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June 11, 2010

VIA FIRST CLASS MAIL

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 Reply Brief of Enola McGrew-Duncan which was electronically filed on June 11, 2010. Hard copies have been served as indicated on the attached Certificate of Service.

Very truly yours,



Burrell A. Brown
Attorney and Counselor at Law

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		

**REPLY BRIEF OF
ENOLA MCGREW-DUNCAN**

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Attorney for Enola McGrew-Duncan

Dated: June 11, 2010

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I. INTRODUCTION/SUMMARY OF ARGUMENT

Complainant Enola McGrew-Duncan on behalf of A-Rize-N LLC filed a formal complaint against Pennsylvania American Water Company (Pennsylvania-American a Company") which asked the Pennsylvania Public Utility Commission ("Commission) to asses responsibility for water damage to rental property Complainant owns at, 347 Baker Avenue, Clairton, Pennsylvania (the "premise") to the company.

Complainant contends that the company failed to follow their own procedures in shutting off the water service to the premise thus, allowed the water pipes to freeze and burst; causing the complainant to spend approximately \$8,000 in repair to the premise.

The company filed a brief on June 1, 2010, alleging as a defense, that the complainant failed to request the water to be turned off and therefore, the utility company cannot be held responsible for damages.

The company also contends in their brief that the company did terminate water service but some unknown party frustrated its attempts.

Finally, the company alleges that because the building was assessed at only \$1,300 that the company could not have caused damages of \$8,000.

For reasons stated below, the P.U.C. should ignore these attempts at misdirection and hold for the complainant.

II. PROPOSED FINDING OF FACTS

Complainant does not disagree with company's proposed Finding of Facts and will stipulate to all of Finding 1 through 32.

With regard to Proposed Finding 33, Complainant has never "abandoned" property.

Complainant proposes the following additional facts:

- (1) On September 28, 2007, company sent a letter terminating service on October 15, 2007. Exhibit B, Page 2.
- (2) On November 6, 2007, Company sent a letter terminating service on November 19, 2007. Exhibit B, Page 4.
- (3) On November 13, 2007, Company sent a letter terminating service on December 26, 2007. Exhibit B, Page 6.

III. REPLY TO COMPANY STATEMENT OF THE QUESTIONS INVOLVED.

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: Yes

- B. Has Complainant carried its burden of proving that the Company has provided adequate, efficient, safe and reasonable service, by not failing to terminate water service to Complainant's rental property, in accordance with its own notice.**

Suggested Answer: Yes

IV. ARGUMENT

The Utility Company on no less than three (3) occasions had told complainant that the service to the property would be discontinued.

On September 28, 2009, Utility said they would discontinue service on October 25, 2009 (Page 2); on November 6, 2009 Utility said they would discontinue service on November 19,

2009 (Exhibit B, Page 6); and again on November 13, 2009 Utility said they would discontinue services on December 26, 2009.

Now Utility wants to argue that after they had informed complainant of their intent to discontinue service she should have informed them to terminate service. The law does not require a person to do a useless act. Once the Utility had said it would discontinue service, of what use would it be to require complainant to say in effect, discontinue service. This would be a “useless act”.

There are no allegations that the condition precedent to Utilities Act of discontinuing service was met. That is, no one is alleging that the bill required to be paid was paid in full or in part. Therefore, the complainant was completely reasonable in believing that water service which the company said they were going to discontinue, was indeed discontinued. It would also be reasonable for complainant to believe that no further action, on her part, was necessary.

Following company logic, the company would require that after the October 15, 2009 date, they should send a letter advising that they had *not* discontinued the water service on the premises, as previously stated and that if complainant wished to terminate service on the premise, it was her duty to advise the Company that she “really” wanted the service discontinue.

The company's second argument is that an unknown third party turned the water back on.

The Company knew that, on at least one other occasion, subsequent to their turning off the water, a third party had come in and turned the water back on. Yet, even with this knowledge, the company took no further steps to stop this action from reoccurring (See Pages 81 and 82 testimony of Mr. Gamber.

The company knew or should have known, the water service to the premises, should have been turned off. Even after they turned it off and someone turned it back on, they failed to take any reasonable precautions to safeguard the property, in spite of the fact that, such measures were readily available.

Finally, the company argues that; the property is of little or no value and that complainant could not possibly have had \$7,098 worth of repairs. Company admits that the property was being lived in by a tenant and that they had no picture of the property prior to the water damage (see Page 86) and has presented no evidence that prior to the damage the property was in good condition and complainant testified that they had the maintenance person come in and clean up the premise for a new tenant.

Simply put, the company has failed to follow its own procedures after notifying complainant that it intends to terminate service and it failed to do so. After attempting to terminate service, it failed to take reasonable precautions to see that a third party did not come back and turn the water back on. Due to the actions of the companys' failure to provide adequate, efficient, safe and reasonable service, complainant has suffered damages.

V. PROPOSED CONCLUSION OF LAW

Company has failed to provide adequate, efficient, safe and reasonable service.

VI. PROPOSED ORDERING PARAGRAPHS

Complainant proposes the following:

1. That the complaint of Enola McGrew-Duncan VS. PA-American Water Company at Docket No. C-2009-2119162 be upheld.

VII. CONCLUSION

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

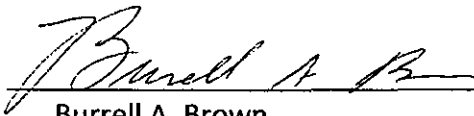
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Respectfully submitted,

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Dated: June 11, 2010

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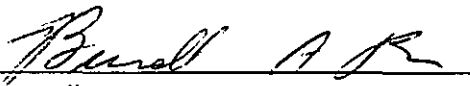
CERTIFICATE OF SERVICE

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

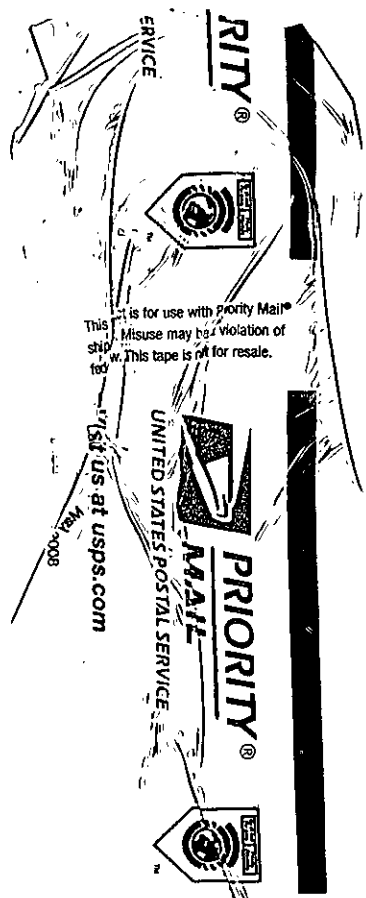
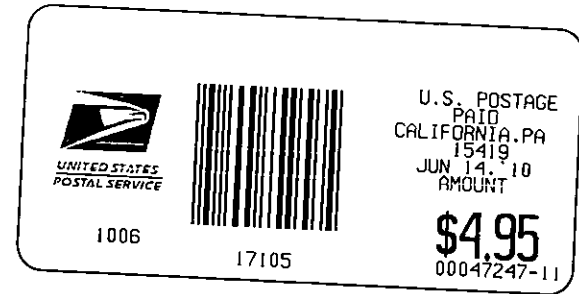
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