Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel: 215.963.5000
Fax: 215.963.5001
www.morganlewis.com

Morgan Lewis
COUNSELORS AT LAW

Anthony C. DeCusatis
Of Counsel
215.963.5034
adecusatis@MorganLewis.com

May 28, 2010

VIA FEDERAL EXPRESS

Rosemary Chiavetta
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 Chiavetta:

Enclosed for filing in the above-captioned proceeding are an unbound original and nine copies of Pennsylvania-American Water Company's ("Company") Reply to the Exceptions of The Municipal Authority Of The Borough Of West View. As evidenced by the enclosed Certificate of Service, copies of the Company's Reply have been served upon the Complainant and the Administrative Law Judge.

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

Very truly yours,

Anthony C. DeCusatis

Anthony C. DeCusatis

cc: Per Certificate of Service

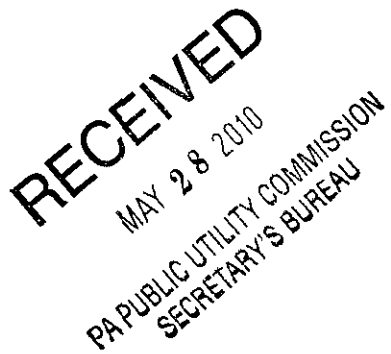
Enclosures

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MUNICIPAL AUTHORITY OF THE BOROUGH OF WEST VIEW	:	
v.	:	**DOCKET NO. C-2010-2153062**
PENNSYLVANIA-AMERICAN WATER COMPANY	:	

REPLY OF PENNSYLVANIA-AMERICAN WATER COMPANY TO THE EXCEPTIONS OF THE MUNICIPAL AUTHORITY OF THE BOROUGH OF WEST VIEW

To The Initial Decision of Administrative Law Judge
Wayne L. Weismandel
Issued April 29, 2010



Thomas P. Gadsden
(Pa. No. 28478)
Anthony C. DeCusatis
(Pa. No. 25700)
Catherine G. Vasudevan
(Pa. No. 210254)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
215.963.5034
877.432.9652 (fax)

Seth A. Mendelsohn
(Pa. No. 77063)
Pennsylvania-American Water Company
800 West Hershey Park Drive
Hershey, PA 17033
717.531.3362

Date: May 28, 2010

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I. INTRODUCTION AND OVERVIEW

A. Background

This proceeding was initiated by a Complaint filed by the Municipal Authority of the Borough of West View ("West View") against Pennsylvania-American Water Company ("PAWC" or the "Company"). The gravamen of West View's Complaint is that PAWC should be barred from selling water to the Evans City Water and Sewer Authority ("Evans City") under the terms of Rider DRS (Demand Resale Service) to the Company's tariff because Rider DRS should not be used to attract incremental load, *i.e.*, its use should be restricted to retaining the existing load of existing customers.

Evans City currently obtains all of the water needed to meet its customers' demands from its own source of supply and water treatment plant. 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. Evans City is not currently a customer of either PAWC or West View.

Evans City received responses to its request for proposals from PAWC, Cranberry Township and the Adams Township Municipal Authority ("Adams Township Authority"). PAWC's response indicated that Rider DRS was available for service to Evans City and, therefore, it offered Evans City a rate that was within the range of prices permitted under Rider DRS. PAWC's offer was the lowest received by Evans City.

Evans City's selection of PAWC as the lowest bidder was not contested by the other bidders.

West View did not respond 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. Nonetheless, in its Complaint, West View alleges that (1) it sells water to Cranberry Township and the Adams Township Authority; and (2) if either of those entities were the successful bidder, West View would sell additional water to that entity for resale to Evans City. As previously explained, West View's Complaint challenges PAWC's right to provide service to Evans City on the grounds that Rider DRS would allow the Company to unfairly "compete" with West View if the rider were used to attract incremental load.

B. Rider DRS – Prior Approval By The Commission And Commonwealth Court

Rider DRS was added to the Company's tariff pursuant to Commission approval granted in *Pa. P.U.C. v. Pennsylvania-American Water Co.*, 85 Pa. P.U.C. 12 (1995) and *Pa. P.U.C. v. Pennsylvania-American Water Co.*, 86 Pa. P.U.C. 201 (1996). By its terms, 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 favorable load factor; and has a "viable competitive alternative to service from the Company."

Under Rider DRS, PAWC is permitted to establish a rate between the "Maximum" and "Minimum" rates specified in the rider. The Maximum Rate is the tariff rate that would apply if a 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). As the Commission expressly found, because the Minimum Rate is high enough to provide a contribution to PAWC's fixed costs and because the load served under Rider DRS represents incremental sales the Company would not make absent the rider, PAWC's existing customers will always be better off (*i.e.*, pay a smaller share of PAWC's fixed costs) as a result of the operation of Rider DRS.

Rider DRS was the subject of a previous challenge that mirrors the one now leveled by West View. In that case, the presiding Administrative Law Judge and the Commission found and determined that "the 'plain language' of Rider DRS makes it clear that the Commission [in approving Rider DRS in 1995 and 1996] fully understood that that Rider could be used for the dual purpose of retaining and attracting incremental load." *Mun. Auth. of the Twp. of Robinson v. Pennsylvania-American Water Co.*, Docket No. C-20030092 (August 1, 2004) at fn. 5.[1] In so holding the Commission quoted testimony from PAWC's 1995 base rate proceeding stating that the purpose of Rider DRS is to "enhance [PAWC's] ability to maintain its existing customer base *and, hopefully, attract new customers*." *Id.* (Emphasis added.)

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[1] Copies of the Initial Decision and Final Order in this case were provided as Exhibits A and B, respectively, to PAWC's Answer to West View's Complaint.

The Municipal Authority of the Township of Robinson ("MATR") appealed the Commission's decision to the Commonwealth Court of Pennsylvania, where it again argued that applying Rider DRS to attract new load exceeded the intended scope of that rider. The Court, in an unreported decision, 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." *Mun. Auth. of the Twp. of Robinson v. Pa. P.U.C.*, No. 2008 C.D. 2004 (Pa. Cmwlth. July 15, 2005).[2] (A copy of the Court's Opinion and Order was provided as Exhibit C to PAWC's Answer to West View's Complaint.) Judge McGinley's dissent in that case left no doubt about the scope of the Court's opinion, stating that the majority would "allow [PAWC] to use the Rider to compete for another provider's customers." Commonwealth Court Opinion at BLM-2.

In PAWC's 2009 water base rate case, at Commission Docket No. R-2009-2097323, West View, along with MATR and the Pennsylvania Municipal Authorities Association ("PMAA"), 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 estopped from re-litigating that issue.

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[2] MATR applied to the Commonwealth Court for re-argument, which was denied. It also filed a Petition for Allowance of Appeal in the Pennsylvania Supreme Court, which was also denied. 588 Pa. 760, 903 A.2d 539 (2006).

On September 11, 2009, Administrative Law Judge Cynthia Williams Fordham issued *Order #6 – Riders DRS and DIS*[3] 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.

Neither West View, MATR, nor PMAA 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).

C. PAWC's Motions To Dismiss And For Judgment On The Pleadings

PAWC filed an Answer that denied the material averments of West View's Complaint. PAWC also filed Motions (1) to dismiss the Complaint on the grounds that West View lacks standing to bring its Complaint; and/or (2) for judgment on the pleadings ("Motions").

In support of its Motion to Dismiss for lack of standing, PAWC explained that West View did not respond to Evans City's request for proposals and, therefore, West View claims an interest only indirectly, *i.e.*, through Cranberry Township and Adams Township Authority, neither of which contested the results of the Evans City's request

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[3] A copy of Judge Fordham's *Order #6* was provided as Exhibit D to PAWC's Answer to West View's Complaint.

for proposals. Accordingly, West View cannot satisfy the "direct" and "immediate" prongs of the standing test set forth in *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975), which West View concedes is the controlling precedent. *See* West View Complaint ¶¶ 40-41.

West View's Complaint alleges that PAWC's use of its previously-approved Rider DRS 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 a grievance that confers standing under the standard established in *William Penn Parking Garage, Inc., supra*. *Pennsylvania Petroleum Ass'n v. Pennsylvania Power & Light Co. and Pa. P.U.C.*, 32 Pa. Cmwlth. 19, 377 A.2d 1270 (1977), *aff'd*, 488 Pa. 308, 412 A.2d 522 (1980). Moreover, the fundamental premise for West View's claim of an alleged competitive injury (*i.e.*, that Rider DRS allows PAWC pricing flexibility that West View, as a municipal authority, does not possess) is wrong as a matter of law (*see* Motions ¶¶ 13-17).

As also explained in PAWC's Motions, 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 Commission and the Commonwealth Court. Additionally, and as previously explained, as recently as September 2009, Administrative Law Judge Fordham rejected an identical claim by West View.

D. The Initial Decision

On April 29, 2010, Administrative Law Judge Wayne L. Weismandel (the "ALJ") issued his decision ("Initial Decision" or "I.D."), which granted PAWC's Motions. As the basis for his decision, the ALJ made specific, detailed findings of fact and conclusions of law. He also provided a thorough, well-reasoned analysis of the issues. The ALJ's findings and conclusions are consistent with the Public Utility Code and are fully supported by prior decisions of this Commission and the Commonwealth Court.

II. ARGUMENT

A. The ALJ Properly Determined That West View Does Not Have Standing To Bring Its Complaint (West View Exception No. 1)

The ALJ determined that two, independent bases exist for dismissing West View's Complaint for lack of standing. First, the ALJ found that West View has not alleged an "immediate" interest, as defined in *Wm. Penn Parking Garage, Inc.*, *supra*, because West View is, in effect, asserting the interests of Cranberry Township and the Adams Township Authority, which, unlike West View, actually responded to Evans City's request for proposals (I.D., pp. 4-5).

Second, the ALJ found that West View was alleging precisely the kind of "competitive injury" that the Commonwealth Court has held is insufficient to confer standing in PUC proceedings. *Pennsylvania Petroleum Ass'n v. Pennsylvania Power & Light Co. and Pa. P.U.C.*, 32 Pa. Cmwlth. at 26, 377 A.2d 1270 at 1273 ("Our review of the case law concerning 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.") The ALJ accurately pointed out that "PAWC . . . is subject to the regulatory jurisdiction of the

Commission, the [West View] Authority is not" (I.D. p. 5). West View, in an egregious misreading of the Initial Decision, highlighted the foregoing finding as, in some way, evidencing "bias" on the part of the ALJ (West View Exceptions, p. 5). In fact, the ALJ's neutrality and independence, as well as his legal reasoning, are unassailable.

1. West View's Interest Is Not "Immediate"

In its Exceptions, West View does not engage the ALJ's finding that its alleged interest cannot satisfy the "immediacy" prong of the three-part test for standing established in *Wm. Penn Parking Garage, Inc.*, *supra*. Instead, West View recites the "substantial" and "direct" criteria without even mentioning the further requirement that an interest, to be legally cognizable, must be "immediate."

As the ALJ explained, even if a complainant's alleged interest is "substantial" (*i.e.*, something more than the abstract interest of all citizens in having others comply with the law) and "direct" (*i.e.*, the matter complained of was the cause-in-fact of the alleged injury), the complainant must demonstrate that its interest is also "immediate." That is, the complainant must establish that its alleged injury follows so closely from the action complained of, and is so closely aligned with the zone of protection afforded by the legal authority on which it relies, that it – rather than another – is the proper party to initiate a justiciable controversy. *See* I.D., p. 4. This West View did not do.

As the ALJ found, West View's claims of "unfair competition" do not arise from any offer West View made to provide water service to Evans City. Rather, West View's claims are made "on behalf of Adams [Township Authority] and Cranberry [Township]" despite the fact that neither of those bidders has challenged the outcome of Evans City's

request for proposals.[4] West View has no valid basis for disputing the ALJ's conclusion that the "immediacy" requirement remains unsatisfied and, as a result, West View does not even try to do so.

2. West View Is Asserting A "Competitive Injury" That Is Insufficient To Confer Standing

In *Pennsylvania Petroleum Ass'n v. Pennsylvania Power & Light Co. and Pa. P.U.C., supra,* the Commonwealth Court considered claims virtually identical 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

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[4] West View assumes that if either Cranberry Township or the Adams Township Authority had submitted the lowest bid, the Township or Authority would have entered into a definitive agreement to sell water to Evans City. Since a water sale agreement requires a meeting of the minds on many things other than just price (*e.g.*, quantity, quality and reliability), West View's assumption is not valid. Moreover, all of the bidders were competing against Evans City's projected cost to rehabilitate its treatment plant. Compared to the bids submitted by Cranberry Township and the Adams Township Authority, rehabilitating Evans City's treatment plant may have been a lower cost alternative. Stated another way, it is pure speculation as to whether Cranberry Township or the Adams Township Authority would have ultimately been the water supplier to Evans City even if PAWC had not been the lowest bidder. Consequently, West View's interest, in addition to being remote and purely derivative of the *potential* interests of other parties, is highly speculative. For that additional reason, West View's interest is neither "immediate" nor "direct."

amount to injury or aggrievement under the standards established in *Wm. Penn Parking Garage, Inc., supra*:

> 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 does not have a substantial interest in the PUC order sufficient to bring this appeal.*

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

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. In short, *Pennsylvania Petroleum Ass'n* 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."

West View did not address – for that matter, does not even cite – *Pennsylvania Petroleum Ass'n* in its Exceptions. In short, the ALJ's dismissal of West View's Complaint on the basis of the Commonwealth Court's holding in *Pennsylvania Petroleum Ass'n* has not been challenged. Instead, West View, in a serious mischaracterization of the Initial Decision, contends that the ALJ dismissed its Complaint because of his alleged "bias" against entities that are not PUC-regulated utilities. As the foregoing discussion of *Pennsylvania Petroleum Ass'n* makes clear, the ALJ referenced West View's status as an entity not subject to PUC jurisdiction because that fact has legal significance in applying the test for standing established by the Commonwealth Court.

Additionally, although not discussed in the Initial Decision, PAWC's Motions establish that the "competitive disadvantage" West View claims to suffer because of the existence of PAWC's Rider DRS does not exist. Specifically, West View contends that the Municipality Authorities Act does not allow it the same flexibility in setting prices for water sales that PAWC is afforded by Rider DRS (*see* West View Complaint ¶¶ 7-10). That contention is wrong as a matter of law.

Contrary to the averments of West View's Complaint, the Municipality Authorities Act expressly grants municipal authorities the right and the 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" (53 Pa. C.S. § 5607(d)(19). Pennsylvania appellate courts have repeatedly held that the rate-setting power granted in that section specifically authorizes municipal authorities to establish rates "by negotiation." *Twp. of Aston v. Southwest Delaware County Mun. Auth.*, 112 Pa. Cmwlth. 434, 535 A.2d 725 (1988). *Accord High Ridge Water Auth. v. Lower Indiana County Mun. Auth.*, 689 A.2d 374 (Pa. Cmwlth. 1997). (The cited cases are discussed in detail in Paragraph No. 15 of PAWC's Motions.) Accordingly, West View's Complaint is premised on an error of law (Motions ¶¶ 13-17). West View is not precluded from competing for new business by negotiating the price at which it may sell water to a municipality or other authority. Consequently, the "unfairness" that West View alleges – *i.e.,* that PAWC can use the price-setting flexibility that Rider DRS provides while West View is barred from exercising similar pricing flexibility – does not exist. Simply stated, there is no basis for West View's claim that it is "aggrieved" by PAWC's use of Rider DRS.

B. The ALJ Properly Determined That PAWC Is Entitled To Judgment On The Pleadings (West View Exception No. 2)

The ALJ granted PAWC's Motion for Judgment on Pleadings and held as follows (I.D., p. 8):

> The question of the permissibility of PAWC using the DRS Tariff Rider to compete for and acquire a new water service customer has been settled. It is permissible. As long as PAWC complies with the provisions of its own DRS Tariff Rider, and there are no allegations in this case that it has not, it is free to offer Evans City a proposal for a bulk water sales agreement that comports with the DRS Tariff Rider provisions.
>
> * * *
>
> There are no material facts at issue in this case, and the question raised is a matter of settled law. . . . PAWC is entitled to judgment on the pleadings.

The ALJ based his decision on the prior decision of this Commission in *Mun. Auth. of the Twp. of Robinson v. Pennsylvania-American Water Co.*, Docket No. C-20030092 (August 1, 2004) (hereafter, the "MATR Order") and the Commonwealth Court's Opinion and Order in *Mun. Auth. of the Twp. of Robinson v. Pa. P.U.C.,* No. 2008 C.D. 2004 (Pa. Cmwlth. July 15, 2005) affirming that decision (hereafter, the "MATR Appeal") (I.D., pp. 7-8).

West View takes issue with the Initial Decision because it claims that the Commonwealth Court, in affirming the MATR Order, offered only "dicta" on the question of PAWC's entitlement to use Rider DRS to serve incremental load from new customers (West View Exceptions, p. 9). However, there is ample proof that West View's interpretation of the MATR Appeal is simply wrong.

The starting point is, of course, the MATR Order itself, in which the Commission squarely confronted the issue of whether Rider DRS could be used to serve a "new" customer and concluded that it could:

> In its Exception No. 1, MATR contends that Rider DRS should be narrowly construed and only invoked, where necessary, to retain existing load and no more. . . . *MATR*

> *further asserts that it was never contemplated that Rider DRS would be utilized "in the context of attracting a customer away from another water supplier." . . .*
>
> There is not much evidence in the record developed at Docket No. R-00943231 [the proceeding in which Rider DRS was approved] to support MATR's argument. While MATR is correct that more time was devoted in that case to discussing the retention of load than the attraction of new load, PAWC identified both goals therein as critical when it first proposed Rider DRS. *Thus, in his direct testimony in that proceeding, PAWC witness Robowski explained that PAWC proposed Rider DRS "to enhance its ability to maintain its existing customer base and, hopefully, attract new customers."* (MATR Exh. 5; I.D. at 16-17). Thereafter, in its Initial Brief in that proceeding, *PAWC described the purpose of its competitive rate riders in terms of "retaining or attracting incremental load."* (PAWC Exh. 3-A). For the above reasons, MATR's Exception No. 1 is denied.

MATR Order, pp. 7-8. (Emphasis added.)

When it decided the MATR Appeal, the Commonwealth Court was asked by MATR to review the PUC's holding, set forth above, on the issue raised by MATR before the Commission (*i.e.,* whether it was ever "contemplated that Rider DRS would be utilized 'in the context of attracting a customer away from another water supplier' "). The Commonwealth Court, like the PUC, decided that Rider DRS could be used "for both retaining and attracting incremental load":

> As noted by the ALJ, Water Company witness Robert L. Robowski testified that Rider DRS was being proposed to maintain the existing customer base *and to attract new customers*. (R.R. 457a). Witness David F. Keim, representing the interests of the Office of Trial Staff (OTS) during the 1995 rate proceedings, testified that Rider DRS was proposed for the purposes of maintaining Water Company's existing customer base *and to attract new customers*. (R.R. 515a) Finally, the PUC was made aware that Rider DRS was intended to be used to retain and attract

> load early in the 1995 rate proceedings by virtue of the briefs filed by OTS and Water Company. (R.R. 670a-677a)
>
> Significantly, Rider DRS specifically provides that the minimum permissible rate be sufficient to allow the Company to recover the fixed costs "associated with all new facilities added to serve the customer." (R.R. 13a) As the PUC reasons, there would be no need for Water Company to build "new facilities" if the scope of Rider DRS was limited solely to preventing loss of sales with existing customers. We therefore agree that inclusion of this language further supports a finding that Rider DRS may be used by Water Company for the purpose of increasing incremental load, not merely retaining it. To find otherwise would render this language meaningless.
>
> Given the plain language of Rider DRS and the proceedings leading up to its ratification, we find that the PUC did not err in determining that Rider DRS may be used for both retaining and attracting incremental load. Consequently, we defer to the PUC's interpretation of this provision.

MATR Appeal, p. 6. (Emphasis added.)

There should be no doubt as to the scope and precedential effect of the MATR Appeal because, as explained above, the Court explicitly affirmed the PUC's determination that Rider DRS may be used to serve a "new" customer. Moreover, that conclusion was also driven home by Judge McGinley's dissent, in which he explained that he could not join the majority because its opinion would "allow PAWC to use the Rider to compete for another provider's customer." *See* Dissenting Opinion by Judge McGinley (p. 2) in Exhibit C to PAWC's Answer to West View's Complaint.[5]

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[5] Notably, Judge McGinley's dissent expressed his concern about the use of Rider DRS to cause an existing customer of other water supplier to switch to PAWC. However, that is not the situation presented here. As previously explained, Evans City is not a customer of West View and, given West View's location, West View cannot provide service to Evans City.

Finally, and as previously explained, West View, along with MATR and PMAA, filed Complaints in PAWC's 2009 water base rate case that also 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 advanced by the complainants had been rejected previously by the Commission in the MATR Order and by the Commonwealth Court in the MATR Appeal and, therefore, the complainants should be barred from re-litigating that issue.

Administrative Law Judge Fordham decided the issues raised in PAWC's Motions to Dismiss in her *Order #6 – Riders DRS and DIS.* In that Order, she found that, as PAWC had averred, the Commission and the Commonwealth Court determined that Rider DRS did not permit unlawful "predatory pricing" and that the rider could validly be used in the manner proposed by PAWC (*see* Exhibit D to PAWC's Answer to West View's Complaint). 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).[6]

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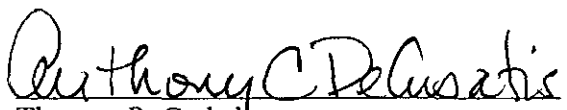
[6] West View's Exceptions (pp. 7-8) contain an extended discussion of certain technical amendments to Rider DRS and Rider DIS (a comparable rider that applies to industrial customers) that PAWC proposed in its 2009 base rate proceeding but ultimately withdrew. Suffice it to say that West View's discussion of that matter is less than accurate. In any event, nothing said by West View is relevant to the issues in this case. In any event, the matters West View purports to recount are delineated in *Order #6 – Riders DRS and DIS*, and the Commission need look no further than that Order for a refutation of West View's contentions.

III. CONCLUSION

WHEREFORE, for the reasons set forth above and in PAWC's Motions, the Exceptions of the Municipal Authority of the Borough of West View should be denied and the Initial Decision of Administrative Law Judge Wayne L. Weismandel should be adopted as the decision of this Commission.

Respectfully submitted,



Thomas P. Gadsden
(Pa. No. 28478)
Anthony C. DeCusatis
(Pa. No. 25700)
Catherine G. Vasudevan
(Pa. No. 210254)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Seth A. Mendelsohn
(Pa. No. 77063)
Pennsylvania-American Water Company
800 West Hershey Park Drive
Hershey, PA 17033
717.531.3362

Counsel for Pennsylvania-American
Water Company

Date: May 28, 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTIILTY COMMISSION

THE MUNICIPAL AUTHORITY OF THE BOROUGH OF WEST VIEW	:	
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 Pennsylvania-American Water Company's Reply to the Exceptions of The Municipal Authority of the Borough of West View upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

SERVICE BY FEDERAL EXPRESS

Honorable Wayne L. Weismandel
Administrative Law Judge
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Commonwealth Keystone Building
400 North Street
2nd Floor. L-M West
Harrisburg, PA 17120

Fred E. Baxter, Jr., Esq.
8510 Perry Highway
Pittsburgh, PA 15237
fbaxterjr@aol.com

Counsel For The Municipal Authority Of The Borough Of West View

Dated: May 28, 2010

Anthony C. Decusatis
Pa. No. 25700
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
215.963.5034
adecusatis@morganlewis.com

Counsel for Pennsylvania-America Water Company

1701 Market Street
Philadelphia, PA 19103-2921

Morgan Lewis
COUNSELORS AT LAW

TO: **VIA FEDERAL EXPRESS**

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

FedEx Express

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HARRISBURG PA 17120

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