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June 18, 2010

VIA HAND DELIVERY

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

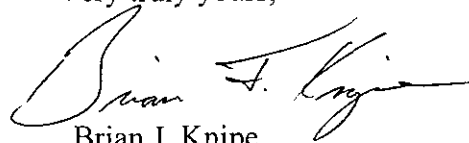
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PA PUP
SECRETARY'S BUREAU

Re: *Sukhendu B. Bhattacharyya v. Pennsylvania-American Water Company*,
Docket No. C-2009-2115020

Dear Secretary Chiavetta:

I have enclosed for filing the original and nine (9) copies of the *Replies of Pennsylvania-American Water Company to the Exceptions of Sukhendu B. Bhattacharyya*. A hard copy is being provided to the Complainant in the manner indicated on the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY PC

BJK/paf

Enclosures

cc: The Honorable Ember S. Jandebaur (w/encl.)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sukhendu B. Bhattacharyya :
 :
 v. : Docket No. C-2009-2115020
 :
 Pennsylvania-American Water Company :

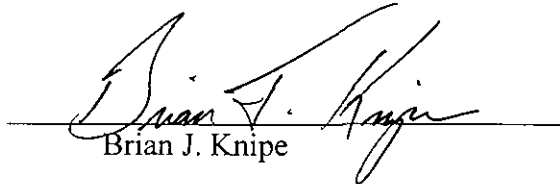
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via First-Class U.S. Mail

Sukhendu Bhattacharyya
383 Wickes Road
Bushkill, PA 18324

Dated this 18 day of June, 2010



Brian J. Knipe

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BEFORE THE
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Sukhendu B. Bhattacharyya :
 :
v. :
 :
Pennsylvania-American Water Company :

Docket No. C-2009-2115020

REPLIES OF PENNSYLVANIA-AMERICAN WATER COMPANY
TO THE EXCEPTIONS OF SUKHENDU B. BHATTACHARYYA

I. INTRODUCTION

Pennsylvania-American Water Company ("Pennsylvania-American" or the "Company"), in accordance with 52 Pa. Code § 5.535, submits these Replies to the Exceptions filed by Sukhendu B. Bhattacharyya ("Complainant") to the Initial Decision ("I.D.") of Administrative Law Judge Ember S. Jandebaur ("ALJ") dated March 25, 2010 and issued April 13, 2010. As explained below, the ALJ properly dismissed the Complaint — which challenges the reasonableness of Pennsylvania-American's December 2007 termination of service to Complainant for nonpayment, as well as the Company's reconnection of service, and mistakenly accuses the Company of terminating Complainant's water service in March 2008 without justification — based upon Complainant's failure to meet his burden of proof.

On or about June 19, 2009, Complainant filed his Formal Complaint against Pennsylvania-American as well as the Commission.¹ Complainant's allegations against the Company contend that Pennsylvania-American provided unreasonable service in connection with two events. The first is the termination of water service to Complainant's residence in Bushkill, Pennsylvania on December 3, 2007 for nonpayment, and the subsequent restoration of

¹ The I.D. does not reach the claims against the Commission, and explains that the ALJ does not have authority to review or adjudicate allegations of improper action by Commission personnel. I.D. at 1.

service. Although Complainant conceded he had a past due balance at the time of the shutoff, he contended that his excellent payment history made termination of his service improper. Further, Complainant, who at the time of the shutoff also owned a residence in Cherry Hill, New Jersey and had been out of the country for an extended period, claimed that the Company failed to provide him with the required notices prior to termination. The second event described in the Formal Complaint is an unauthorized interruption of service to Complainant's residence in March 2008. Pennsylvania-American, responding to Complainant's telephone call, found service turned off at the curb and reconnected it. Complainant alleged that it was the Company that improperly terminated his service. In the alternative, Complainant argued that if a third party terminated his water service without authorization, the Company failed to provide safe service.

The ALJ's I.D. dismissed the Formal Complaint, finding that Complainant failed to satisfy his burden of proving that the Company's service was unreasonable. With respect to the December 2007 termination of service for nonpayment, the ALJ found that although Complainant had made an overpayment of his water bills on May 31, 2007, resulting in a "negative balance" on his account (i.e., a net credit), Complainant's negative balance had run out in early October 2007 while he was out of the country, and by December 2007 he had a past due balance of \$96.42. Given this past due balance and the fact that Complainant had not made a payment in six months, the ALJ properly concluded that the Company's actions were reasonable. The ALJ further found that Complainant, who at all relevant times was out of the country, failed to overcome the Company's evidence that it had in fact mailed Complainant a 10-day notice of termination and posted 3-day and 48-hour notices at the service address. In addition, the I.D. concludes that Pennsylvania-American acted reasonably in restoring service on December 7,

2007, well within 24 hours of Complainant's payment of the Company's reconnect fee late on the night of December 6, 2007.

The ALJ also concluded that Complainant failed to meet his burden of proving the Company acted unreasonably with respect to the March 2008 unauthorized interruption of Complainant's water service. While Complainant accused Pennsylvania-American of shutting off his service without justification, the Company provided evidence that its personnel were not at Complainant's property for any reason around the time of the interruption, until Complainant called to report the interruption of his service, and that the Company restored service the same day.

The April 13, 2010 Secretarial Letter enclosing the I.D. established May 3, 2010 as the deadline for exceptions. On or about May 6, 2010, Complainant filed a request for an extension of time to file exceptions to the I.D. The Commission notified counsel for Pennsylvania-American of the request, to which the Company did not object. By Secretarial Letter issued June 2, 2010, the Commission extended the deadline for Complainant to file Exceptions until June 8, 2010, with instructions for the Company to file any reply by June 18, 2010. On or about June 7, 2010, Complainant filed an indeterminate number of exceptions to the I.D., consisting of one hundred and thirty-one (131) paragraphs.

II. REPLIES TO EXCEPTIONS

Complainant's voluminous exceptions contain a large amount of impertinent material, including extensive discussion of facts outside the record, requests for future discovery, and even details of settlement discussions. Further, the exceptions are not divided into specific challenges to discrete portions of the I.D. and follow no clear pattern of organization. Nevertheless, several

paragraphs of the exceptions can be grouped into four general themes, each of which is discussed below in Pennsylvania-American's Replies.

A. The Evidence Supports the I.D.'s Finding that the Company Posted Notices of Termination

Complainant challenges the conclusion in the I.D. that he failed to meet his burden of proof that Pennsylvania-American failed to post 3-day and 48-hour notices of termination at the service address.² Exceptions ¶¶ 15, 78-80. Complainant, who admittedly was out of the country when the notices would have been posted, testified that the Company posted no notices at the service address. N.T. at 8. The Company, however, testified that these notices were in fact posted at the service address, N.T. at 39, 85, and provided copies of the notices, PAWC Ex. 1 at 8, 9. The ALJ correctly found that Complainant did not carry his burden of proof by providing more convincing evidence. Therefore this exception should be denied.

B. Pennsylvania-American Did Not Delay in Restoring Service

Complainant takes exception to the ALJ's finding that the Company acted reasonably in connection with the restoration of Complainant's service in December 2007. Exceptions ¶¶ 24-31. Complainant contends that when he was first in contact with the utility following the termination of his service, the Company failed to inform him that he needed to pay a \$30 reconnection fee, in addition to his outstanding balance. However, the record evidence shows that Complainant first contacted the Company at 10 or 11 p.m. on December 6, 2007, N.T. 10-11, by telephone following his return home and the discovery that his water was off, and that on

² Complainant does not appear to be challenging the transmittal of the 10-day notice of termination to his residence in New Jersey. Indeed, the allegations attached to the Formal Complaint state that "[t]he utility letters sent by regular mail were supposed to be delivered in my NJ residence, it seems very unlikely that I will get a cutoff notice while I am in NJ residence and not act on." Compl. Attachments at 1.

that call the Company did in fact inform him that he needed to pay a \$30 reconnection fee. PAWC Ex. 1 at 6. At hearing, Complainant admitted that while he made a credit card payment to the Company on December 5, 2007, he made that payment online, and the record shows that Complainant did not call the Company that day. N.T. at 63-65; PAWC Ex. 1 at 6. The evidence also shows that Complainant paid the \$30 reconnect fee by bank debit late at night on December 6, 2007, and that service was restored on December 7, 2007, well within the 24 hours required by 66 Pa.C.S. § 1407(b)(2). Accordingly, the weight of the evidence supports denial of this exception.

In addition, Complainant takes further exception to the timeliness of the restoration of service by criticizing the I.D.'s conclusion that Complainant has never followed the procedure for medical certifications. Exceptions ¶¶ 54-57. Although Complainant maintains that the Company failed to restore service promptly when informed that Complainant had a heart condition, Complainant raises no basis whatsoever for reversing the I.D. The fact remains that neither Complainant nor his wife provided any evidence to suggest they followed the procedure for medical certifications, see N.T. 13-14, 33-34, and for this reason as well this exception should be denied.

C. Complainant's Argument that the 10-Day Notice of Termination Was Premature Lacks Any Evidentiary Support

In Paragraphs 33 to 37 of his exceptions, Complainant challenges the ALJ's finding that the Company properly discontinued service for nonpayment, by arguing that the Company served its 10-day notice of termination (PAWC Ex. 1 at 7), which required Complainant to pay \$54.90, before this payment had even become due. Complainant's exception is based on an assumption that the bill for \$54.90, which was included in Complainant's November balance in

the amount of \$55.51, was not due until approximately November 27, 2007. This assumption is flatly incorrect. As PAWC Ex. 1 plainly shows on page 2, Complainant's payment of the charges in the amount of \$54.90 was due by October 31, 2007. This amount of \$54.90 is the sum reflected in the November 14, 2007 10-day notice of termination. PAWC Ex. 1 at 7. Therefore, Complainant's contention that the 10-day notice of shutoff was premature is incorrect, and this exception should be denied.

D. There is No Evidence to Suggest the Company Interrupted Complainant's Service in March 2008 or Otherwise Provided Unreasonable Service

The parties agree, and the ALJ correctly found, that when Pennsylvania-American responded to Complainant's March 7, 2008 call regarding an interruption to his service, the Company found Complainant's water service shut off. FOF 22. Complainant provided no evidence that it was Pennsylvania-American that shut off his service. In fact, Complainant's Exceptions do not appear to challenge the I.D.'s finding that the Company did not shut off Complainant's service. See Exceptions ¶ 18. Rather, Complainant contends that if the Company did not shut off his service, an unauthorized third party did it, in which case Pennsylvania-American must have failed to provide him with safe service. Exceptions ¶¶ 16-23. Indeed, Complainant argued at the hearing that the Company's curb stop should not be operable with any tool accessible to anyone who is not utility personnel, including plumbers. N.T. at 31. The I.D. correctly declines to follow Complainant's flawed logic that if Pennsylvania-American did not turn off Complainant's water on March 7, 2007, the Company's service must somehow be unsafe. No public utility can guarantee against all unauthorized use of its equipment. The Commonwealth recognizes this impossibility, which is why laws such as the Public Utility Code, as well as the Company's Commission-approved tariff which has the force and effect of law,

prohibit and penalize tampering with utility equipment. See 66 Pa.C.S. §§ 1406(c)(iii); Pennsylvania-American Tariff Rule 5.7. Accordingly, this exception should also be denied.

III. CONCLUSION

For the reasons stated above, Pennsylvania-American Water Company respectfully requests that the Commission deny Complainant's Exceptions and adopt the Initial Decision of Administrative Law Judge Ember S. Jandebaur without modification.

Respectfully submitted,

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Dated: June 18, 2010