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April 20, 2010

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

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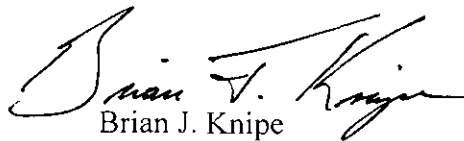
Re: *Third Avenue Realty Limited Partners v. Pennsylvania-American Water Company*, Docket No. C-2010-2167286

Dear Secretary McNulty:

I have enclosed for filing the original and three (3) copies of the *Preliminary Objections of Pennsylvania-American Water Company to the Complaint of Third Avenue Realty Limited Partners* and the original and three (3) copies of the *Answer and New Matter of Pennsylvania-American Water Company to the Complaint of Third Avenue Realty Limited Partners*.

Copies of the *Preliminary Objections* and *Answer* have been provided to the Complainant as indicated on the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY PC

BJK/paf

Enclosures

cc: The Honorable Charles E. Rainey, Jr. (via e-mail and regular mail, w/encls.)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

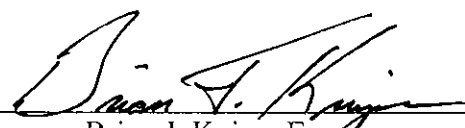
THIRD AVENUE REALTY LIMITED	:	
PARTNERS	:	
Complainant	:	
	:	
v.	:	Docket No. C-2010-2167286
	:	
PENNSYLVANIA-AMERICAN WATER	:	
COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that you are required to file an Answer to the enclosed Preliminary Objections of Pennsylvania-American Water Company within **ten (10) days** from the date of service of the Preliminary Objections. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Pennsylvania-American Water Company, and where applicable, the Administrative Law Judge presiding over the case.

File with:
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Brian J. Knipe, Esq.
Buchanan Ingersoll & Rooney PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503



Brian J. Knipe, Esq.

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	:	
PENNSYLVANIA-AMERICAN WATER	:	
COMPANY	:	
Respondent	:	

**PRELIMINARY OBJECTIONS OF PENNSYLVANIA-AMERICAN WATER
COMPANY TO THE COMPLAINT OF THIRD AVENUE REALTY
LIMITED PARTNERS**

Pennsylvania-American Water Company ("Respondent" or the "Company"), by and through its attorneys, files these preliminary objections pursuant to 52 Pa. Code § 5.101, and moves to strike, in part, the request for a payment arrangement in the Formal Complaint filed by Third Avenue Realty Limited Partners ("Complainant"), and further to strike Complainant's request for attorney's fees. In support thereof, Respondent states as follows:

1. Complainant challenges the monthly combined water and wastewater bills charged for water and wastewater service provided to an apartment building it owns (the "Premises"). Compl. ¶ 4.B and Attachments.¹
2. Complainant has not made any payments on its water or wastewater bills for the Premises since October 23, 2007, a period of thirty (30) months.
3. As of March 22, 2010, Complainant had an outstanding combined water and wastewater balance of \$23,712.27.

¹ The Attachments to the Formal Complaint include a letter dated March 22, 2010, from Complainant's attorney to the Company and the Commission, and a copy of the Company's 37-Day Notice to Landlord dated March 12, 2010.

4. Complainant alleges that the "correct" level of monthly combined water and wastewater charges for service to the Premises is \$250.00. Compl. ¶ 4.B and Attachments.

5. On or about March 12, 2010, the Company mailed Complainant a certified 37-day landlord nonpayment termination notice, requiring Complainant to pay \$5,275.11 prior to April 19, 2010 to avoid shutoff.

6. On or about March 22, 2010, Complainant filed the instant Formal Complaint. Compl. ¶ 4.B and Attachments.

7. The relief requested in the Formal Complaint includes a reduction of all monthly bills to \$250.00, a payment arrangement, and an award of attorney's fees. Compl. ¶ 4.B and Attachments.

**FIRST PRELIMINARY OBJECTION —
LEGAL INSUFFICIENCY OF A PLEADING.
(52 Pa. Code § 5.101(a)(4))**

8. While the parties dispute most of the charges for water and wastewater service provided to the Premises, \$250.00 of monthly combined water and wastewater charges are not in dispute. Over the 30-month period in which Complainant has not made any payments toward its water and wastewater account, these undisputed charges total \$7,500.00.

9. Pending resolution of a dispute, including a termination dispute, a ratepayer is required to pay the undisputed portion of a bill. If the ratepayer fails to fulfill this duty of paying the undisputed portion of a bill, then a utility may proceed with its termination procedure. *E.g., LTV Steel Company, Inc. v. Duquesne Light Company*, 72 PUR4th 605, 609-10, 61 Pa. PUC 21, 24-26 (1986).

10. Because Complainant has failed to fulfill its duty to pay \$7,500.00 of undisputed charges, its request for a payment agreement should be stricken as it relates to this portion of its bills, and the Company should be permitted to immediately resume the termination process begun on March 12, 2010 which required Complainant to pay \$5,275.11 prior to April 19, 2010 to avoid shutoff, or to immediately begin the termination process with a new 37-day landlord nonpayment termination notice that requires Complainant to pay \$7,500.00 to avoid shutoff.

**SECOND PRELIMINARY OBJECTION —
MOTION TO STRIKE REQUEST FOR ATTORNEY'S FEES FOR
LACK OF COMMISSION JURISDICTION/POWER
(52 Pa. Code § 5.101(a)(1))**

11. It is well-settled that the Pennsylvania Public Utility Commission's array of remedial and enforcement powers does not include the power to award money damages. This power resides with the civil courts. *E.g., Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 10, 383 A.2d 791, 795 (1977). Likewise, the statutory authority granted to the Commission does not include the power to award attorney's fees.

12. Because the Commission lacks the authority to award attorney's fees, Complainant's request for attorney's fees should be stricken.

**THIRD PRELIMINARY OBJECTION —
MOTION TO STRIKE REQUEST FOR ATTORNEY'S FEES
LEGAL INSUFFICIENCY OF A PLEADING
(52 Pa. Code § 5.101(a)(4))**

13. Even in a civil court, under Pennsylvania law, attorney's fees are recoverable from an adverse party to a cause only when provided for by statute, or when clearly agreed to by the

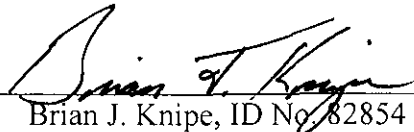
parties. *Fidelity-Philadelphia Trust Company v. Philadelphia Transportation Company*, 404 Pa. 541, 548-89, 173 A.2d 109, 113-14 (1961).

14. Complainant has not alleged a right to recover attorney's fees under any statute or agreement with the Company, and therefore Complainant's request for attorney's fees should be stricken.

WHEREFORE, Respondent, Pennsylvania-American Water Company, respectfully requests that this Honorable Commission grant its preliminary objections to the Formal Complaint of Third Avenue Realty Limited Partners at Docket No. C-2010-2167286, strike Complainant's request for a payment agreement as it relates to \$7,500.00 of undisputed charges, and further strike Complainant's request for attorney's fees.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY, P.C.

By: 
Brian J. Knipe, ID No. 82854

17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503
Phone: (717) 237-4820
Fax: (717) 233-0852
brian.knipe@bipc.com


Dated: April 20, 2010

Attorneys for Pennsylvania-American
Water Company

VERIFICATION

I, JUDY MCCOY JORDAN, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief), and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: 4-20-10



Judy McCoy-Jordan
Billing & Collection Manager
Pennsylvania-American Water Company

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

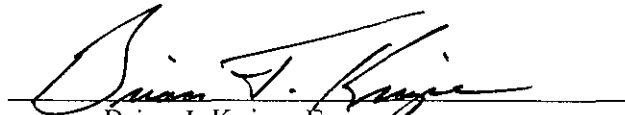
THIRD AVENUE REALTY LIMITED	:	
PARTNERS	:	
Complainant	:	
	:	
v.	:	Docket No. C-2010-2167286
	:	
PENNSYLVANIA-AMERICAN WATER	:	
COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.62(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed New Matter of Pennsylvania-American Water Company, within **twenty (20) days** from service of this Notice, the facts set forth by Pennsylvania-American Water Company in the New Matter may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Pennsylvania-American Water Company, and where applicable, the Administrative Law Judge presiding over the case.

File with:
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Brian J. Knipe, Esq.
Buchanan Ingersoll & Rooney PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503



Brian J. Knipe, Esq.

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	:	
v.	:	Docket No. C-2010-2167286
	:	
PENNSYLVANIA-AMERICAN WATER	:	
COMPANY	:	
Respondent	:	

**ANSWER AND NEW MATTER OF PENNSYLVANIA-AMERICAN WATER
COMPANY TO THE COMPLAINT OF THIRD AVENUE REALTY
LIMITED PARTNERS**

Pennsylvania-American Water Company ("Respondent" or the "Company"), by and through its attorneys, hereby submits its Answer and New Matter to the Complaint filed by Third Avenue Realty Limited Partners ("Complainant"). In support thereof, Respondent avers and represents as follows:

ANSWER

1. Admitted upon information received from Complainant.
2. Admitted.
3. Admitted, except that the Company also provides wastewater service to Complainant's apartment building.
4. A. Denied, for the reasons set forth in Paragraph 4.B of this Answer.

B. The Company responds to the allegations of Paragraph 4.B, which incorporates by reference the Attachments to the Formal Complaint,¹ as follows:

It is admitted that Complainant is a Pennsylvania Limited Partnership which owns and leases units in an apartment building in Coatesville, Pennsylvania (the "Premises"), and that the Company provides both water and wastewater service to the Premises. It is also admitted that in October 2008, Complainant filed a Formal Complaint against the Company at Docket No. C-2008-2072920 (the "2008 Formal Complaint") alleging high water and wastewater bills. In addition, it is admitted that on or about October 13, 2009, the Company pulled Complainant's water meter at the Premises for testing, and that the test results indicated 97% accuracy for low flow and 101% accuracy for high flow. These levels of accuracy are well within the Pennsylvania Public Utility Commission's guidelines at 52 Pa. Code § 65.8(a). It is further admitted that on or about March 12, 2010, the Company mailed Complainant a certified 37-day landlord nonpayment termination notice, requiring Complainant to pay \$5,275.11 prior to April 19, 2010 to avoid shutoff. This is because Complainant has not made any payments on its water or wastewater bills for the Premises since October 23, 2007, a period of thirty (30) months, and as of March 22, 2010 had an outstanding combined water and wastewater balance of \$23,712.27. It is also admitted that Complainant alleges in the instant Formal Complaint that there is a level of monthly combined water and wastewater charges (\$250.00 according to Complainant) which is "correct" and therefore undisputed.

It is denied that Complainant's "water bills" — a term Complainant appears to use to refer to its combined water and wastewater bills — are excessive. This question is being fully litigated in the 2008 Formal Complaint proceeding at Docket No. C-2008-2072920. Further, it is

¹ The Attachments to the Formal Complaint include a letter dated March 22, 2010, from Complainant's attorney to the Company and the Commission, and a copy of the Company's 37-Day Notice to Landlord dated March 12, 2010.

denied that the instant Formal Complaint was filed to challenge any water or wastewater charges separate and apart from those being challenged in the 2008 Formal Complaint proceeding. To the contrary, the instant Formal Complaint is merely an attempt by Complainant to continue avoiding termination of service for nonpayment while continuing to refuse to make any payments for water or wastewater service (even for undisputed charges). This course of conduct has lasted thirty (30) months, since October 23, 2007, and resulted in an outstanding balance of \$23,712.27 as of March 22, 2010.

It is further denied that Complainant is entitled to a reduction in water and wastewater charges, or an installment plan on its outstanding balance. Further, it is denied that Complainant is entitled to an award of attorney's fees. It is well-settled that the Commission's array of remedial and enforcement powers does not include the power to award money damages or attorney's fees. Nor has Complainant alleged any legal basis for an award of attorney's fees.

After reasonable investigation, the Company is without knowledge or information sufficient to determine the truth of the remaining allegations in Paragraph 4.B of the Formal Complaint, and therefore these allegations are denied.

5. It is denied that Complainant is entitled to the relief requested, for the reasons set forth in Paragraph 4.B of this Answer.

6. This is a statement which requires no response.

7. Admitted.

8. This is a statement which requires no response.

9. This is a statement which requires no response.

WHEREFORE, Respondent, Pennsylvania-American Water Company, respectfully requests that this Honorable Commission dismiss the Formal Complaint of Third Avenue Realty Limited Partners at Docket No. C-2010-2167286 in its entirety.

NEW MATTER

10. The averments contained in Paragraphs 1 through 9 are hereby incorporated by reference.

11. Complainant is a Pennsylvania Limited Partnership which owns and leases units in an apartment building in Coatesville, Pennsylvania (the "Premises").

12. The Company provides both water and wastewater service to the Premises.

13. In October 2008, Complainant filed a Formal Complaint against the Company at Docket No. C-2008-2072920 (the "2008 Formal Complaint") alleging high water and wastewater bills.

14. Complainant's water and wastewater bills are correct as rendered.

15. Complainant's challenge to its water and wastewater bills is being fully litigated in the 2008 Formal Complaint proceeding at Docket No. C-2008-2072920.

16. At the October 2009 hearing held in the 2008 Formal Complaint proceeding, Complainant's witness Mr. Brian J. Michalovic, who is identified in the instant Formal Complaint as Complainant's "Chair of general partnership," testified that he does not live on the Premises and does not know the tenants' water usage patterns.

17. On or about October 13, 2009, the Company pulled Complainant's water meter at the Premises for testing. The test results indicated 97% accuracy for low flow and 101%

accuracy for high flow. These levels of accuracy are well within the Pennsylvania Public Utility Commission's guidelines at 52 Pa. Code § 65.8(a).

18. Complainant has not made any payments on its water or wastewater bills for the Premises since October 23, 2007, a period of thirty (30) months.

19. As a result of Complainant's nonpayment of any water or wastewater charges for thirty (30) months, Complainant's outstanding combined water and wastewater balance has increased substantially, to \$23,712.27 as of March 22, 2010.

20. Complainant alleges in the instant Formal Complaint that the "correct" level of monthly combined water and wastewater charges for service to the Premises is \$250.00. Accordingly, \$250.00 of combined water and wastewater charges each month is not in dispute. Over the 30-month period in which Complainant has not made any payments toward its water and wastewater account, these undisputed charges total \$7,500.00.

21. Pending resolution of a dispute, including a termination dispute, a ratepayer is required to pay the undisputed portion of a bill. If the ratepayer fails to fulfill this duty of paying the undisputed portion of a bill, then a utility may proceed with its termination procedure.

22. On or about March 12, 2010, the Company mailed Complainant a certified 37-day landlord nonpayment termination notice, requiring Complainant to pay \$5,275.11 prior to April 19, 2010 to avoid shutoff.

23. The Commission's array of remedial and enforcement powers does not include the power to award money damages or attorney's fees. This power resides with the civil courts.

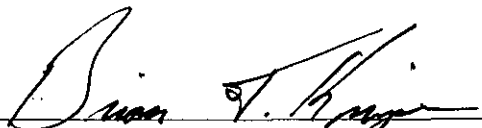
24. At all times, Respondent provided reasonable and adequate water service in compliance with the Public Utility Code, the Commission's Regulations and Orders, and the Company's Commission-approved tariff.

25. The Complaint fails to state a claim against the Company for which relief may be granted.

WHEREFORE, Respondent, Pennsylvania-American Water Company, respectfully requests that this Honorable Commission dismiss the Formal Complaint of Third Avenue Realty Limited Partners at Docket No. C-2010-2167286 in its entirety.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY, P.C.

By: 
Brian J. Knipe, ID No. 82834

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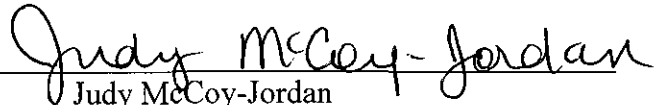
Dated: April 20, 2010

Attorneys for Pennsylvania-American
Water Company

VERIFICATION

I, JUDY MCCOY JORDAN, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief), and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: 4-20-10



Judy McCoy-Jordan
Billing & Collection Manager
Pennsylvania-American Water Company

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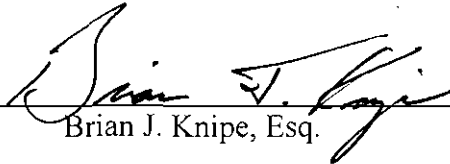
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons on the attached service list, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via E-Mail and First-Class U.S. Mail

William H. Copperthwaite, Jr., Esq.
111 Greenbriar Drive
West Chester, PA 19382-6151

Dated: April 20, 2010



Brian J. Knipe, Esq.

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