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a limited liability company

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December 14, 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 an original and nine (9) copies of Complainant's Response to Respondent, Pennsylvania American Water Company's Replies to the Exception of Third Avenue Realty Limited Partners to the Initial Decision in the above-referenced matter.

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

WHC/nsj
Enclosures
Cc: The Honorable David A. Salapa
Michael T. Killion, Esquire
Brian J. Knipe, Esquire

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Third Avenue Realty Limited Partners

v.

Pennsylvania-American Water Company

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:
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Docket No. C-2008-2072920

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SECRETARY'S BUREAU

**COMPLAINANT'S RESPONSE TO RESPONDENT,
PENNSYLVANIA-AMERICAN WATER COMPANY'S REPLIES
TO THE EXCEPTIONS OF THIRD AVENUE REALTY**

Complainant, THIRD AVENUE REALTY LIMITED PARTNERS, by and through its attorneys, the Law Offices of William H. Copperthwaite Jr., L.L.C., in response to Respondent, PENNSYLVANIA-AMERICAN WATER COMPANY'S Replies to the Exceptions of THIRD AVENUE REALTY, hereby avers to the following:

1. Respondent repeatedly fails to recognize Complainant's testimony regarding evidence of tenant's water usage or "stable usage environment," describing it as "a critical issue on which Complainant presented absolutely no evidence at hearing (Respondent's Reply to Exceptions, p. 5)." Respondent confirmed the pattern of typical water and wastewater billing. Complainant provided uncontroverted sworn testimony stating, "We typically run with one unit available during the time—during that time period for that billing though that [sic] we were at 100 percent occupancy and there were no change in tenants during that time." (Hearing Transcript pp. 7, 15). The Respondent continues to assert that because Complainant had no actual knowledge of individual tenants' water usage nor did he reside in the property that such basic recordkeeping is inadequate to establish a pattern of typical usage. Nowhere in any Public Utility Commission holding does it require that a Complainant must interrogate its tenants or monitor their water use with a stopwatch and clipboard. Using the Respondent's reasoning, no apartment owner could

ever raise a billing dispute without first moving his or her family into a two bedroom unit and waiting patiently for the next extreme spike in billing from Pennsylvania American Water Company to occur. The pattern whereby respondent discredits the weight of Complainant's testimony at one instance and relies on such testimony at another is offensive. Complainant requests that this Honorable Commission treat all sworn testimony from both Complainant and Respondent as reliable unless proven otherwise.

2. Respondent's argument that the evidence asserted on its own behalf relies solely on reports from field service representatives and the bills themselves which is precisely the type of evidence the Waldron¹ holding prevents a utility company from solely relying on.
3. Respondent attempts to characterize the return of water usage to normal levels as evidence of an accurate water meter. To the contrary, Complainant believes the return of the bills to normal water usage is a prime indicator of unusual activity. The exponential rise in water usage and return to a normal level can hardly be explained by a combination of toilet leaks and 30 days of egregious tenant water usage only to be followed by quick repentance. In a sense, the meteoric rise into the hundreds of thousands of gallons of water speaks for itself as a quasi form of res ipsa loquitur.
4. Respondent in its footnotes accuses Complainant of again raising new allegations following the close of the record. Complainant maintains that were such evidence made a part of Respondent's Reply Brief, Complainant's response to such an allegation would have been timely. Complainant merely raises the exception to the Initial Decision that may or may not rely upon arguments improperly raised by Respondent. Similarly, in its

¹ Waldron v. Phila. Elec. Co., 1980 WL 140964 (Pa.P.U.C.).

Reply, Respondent analogizes to Christman v. PECO Energy Company²; Complainant fails to see where such an analogy was previously relied upon in its defense.

5. Respondent identifies that a lack of a notation on a field service representative's report that the leak detector was not spinning does not necessarily mean that the detector was not spinning. At the same time, a notation that the landlord was notified to instruct tenant to cease water usage suffer the same scrutiny.
6. In summary, the Complainant is relying on a "Res Ipsa Loquitor" legal theory in that the excessive billings by Pennsylvania American Water Company speaks for itself. There is no rational basis or documented proof that these grossly fluctuating invoices can be accurate.

WHEREFORE, Complainant respectfully requests the Public Utility Commission accept this Response to the Reply of Respondent, Pennsylvania American Water Company to the Exceptions of Third Avenue Realty.

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Date: 12/16/2010

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² Christman v. PECO Energy Co., Docket No. F-2008-2026212 (Aug. 17, 2009).

CERTIFICATE OF SERVICE

I do hereby certify that service of true and correct copy of the Complainant's Response to the Reply of Respondent, Pennsylvania American Water Company to the Exceptions of Third Avenue Realty was delivered on the 16th day of December 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
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Date: December 16, 2010

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FORWARDING SERVICE REQUESTED

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