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RECEIVED

February 12, 2010

FEB 12 2010

VIA FEDERAL EXPRESS

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

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

Re: The Municipal Authority Of The Borough Of West View v. Pennsylvania-American
Water Company
Docket No. C-2010-2153062

Dear Secretary McNulty:

Pursuant to 52 Pa. Code §§ 1.56(b), 5.61 and 5.102, enclosed for filing in the above-captioned matter are:

- An unbound original and three copies of the **Answer Of Pennsylvania-American Water Company (PAWC) To The Complaint of the Municipal Authority of the Borough of West View (West View)**;
- An unbound original and three copies of **Exhibits A-D** accompanying PAWC's Answer;
- An unbound original and three copies of the **Motions Of PAWC (1) To Dismiss The Complaint Of West View For Lack Of Standing; And/Or (2) For Judgment On The Pleadings**, which are preceded by a Notice to Plead.

As provided in 52 Pa. Code § 1.11(a)(2), February 12, 2010, which is the date shown on the express delivery receipt attached to or included with the envelope containing this letter and enclosures, is the date of filing of PAWC's Answer and Motion, and they should be date-stamped accordingly.

James J. McNulty
February 12, 2010
Page 2

We are also enclosing one extra copy of this letter, PAWC's Answer and PAWC's Motions, which we request be date-stamped as of February 12, 2010 and returned to us in the stamped, pre-addressed envelope provided.

As evidenced by the original and three copies of the Certificate of Service enclosed herewith, copies of PAWC's Answer, Exhibits and Motions have been served upon counsel for West View.

If there are any questions concerning the enclosures or any matters discussed herein, please feel free to contact the undersigned.

Very truly yours,



Anthony C. DeCusatis
Enclosures

c: Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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FEB 12 2010

THE MUNICIPAL AUTHORITY OF THE :
BOROUGH OF WEST VIEW :

v. :

PENNSYLVANIA-AMERICAN WATER :
COMPANY :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKET NO. C-2010-2153062

**MOTIONS OF PENNSYLVANIA-AMERICAN WATER COMPANY
(1) TO DISMISS THE COMPLAINT OF THE MUNICIPAL AUTHORITY
OF THE BOROUGH OF WEST VIEW FOR LACK OF STANDING; AND/OR
(2) FOR JUDGMENT ON THE PLEADINGS**

Pursuant to 52 Pa. Code §§ 5.102 and 5.103, Pennsylvania-American Water Company (“PAWC” or the “Company”) hereby moves (1) to dismiss the above-docketed Complaint of the Municipal Authority of the Borough of West View (“West View”) on the grounds that West View lacks standing to bring its Complaint; and/or (2) for judgment on the pleadings.

As explained below, West View lacks standing because its Complaint alleges that PAWC’s use of a previously approved tariff rider would adversely affect a competitive interest of West View, namely, West View’s ability to sell water to another municipality without having to compete with PAWC. In a case that presented substantially the same issue, the Commonwealth Court of Pennsylvania held that an allegation of harm to a competitive interest like the one asserted by West View does not amount to an injury or other grievance sufficient to confer standing under the standard established in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). *Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company and Pa. P.U.C.*, 32 Pa. Comwlth. 19; 377 A.2d 1270 (1977) *aff’d* 488 Pa. 308; 412 A.2d 522 (1980). Moreover, West View’s claim of competitive disadvantage is based on a demonstrably incorrect interpretation of the Municipality Authorities

Act. Contrary to West View's erroneous legal analysis, nothing in that Act prohibits West View from "negotiating" with a municipality or another municipal authority for the sale of water, as the holdings of several Pennsylvania appellate court decisions make clear.

As also explained below, PAWC is entitled to judgment on the pleadings because West View's Complaint attempts to raise an issue that has been decided against West View's position by the Pennsylvania Public Utility Commission ("PUC" or the "Commission") and the Commonwealth Court. In fact, as recently as September 2009, Administrative Law Judge Cynthia Williams Fordham issued an Order rejecting West View's claim that PAWC's Rider DRS (Demand Resale Service) can be used to retain existing load but cannot be used to attract new load:

The Commonwealth Court found that the Commission did not err in determining that the Rider DRS can be used for both retaining and attracting incremental load. (Com Ct. at 6)

Therefore, allegations in the complaints relating to whether the Rider can be used to retain customers or attract incremental load; whether the Rider allows the Company to engage in predatory practices; or whether the Company can use the Rider in instances where an alternative provide[r] will lose existing sales have already been decided and collateral estoppel prevents the Complainants from relitigating these issues.

Pa. P.U.C. v. Pennsylvania-American Water Company, Docket No. R-2009-2097323, *Order #6 – Riders DRS and DIS* (September 11, 2009). No Exceptions were filed, and *Order #6 – Riders DRS and DIS* became final by operation of law.

I. BACKGROUND

1. On January 20, 2010, the Commission served West View's Complaint upon PAWC by first class mail. The gravamen of West View's Complaint is that PAWC's Rider DRS

cannot be used to attract incremental load, i.e., its use should be restricted to PAWC's efforts to retain the existing load of existing customers.

2. Rider DRS was added to the Company's tariff pursuant to Commission approval granted in *Pa. P.U.C. v. Pennsylvania-American Water Company*, 85 Pa. P.U.C. 12 (1995) and *Pa. P.U.C. v. Pennsylvania-American Water Company*, 86 Pa. P.U.C. 201 (1996).

3. Rider DRS may be used by the Company to sell water to a purchaser for resale that enters into a Service Agreement for a period of not less than 10 years; agrees to maintain a load factor of 75% or better and has a "viable competitive alternative to service from the Company." Under Rider DRS, PAWC is permitted to establish a rate that is between the "Maximum" and "Minimum" rates specified in the rider. The Maximum Rate is the tariff rate that would apply if it were determined that the customer did not qualify for Rider DRS. The Minimum Rate must be "sufficient to recover: (1) the Production Cost of Water [as defined in the rider]; (2) the fixed costs (depreciation and pre-tax return) associated with all new facilities added to serve the customer; and (3) some portion of the fixed costs of the Company's other facilities." Additionally, the Minimum Rate is "subject to an Escalation Clause, during the original and any renewal terms of the Service Agreement, based upon changes in published price indices and/or changes in the Company's cost of service" (PAWC Tariff Water-PA P.U.C. No. 4 Second Revised Page 9E).

4. West View avers that its Complaint was occasioned by PAWC's response to a request for proposals from the Borough of Evans City ("Evans City"), which is seeking a supply of treated water sufficient to meet the full requirements of its customers.

5. Evans City currently obtains all of the water needed to meet its customers' demands from its own source of supply and a water treatment plant that it owns and operates.

However, the Pennsylvania Department of Environmental Protection (“DEP”) has notified Evans City that its water treatment plant would have to be upgraded to assure compliance with current drinking water requirements. Evans City solicited proposals to purchase treated water from a third-party supplier as an economically competitive alternative to upgrading its treatment plant.

6. PAWC submitted a response to Evans City. PAWC’s response indicated that Rider DRS applied to the service Evans City sought. Accordingly, PAWC offered Evans City rates, under two options, that were within the range of prices permitted under Rider DRS.

7. Cranberry Township and the Adams Township Municipal Authority (“Adams Township Authority”) also submitted responses to Evans City’s request for proposals. In its Complaint, West View alleges that the prices offered by Cranberry Township and the Adams Township Authority were higher than those offered by PAWC.

8. West View did not submit a response to Evans City’s request for proposals. West View is not located adjacent to Evans City and cannot physically interconnect with Evans City’s water system. However, in its Complaint, West View alleges that it supplies water to Cranberry Township and the Adams Township Authority and, if either of those entities were chosen to provide water service to Evans City, West View’s sales of water would increase as a result.

9. West View contends that Rider DRS, by its terms, does not authorize PAWC to use that rider to attract new load. West View also alleges that, to permit PAWC to employ Rider DRS to attract new load, as contrasted with retaining existing load, would place West View at a competitive disadvantage. Specifically, West View contends that, as a municipal authority, it must adhere to a strict, albeit undefined, “cost of service” standard in setting its rates and, as a result, it cannot establish prices for the sale of water based on bi-lateral negotiation with a purchaser. West View ascribes this alleged “cost of service” restriction to Section 5607(d)(9) of

the Municipality Authorities Act, 53, Pa. C.S. §5607(d)(9), which provides that a municipal authority's rates must be "reasonable and uniform" for customers "in the areas served by its facilities." As explained below, West View has misinterpreted the applicable provisions of the Municipality Authorities Act.

II. MOTION TO DISMISS

10. In *Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company and Pa. P.U.C.*, 32 Pa. Comwlth. 19; 377 A.2d 1270 (1977) *aff'd* 488 Pa. 308; 412 A.2d 522 (1980), the Commonwealth Court considered claims similar to those raised by West View's Complaint. In that case, the Pennsylvania Petroleum Association ("PPA"), on behalf of its members, contended that the Commission had approved special water and space heating rates for Pennsylvania Power & Light Company (PP&L) that allegedly were "below the actual cost of service" and that such rates "excluded competition in the residential and commercial space and water heating market in which [the Association's] members participated." The Court granted PP&L's motion to quash the Association's appeal on the grounds that neither it nor its members had standing because any adverse impact on the competitive interest of the PPA's members did not amount to injury or aggrievement under the standards established in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975):

The record persuades us therefore that PPA's interest stems from the fact that the PUC order here appealed continues its members' competitive disadvantage with regard to PP&L in the commercial and residential space and water heating market. Our review of the case law concerning the standing of parties alleging competitive injury to appeal leads us to conclude that such parties have standing only where the alleged competition is prohibited by a regulatory scheme in which both parties participate. In *Delaware County National Bank v. Campbell*, 378 Pa. 311, 106 A.2d 416 (1954), a bank was found to have standing to challenge a merger between two other banks because the statutory scheme regulating

banks prohibited competition which threatened the financial stability of such institutions. Likewise, in *Franklin Federal Savings and Loan Ass'n v. Patterson*, 421 Pa. 409, 218 A.2d 724 (1966), a savings and loan association had standing to challenge the establishment of a competing savings and loan association nearby since excessive competition was prohibited by the state banking code. Cf. *Ritter Finance Co. v. Myers*, 401 Pa. 467, 165 A.2d 246 (1960), in which a loan company did not have standing to challenge the granting of a license to a nearby competitor because the law regulating small loan companies was not concerned with competition between such companies. *Because we can find here no evidence of a regulatory scheme in which both parties participate which prohibits competition between them, we must conclude that PPA [Pennsylvania Petroleum Association] does not have a substantial interest in the PUC order sufficient to bring this appeal.*

32 Pa. Comwlth. 19, 26; 377 A.2d 1270, 1273. (Emphasis added.)

11. Like the members of the PPA, West View does not operate under the same “regulatory scheme” as PAWC, as West View admitted in Paragraph Nos. 7 and 11 of its Complaint. Moreover, nothing in the Public Utility Code prohibits public utilities from “competing” with municipalities or municipal authorities for sales of water to other public or privately-owned water systems. In fact, the terms of Rider DRS expressly contemplate such competition by requiring that an entity have a “viable competitive alternative” as a condition precedent to obtaining service under that rider.¹ In short, *Pennsylvania Petroleum Association* is directly on point and, as applicable precedent, establishes that West View does not have standing to bring its Complaint. The Commonwealth Court reached the same conclusion in *Brinks, Inc. v. Pa. P.U.C.*, 1982 Pa. Commw. LEXIS 1264 (April 28, 1982), where it held that a decision of the Commission that exposes an entity to “competition” does not constitute a legally recognizable “injury.”

¹ As explained in PAWC’s Motion for Judgment on the Pleadings, *supra*, the Commonwealth Court has previously held that such competition is permissible and the Commission properly exercised authority granted to it in the Public Utility Code in approving Rider DRS to enable such competition.

12. Moreover, the competitive interest alleged by West View is even more remote than the one the PPA asserted on behalf of its members. West View, by its own admission, would not “compete” directly with PAWC, as PPA’s members competed with PP&L. Rather, West View alleges, at most, an indirect impact on its competitive interest because, according to West View, PAWC’s use of Rider DRS may adversely affect the ability of Cranberry Township and the Adams Township Authority to sell water to Evans City. The alleged impact on West View’s competitive interest is, at most, a derivative of the effect PAWC’s use of Rider DRS may have upon Cranberry Township and the Adams Township Authority, which are the only other entities that responded to Evans City’s request for proposals.

13. As previously noted, West View also alleges that PAWC’s use of Rider DRS to formulate prices within the Minimum and Maximum Rate range specified in the rider places West View at a competitive disadvantage because, according to West View, the requirements of the Municipality Authorities Act do not grant it comparable flexibility in setting prices for sales of water to municipalities or other authorities (*see* West View Complaint ¶¶ 7-10). Specifically, West View contends that: (1) it must observe the “reasonable and uniform” standard for setting rates contained in 53 Pa. C.S. §5607(d)(9); (2) that standard requires West View to offer rates that adhere to a strict “cost of service” standard; and (3) as a consequence, West View cannot negotiate rates for the sale of water that, like rates offered by PAWC under Rider DRS, would allow it to recover its production costs plus make a contribution to the recovery of its fixed costs (*see* West View Complaint ¶¶ 8 and 10).

14. Contrary to West View’s averments, 53 Pa. C.S. § 5607(d)(9), which is cited by West View, does not govern the manner in which a municipal authority may establish rates for sales of water to “resale customers, other authorities and municipalities.” Instead, such sales are

governed by 53 Pa. C.S. § 5607(d)(19), which specifically grants municipal authorities the right and power: “To enter into contracts to supply water and other services to and for municipalities that are not members of the authority, or to and for the Commonwealth, municipalities, school districts, persons or authorities, and fix the amount to be paid therefor.”

15. Contrary to West View’s averments, Pennsylvania appellate courts have held that the rate-setting authority granted in Section 5607(d)(19) is not subject to the “reasonable and uniform” standard set forth in Section 5607(d)(9) but, rather, under that section, a municipal authority is authorized to establish such rates “by negotiation.” Accordingly, in *Township of Aston v. Southwest Delaware County Municipal Authority*, 112 Pa. Cmwlth. 434, 535 A.2d 725 (1988), the Commonwealth Court held as follows:

Middletown urges that Section 4B(p) [after codification, 53 Pa. C.S. § 5607(d)(19)] must govern the outcome here. That section provides that a municipal authority shall have the right and power “[t]o enter into contracts to supply water and other services to and for municipalities that are not members of the Authority, or to and for the Commonwealth of Pennsylvania, municipalities, school districts, persons or authorities, and fix the amount to be paid therefor.” While Section 4B(h) [after codification, 53 Pa. C.S. § 5607(d)(9)] speaks of fixing reasonable and uniform rates “in the area served by [a municipality authority’s] facilities,” there is no such limitation where an authority contracts with another, presumably outside that area. *In the case of a contract under Section 4B(p), a municipal authority is given the power to fix the rates to be paid for its services, without the statutory limitation that they be “reasonable and uniform.”* The discrepancy is not illogical when the difference between the two situations is examined. In the first case, under Section 4B(h), a municipal authority is granted the exclusive authority to set rates for its services. The recipient of these services has no input into the ratemaking process. It is therefore protected by the provision requiring the rates to be reasonable and uniform and subject to judicial review. Such is not the case when two municipal bodies contract for services, as under Section 4B(p). *That section allows a municipal authority to fix the rate for its services, but that rate,*

of course, will be the subject of negotiation before a contract is concluded. (Emphasis added.)

Accord High Ridge Water Authority v. Lower Indiana County Municipal Authority, 689 A.2d 374 (Pa. Cmwlth. 1997) (“ . . . Section 4B(h) of the Act, 53 P.S. § 306B(h) . . . grants an authority the exclusive power to set rates for services provided within its service area, with the limitation that those rates be reasonable and uniform. The limitation contained in Section 4B(h) does not apply where the authority contracts with another.”)

16. West View’s Complaint is premised on an error of law. Contrary to the averments of its Complaint, West View is not precluded from competing for new business by negotiating the price at which it may sell water to a municipality or another authority. Consequently the “unfairness” that West View alleges, namely, that PAWC can use Rider DRS to negotiate a rate for sales of water to Evans City – albeit within the Minimum and Maximum Rates specified in the rider – while West View is restricted to conforming its rates for similar service to an undefined “cost of service” standard, simply does not exist.

17. For the reasons set forth above, West View has failed to allege that it is aggrieved by PAWC’s use of Rider DRS to offer the rates set forth in the Company’s response to Evans City’s request for proposals and, therefore, West View lacks standing to bring its Complaint under the standards set forth in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975), which West View agrees establishes the legal standard for deciding standing in this case (*see* West View Complaint ¶ 41).

III. MOTION FOR JUDGMENT ON THE PLEADINGS

18. As previously noted, Rider DRS was approved by the Commission in its final Order in PAWC's 1995 water base rate case² and was subsequently revised pursuant to the Commission's Order entered on June 6, 1996.³ In PAWC's 1995 water base rate case, PAWC's witness sponsoring Rider DRS explained that the explicit purpose of that rider – as well as Riders DIS (Demand Industrial Service) and EGS (Electric Generation Service), which were also proposed at that time and approved by the Commission – was to “enhance [PAWC's] ability to maintain its existing customer base and, hopefully, *attract new customers*” (emphasis added). PAWC subsequently employed Rider DRS and Rider DIS (a comparable rider for industrial sales) to retain existing load and to serve new load.

19. On April 15, 2003, the Municipal Authority of the Township of Robinson (MATR) filed a Complaint and Petition for Declaratory Order asking the Commission, among other things, to void a water sales agreement as an unlawful exercise of Rider DRS. *See The Municipal Authority of the Township of Robinson v. Pennsylvania-American Water Company*, Docket No. C-20030092 (Order entered August 19, 2004)(Commission Order) at 2.⁴ The water sales agreement in question was between PAWC and the Western Allegheny County Municipal Authority (“WACMA”), which, up to that point, had purchased virtually all of its water from

² *Pa. P.U.C. v. Pennsylvania-American Water Company*, 85 Pa. P.U.C. 13 (1995).

³ *Pa. P.U.C. v. Pennsylvania-American Water Company*, 86 Pa. P.U.C. 201 (1996). In this order, the Commission approved revisions to Riders DRS, DIS (Demand Industrial Service) and EGS (Electric Generation Service) to provide that: (1) the riders would state minimum and maximum rates that reflect the Commission-approved range within which the Company is authorized to negotiate the rates for service to eligible customers; (2) Rider EGS would be available only if the prospective customer had a competitive alternative, i.e., the same criterion that applied to Riders DRS and DIS; and (3) the service agreements entered into under the riders would be filed with the Commission on a confidential basis within five days after they were executed.

⁴ A copy of the Commission's August 19, 2004 Order at Docket No. C-20030092 has been provided as **Exhibit B** to PAWC's Answer to the West View Complaint.

MATR. *Id.* at 2, 4. The Pennsylvania Municipal Authorities Association (“PMAA”) participated in this proceeding as an *amicus* party on behalf of its members. West View was a member of PMAA at that time and remains so today.

20. On April 8, 2004, Administrative Law Judge Larry Gesoff (the “ALJ”) issued his Initial Decision recommending that MATR’s Complaint be dismissed. The ALJ determined that “the plain language and history of Rider DRS make it clear that the Rider is to be used to retain *and attract* incremental load.” *Id.* at 16 (emphasis added). In reaching this conclusion, the ALJ highlighted several pieces of testimony from the Company’s 1995 rate proceeding wherein Rider DRS was first proposed and developed which, in his judgment, confirmed the Company’s intent to use Rider DRS to attract new customers. *Id.* at 16-18.⁵

21. MATR filed Exceptions to the Initial Decision, arguing that Rider DRS should be interpreted narrowly and used only to retain existing load. Commission Order at 7. The Commission denied the exception, quoting testimony from the 1995 proceeding that stated the purpose of the Rider DRS was to “enhance [PAWC’s] ability to maintain its existing customer base and, hopefully, attract new customers.” *Id.* The Commission also stated that “the ‘plain language’ of Rider DRS makes it clear that the Commission [in the 1995 proceeding] fully understood that that Rider could be used for the dual purpose of retaining and attracting incremental load.” *Id.* at fn.5.

22. MATR appealed the Commission’s Order to the Commonwealth Court of Pennsylvania, arguing that the Commission’s interpretation of Rider DRS exceeded the rider’s intended scope. *See The Municipal Authority of the Township of Robinson v. Pennsylvania-*

⁵ A copy of the ALJ’s April 8, 2004 Initial Decision at Docket No. C-20030092 has been provided as **Exhibit A** to PAWC’s Answer to the West View Complaint.

American Water Company, No. 2008 C.D. 2004, at 4 (Pa. Commw. Ct. July 15, 2005) (Commonwealth Opinion).⁶ MATR again asserted that Rider DRS was never meant to be used to expand service to existing customers or to draw customers away from other suppliers. *Id.* at 5.

23. The Court, in an unreported decision,⁷ affirmed the Commission's Order, finding "nothing in the record, including evidence from the 1995 rate proceedings, to support the narrow interpretation advanced by MATR." *Id.* The Court highlighted the Commission's awareness in PAWC's 1995 base rate proceeding that Rider DRS was intended to maintain PAWC's existing customer base and to attract new customers. *Id.* at 6. The Court also looked to the plain language of the Rider itself, noting that "[s]ignificantly", it provided that the reduced rate must be sufficient to allow recovery of fixed costs "associated with all new facilities added to serve the customer." *Id.* The Court reasoned that to limit the use of Rider DRS to preventing the loss of existing sales would render the "new facilities" language meaningless. The Court held that the Commission "did not err in determining that Rider DRS may be used for both retaining and attracting incremental load." *Id.*

24. In dissent, Judge McGinley noted that the majority had affirmed the Commission's interpretation of Rider DRS, which would "allow [PAWC] to use the Rider to compete for another provider's customer." Commonwealth Opinion at BLM-2. In short, Judge McGinley's dissent left no doubt or ambiguity about the scope of the majority's opinion, namely, that it explicitly affirmed PAWC's authority to use Rider DRS to attract "new" customers.

⁶ A copy of the Commonwealth Court's July 15, 2005 Opinion at No. 2008 C.D. 2004 has been provided as Exhibit C to PAWC's Answer to the West View Complaint.

25. MATR then applied to the Commonwealth Court for reargument, but its request was denied. Finally, MATR filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, which was denied at 588 Pa. 760, 903 A.2d 539 (2006).

26. In PAWC's 2009 water base rate case, at Commission Docket No. R-2009-2097323, MATR, the PMAA and West View filed Complaints that questioned whether Rider DRS could be used by the Company to furnish service to a new customer. PAWC filed Motions to Dismiss the Complaints on the grounds, *inter alia*, that the position being advanced by the Complainants had previously been rejected by the Commission and the Commonwealth Court and, therefore, the Complainants were collaterally estopped from re-litigating that issue.

27. On September 11, 2009, Administrative Law Judge Cynthia Williams Fordham issued *Order #6 – Riders DRS and DIS*⁷ in which she reviewed the history of Rider DRS and the MATR litigation discussed above and held as follows:

The Commonwealth Court found that the Commission did not err in determining that the Rider DRS can be used for both retaining and attracting incremental load. (Com Ct. at 6)

Therefore, allegations in the complaints relating to whether the Rider can be used to retain customers or attract incremental load; whether the Rider allows the Company to engage in predatory practices; or whether the Company can use the Rider in instances where an alternative provide[r] will lose existing sales have already been decided and collateral estoppel prevents the Complainants from relitigating these issues.

28. Neither MATR, PMAA nor West View filed exceptions to *Order #6 – Riders DRS and DIS*, and that Order, therefore, became final by operation of law. 66 Pa. C.S. § 332(h).

⁷ A copy of *Order #6 – Riders DRS and DIS* was provided as **Exhibit D** to PAWC's Answer to the West View Complaint.

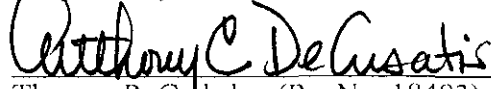
29. In every instance in which the question of the appropriate scope and application of Rider DRS has been presented to the Commission, the Commission has ruled that Rider DRS can be used by PAWC to furnish service to a new customer. Additionally, the Commission's determination in that regard has been affirmed by the Commonwealth Court, and the Pennsylvania Supreme Court declined further review.

30. Under the applicable standard, as set forth in 52 Pa. Code § 5.102(d)(1), no genuine issue of material fact is presented by West View's Complaint. West View's Complaint mirrors the averments set forth in the Complaints filed by it, MATR and PMAA in PAWC's 2009 water base rate case, where Judge Fordham ruled that the Complainants were estopped from re-litigating issues previously decided by the Commission and the Commonwealth Court (*see* Paragraph 27, *supra*). Accordingly, PAWC is entitled to judgment on the pleadings in its favor.

IV. CONCLUSION

WHEREFORE, for the reasons set forth above, the Complaint of the Municipal Authority of the Borough of West View should be dismissed and/or judgment rendered on the pleadings in PAWC's favor.

Respectfully Submitted



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Counsel for Pennsylvania-American Water
Company

Dated: February 12, 2010

BEFORE THE
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THE MUNICIPAL AUTHORITY OF THE :
BOROUGH OF WEST VIEW :

v. :

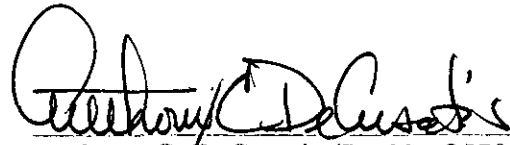
PENNSYLVANIA-AMERICAN WATER :
COMPANY :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKET NO. C-2010-2153062

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103(b), you are hereby notified to file a written response to the enclosed **Motions To Dismiss The Complaint Of The Municipal Authority Of The Borough Of West View For Lack Of Standing And/Or For Judgment On The Pleadings** within twenty (20) days of the date of service of such Motions.



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*Attorney for Pennsylvania-American Water
Company*

Dated: February 12, 2010

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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THE MUNICIPAL AUTHORITY OF THE
BOROUGH OF WEST VIEW

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

V.

Docket No. C-2010-2153062

PENNSYLVANIA-AMERICAN WATER
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I have this date served true copies of the Answer Of Pennsylvania-American Water Company To The Complaint Of The Municipal Authority Of the Borough Of West View, with accompanying exhibits, and Pennsylvania-American Water Company's Motions (1) To Dismiss The Complaint Of The Municipal Authority Of The Borough of West View For Lack Of Standing; and/or (2) For Judgment On The Pleadings upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

SERVICE BY ELECTRONIC MAIL AND FEDERAL EXPRESS

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*Counsel For The Municipal Authority Of
The Borough Of West View*



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Dated: February 12, 2010

Counsel for Pennsylvania-American Water Company