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April 19, 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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PA PUC  
SECRETARY'S BUREAU

Re: **Third Avenue Realty Limited Partners v. Pennsylvania American Water Company, Docket No. C-2008-2072920**

Dear Secretary McNulty:

I have enclosed for filing an original and (3) three copies of Pennsylvania-American Water Company's Motion for Leave to File Reply Brief and an original and nine (9) copies of Pennsylvania-American Water Company's Reply Brief in the above-referenced proceeding. A copy of the Motion and Brief have been provided to the Complainant's counsel in the manner indicated on the attached Certificate of Service.

Please contact me if you have any questions.

Very truly yours,

Michael T. Killion

MTK/jlf

cc: Honorable Charles E. Rainey, Jr.  
William H. Copperthwaite, Jr., Esq.






argues for the first time on reply brief that all bills since its 2003 purchase of the property should be reduced to a flat rate of \$300. *Reply Brief of Complainant* at 6. In addition, Complainant contends for the first time that PAWC has offered no explanation for the removal of Complainant's meter, *Reply Brief of Complainant* at 5, a new argument which is directly contrary to the testimony of PAWC's witness at hearing. It is well settled that issues raised for the first time on reply brief are deemed waived. *E.g., Commonwealth v. Wharton*, 811 A.2d 978, 990 (2002). Indeed, courts have termed the practice of reserving arguments for reply briefs as impermissible "sandbagging." *South Coast Air Quality Management Dist. v. E.P.A.*, 554 F.3d 1076, 1081 (D.C. Cir. 2009).

5. PAWC respectfully requests leave to file a response to the Reply Brief of Complainant so that it may respond to the new assertions presented by Complainant in its Reply Brief.

WHEREFORE, for all the foregoing reasons, Respondent, Pennsylvania-American Water Company, respectfully requests that it be permitted to file the attached Reply Brief of Respondent, Pennsylvania-American Water Company, in response to the new arguments presented for the first time in Third Avenue Realty's Reply Brief.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY, P.C.

By:   
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Dated: April 19, 2010

Counsel for Pennsylvania-American  
Water Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>THIRD AVENUE REALTY</b>	:	
<b>LIMITED PARTNERS</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>Docket No. C-2008-2072920</b>
	:	
	:	
<b>PENNSYLVANIA AMERICAN</b>	:	
<b>WATER COMPANY,</b>	:	
	:	
<b>Respondent</b>	:	


**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 Electronic Mail and Overnight Mail**

William H. Copperwaite, Jr.  
111 Greenbriar Drive  
West Chester, PA 19382

Dated: April 19, 2010

  
\_\_\_\_\_  
Michael T. Killion, Esquire  
Counsel for Pennsylvania American Water Company

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