

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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GSP MANAGEMENT CO.,

Complainant,

v.

PENNSYLVANIA AMERICAN
WATER COMPANY,

Respondent.

APR 22 2013

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKET NO. C-2012-2336436

ORDER

AND NOW, this ___ day of April, 2013, upon consideration of Complainant GSP Management Co.'s Motion in Limine, it is hereby ORDERED that the motion is GRANTED. Respondent Pennsylvania American Water Company is precluded from admitting any evidence regarding:

1) Wastewater billing performed by other utilities, including but not limited to the facts contained in Joint Stipulation paragraphs 55-56; and

2) Respondent's use of water meter readings to calculate wastewater invoices for other customers, including but not limited to the facts contained in Joint Stipulation paragraphs 52-54.

, J.

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MOTION IN LIMINE

Complainant GSP Management Co. files the following motion in limine seeking to preclude Respondent Pennsylvania American Water Company ("Company") from entering into evidence the following materials that are irrelevant to these proceedings: 1) wastewater billing performed by other utilities; and 2) the Company's use of water meter readings to calculate wastewater invoices for other customers. In support of this motion, GSP avers as follows:

1. A rate tariff has the force and effect of law and is binding on both the utility and its customers. *Brockway Glass Company v. Pennsylvania Public Utility Commission*, 437 A.2d 1067, 1070 (Pa.Cmwlt. 1981). *See also, PPL Electric Utilities Corporation v. Pennsylvania Public Utility Commission*, 912 A.2d 386, 402 (Pa.Cmwlt. 2006); *Springfield Township v. Pennsylvania Public Utility Commission*, 676 A.2d 304, 309 (Pa.Cmwlt. 1996); *e.g., Lewistown Specialty Yarns, Inc. v. Pennsylvania Electric Company*, 1994 Pa. PUC LEXIS 31, *7.

2. A utility must follow its tariff if it wishes to provide services to its customers and may not charge any rate except the rate contained in its tariff. *PPL Electric*, 912 A.2d at 402; *Brockway*, 437 A.2d at 1070.

3. In interpreting rate tariffs, the PUC must look first at the language of the document itself. If that language is clear and unambiguous, the PUC may apply only that language to determine the rates permitted by the tariff. *PPL Electric*, 912 A.2d at 400-01.

4. In applying the language of a tariff, the PUC must attribute to the words utilized in the tariff only the meanings that are generally used, understood and accepted. *PPL Electric*, 912 A.2d at 400-01.

5. In interpreting the language of a tariff, the PUC must give effect to all of its terms and may not disregard any of those terms under the pretext of pursuing the “spirit” of the tariff. *PPL Electric*, 912 A.2d at 403.

6. Part I (Rates) of PAWC’s *Tariff Wastewater PA P.U.C. No. 14*, which took effect on January 1, 2011 (the “Tariff”), is clear and unambiguous on its face.

7. For the period January 1, 2012, through December 31, 2012, the usage charges for wastewater service were \$1.686 “per 100 gallons of metered water or wastewater usage.” The usage charges increased to \$2.118 “per 100 gallons of metered water or wastewater usage” for the period January 1, 2013, through December 31, 2013.

8. Under the Tariff, wastewater bills can be based either on metered water usage or metered wastewater usage.

9. To determine which metered usage must be applied, the PUC need not look at extrinsic evidence because a utility is bound by 66 Pa.C.S. Section 1303 to apply the “rate most advantageous to the patron.”

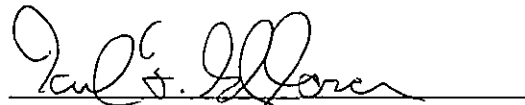
10. The question presented in this matter is one of application – how should this rate tariff be applied to a customer that has both a water meter and a wastewater meter and the monthly metered flows from each meter are significantly different?

11. As a result, there is no need for the PUC to consider extrinsic evidence to interpret the Tariff and the Company should be precluded from introducing any evidence for the purpose of aiding in the interpretation of the Tariff.

WHEREFORE, GSP respectfully requests that the Commission preclude the admission of evidence regarding: 1) wastewater billing performed by other utilities; and 2) the Company’s use of water meter readings to calculate wastewater invoices for other customers.

Respectfully submitted,

GSP Management Co.



Daniel F. Schranghamer
Attorney I.D. No. 67311
800 West Fourth Street, Suite 200
Williamsport, PA 17701
Phone: (570) 567-7261
Counsel for Complainant

Dated: April 22, 2013

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PENNSYLVANIA AMERICAN	:	
WATER COMPANY,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Complainant GSP Management Co.'s Motion in Limine and Brief in Support of Motion in Limine upon the parties, listed below, in accordance with the requirements of §1.54 (relating to service by a party).

Via E-Mail and Overnight Delivery:

Joshua L. Belcher
Cozen O'Connor
The Army and Navy Club Building
Suite 1100
1627 I Street, NW
Washington, DC 20006-4007
Counsel for Respondent Pennsylvania American Water Company

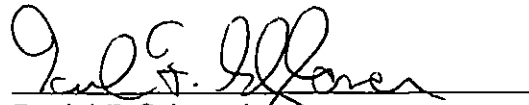
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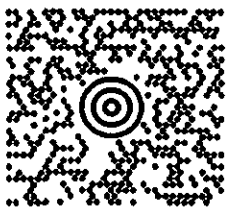



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