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May 28, 2010

**VIA HAND DELIVERY**


Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
Harrisburg, PA 17120

Re: *Enola McGrew-Duncan v. Pennsylvania-American Water Company*,  
Docket No. C-2009-2119162

Dear Secretary Chiavetta:

Enclosed for filing are the original and nine (9) copies of the *Main Brief of Pennsylvania-American Water Company*. Hard copies have been served as indicated on the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/paf

Enclosures

cc: The Honorable David A. Salapa (via e-mail and hand delivery w/encl.)  
Certificate of Service

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ENOLA MCGREW-DUNCAN	:	
Complainant	:	
v.	:	
	:	Docket No. C-2009-2119162
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

**MAIN BRIEF OF  
PENNSYLVANIA-AMERICAN WATER COMPANY**

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Dated: May 28, 2010

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## **I. INTRODUCTION / SUMMARY OF ARGUMENT**

Complainant, Enola McGrew-Duncan, filed a Formal Complaint against Pennsylvania-American Water Company ("Pennsylvania-American" or "Company") which asks the Pennsylvania Public Utility Commission ("Commission") to shift responsibility for water damage to a vacant rental property Complainant owns at 347 Baker Avenue in Clairton, Pennsylvania (the "Premises") from Complainant to the Company. According to Complainant, an out-of-state landlord who in the past has occasionally leased apartments in the Premises, the Company's alleged failure to shut off water service to an apartment which a tenant had vacated in June 2007 allowed a water pipe to freeze and burst. Complainant contends that she spent approximately \$8,000.00 in repairing the Premises. Her Formal Complaint asks the Commission to make findings that Pennsylvania-American provided unreasonable service, which Complainant might use in civil court to seek money damages against the Company.

However, for reasons explained below, Complainant, not the Company, is responsible for the damage to the Premises. What Complainant omits to mention in her complaint is that at no time did she or her former tenant notify the Company that the tenant was vacating or had vacated the apartment. Neither of them asked the Company to disconnect water service. Complainant testified at hearing that she merely assumed that whenever an apartment was vacant, the water is turned off. It is the responsibility of the property owner, landlord or tenant to notify the Company of the need to discontinue water service. The utility cannot be held responsible for knowing whether an apartment in a landlord's building is vacant.

Pennsylvania-American, for its part, terminated water service to the Premises no fewer than three times. However, the Company's attempts to terminate water service were frustrated by repeated tampering with its equipment. Twice the Company shut off water service at the curb,

only to return to find that someone had restored service to the house without the Company's permission.

Complainant has fallen far short of satisfying her burden of proving the Company provided unreasonable service. Indeed, the evidence adduced at hearing tells a very different story than the Formal Complaint and a number of details cannot be ignored when considering the merits of Complainant's claim. Complainant, a Georgia resident, has not been to the home in years. For years the house has been mostly vacant. It is in very poor condition, with an assessed value of only \$1,300.00. It has broken and missing doors and windows and hazardous wiring and is left wide open such that anyone can enter illegally at any time. Complainant's Georgia LLC (the actual legal owner of the Premises) has not maintained its Georgia registration, is not qualified to do business in Pennsylvania, and has not paid property taxes for the Premises in at least four years. In addition, Complainant's testimony was replete with inconsistencies, as explained further below.

Complainant should not be permitted to shift responsibility for managing and maintaining her rental property to Pennsylvania-American. The Formal Complaint should be dismissed.

## **II. PROPOSED FINDINGS OF FACT**

1. Pennsylvania-American provides water service to 347 Baker Avenue, Clairton, Pennsylvania 15025. PAWC Exs. A-C.
2. Complainant lives at 2104 Corsica Way, Marietta, Georgia. Tr. 25.
3. According to Allegheny County Tax Records, Ms. Duncan purchased 347 Baker Avenue, Clairton, Pennsylvania ("Premises") on May 17, 2001. PAWC Ex. E at 4.
4. On February 7, 2006, Ms. Duncan created A-Rize-N Management Co., LLC ("A-

Rize-N"), a Georgia LLC. PAWC Ex. F.

5. On April 18, 2006, Complainant sold 347 Baker Avenue to A-Rize-N for \$6,000.00. Tr. 25; PAWC Ex. E.

6. According to records of the Georgia Office of Secretary of State, A-Rize-N's status is described as "active/noncompliance," and it has not filed an Annual Registration with Georgia since December 18, 2007. PAWC Ex. F at 1-2.

7. According to records of the Pennsylvania Department of State, A-Rize-N is not registered to do business in Pennsylvania. PAWC Ex. G.

8. According to Tax Records posted on the Allegheny County website for the Premises, A-Rize-N has not paid property taxes on the Premises in at least 4 years. PAWC Ex. E at 3.

9. Complainant considers herself the landlord of the Premises. Tr. 33.

10. Complainant has been in the landlord business since 1991. Tr. 40.

11. Complainant visited the Premises in August 2009. Complainant cannot remember the last time she had been there previously, although Complainant knows it was before March 2007. Tr. 41-42.

12. Complainant's property manager, Rudy Skrinjorich, handles all care and maintenance of the Premises, as well as all showings. Tr. 30, 33.

13. Mr. Skrinjorich owns and operates Jefferson Heating and Cooling. Tr. 38.

14. As property manager, Mr. Skrinjorich's responsibilities include going through and checking the property, being on call for any emergency repairs, remodeling the property, showing the property and collecting the rent. Tr. 43.

15. In January 2007, Complainant called Pennsylvania-American to begin water

service to Apartment 1. Tr. 91.

16. In January 2007, when turning on water service at Ms. Duncan's request, a Pennsylvania-American Field Service Representative ("FSR") noted that the meter had been stolen and that the Premises were "a mess." Tr. 74-75; PAWC Ex. A at 7-8.

17. In March 2007, Complainant rented Apartment 1 to Dennis Hawkins. Mr. Hawkins lived in Apartment 1 from March to June 2007. Tr. 26-27, 34.

18. While Mr. Hawkins rented Apartment 1, water service was in the name of Tim Coss. Tr. 27, 54; PAWC Ex. B.

19. Neither Mr. Hawkins nor Mr. Coss notified Pennsylvania-American that Mr. Hawkins was vacating the premises, or requested discontinuance of water service. Tr. 55-56.

20. Complainant did not notify Pennsylvania-American that Mr. Hawkins had moved out, or request discontinuance of service. Tr. 56-57.

21. When Mr. Hawkins vacated Apartment 1 in June 2007, there was a combined outstanding water and wastewater balance of approximately \$40.00, of which only water charges belonged to Pennsylvania-American. Tr. 54-55.

22. In July 2007, Mr. Skrinjorich entered and cleaned Apartment 1 for three to four hours. Tr. 28, 33, 36-37, 39-40.

23. Usage records for Mr. Coss' account indicate water usage in Apartment 1 in July 2007. PAWC Ex. B at 1.

24. In September 2007, Mr. Skrinjorich entered Apartment 1 to show it to a prospective tenant. Tr. 28-30.

25. On December 14, 2007, a Pennsylvania-American Field Service Representative ("FSR") visited the Premises to check the meter for zero water usage for three or more months.

The FSR found no heat and heard water running, and turned service off at the curb. The FSR found the building vacant. Tr. at 75-76; PAWC Ex. C at 6-7.

26. To operate the curb box, one needs to unbolt a bolt to remove the lid, then operate the curb stop with a curb key, a tool like a rod that is approximately three feet long, that can be used to reach down inside the curb box to operate the curb stop. Many professionals have access to curb keys. Tr. at 76-77, 78, 81.

27. On December 26, 2007, an FSR visited the premises to shut off water for non-payment. The FSR found service turned back on without Pennsylvania-American's permission. The FSR shut off the water again at the curb. Tr. at 77-78; PAWC Ex. C at 8-9.

28. On January 10, 2008, an FSR visited the Premises, found the curb stop was still in the off position, and saw that the Premises were vacant. Tr. 78-79; PAWC Ex. C at 10-11.

29. On January 11, 2008, Pennsylvania-American discontinued service to Apartment 1. Tr. 57.

30. In March 2008, Mr. Skrinjorich entered Apartment 1 and discovered water damage. Tr. 29.

31. On March 5, 2008, an FSR visited the Premises. The FSR found the water on, without Pennsylvania-American's permission. The FSR found the Premises were wide open, and "completely trashed inside." The FSR again shut off the water at the curb and removed the meter. Tr. 79-80; PAWC Ex. C at 12-13.

32. According to Tax Records posted on the Allegheny County website for the Premises, the assessed value of the building is \$1,300.00, and the total value of the land and building is \$6,700.00. PAWC Ex. E at 1.

33. As of December 11, 2009, the Premises were an abandoned structure which is in

disarray, with doors left open, windows broken, hazardous electrical wiring, and a mattress propped against an open door. Tr. 71-73; PAWC Ex. D.

### **III. STATEMENT OF THE QUESTIONS INVOLVED**

- A. Is a public utility responsible for discontinuing water service to a vacated rental property when neither the tenant, the ratepayer of record, the landlord or the property owner notify the utility of the vacancy?**

Suggested Answer: No

- B. Has Complainant carried its burden of proving that the Company failed to terminate water service to Complainant's rental property?**

Suggested Answer: No

### **IV. STATEMENT OF THE CASE**

On July 13, 2009, Complainant filed the instant Formal Complaint. On August 5, 2009, Pennsylvania-American filed an Answer with New Matter.

By notice dated November 4, 2009, the Commission scheduled this matter for a telephonic hearing on December 14, 2009 before Administrative Law Judge David A. Salapa (the "ALJ"). On November 5, 2009, the ALJ issued a Prehearing Order. On December 14, 2009, the parties appeared before the ALJ for the scheduled telephonic hearing. Prior to any testimony being placed on the record, the Company objected to Complainant prosecuting the Formal Complaint because Complainant did not own the property at 347 Baker Street. Rather than conduct an evidentiary hearing, the ALJ directed Pennsylvania-American to file a preliminary objection within thirty days, and directed that Complainant to file a response to the motion within ten days after receiving it.

By notice dated January 7, 2010, the Commission scheduled this matter for a telephonic

hearing on March 18, 2010 before the ALJ.

On January 13, 2010 the Company filed its preliminary objection. On January 21, 2010, Complainant filed a motion requesting an extension of time until February 22, 2010 to retain counsel and file an answer to Pennsylvania-American's preliminary objection. The Company did not oppose the Complainant's request. On February 8, 2010, the ALJ issued an Order granting Complainant's request and directing that Complainant file an answer to the preliminary objection on or before February 22, 2010. Complainant did not file an answer to the Company's preliminary objection.

On February 23, 2010, the ALJ issued an Order Denying Preliminary Objections, which directed that the March 18, 2010 telephonic hearing proceed as scheduled. On or about March 8, 2010, counsel for Complainant filed an Entry of Appearance and a Motion to Add A-Rize-N as a party. On March 18, 2010, the parties participated in a telephonic evidentiary hearing before the ALJ, who granted Complainant's Motion to add A-Rize-N as a party. The same day, the ALJ issued a Briefing Order. Pursuant to the March 18, 2010 Briefing Order, Pennsylvania-American hereby submits this Main Brief.

## **V. ARGUMENT**

### **A. Absent Notice of a Tenant's Departure, a Public Utility Is Not Responsible for Discontinuing Utility Service to Rental Property**

After Mr. Hawkins vacated Apartment 1 in June 2007, no one but Pennsylvania-American took any steps whatsoever to discontinue water service to the apartment. When a tenant vacates an apartment, responsibility for the discontinuance of utility service does not automatically shift to the utility. Rather, responsibility lies with the tenant or property owner.

Indeed, the Commission's regulations require a ratepayer who is about to vacate premises to notify the utility of the departure:

A ratepayer who is about to vacate premises supplied with utility service or who wishes to have service discontinued shall give at least 7 days notice to the utility and a nonratepayer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the ratepayer shall be responsible for services rendered.

52 Pa. Code § 56.16(a). From March to June 2007, Complainant's tenant in Apartment 1 was Mr. Hawkins. Tr. 26-27, 34. During that period, service was in the name of Tim Coss. Tr. 27, 54; PAWC Ex. B. Mr. Hawkins vacated Apartment 1 in the middle of June of 2007, but neither Mr. Hawkins nor Mr. Coss notified Pennsylvania-American, or requested discontinuance of water service. Tr. 56-57.

After the tenant and ratepayer of record, responsibility for ensuring the discontinuance of water service to a vacant premises should logically lie with the landlord and property owner, in this case the Complainant. Complainant was in a far better position than Pennsylvania-American to know whether the Premises were occupied or vacant. In fact, the Commission has recognized that "[u]tilities cannot be expected to know more about their customer's businesses than the customer themselves . . . . A utility is not the co-manager of its customer's operations." *City of Pittsburgh v. Duquesne Light Company*, 54 PA PUC 460, 462 (1980). Indeed, the Public Utility Code recognizes in various sections that responsibility for utility service to a rental unit lies with the landlord or property owner, if not with the tenant. *See, e.g.*, 66 Pa.C.S. § 1529.1 (in the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, a utility shall list the account for the premises in question in the name of the owner, who shall be responsible for the payment for utility services to the premises); *Burrell v. Philadelphia Gas Works*, Docket No. F-01763537 (Order entered July 11, 2007)

(holding landlord responsible for utility service after tenant vacated premises). In addition, the Public Utility Code permits a landlord ratepayer to voluntarily relinquish utility service. 66 Pa.C.S. § 1523(b); *see also* 68 P.S. § 399.3(b).

In this instance, Complainant did not notify Pennsylvania-American that Mr. Hawkins had moved out, or request discontinuance of service. Tr. 56-57. At hearing, Complainant testified that she knew the property was vacant, but assumed that the water was off whenever the property was vacant. Tr. 28, 92. Complainant testified that she was not aware water service was available to the Premises until March of 2008. Tr. 28-29, 91. This testimony, however, is contradicted by Complainant's testimony regarding the activities of her property manager, Mr. Skrinjorich. Complainant testified that Mr. Skrinjorich, who owns a heating and cooling business, handles all care, maintenance and remodeling of the Premises, as well as all showings. Tr. 38, 43. Mr. Skrinjorich also collects rent from Complainant's tenants. Tr. 43. Complainant testified that Mr. Skrinjorich is very reliable and attentive to details, Tr. 38-39, and visits the Premises once a month, Tr. 43-44. In July 2007, Mr. Skrinjorich entered the Premises and cleaned Apartment 1 for three to four hours. Tr. 28, 33, 36-37, 39-40. This is corroborated by water usage records for the account of Mr. Coss, who was still ratepayer of record. These records indicate that there was water usage in Apartment 1 in July 2007. PAWC Ex. B at 1. Mr. Skrinjorich again visited the Premises in September 2007 to show it to a prospective tenant. Tr. 28-30. Under these circumstances, Complainant cannot credibly contend that she believed the water was off simply because Mr. Hawkins had vacated Apartment 1.

**B. Pennsylvania-American Terminated Service to the Premises No Fewer Than Three Times**

As explained above, Pennsylvania-American was not the party with primary, secondary

or even tertiary responsibility for discontinuing water service to Apartment 1. That responsibility lay with Mr. Hawkins, Mr. Coss and Complainant. Nevertheless, Pennsylvania-American turned off the water to 347 Baker Street no fewer than three times in late 2007 and early 2008. Tr. 80. The first time was December 14, 2007, when an FSR visited the Premises to check the meter for zero water usage for three or more months. The FSR found the building vacant with no heat and heard water running, and therefore turned service off at the curb. Tr. at 75-76; PAWC Ex. C at 6-7. However, on December 26, 2007, when an FSR visited the Premises to shut off water for non-payment, the FSR found the water service on, and again shut off the water again at the curb. Water service had been turned back on without Pennsylvania-American's permission.<sup>1</sup> Tr. at 77-78; PAWC Ex. C at 8-9.

On January 10, 2008, an FSR visited the Premises to ensure the curb stop was still in the off position. Tr. 78-79; PAWC Ex. C at 10-11. However, when an FSR visited the Premises on March 5, 2008, to verify the water was still off, the FSR found that the water had been turned back on at the curb for a second time, without Pennsylvania-American's permission. This time, the FSR found that the property was wide open, and that the premises were "completely trashed inside." The FSR shut off the water at the street for the third time, and removed the meter. Tr. at 79-80; PAWC Ex. C at 12-13.

Thus, Pennsylvania-American did terminate water service to the Premises. In fact, it did so three times, as a result of someone illegally restoring service twice by tampering with the Company's equipment. Given these circumstances, Pennsylvania-American made a more than reasonable effort to discontinue service to the Premises, and Complainant has failed to meet her

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<sup>1</sup> As Pennsylvania-American's witness David Gumbert explained at the hearing, not just anyone has the ability to restore service illegally at the curb. To operate the curb box, one needs to unbolt a bolt to remove the lid, then operate the curb stop with a curb key, a tool like a rod that is approximately three feet long, that can be used to reach down inside the curb box to operate the curb stop. Mainly it is professionals who have access to curb keys. Tr. at 76-77, 78, 81.

burden of proving unreasonable service.

**C. Complainant Should Not Be Allowed to Shift Responsibility for Mismanagement of Her Rental Property to Pennsylvania-American**

As indicated above, Complainant failed to meet her burden of proving unreasonable service in large part because her testimony was not believable. There are several instances in the record where Complainant provided testimony that was either based solely on the observations of her property manager, who did not testify at the hearing, or contradicted by other evidence adduced at hearing. Two aspects of Complainant's testimony that particularly defy belief are her testimony that she incurred approximately \$8,000.00 in repairing the Premises following the water damage, Tr. 29, and her testimony regarding the work of her property manager Mr. Skrinjorich.

The best evidence of the lack of legitimacy of Complainant's claim is the condition of the Premises itself, which cannot be ignored. The record evidence demonstrates that the Premises' condition is and has been deplorable, both before and after the events described in the Formal Complaint. As early as January 2007, when an FSR turned on water service to the Premises at Complainant's request, the FSR observed that the meter had been stolen and that the premises were "a mess." Tr. 74-75; PAWC Ex. A at 7-8. Also, there is nothing about the condition of the Premises to support Complainant's claim that she made \$8,000.00 in repairs. As Pennsylvania-American's witnesses described at the hearing, and demonstrated with photographs, when they visited the Premises in December 2009 they found an abandoned structure in disarray. Tr. 71-72. Among other things, doors were left open or missing, windows were broken or missing, hazardous electrical wiring hung from the walls, and a mattress stood propped against the inside

of a windowless storm door. Tr. 72-73; PAWC Ex. D. Anyone who wishes to enter the Premises illegally can simply walk in.

The dilapidated condition of the Premises is also evidenced by Allegheny County tax records. According to these records, which describe the property's condition as "Very Poor," the assessed value of the building is only \$1,300.00 — meaning the claimed \$8,000.00 of repairs cost over six (6) times the building's market value — and the total value of the land and building is only \$6,700.00. PAWC Ex. E at 1. The tax records further indicate that the actual owner of the Premises, A-Rize-N, has not paid property taxes on the Premises for at least four (4) years. PAWC Ex. E at 3. The state of A-Rize-N's affairs reflects a similar lack of care. According to official Georgia records, A-Rize-N's status is "active/noncompliance," and it has not filed an Annual Registration with the State since 2007. PAWC Ex. F at 1-2. Further, A-Rize-N is not registered to do business in Pennsylvania. PAWC Ex. G.

As Complainant testified, she has rarely seen the Premises. Tr. 30, 41-42. She was last on the property in August 2009, and cannot remember the last time she was there before that, although she knows it was before Mr. Hawkins lived there in March of 2007. Tr. 41-42. Complainant testified at the hearing that the Premises are maintained, repaired and remodeled by her property manager, Mr. Skrinjorich, who owns a heating and cooling business and visits the Premises at least once a month for maintenance. Tr. 38, 43-44. She described Mr. Skrinjorich as very reliable and attentive to details. Tr. 38-39. This testimony is completely contradicted by the condition of the property. Further, it defies logic for Complainant to explain that the Premises were unheated in the fall of 2007 and winter of 2008, consistent with her policy of not heating an empty building. Tr. 43. If Complainant's property manager, who owns a heating and cooling business, had in fact been monitoring and maintaining the Premises, he would have

ensured that the heat was on while there was water service available.

Simply put, Complainant's claim is founded on testimony that defies logic and the evidence presented at the hearing. Complainant has fallen far short of satisfying her burden of proving that the Company provided unreasonable service to the property. The condition of the Premises is the result of Complainant's neglect and mismanagement as an absentee landlord, not the quality of service provided by the Company. Complainant should not be allowed to shift the burden of managing her rental property to Pennsylvania-American, and should not be permitted to use this proceeding as an opportunity to have her neglected property renovated.

#### **VI. PROPOSED CONCLUSIONS OF LAW**

1. Complainant, as the party seeking affirmative relief from the Commission, has the burden of proving that Pennsylvania-American Water Company failed to provide adequate, efficient, safe and reasonable service. 66 Pa.C.S. § 332(a).

2. Complainant failed to satisfy the burden of proof.

#### **VII. PROPOSED ORDERING PARAGRAPHS**

Pennsylvania-American Water Company proposes the following ordering paragraphs:

1. That the complaint of Enola McGrew-Duncan versus Pennsylvania-American Water Company at Docket No. C-2009-2119162 is dismissed.

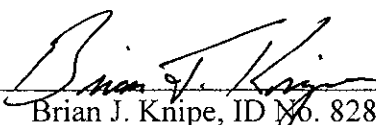
2. That the Commission's Secretary shall mark Docket No. C-2000-2119162 closed.

## VIII. CONCLUSION

For all the foregoing reasons, Pennsylvania-American Water Company respectfully requests that the Commission dismiss the Formal Complaint of Enola McGrew-Duncan at Docket No. C-2009-2119162.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY, PC

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Dated: May 28, 2010

Attorneys for Pennsylvania-American  
Water Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ENOLA MCGREW-DUNCAN  
Complainant

v.

PENNSYLVANIA-AMERICAN  
WATER COMPANY  
Respondent

Docket No. C-2009-2119162

**CERTIFICATE OF SERVICE**

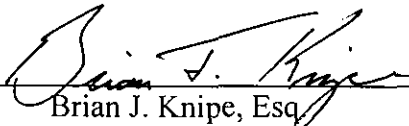
I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons on the attached service list, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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

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Dated: May 28, 2010

  
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Brian J. Knipe, Esq.