

February 28, 1969

Met. Com. vs. Pat. Water Company

Mr. H. Sterling, Mr. J. D. Weiner, Attorney, Mr. T. Waring, Mr. W. Miles, Adm. T. B. Clarke, Mr. A. V. Cherbonnier, Attorney, Mr. R. Gabrelcik, Mr. T. McKee, Mr. D. Williams, Attorney, Mr. L. C. Merchant, Mr. P. R. Raley, Mr. D. M. Gruber, Accountant, Mr. T. T. Pantaleo, County Engineer, Mr. J. A. Kenney, Attorney and Mr. Francis Taylor.

Mr. Burch opened the meeting by informing those present that separate discussions had been held with each group of the Metropolitan Commission and the Patuxent Water Company. A difference of opinion was found to exist. It was stated that legislation was enacted to set up the Metropolitan Commission and Sanitary District whose services must be rendered. However, the Patuxent Water Company has an investment in their Company and consideration must be given to them also. Mr. Merchant stated that legal counsel had informed him that the Patuxent Water Company had a water franchise and not a sewage franchise. He thought the two parties concerned should make an agreement for the purchase of this franchise. Mr. Burch reminded those present that the purpose of this meeting was to get the two groups together in order to start some type of negotiations. Mr. Weiner felt that the rates should be set by the Public Service Commission and not by the Metropolitan Commission. Mr. Weiner stated that the Patuxent Water Company should not be charged percentage-wise more than the Navy. It was brought out that the Navy used  $2\frac{1}{2}$  to 3 times as much sewage as the Patuxent Water Company. Mr. Weiner stated that the Public Service Commission should arbitrate for both sides. Mr. Cherbonnier stated that the Public Service Commission was in a position to set the rates of the Metropolitan Commission by arbitration. Mr. Weiner stated that while he attended a meeting with both groups Patuxent Water Company was not given any information and it seemed as though the Metropolitan Commission was set on offering the Patuxent Water Company a rate and they could take it or leave it. Mr. Waring stated that the Public Service Commission has a record of the franchise from the Commissioners. The original franchise has never been amended to include sewage. Mr. Waring stated that the Patuxent Water Company will and have agreed to sell the company if they could agree on a price. Mr. Waring feels that the Metropolitan Commission is not fair in asking the Commissioners not to recognize the franchise. If they are going to be arbitrary then the court will decide. Mr. Waring said that the Patuxent Water Company had decided to accept as binding any findings of the Public Service Commission. He stated that the two mile radius that they have been operating in has been served by them since 1963 and the one mile franchise since 1943. Mr. Waring went on to say that if both parties were to exist in Lexington Park each will serve its own customers or they can buy the Patuxent Water Company out. Adm. Clarke submitted two letters to the Commissioners, both dated February 27, 1969. One letter was regarding the Patuxent Water Company franchise and the other letter was regarding the purchase of the Patuxent Water Company. Also submitted was a memo from the Patuxent Water Company requesting certain information necessary for income evaluation of the Patuxent Water Company. Mr. Kenney stated that there were three problems as he saw it: (1) franchise,

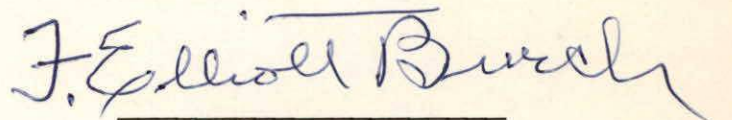


(2) dispute over the rates of the Metropolitan Commission and (3) Purchase of the Patuxent Water Company. Mr. Kenney stated that the County must grant a franchise and the Public Service Commission sets the rates. The Metropolitan Commission set the rate they feel is needed but the Public Service Commission states that the Metropolitan Commission does not have the right to set the rates. Mr. Gabrelcik stated that the Patuxent Water Company is personal property and will not let anyone arbitrate for his personal property and no one can force them. The Metropolitan Commission requested from the Patuxent Water Company the income tax returns for 1964 through 1968 plus written clarifying comments with regard to the operating income and expenses as reflected in the annual reports filed with the Public Service Commission. Mr. Waring stated that the information they have to give the Metropolitan Commission is on file with the Public Service Commission. Adm. Clarke stated that the reason he had asked for this information from the Patuxent Water Company was that they needed it in connection with the design of their own system. Mr. Gabrelcik stated that it was rather costly to get this information together for the Metropolitan Commission and in fact, they did not know why they were to give them this information. The M. C. submitted a list of items they needed to know to the Patuxent Water Company at this time. Mr. Gabrelcik stated that there were a lot of things that do not show on paper that are quite important, such as Daugherty's Trailer Court. The Patuxent Water Co. made an agreement with them saying that if they did not charge them for three years for water than after the three years Daugherty would turn the water lines over to the Patuxent Water Co. Mr. Kenney stated that this was why this meeting was called so these gentlemen could sit down and discuss these things. Mr. Waring stated that he did not think they should stop their discussions under the assumption that the Patuxent Water Co. is going to be purchased. Mr. Waring thought that it was unfair for the M. C. to not want to negotiate some sort of rate. Mr. Waring further stated that when the reports are in, this does not mean that the rates set by the M. C. are satisfactory because the Patuxent Water Co. will take the rates to court. The M. C. must also realize that the same does not mean the acceptance of the rates for the Patuxent Water Co. customers. Mr. Kenney would like to have the opportunity to discuss some sort of possible procedures with Mr. Weiner. Mr. Weiner stated that if this matter goes to court it would be about a year before the rates were established. He thought the court would probably appoint someone to go over these figures. Mr. Cherbonnier stated that the M. C. under the statute could not delegate the right of way to someone "you set the rate". In regard to the arbitration board, Mr. Cherbonnier said this board would help with a meeting of minds. If one doesn't agree then some other means must be met so there can be an agreement. While it is true that the Patuxent Water Company has an assumed franchise, but if it cannot treat the sewage then what happens to the franchise - it will be lost. Mr. Burch stated that unless the parties being somewhere and know what direction they are going to take, they are not going to get anywhere. Mr. Gabrelcik gave a figure of \$900,000 as the worth for the sewage and water and all fixtures and equipment of the Company. He stated that the M. C. cannot set a figure if the total information on revenues is not complete. Mr. Waring asked the M. C.'s plans to have their sewage plant complete and ready for



operation. Adm. Clarke stated that their target date was April 1. Mr. Dave Gruber stated this his firm would give them all the cooperation it could. He could promise that he could map out some approach. He further stated that he wanted to suggest that even if the parties started to negotiate in a week or two, it is highly improbable that the Patuxent Water Company can give all this information and that the sale price be reached by April 1. Mr. Cherbonnier stated that in the unfortunate event that there is not an agreement as to the true value of what they are to purchase, he could not say what would happen. He stated that they would be subject to great criticism if they set an unfair rate. In Mr. Cherbonnier's opinion the Water Company should be purchased. Mr. Gruber said he feels that the civilian population was not being charged out of percentage with the Navy and that the Commission has certain obligations to make X number of dollars to operate. Mr. Cherbonnier asked what would happen if the sale is not made. What if the Metropolitan Commission feels it cannot spend the public's money which might be out of line? Mr. Cherbonnier stated that the court could take a year to determine and would possibly order an arbitrary board to do this. Mr. Kenney stated that the Metropolitan Commission is asking \$84,000 from the Patuxent Water Company for treatment of sewage. Mr. Waring stated this is where he felt it was unfair as the Patuxent Water Company only got \$55,000 last year and paid the Navy \$24,000. Mr. Waring stated that the Patuxent Water Company can only charge what the Public Service Commission permits them to charge. Mr. Weiner stated that the Patuxent Water Company would probably pay the Metropolitan Commission the same amount that is \$24,000 a year until the rate is set and satisfied by all concerned. Mr. Kenney stated that they could pay the same amount without any approval of the Public Service Commission. The Patuxent Water Company has a franchise granted by the County Commissioners and they cannot operate without approval from the Public Service Commission. Mr. Gabrelcik wants the County Commissioners to decide whether the Patuxent Water Company has a franchise or not, so they can approach the Public Service Commission more intelligently. He also wants to clear up the matter of the two mile franchise. As it is now they don't know exactly where they do stand.

Approved,

  
F. Elliott Burch