

Law Offices of
WILLIAM H. COPPERTHWAITE JR.
a limited liability company

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November 2, 2010

Via Regular Mail and Facsimile (717) 783-9526
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor North
Harrisburg, PA 17120

RECEIVED
2010 NOV -5 AM 11:17
PA P.U.C.
SECRETARY'S BUREAU

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 nine (9) copies of the Exception of Third Avenue Realty Limited Partners - Complainant to the Initial Decision in the above-referenced matter.

The Initial Decision was dated for October 13, 2010 but Complainant received the decision on October 15, 2010. Therefore, kindly forward a time-stamped copy of the exceptions 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 by fax and regular mail:
Cc by fax and regular mail:

The Honorable David A. Salapa
Michael T. Killion, Esquire

IN AND BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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

**EXCEPTIONS OF THIRD AVENUE REALTY
LIMITED PARTNERS - COMPLAINANT**

Complainant, THIRD AVENUE REALTY LIMITED PARTNERS, by and through their attorneys, the Law Offices of William H. Copperthwaite Jr., L.L.C., after review of the Initial Decision of Administrative Law Judge David A. Salapa, do hereby assert the following exceptions:

To Findings of Fact:

3. Complainant established that he visits said property every weekend.

6-9. Complainant also established that the forced water heat is a closed loop system.

11-13. Complainant's water and wastewater bill for the period of November 16, 2006 through December 22, 2006 amounted to three thousand eighty-two dollars and forty-nine cents (\$3,082.49), which is an unusually high amount for Complainant's property. It is alleged the property's estimated usage was 340,000 gallons of water in thirty-six days.

14-16. Complainant's water and wastewater bill of for the period of March 20, 2007 through April 19, 2007 amounted to four thousand four hundred ninety-five dollars and ten cents (\$4,495.49) which is an unusually high amount for Complainant's property. It is alleged the property's estimated usage was 497,000 gallons of water in thirty days.

24-26. Complainant's water and wastewater bill for the period of July 28, 2008 through August 18, 2008 amounted to six hundred three dollars and ninety-four cents (\$603.94) which is a larger than average (but not astronomical) amount for Complainant's property. It is alleged the property's actual usage was 60,000 gallons of water in 21 days.

27-29. Complainant's water and wastewater for the period of June 18, 2008 through July 28, 2008 amounted to seven hundred seventy-two dollars and sixteen cents (\$772.16) which is a larger than average (but not astronomical) amount for Complainant's property. It is alleged the property's actual usage was 76,000 gallons of water in 40 days.

33-35. Complainant's water and wastewater for the period of August 19, 2009 to September 21, 2009 amounted to three hundred seventy-nine dollars and eighty-two cents (\$379.82) which is a typical amount for Complainant's property. It is alleged the property's actual usage was 29,000 gallons of water in 33 days.

36-37. Complainant's meter was read and reported spinning on July 28, 2008. Accordingly, Complainant's water usage for the twenty-one days before the reading was 60,000 gallons of water.

39-41. Complainant's meter was read and reported spinning on May 11, 2007. Complainant states that Respondent did not notify Complainant to instruct residents to have all water turned off pursuant to the service order.

42. Complainant's meter was read on April 17, 2007. Accordingly, Complainant's water usage for the 30 days between March 20, 2007 and April 19, 2007 was 497,000 gallons.

43. Complainant's meter was read on April 17, 2007. The Initial Decision fails to point out that the meter was not reported to be spinning.

44-45. Complainant's meter was read and reposted spinning on October 17, 2006. The Initial Decision fails to point out that the meter was tested on August 15, 2006 and January 9, 2006 and was not found to be spinning.

46-48. Complainant's meter underwent testing on October 13, 2009. The test revealed a low flow registered 97.0% accuracy and the high flow registered 101.7% accuracy. While Respondent argues the meter was functioning properly according to standards set by 52 Pa. Code § 65.8, Complainant points to the fact that the meter was removed from service. Further evidence, including testimony from Respondent's expert witness on October 15, 2009 also indicates that the meter was not completely functioning properly and needed to be removed. (See Hearing Transcript pp. 40-45).

Discussion

I. Complainant believes it carried its burden of proof under Pennsylvania law and Respondent failed to meet their burden with co-equal or superior evidence.

Complainant's evidence outweighs the evidence of Respondent. Complainant has met all evidentiary requirements outlined in Waldron v. Phila. Elec. Co., 1980 WL 140964 (Pa.P.U.C. March 19, 1980). The Complainant has shown that the disputed bills were abnormally high when compared to prior usage patterns and that the pattern of usage had not changed during the disputed time period. Therefore, the Initial Decision inappropriately finds that Respondent rebuts Complainant's evidence with co-equal evidence. Id. Even ignoring any new arguments presented in Complainant's Reply Brief, the Respondent relies on the same tired assertion that plumbing repairs caused a leak that would result in more than three hundred thousand gallons of water/wastewater to be used by Complainant's property in 30 days. There are no washing machines anywhere on the property, no external spigot and the forced heat is a closed loop system. The Initial Decision also fails to recognize that in three of the four site visits by

by Respondent, the Complainant's water meter was spinning. During the April 17, 2009 visit, which occurred during the 30 day usage period where Complainant allegedly used 497,000 gallons of water/wastewater, the meter was not recorded as spinning.

The Judge improperly concludes 1) that the meter was functioning properly 2) that there was a leak somewhere on the property which caused amounts of water/wastewater usage anywhere from 60,000 to 340,000 gallons and 3) that during the thirty day period where Complainant's property allegedly used 497,000 gallons of water/water, the leak detector was not spinning and thus the abnormally high bill was a result of actual usage. The evidence in this case is nothing short of inconsistent to the extent that not even Respondent can explain. It is this inconsistency which Complainant has asserted since its original Brief which is the undoing of Respondent's argument.

Complainant's evidence outweighs the evidence of Respondent. Complainant's burden is established by showing abnormally high bills despite a stable usage environment. Respondent offers evidence relying on the meter tests and accuracy of the meter, which Pennsylvania law has held, "are matters to be considered but not, in our opinion, sufficient by themselves to satisfy [Respondent's] burden of going forward." *Id* at *3. Respondent's other circumstantial speculation is not enough to carry its burden of co-equal evidence as required by Pennsylvania law. Complainant therefore maintains that it is entitled to a decision in its favor.

**Law Offices of
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Date: 11/2/2010

By: William H. Copperthwaite Jr.

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Attorney for Complainant

CERTIFICATE OF SERVICE

I do hereby certify that service of true and correct copy of the Complainant's Exceptions to Initial Decision was delivered on the 2nd day of November, 2010, to the following via facsimile and regular United States Mail:

Administrative Law Judge David A. Salapa
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Michael T. Killion, Esquire
Buchanan, Ingersoll & Rooney, P.C.
P.O. Box 12023
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Date: November 2, 2010

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FORWARDING SERVICE REQUESTED

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