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October 14, 2002

RECEIVED
REGULATORY COMMITTEE
02 OCT 16 AM 9:37
STATE OF WASH.
UTILITIES BOARD
CONNECTION

Carole Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket UW-010417; Rebate Claim by Peninsula Light Co. against AWR

Dear Ms. Washburn:

Peninsula Light Company is a non-profit Washington mutual corporation. Peninsula operates water utilities in Pierce, Kitsap and Mason counties. Peninsula is not regulated by the Commission.

In June 2001, the Commission entered an order approving an agreement between Peninsula and American Water Resources, a regulated water utility, by which AWR sold several water systems to Peninsula. These systems totaled 140 existing connections and 53 approved future connections.

After the sale was approved, Peninsula learned of potential disputes as to the ownership of several of the systems and various claims by property owners to be entitled to connections without having to pay a connection fee. These claims were not disclosed to Peninsula by AWR prior to the sale even though they materially affect the value of the affected systems. Peninsula has notified AWR that it claims a rebate of the purchase price based on the failure to disclose these material facts. A copy of Peninsula's letter to AWR is enclosed.

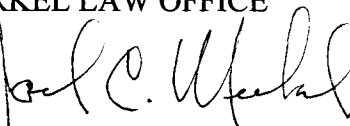
Peninsula understands that over \$26,000 of the proceeds that AWR received from Peninsula remains in an AWR account from which disbursements and expenditures may be made only with the prior approval of the WUTC. Peninsula claims that these funds belong to Peninsula in that they represent a portion of the amount that AWR must rebate to Peninsula. Accordingly, Peninsula petitions the Commission not to authorize the release of any of these funds pending resolution of Peninsula's dispute with AWR.

Carole Washburn, Executive Secretary
Washington Utilities and Transportation Commission
October 14, 2002
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Should you have any questions concerning this matter, please feel free to contact me or have a Commission staff member contact me at the above address and phone number.

Sincerely,

MERKEL LAW OFFICE

A handwritten signature in black ink, appearing to read "Joel C. Merkel". The signature is written in a cursive style with a large initial "J".

Joel C. Merkel

JCM:sh

Enclosures

cc. Russ Salzer, Peninsula Light Co.
Virgil Fox, American Water Resources
Mary Tennyson, Assistant Attorney General, Utilities Division

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October 8, 2002

Mr. Virgil Fox
American Water Resources, Inc.
921-B Middle Fork Road
Onalaska, WA 98570

Re: AWR sale of Razor # 1-4, Razor Place, Dream Lane, Key Ridge and Old Sawmill water systems to Peninsula Light Company

Dear Mr. Fox:

I represent Peninsula Light Company. Peninsula has asked me to prepare a proposal for resolving its claim against AWR for failure to disclose commitments by AWR to provide free water connections for the above listed water systems, other encumbrances on the systems including claims that AWR did not in fact even own some of the systems.

Razor # 1-4, Razor Place and Dream Lane. The most significant problems relate to Razor # 1-4, Razor Place and Dream Lane. The Agreement signed by AWR and Peninsula indicates that AWR owned and sold the following systems to Peninsula with existing and potential future connections as shown below:

	<u>Existing</u>	<u>Future</u>	<u>Approved</u>
1) Razor #1	2	4	6
2) Razor #2	2	4	6
3) Razor #3	2	4	6
4) Razor #4	0	6	6
5) Razor Place	3	3	6
6) Dream Lane	<u>2</u>	<u>4</u>	<u>6</u>
TOTAL	11	25	36

After the sale closed, however, Peninsula learned that Mr. Bob Dick, the former owner of these six systems, claimed that they were sold to AWR in 1997 without his authority. He asserts that Mr. Hal Parks who was managing the systems sold them to AWR without his knowledge or approval and that no purchase and sale agreement or bill of sale was ever executed. Mr. Dick claims that after the sale to AWR was approved by the WUTC (without his knowledge), he entered into an agreement with AWR to not charge connection fees to new customers of these systems, in return for which he would recognize AWR's ownership of these systems. Copies of Mr. Dick's correspondence and e-mails to Peninsula have been provided to you previously, however, they are also enclosed with this letter. I am also enclosing a copy of the unexecuted three party agreement among Mr. Dick, AWR and Hal Parks.

Although Mr. Dick acknowledges that there is no executed copy of this agreement, your attorney, Rick Finnigan sent a letter to Peninsula's Director of Operations, Russ Salzer in December 2001 describing the agreement with Mr. Dick as a binding agreement "that Peninsula is refusing to honor." Thus, AWR apparently regards it as a valid agreement. Correspondence between Mr. Finnigan and the WUTC in late 1998 and early 1999 also indicates that AWR was well aware of the claims of Mr. Dick prior to the sale to Peninsula and AWR regarded the agreement as binding on AWR.

The failure to disclose this "cloud" on AWR's ownership right to the Razor and Dream Lane systems and/or the undisclosed limitation on the ability to charge connection fees is a substantial misrepresentation. Among other things, the agreement between AWR and Peninsula represents that AWR owns the systems being transferred, it requires AWR to completely disclose its books and records in order to provide Peninsula with all information necessary to establish rates and charges and it provides that AWR will indemnify Peninsula for claims by third parties resulting from AWR's actions prior to the sale. The undisclosed clouded ownership status and the limitation on the right to charge connection fees have a substantial adverse impact on the value of these systems compared to the price paid to AWR by Peninsula.

Old Sawmill Water System. Recently Peninsula learned that one of the property owners, Mr. and Mrs. Wayne Edwards, served by the Old Sawmill Water System claims that she actually owns a share of the water system and has the right to sell future water connections for 2 lots and that Peninsula is not entitled to charge a connection fee for these connections. We have since discovered that you were aware of this arrangement when you purchased the system from Jim Short.

Key Ridge Water System. Attached is a copy of a document entitled "Agreement to Surrender Water System" by which Robert and Lois Hickman and Gary Wolanski transferred their ownership of the Key Ridge Water System to Holland Pump Co., the company from which AWR acquired ownership of the Key Ridge Water System. This agreement purports to reserve 4 hook-ups to the Hickman's and Mr. Wolanski for \$250 each and to obligate Holland to pay \$150 per connection for up to 12 other connections. This agreement was not disclosed by AWR and came to light only as a result of a customer seeking a connection and claiming that Peninsula is not entitled to charge a connection fee.

At the present time there are 19 existing and 7 future connections in Key Ridge. The undisclosed agreement between the Hickmans, Wolanski and Holland Pump affects the ability of Peninsula to charge connection fees for the 7 future connections.

Value of Existing and Future Connections. The Peninsula/AWR purchase and sale agreement provides for the sale of 140 actual connections and 53 approved (future) connections by AWR to Peninsula. The total sale price was \$150,000. It is obvious that existing connections have less value than future connections. This is because the relatively low recurring revenue from monthly water sales for existing connections does not have the value of a connection fee *plus* the recurring revenue after the connection occurs. Discounting the revenue stream from future connection fees to take account of the passage of time, Peninsula values the existing and future connections that it paid for as follows:

\$600 X 140 existing connections	\$	84,000.00
\$1250 X 53 future connections	\$	66,250.00
Total Purchase Price	\$	150,250.00

The undisclosed inability to charge connection fees for some of the systems purchased from AWR substantially devalues the systems purchased by Peninsula from AWR. With the above values in mind, Peninsula proposes two options for settling this dispute:

Option one is that Peninsula will reconvey the following systems to AWR: Razor # 1-4, Razor Place, Dream Lane, Old Sawmill and Key Ridge. AWR will rebate to Peninsula **\$63,550**, which is a proportionate share of the original total purchase price based on the above values of the existing and future connections. Calculation of the rebate is shown below.

	Existing	Future	Total
Razor # 1-4, Razor Place & Dream Lane	\$ 6,600.00	\$ 31,250.00	\$ 37,850.00
Old Sawmill	\$ 1,800.00	\$ 3,750.00	\$ 5,550.00
Key Ridge	\$ 11,400.00	\$ 8,750.00	\$ 20,150.00
Total	\$ 19,800.00	\$ 43,750.00	\$ 63,550.00

Option two is that Peninsula will retain ownership of all three of the systems. AWR will rebate only the portion of the purchase for future connections for each system. Under this proposal AWR will rebate \$31,250 (25 x \$1,250) for the Razor System, \$3,750 (3 x \$1,250) for the Sawmill system and \$8,750 (7 X \$1250) for the Key Ridge system. The total rebate under this option would be **\$43,750**.

In addition, under the second option, Bob Dick would have to sign an agreement recognizing Peninsula's ownership of the Razor and Dream Lane systems. And finally, as an added incentive to settle this dispute, Peninsula will waive any future claims it may have against AWR involving ownership or connection fees for the other systems that Peninsula purchased from AWR. This would include any claims by third parties and involving ownership, free or reduced connection fees or monthly water charges based on additional side deals of which neither AWR nor Peninsula are presently aware.

Peninsula understands that about \$26,000 of the proceeds of the sale to Peninsula continues to be held by AWR in an account from which disbursements may not be made without WUTC approval. Those funds are proceeds from the sale of these disputed systems to Peninsula. Peninsula claims to be entitled to a rebate from those funds based on the undisclosed claims about ownership and future connection fees. Accordingly, Peninsula is providing the Commission with a copy of this letter and is notifying the Commission of its claim for a rebate. Peninsula is asking the Commission not to approve any further disbursements from this account until this dispute is resolved.

Time is of the essence to Peninsula in resolving this dispute. For that reason, you are requested to respond in writing to this offer by November 1, 2002. If you desire to speak with someone at Peninsula about this proposal, you may call Russ Salzer who runs the Water Department. His phone number is 253-857-1554. If neither Russ nor I hear from you by November 1 and no written response is

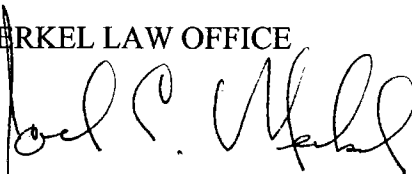
Mr. Virgil Fox
October 7, 2002
Page 4

received, we will assume that you are not interested in settling this dispute and Peninsula will have no alternative but to pursue available legal options.

This letter is intended to be an offer to settle Peninsula's claims without resorting to litigation. It is intended that this communication fall within Evidence Rule 408, i.e. it shall not be admissible as evidence in the event Peninsula's claims ultimately go to trial.

Sincerely,

MERKEL LAW OFFICE

A handwritten signature in black ink, appearing to read "Joel C. Merkel", written over the typed name below.

Joel C. Merkel

JCM:sh

cc. Russ Salzer, Peninsula Light Co.
Carole Washburn, Ex. Sec., WUTC
Mary Tennyson, Asst. AG, Utilities Division

Enclosures

Russ Salzer

From: Bob Dick [bob@pnwre.com]
Sent: Thursday, May 23, 2002 8:19 AM
To: Russ Salzar
Cc: joytallman@attbi.com; steve@huntwhitehurleycpa.com
Subject: water systems

Dear Russ, In answer to your request for our position on the water systems, I submit the following. Back in 1993/1994, several investors and I purchased 5 acre parcels in Mason County Washington with the idea of short platting them into 1 1/4 acre parcels and selling them. In order to make the lots saleable we decided that we needed to provide water to them. We contacted Davis Drilling of Belfair, Washington and hired them to drill the various wells. These water systems cost us \$18,000.00 to \$20,000.00 each.

Our surveyor for the short plats, Mr. Sid Bechtold, of Agate Land Surveying, said he knew a water company that would manage these systems for us. He referred us to Hal Parks of Satellite Water Systems. I contacted Hal and he said yes he would be interested in managing the systems for us and that he was state approved and so on. We came to a verbal agreement that he would manage the water systems and collect the monthly fees and that we would remain owners of the systems and be able to sell the shares. We planned on getting water rights and later on sell more than our county approved six shares to neighboring property owners. We asked Hal Parks, several times, for an agreement in writing, but he never produced one.

We sold some lots and hooked them up and we charged \$750.00 per hook up when we sold these lots. The water company charged about \$50.00 for administrative fees and everything was fine until 1998 when one of our lot customers tried to get connected.

They were told that the water system had been sold to Lewis County Utility Corporation and Virgil Fox (later know as American Water Resources) and that they would have to pay a fee in excess of \$2,000.00 to be hooked up. Needless to say, we could not believe that this was happening. It was totally without our knowledge or permission. I contacted Lewis County Utility Corporation, immediately, and asked them what was going on.

They told me they had purchased these water systems along with several others from Satellite Water Systems and Hal Parks and that because of their tariff with the State Utilities Commission they had to charge this hook up fee on all of their systems. I informed them that Hal Parks did not own those systems and had no right to sell them and that we had paid for them. I informed them that our agreement was that we could collect a fee for hook up and that they could collect the monthly fees. At that time they gave me the phone number of the State Utilities Commission and I called them. The person at the State Utility Commission said yes this was true. I explained to her that we had paid for these systems, which was in essence our hook up fees. After several discussions and discussions with Lewis County Utility Corporation, the state agreed as long as we produced invoices for the wells, which we did.

I asked Virgil Fox for an agreement regarding this and he produced a very loosely worded agreement which was not signed by either him or Hal Parks. I repeatedly asked him to get it signed by Hal and that he sign it and return it to me. He never did.

Then in the fall of 2001, here we go again. Virgil Fox sells the water systems again and you know the rest. We have never signed a bill of sale for these water systems or an agreement regarding them. Legally, we still own the systems, as no one has ever executed an agreement with us to transfer ownership of them. Sincerely,
Robert W. Dick

Robert W. (Bob) Dick bob@pnwre.com
360-275-4477 Ext 19 office
360-731-8765 cellular
360-275-5711 home
realestatebelfair@pnwre.com/[bobdick](http://bobdick.com) website
P. O. Box 1919
Belfair, WA 98528 snail mail

3/25/02

Mr. Virgil Fox
921 B. Middlefork Rd.
Omakaska, WA 98570

RE: Water Systems

Dear Virgil,

I am writing this as a final response to you before I turn this over to the attorneys to start a law suit.

After all that we went through when you purchased those systems from Hal Perkes I do not believe that you would let this happen again.

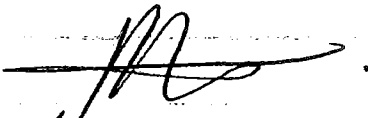
Pen Light has the same attitude as you do. It seems you both put it back onto us the innocent parties.

You should have made it very clear to them that we did not have to pay hook up fees on those systems as we already paid in excess of \$18,000⁰⁰ for each system.

If we start a law suit we are going to seek attorney fees, damages, ~~and~~ as well as reinstatement of the no hook up fees that we have been entitled to from the beginning.

And possibly we will seek to have the systems returned to us as none of you have a bill of sale properly executed from us.

You and Per Light need to get together and resolve this now! You caused the problem, you resolve it. If you don't we will start our law suit soon and will not quit until we get justice. You will not win. So please take the steps to prevent this.

Sincerely, 

Robert W. Dick

360-275-4477 - EXT 19

360-731-8765 - cell

360-275-4022 - Fax

P.O. Box 1919

Bellevue, WA 98528

Cy to: Per Light - Ross Salzer

This Agreement, entered into this ___ day of June, 1999, by and between Robert Dick, Harold Parks for Satellite Water Systems, and Virgil R. Fox for American Water Resources, Inc., serves to clarify agreements in place between Robert Dick and Satellite Water Systems at the time of the sale of the following water systems to American Water Resources, Inc.:

Razor Road #1 Water System
Razor Road #2 Water System
Razor Road #3 Water System
Razor Raod #4 Water System
Razor Place Water System
Dream Lane Water System

At the time of the sale of the above-listed water systems to American Water Resources, Inc., the property owners listed in Exhibit A had already bought and paid for a service connection to the above-mentioned water systems and have right to receive such service connection at no additional service connection charge or facilities charge.

In an attempt to avoid extensive and cost-intensive litigation, the parties mutually agree that:

- 1) American Water Resources, Inc., recognizes the right of the property owners listed in Exhibit A to one standard residential service connection (3/4" or similar size) at no additional service connection charge to the property owners.
- 2) American Water Resources, Inc., therefore recognizes the property owners listed in Exhibit A as inactive "customers" of the water system and therefore recognizes that the facilities charge listed in American Water Resources, Inc.'s tariff is not applicable.
- 3) Robert Dick recognizes that American Water Resources, Inc., has the clear legal title to the above-listed water systems as is evidenced by the Bill of Sale executed on Feb. 13, 1997, and will not contest this ownership now or at any point in the future.
- 4) Robert Dick recognizes that the only fees paid in advance by the property owners listed in Exhibit A are the service connection charge and that nothing in this agreement or elsewhere affects the ability of American Water Resources, Inc., to collect or act in accordance with its tariff filed with the Washington Utilities and Transportation Commission.

This agreement is hereby agreed to and accepted by Robert Dick, Harold Parks for Satellite Water Systems, and Virgil R. Fox for American Water Resources, Inc.

For Satellite Water Systems:

Robert Dick

Harold Parks

For American Water Resources, Inc.:

Virgil R. Fox

TT
268571M
AUG 12 1981

AGREEMENT TO SURRENDER WATER SYSTEM

Robert L. and Lois J. Hickman, husband and wife, and Gary Wolanski, a single man, surrender all rights to the "Key Ridge" water system to Holland Pump Co., Inc., a Washington Corporation. It is agreed by all parties that the grantors retain four (4) additional hook-ups to the existing system, said hookups to cost \$250.00 each.

It is also agreed that Holland Pump Co. Inc. will pay to the grantors a \$150.00 hook-up fee for each parcel, at the time of water hook-up, up to a total of twelve (12) hook-ups. See Attached Exhibit "A".

RECORDED

81 AUG 12 A 8:30

NOTARY PUBLIC
PIERCE COUNTY WASH

M. Baker
DEPUTY

Robert L. Hickman
Lois J. Hickman
Gary J. Wolanski
Lois J. Hickman Attorney in Fact

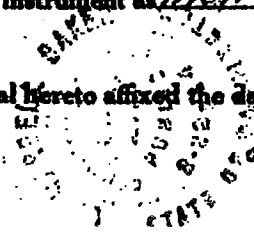
[Signature]
Holland Pump Company, Inc.

STATE OF Washington
County of Pierce

On this 3rd day of February, A. D. 1981, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared

Robert L. Hickman & Lois J. Hickman as Attorney in Fact
to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.



M. Baker
Notary Public in and for the State of Washington
Pierce County