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April 15, 2010

VIA FEDERAL EXPRESS

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:

Enclosed for filing in the above-captioned proceeding are an original and three copies of Pennsylvania-American Water Company's ("Company") Motion To Strike The "Supplemental Answer" and "Affidavit" Filed By The Municipal Authority Of The Borough Of West View. As evidenced by the enclosed Certificate of Service, copies of the Company's Motion have been served upon the parties and the Office of Administrative Law Judge.

We have also enclosed additional copies of this letter and the Company's Motion to Strike, which we request that you date-stamp and return to us in the stamped, pre-addressed envelope provided.

Very truly yours,


Anthony C. DeCusatis

Enclosures

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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APR 15 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

MOTION TO STRIKE
THE "SUPPLEMENTAL ANSWER" AND "AFFIDAVIT"
FILED BY THE MUNICIPAL AUTHORITY OF
THE BOROUGH OF WEST VIEW

Pursuant to 52 Pa. Code §5.101(a), Pennsylvania-American Water Company (PAWC or the Company) moves to strike: (1) the document filed by the Municipal Authority of the Borough of West View (West View) on April 9, 2010, which is styled as a Supplemental Answer to PAWC's Motions to dismiss and for judgment on the pleadings, which were filed on February 12, 2010; and (2) the Affidavit that accompanied the Supplemental Answer. As more fully explained below: (1) the Supplemental Answer has been filed more than a month after the date that Answers were due to PAWC's Motions; (2) West View has not explained why the averments in its Supplemental Answer could not have been included in its Answer filed on March 1, 2010; (3) the Supplemental Answer is neither "supplemental" nor an "answer" – it does not reference the paragraphs of PAWC's Motions nor purport to correspond to averments in those Motions; and (4) West View did not offer any purported basis for filing the Affidavit or identify any authority in the Commission's rules of practice and procedure that permits filing such an Affidavit.

In further support of its Motion to Strike, PAWC states as follows:

1. This proceeding was initiated by a Complaint filed by West View and served on PAWC on January 20, 2010, alleging that PAWC should not be permitted to employ Rider DRS (Demand Resale Service) to its tariff to furnish resale service to the Evans City Water and Sewer Authority (Evans City) because Rider DRS should not be used to attract incremental load. West View's argument that the use of Rider DRS should be restricted to retaining existing load of PAWC's existing customers has been rejected previously by the Commission and the Commonwealth Court.¹

2. On February 12, 2010, PAWC filed an Answer to West View's Complaint that denied all of its relevant averments. On the same date, PAWC filed Motions to dismiss the Complaint for lack of standing and/or for judgment on the pleadings. An Answer to the motions was due on March 4, 2010 (52 Pa. Code §5.102(b)).² West View filed its Answer to both Motions on March 1, 2010.

3. On April 9, 2010, West View filed its Supplement Answer and an accompanying Affidavit of Sharon A. Bruno, who is identified in the Affidavit as the Director of Administration of West View. The Affidavit consists of six unnumbered pages and a Notary's verification of the signature of Sharon A. Bruno.

4. Neither West View's Supplemental Answer nor the Affidavit is a permissible filing and both should be summarily stricken for the reasons set forth hereinafter.

¹ The decisions of the Commission and Commonwealth Court are discussed in PAWC's Answer and Motions, and copies of those decisions were provided as Exhibits A-D in a separately bound volume that accompanied PAWC's Answer.

² Because PAWC filed a combined Motion to Dismiss and Motion for Judgment on the Pleadings, the due date referenced above is the later of the due dates for Answers to such Motions. (Answers to Motions to Dismiss are due ten days after service of the Motion. 52 Pa. Code §5.101(f)(1).)

5. **The Supplemental Answer is untimely.** The time for filing an Answer to PAWC's Motions expired on March 4, 2010. *See* 52 Pa. Code §5.102(b). As previously explained, West View filed an Answer to the Motions on March 1, 2010. The Supplemental Answer has been filed more than a month after the deadline for filing an Answer and, therefore, is untimely.

6. **The Supplemental Answer is not authorized.** The Commission's rules of practice and procedure do not authorize the filing of a "supplemental" Answer to a motion beyond the time permitted for filing an Answer, nor has West View alleged that any such authority exists.

7. **West View has not requested permission to file its Supplemental Answer nor is there any valid basis for such a request.** West View has not explained why the averments of its Supplemental Answer could not have been included in its Answer filed on March 1, 2010. Indeed, those averments could have been made in West View's Answer because none of them constitutes newly-discovered facts or other information that was unavailable to West View when it filed its Answer. In short, West View has no justification for waiting until April 9, 2010 to plead the averments of its Supplemental Answer.

8. **The Supplemental Answer is neither "supplemental" nor an "answer."** To the contrary, the numbered paragraphs of the Supplemental Answer do not reference or otherwise correspond to the paragraphs of PAWC's Motions or to any specific averments made in those Motions.³ The portions of the Supplemental Answer that do not simply repeat assertions

³ Paragraph No. 1 of West View's Supplemental Answer contains the parenthetical reference "Page 20, line 37." PAWC's Motions contain a total of fifteen pages – there is no "Page 20" – and do not have line numbers. However, from the context in which the reference is made, it appears that Paragraph No. 1 of the Supplemental Answer is addressing Paragraph No. 37, at page 20, of PAWC's Answer to West View's Complaint, not

already made in West View's Answer filed on March 1, 2010, seek to challenge a filed and approved rate of PAWC on bases that were not alleged in West View's Complaint and, in any event, were rejected in prior decisions of this Commission and the Commonwealth Court, as explained in PAWC's Answer (§ 22) and Motions (§§ 18-29).

9. **The Affidavit accompanying West View's Supplemental Answer is improper and unauthorized.** The Affidavit attached to the Supplemental Answer is not explained or even referenced in the Supplemental Answer. West View did not offer any purported basis for filing the Affidavit nor did it identify any authority in the Commission's rules of practice and procedure that would permit filing such an Affidavit as part of a pleading responding to either a Motion to Dismiss or a Motion for Judgment on the Pleadings.⁴ Like West View's Supplemental Answer, the Affidavit contains averments purporting to challenge a filed and approved rate of PAWC on bases that were not alleged in West View's Complaint and, in any event, were rejected in prior decisions of this Commission and the Commonwealth Court, as explained in PAWC's Answer (§ 22) and Motions (§§ 18-29).

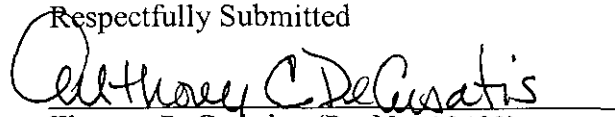
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PAWC's Motions. In that event, the averments are even more clearly improperly because a complainant is not permitted to "answer" a respondent's Answer.

⁴ PAWC filed a Motion for Judgment on the Pleadings, not a Motion for Summary Judgment. The Commission's regulations permit "affidavits" to be submitted to supplement answer to Motions for Summary Judgment but not Motions for Judgment on the Pleadings. See 52 Pa. Code § 5.102(b).

WHEREFORE, for the reasons set forth above, the Supplemental Answer and Affidavit filed by the Municipal Authority of the Borough of West View on April 9, 2010 should be stricken.

Respectfully Submitted



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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dated: April 15, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**THE MUNICIPAL AUTHORITY OF THE
BOROUGH OF WEST VIEW**

V.

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

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:
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Docket No. C-2010-2153062

CERTIFICATE OF SERVICE

I hereby certify that I have this date served true copies of Pennsylvania-American Water Company's Motion To Strike The "Supplemental" Answer And "Affidavit" Filed By The Municipal Authority Of The Borough Of West View upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Honorable Veronica A. Smith
Chief Administrative Law Judge
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Commonwealth Keystone Building
400 North Street
2nd Floor. L-M West
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*Counsel For The Municipal Authority Of
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



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Dated: April 15, 2010

Counsel for Pennsylvania-American Water Company

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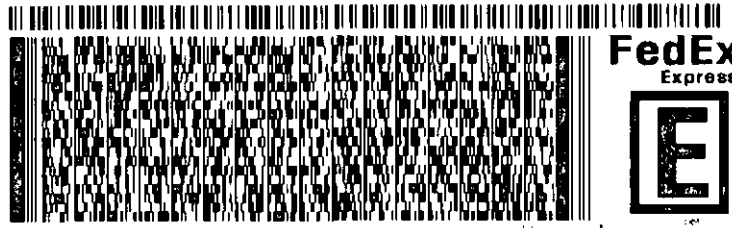
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