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March 27, 2012

IN PERSON

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

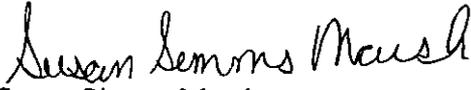
Re: Utility Workers Union of America System Local 537 v.
Pennsylvania-American Water Company
Docket No. C-2012-2287204

Dear Secretary Chiavetta:

Enclosed for filing is an original and three copies of Pennsylvania-American Water Company's Answer to the Motion of Utility Workers Union of America System Local 537 to Dismiss Objections and Compel that Interrogatories be Answered.

As evidenced by the attached Certificate of Service, all parties to this proceeding have been duly served.

Respectfully,


Susan Simms Marsh

Enclosures

cc: Administrative Law Judge Ember Jandebour w/Encs.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

UTILITY WORKERS UNION OF :
OF AMERICA SYSTEM LOCAL 537, :
Complainant :

v. :

Docket No. C-2012-2287204

PENNSYLVANIA AMERICAN WATER :
COMPANY, :
Respondent :

**ANSWER OF PENNSYLVANIA-AMERICAN WATER COMPANY TO
MOTION OF UTILITY WORKERS UNION OF AMERICA SYSTEM LOCAL 537 TO
DISMISS OBJECTIONS AND COMPEL THAT INTERROGATORIES BE ANSWERED**

Pursuant to 52 Pa. Code §5.342(g)(1), Pennsylvania-American Water Company (“PAWC”), by its counsel, hereby answers the Motion of Utility Workers Union of America System Local 537 (“UWUA”) to Dismiss Objections and Compel that Interrogatories be Answered (hereinafter “Motion”). PAWC answers the Motion specifically as follows:

1. It is admitted UWUA filed with the Pennsylvania Public Utility Commission (“Commission”) a Formal Complaint against PAWC. By way of further answer, the Commission, on February 8, 2012, served said Formal Complaint on PAWC.
2. It is admitted PAWC filed an Answer and Motion to Dismiss.
3. Admitted.

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4. Admitted.¹ There have been proceedings before the Commission wherein parties served their objections on the Commission's Secretary and the Administrative Law Judge.²

5. UWUA failed to provide a citation to any Commission regulations which specifically prohibits General Objections. PAWC's General Objections specifically relate to its outstanding Motion to Dismiss the Formal Complaint of UWUA for lack of standing to pursue the instant Formal Complaint. With all due respect, it serves no useful administrative purpose to undertake the process of answering interrogatories and requests for the production of documents which, in some cases, covers voluminous information over a four-year period of time. UWUA, itself, acknowledges the enormous effort it will take to provide certain answers and documents.³ Moreover, there have been proceedings before the Commission where parties raised "General Objections" to discovery matters.⁴

6. First, PAWC respectfully submits UWUA's Interrogatories and Requests for Production of Documents Set I goes to the credibility of a Formal Complaint versus a

¹ It was an innocent oversight in filing PAWC's objections with the Commission's Secretary and Administrative Law Judge. UWUA did not present any irreparable harm and PAWC respectfully submits no irreparable harm occurred in this matter on this issue.

² See *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 through May 31, 2014*, Docket No. P-2008-2060309; *Application of Millcreek Paramedic Service, Inc.*, Docket No. A-2008-2063911 and *Joint Application of The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania and Embarq Communications, Inc. for all Approvals Required under the Pennsylvania Public Utility Code for the Indirect Transfer of Control to CenturyTel, Inc.*, Docket No. A-2008-2076038.

³ UWUA's Motion to Compel at Paragraph 6.I. states ". . . more than one hundred formal complaints were filed against PAWC. UWUA submits that rather than burden the Commission's file room with requests to physically review well over 100 files. . . ." [emphasis added].

⁴ See *Core Communications, Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-20078390; *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 through May 31, 2014*, Docket No. P-2008-2060309 and *Application for Motor Common or Contract Carrier of Persons of Medex Ambulance Inc.*, Docket No. A-2009-2132318.

Commission investigation. If in fact the issues raised by UWUA rise to the status of a complaint, then UWUA should have been in a position to present its case in chief as of the date of the filing of the Formal Complaint. Moreover, UWUA President Kevin Booth verified the facts are true and he expects to be able to prove each and every allegation of the Formal Complaint.⁵ In that regard, a party would only file a complaint when they possess the required evidence to support its burden of proof with respect to the complaint. Based on the information and documents sought by UWUA interrogatories, places into question the verification of the Formal Complaint as of the filing date.

PAWC provides the following response:

A. UWUA, in its Motion, relies upon 52 Pa. Code § 5.331(b). This regulation presupposes the party has standing to file a complaint or protest. In this instance, PAWC continues to submit that, at best, the UWUA document, which has been described and captioned as a Formal Complaint, is a report to the Commission as to a possible violation as noted in the Formal Complaint at paragraph 6 wherein the Complainant seeks protection against retaliation pursuant to 66 Pa. C.S. § 3316 (Protection of public utility employees). In particular, PAWC notes that the nature of most of UWUA's discovery requests, in terms of scope and years, goes more to the credibility of the Formal Complaint as to whether or not there was sufficient evidence to support the filing of a Formal Complaint. If in fact the issues presented in UWUA's pleading rose to the status of a complaint on February 7, 2012, Mr. Kevin Booth verified he was prepared to support each and every allegation of the Formal Complaint. In that regard, it is presumed Mr. Booth had, within his control and possession, evidence to support the filing of the Formal Complaint. As the parties move forward in this proceeding, the scope of the

⁵ See verification attached to the Formal Complaint.

discovery appears to suggest that the Formal Complaint may be based upon antidotal conversations between individuals without sufficient evidence to support the filing of said Formal Complaint. It appears UWUA is now, after the fact, seeking through discovery to create a foundation for the basis of its Formal Complaint. PAWC submits that such a procedure should not be encouraged nor be part of any Commission complaint proceeding. To suggest otherwise would open up a flood gate of filings under the guise of complaints without the required evidence to support the Complainant's allegations at the time of the filing of the Formal Complaint. This process would have parties filing complaints and, subsequently, seeking to prove the averments of the complaint by inundating respondents with discovery requests for the purpose of supporting its allegations.

B. The Commission's regulations permit a party to initiate discovery when a complaint is filed. However, the presumption is that the party has the right and possesses the requisite standing to file a complaint.

C. The hearing, in this proceeding, is scheduled to occur on April 24, 2012, approximately 10 weeks after the filing of the Formal Complaint. It is natural to presume UWUA had the necessary evidence to support its Formal Complaint at the time it made the filing. Now, it appears as you examine the discovery, this is not the case. The hearing date is less of a concern as it is more important to determine whether UWUA has the requisite standing to bring the Formal Complaint. Moreover, there is no statutory or regulatory provision which would prohibit the rescheduling of the hearing to a later date in 2012, thereby allowing for a ruling on the Motion to Dismiss.

D. Admitted. By way of further answer, to the extent UWUA's request that PAWC provide four years of information and production of documents is not specifically objected to, UWUA has acknowledged the burdensomeness of such a request.

E. Within the 10-day timeframe in which PAWC had to object to UWUA's interrogatories, PAWC was not able to specifically quantify the magnitude of the requests but had a general knowledge the request involved voluminous documents. Since there has been a period of time beyond 10 days, PAWC is in a better position to specifically quantify the magnitude of UWUA's request. In that regard, PAWC can report for the period 2008 to February 2012, there were approximately 10,000 informal complaints. More importantly, PAWC does not have the ability to search electronically formal and informal complaints in order to identify complaints wherein a customer alleged "PAWC failed to provide proper notice prior to terminating service" and "... failed to provide proper post-term notice." See Interrogatories 15, 16, 17, 18, and 19. Based upon the quantification that has been provided with respect to the request, PAWC respectfully submits any objective individual would conclude the request is voluminous and will require significant working hours to fulfill the request. It would be such a monumental task that if required to provide the information, PAWC is prepared to request a special order from the Commission to seek a harmless protection order from our other 650,000 customers due to our need to move employees from their daily responsibilities to fulfill UWUA's discovery requests.

F. Admitted. The Complainant has acknowledged two important factors: (1) that the formal complaints are available at the Commission for review, retrieval and copying; and (2) UWUA is willing to pay the expense associated with copying the requested documents. With those two acknowledgements, UWUA should have availed itself of that opportunity and

have in their possession, at this time, 100 formal complaints. In essence, the Complainant has satisfied the basis of having accessibility to public documents. By way of further answer, for the period of 2008 to 2011, more than 300 formal complaints have been filed against PAWC. As explained more fully in Paragraph 9 below, PAWC does not have the ability to search electronically formal complaints.

G. Denied.

H. On page 5, paragraph 1 of UWUA's Motion, the Complainant acknowledges it has conducted an electronic search of the Commission's file and "... substantially more than one hundred formal complaints were filed. . . ." Since UWUA is willing to pay the cost of copying documents, the Complainant can proceed to make a request to the Commission for the documents.

I. PAWC suggests the fact that certain items, namely, the Formal Complaint filed against the Company and served by the Commission on PAWC and Answers, to the extent PAWC filed said pleading, are available from another source, namely, the Commission's Secretary's Bureau, is relevant. Since it is under the control of the Commission, UWUA can go the Commission to review documents and request copies of the documents. In fact, this is the proper source because the Commission's file room would have all of the relevant documents deemed necessary to adjudicate the matter. Most importantly, it would remove any ambiguity and unintentional oversight to include certain documents. Moreover, the request is burdensome and UWUA recognizes the burdensome nature of said request.⁶ PAWC does not have file room personnel whose duty is to exclusively maintain files. PAWC notes that when

⁶ UWUA at page 5, paragraph 1 of the Motion states "UWUA submits that rather than burden the Commission's file room with requests to physically review well over 100 files, it is more reasonable to request PAWC to search its records. . . ."

the Complainant makes reference to electronic files, it is presupposing that PAWC files are maintained in an electronic searchable format which is not the case.

By way of further answer, PAWC maintains the Formal Complaint served by the Commission and other pleadings filed in the formal complaint proceeding. For the period requested, the Commission has served more than 300 formal complaints on PAWC. As discussed more fully at paragraph 9, the pleadings, in some of the formal complaint proceedings, are hard copy only and require PAWC to review each and every formal complaint to ascertain whether there was an allegation “that PAWC failed to provide proper notice prior to terminating service.” In formal complaint proceedings where certain of pleadings have been converted to a “pdf,” PAWC would still be required to review each and every formal complaint to ascertain whether there was an allegation “that PAWC failed to provide proper notice prior to terminating service.” Thus, as UWUA states in its Motion that “UWUA would need to review the physical file for every complaint filed against PAWC for the past four years,” PAWC would also need to review the physical file for every formal complaint to determine which, if any, included the specific allegation stated in the interrogatory. Moreover, UWUA recognized this request to be burdensome and the task to be burdensome.

7. Admitted in part and denied in part. PAWC admits it objected to Interrogatories 1 and 2. The basis of the objections is that at this point and time, PAWC does not know who it will call as a witness to present testimony in rebuttal to UWUA case in chief. As pointed out in the objection, UWUA, as the Complainant in this proceeding, has the burden of proof and must present, at a hearing, its case in chief, proving each and every allegation set forth in the Formal Complaint. In that regard, UWUA must present its witnesses and evidence first. UWUA’s Motion suggests PAWC will be calling expert witnesses. This proceeding may or may

not require the testimony of expert witnesses. To date, UWUA has only identified, via the verification, the President of Utility Workers Union of America System Local 537 as a witness. At this point, PAWC does not know what evidence or testimony UWUA will present to support the allegations specified in the Formal Complaint. Without such knowledge, it is impossible to know what witnesses or evidence PAWC will present to rebut UWUA's case in chief

8. See PAWC response, herein, to paragraph 6, A.-C.

9. The premise of UWUA's comment suggests that it is an irrebuttable presumption that the discovery can be achieved in the format suggested by the Motion. In that regard, the documents are not maintained and stored in an electronic searchable format. Therefore, this request will require time and resources. By way of further answer, PAWC does not maintain pleadings in formal complaint proceedings in an electronic searchable system. The Commission, in accordance with 66 Pa.C.S. § 702 served PAWC with a copy of more than 300 formal complaints by certified mail. In most cases, where PAWC filed a hard copy of the answer to the formal complaint, the pleading was served via overnight mail.

10. The premise of UWUA's comment suggests that it is an irrebuttable presumption that the discovery can be achieved in the format suggested by the Motion. In that regard, the documents are not maintained and stored in an electronic searchable format such that you would be able to obtain the information sought in the discovery request. Therefore, this request will require time and resources which will be unduly burdensome.

By way of further answer, for the period of 2008 to 2010, the Commission's Bureau of Consumer Services ("BCS") communicated to PAWC 10, 288 informal complaints. In order to determine the informal complaints "in which a residential customer alleged that PAWC failed to provide proper notice prior to terminating service," PAWC must manually

review the case file. PAWC receives informal complaints from the Commission BCS through Data Exchange. In utilizing the search engine by dates within the archived cases, the search provides informal complaints based on the informal complaint closing date. PAWC must then click on each informal complaint, and next, click on the opening case to determine the date the informal complaint was logged with the Commission. There is no searchable engine for the customer's allegation. Therefore, once PAWC determines the date parameter has been met, it must manually review paper files in order to ascertain the customer's allegation provided to BCS during the telephone intake stage of the informal complaint process.

For the period of 2011 to February 2012, BCS communicated 3,506 informal complaints. The cases are stored by month with an opening and closing date. However, there is no searchable engine for the customer's allegation. Thus, PAWC must manually review the system to ascertain the customer's allegation provided to BCS during the telephone intake stage of the informal complaint process. On average, PAWC can review 100 cases in 3 hours. It will take significant work hours to complete this task.

11. With respect to formal complaints, the confidentiality of settlement agreements is between PAWC and its customers.⁷ It must be noted that it is the customers who have an expectation of privacy and expect the confidentiality of their personal information; therefore, no party other than those particular customers have the ability to waive confidentiality. To the extent UWUA is seeking to pierce the confidentiality veil, such a request cannot not be waived. With respect to informal complaints, PAWC's claim of confidentiality does not go to confidentiality of the Company but goes to the confidentiality of the customer. In some cases, the informal complaints contain personal information with

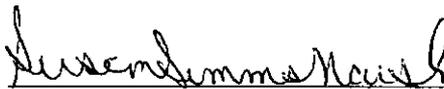
⁷ Some settlements were the result of mediation. One of the key elements of mediation cases is confidentiality.

respect to those customers under which UWUA cannot have access. Most notably this goes to the heart of PAWC's Motion to Dismiss as UWUA does not have standing with respect to this issue. PAWC respectfully submits that UWUA is seeking not only to achieve standing but evidence to support the Formal Complaint, after the fact, through discovery of PAWC customer information, which, in many cases, is confidential to those customers. In essence, PAWC does not have the right or ability to waive its customers' expectation of confidentiality.

12. See PAWC's response, herein, at Paragraph 4.

WHEREFORE, for the reasons set forth above, Pennsylvania-American Water Company respectfully requests Your Honor to deny the Motion of Utility Workers Union of America System Local 537 to Dismiss Objections and Compel that Interrogatories be Answered.

Respectfully submitted,



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Dated: March 27, 2012

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 :
v. : DOCKET NO. C-2012-2287204
 :
PENNSYLVANIA-AMERICAN WATER :
COMPANY, :
Respondent :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, Answer of Pennsylvania-American Water Company to Motion of Utility Workers Union of America System Local 537 to Dismiss Objections and Compel that Interrogatories be Answered, upon the participant listed below, in accordance with the requirements of 52 Pa. Code §1.54:

VIA Email & First Class Mail

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Dated this 27th day of March, 2012

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