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a limited liability company

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May 7, 2010

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

Re: Third Avenue Realty Limited Partners v. Pennsylvania-American Water Company
Case Id: **C-2008-2072920**

Dear Mr. McNulty:

Enclosed please find the original and four (4) copies of Complainant, Third Avenue Realty Limited Partners Response to Respondent's Reply Brief, in the above-referenced matter.

Kindly forward a time-stamped cover and return to my attention in the enclosed self-addressed stamped envelope.

Thank you for your anticipated cooperation in this matter, and should you have any additional questions or concerns, please feel free to contact me at your earliest convenience.

Very truly yours,



WILLIAM H. COPPERTHWAITE JR.

For the firm
Id #: 77687

WHC/nsj
Enclosures

Cc: The Honorable Charles E. Rainey, Jr.
Michael T. Killion, Esquire

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IN AND BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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THIRD AVENUE REALTY LIMITED
PARTNERS,

Complainant

v.

PENNSYLVANIA-AMERICAN
WATER COMPANY,

Respondent

PA.P.U.C.
SECRETARY'S BUREAU

No. C-2008-2072920

ORDER

AND NOW, this _____ day of _____, 2010, by this Court, that, after review and consideration of Respondent's Reply Brief and Complainant's Response to Respondent's Reply Brief, Complainant's request for relief is GRANTED.

It is hereby ORDERED, ADJUDGED AND DECREED that:

1. All bills, since the purchase of the property in 2003 be revised to \$300.00 per monthly billing cycle;
2. The two invoices of \$3,082.49 and \$4,495.10 be eliminated; and
3. An award of the Complainant's attorney fees with the amount to be determined upon submission of the Certification by Complainant's counsel.

So Ordered by this Court.

Judge Charles E. Rainey, Jr.

IN AND BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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SECRETARY'S BUREAU

THIRD AVENUE REALTY LIMITED :
PARTNERS, :
Complainant :
v. :
PENNSYLVANIA-AMERICAN :
WATER COMPANY, :
Respondent :

No. C-2008-2072920

COMPLAINANT THIRD AVENUE REALTY LIMITED PARTNERS'
RESPONSE TO REPLY BRIEF OF RESPONDENT,
PENNSYLVANIA-AMERICAN WATER COMPANY

Complainant, THIRD AVENUE REALTY LIMITED PARTNERS, by and through its attorney, William H. Copperthwaite Jr., Esq., hereby submits its Response to the Reply Brief of Respondent, PENNSYLVANIA-AMERICAN WATER COMPANY, in the above referenced matter.

I. ARGUMENT

A. Complainant Raises No New Facts or Arguments Not Already Introduced

Complainant, Third Avenue Realty Limited Partners, raises no new facts or arguments not already introduced in its Reply Brief. Complainant filed with the Pennsylvania Public Utility Commission seeking review of its account with Pennsylvania American Water Company. In an argument for overbilling, Complainant identifies two bills that were numerous times larger than any bill it had received in the previous four years.¹ It was not until the October 15, 2009 hearing that Complainant learned the water meter, which serviced the property since inception of the account in 2003, was replaced on October 12, 2009.² Since then, a subsequent drop in the

¹ (Cmplt's Br. 2).

² (Hearing Ex. 41-42).

average water and wastewater bills occurred for the months between the date of installation of the new meter and the filing of the Brief of Complainant. Complainant raises no new facts or arguments and continues to assert a claim for overbilling. In his Reply Brief, Respondent fails to note that the argument in question was raised in the Brief of Complainant and that all factual information relied on comes from bills received from Respondent.

Contrary to what Respondent argues in its Reply Brief, Complainant raised the issue that all bills from March 2003 to October 2009 are inaccurate multiple times within the (original) Brief of Complainant. Specifically, Complainant stated in the *Summary of the Argument* to the Brief of Complainant, "Since the replacement of the water meter, the monthly bills are running to a maximum of \$317.00, which is **half** of the previous monthly average of around seven hundred (\$700.00) from March of 2003 through replacement of the faulty meter."³ Within the *Argument* to the Brief of Complainant it is stated, "Since that faulty meter was replaced, the highest monthly water bill has been \$317.00. This is less than *half* of the average \$700.00 water bills charged from March 2003 through October of 2009, when that meter was replaced."⁴ Within the *Conclusion* to the Brief of Complainant it is stated, "Since the installation of a new water meter in October 2009, the bills have been \$256.69 for October 2009, \$257.58 for November 2009 and \$316.67 for December 2009."⁵ Finally, the *Request for Relief* blankly states, "Complainant requests **all bills**, since the purchase of the property in 2003, be revised to \$300.00 per monthly billing cycle."⁶ This directly contradicts the argument within Respondent's Reply Brief.

³ (Cmplt's Br. 5).

⁴ (Cmplt's Br. 7).

⁵ (Cmplt's Br. 9).

⁶ (Cmplt's Br. 10).

In addition, Respondent's argument that Complainant's assertion "is not supported by any record evidence" is misguided. Notwithstanding Respondent's Reference to the Pennsylvania Code, the evidence in question consists of billing statements provided to Complainant by way of Respondent, Pennsylvania-American Water Company. It should come as no surprise that Complainant intends to rely on billing statements as seven other statements from Respondent were entered into the record for the October 2009 hearing.

B. Complainant Has Met Its Burden of Proof

Complainant has met its burden of proof through testimony under oath. Respondent fails to note that the Waldron Rule unequivocally states, "This testimony, if adequately developed on a formal record, would, in [the Pennsylvania Public Utility Commission's] opinion, be sufficient to establish [Complainant's] prima facie case."⁷ This quote refers to an argument by Complainant Waldron stating that two air conditioners were unplugged during the billing period in question, followed by testimony from an expert who stated in his own professional opinion, "that such an amount of electricity could not have been consumed even if both air conditioners had been left running night and day for the entire billing period."⁸ This set of circumstances is eerily similar to the gallons of water allegedly used by Complainant, Third Avenue Realty Limited Partners and the Respondent's expert testimony regarding leaky toilets.⁹ Based on the facts of Waldron and decision the Pennsylvania Public Utility Commission arrived at in the case, Complainant has met its burden of proof through its testimony under oath.

⁷ Waldron v. Phila. Elec. Co., No. C-77100047, 1980 WL 140964, at *3 (Pa.P.U.C. March 19, 1980).

⁸ *Id.*

⁹ (See Cmplt's Br. 8).

C. Respondent Fails to Carry Its Burden of Proof

Respondent fails to carry its burden of proof. It is well settled that once Complainant established a prima facie case Respondent has the burden of going forward and presenting co-equal evidence.¹⁰ Respondent fails to offer co-equal evidence to carry its own burden of proof when it suggests “plumbing issues” were the cause of “the two high bills.”¹¹ Despite contradicting Mr. Mihalovich’s testimony,¹² Respondent can only offer testimony which would require at least three (3) separate leaks, releasing three (3) gallons per minute continuously for thirty (30) days to even begin to approach the readings which Complainant was billed for.¹³ Respondent offers no evidence of such a situation, other than “leak detector” readings from a meter that was eventually replaced.¹⁴ Respondent, therefore, fails to carry its burden of going forward and producing co-equal evidence.

II. CONCLUSION

Respondent’s Reply Brief unnecessarily extends this litigation. Respondent incorrectly asserts issues were raised within Complainant’s Reply Brief for the first time. Respondent also overlooks settled doctrine within the cardinal opinion regarding complaints of overbilling in the Public Utility Commission. Due to Respondent’s failure to carry its burden of proof, Complainant requests this Honorable Court grant the accompanying Order.

WHEREFORE, Complainant requests this Honorable Court that all bills, since the purchase of the property in 2003, be revised to \$300.00 per monthly billing cycle. Further, Complainant requests the elimination of the two invoices of \$3,082.49 and \$4,495.10, and an award of attorney fees.

¹⁰ Waldron, 1980 WL 140964 at *3.

¹¹ (Rspd’s Reply Br. 3).

¹² (R:19-21).

¹³ (See Cmpl’t’s Br. 8).

¹⁴ (See Hearing Ex. R-2).

Respectfully submitted,

**Law Offices of
WILLIAM H. COPPERTHWAITE JR., L.L.C.**

Date: May 7, 2010



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No. C-2008-2072920

CERTIFICATE OF SERVICE

I do hereby certify that service of true and correct copy of the Complainant's Response to the Reply Brief of Respondent was delivered on the 7th day of May, 2010, to the following via

Regular United States Mail:

Administrative Law Judge Charles E. Rainey, Jr.
801 Market Street
Suite 4063
Philadelphia, PA 19107

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

Michael T. Killion, Esquire
Buchannon, Ingersoll & Rooney, P.C.
213 Market Street, 3rd Floor
Harrisburg, PA 17101

Date: May 7, 2010

By: William H. Copperthwaite Jr.
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SWORN TO AND SUBSCRIBED

BEFORE ME THIS 7th DAY

OF May 2010

Cynthia M. Picannaris
NOTARY