loan until July, but have to pay the additional interest on the loan and additional rent while trying to get sewer service to their new home. Complainants do not seek monetary damages in this proceeding, this information is being provided to inform the Commission of the gravity of the situation and the short timeframe in which the Complainants have to resolve this issue. A Motion for Expedited Treatment is being filed simultaneously with this Complaint.

12. Pursuant to Commission rule 4 CSR 240-3.340(11), in its tariffs, each utility is to specify the conditions pursuant to which it may refuse to provide service to an applicant, and if the utility refuses to serve an applicant under the provisions of this rule, the utility must provide the applicant with the basis for its refusal in writing. Complainants have not received directly, or through their Agent, any written statement asserting the basis for AquaSource's refusal to provide service.

13. In its application to the Missouri Public Service Commission to purchase the stock of AquaSource Development Company, Philadelphia Suburban Corporation made the following representations: (1) "AquaSource Development is expected to continue to operate in much the same manner as it currently does and will continue to be fully subject to all applicable laws, rules and policies governing the regulation of Missouri public utilities"; (2) "the proposed acquisition will produce a stronger water and wastewater utility system"; (3) "PSC is committed to providing adequate, safe and reliable water and wastewater service and its performance bears this out"; (4) "The Joint Applicants believe, however, that the combined entity, by virtue of its greater resources, will be better positioned to meet future demands and to ensure that the high quality of service presently being provided is maintained"; and (5) "AquaSource Development's customers will be served by a large, fiscally sound company that has the capability to finance necessary capital additions."

14. The Commission has jurisdiction to hear this matter pursuant to Section 386.250(4) RSMo which states the Commission jurisdiction extends to "all sewer systems and their operations within this state and to persons or corporations owning, leasing, operating or controlling the same. The Commission also has jurisdiction to hear this matter pursuant to Section 393.140 RSMo which provides under its subparts: (1) Commission supervision of all sewer corporations, (2) authority to investigate quality of service, and power to order reasonable improvements of the sewer system facilities, (3) power to investigate the sewer system design standards, operation and maintenance, and (5) determine just and reasonable acts to be done, and if the Commission determines the sewer system is inadequate it has jurisdiction and authority to determine and prescribe the

safe, efficient and adequate property, equipment and appliances to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

WHEREFORE, the Complainants hereby request the Commission Order AquaSource to immediately permit Complainants to hook up to AquaSource's collective sewer system and to provide safe and adequate sewer services to the property located at 711 Oak Point Road, Jefferson City, Mo 65101.

Respectfully Submitted,

**ANDERECK, EVANS, MILNE,
PEACE & JOHNSON, L.L.C.**

By: 
Lisa Chase, Mo. Bar 51502
Andrew Sporleder, Mo. Bar 51197
The Col. Darwin Marmaduke House
700 E. Capitol Ave.
P.O. Box 1438
Jefferson City, MO 65102
Telephone: (573) 634-3422
Facsimile: (573)-634-7822
Email: lisachase@aempb.com
Email: asporleder@aempb.com


ATTORNEYS FOR COMPLAINANTS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was hand delivered or mailed, via U.S. Mail, postage prepaid, this 15th day of April, 2005, to the following parties to:

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

General Counsel
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102



Lisa Chase