

GSP Management Co.

800 West 4th Street
Suite 200
Williamsport, PA 17701

Phone: (570) 567-7261
Fax: (570) 567-7263
e-mail: dschranghamer@gmail.com

Via First Class Mail

April 22, 2013

RECEIVED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

APR 22 2013

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: *GSP Management Co. v. Pennsylvania American Water Company*
Docket No. C-2012-2336436

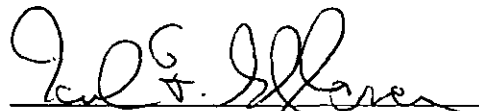
Dear Secretary Chiavetta,

Enclosed for filing in the above-referenced matter are GSP's Motion in Limine, Brief in Support of Motion in Limine, and Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

GSP Management Co.


Daniel F. Schranghamer,
General Counsel

Enclosure

Cc: Joshua L. Belcher (via Electronic Mail and Overnight Delivery)

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GSP MANAGEMENT CO.,	:	
	:	
Complainant,	:	
	:	
v.	:	
	:	DOCKET NO. C-2012-2336436
PENNSYLVANIA AMERICAN WATER COMPANY,	:	
	:	
Respondent.	:	

BRIEF IN SUPPORT OF 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 exclusive use of water meter readings to calculate wastewater invoices.

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. 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. A “rate,” in turn, is every charge made demanded, or received for any service offered, rendered, or furnished by a public utility and any rules, regulations, practices, classifications, or contracts affecting any such charge, etc. 66 Pa.C.S. Section 102.

The rules of rate tariff interpretation are clear. 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 must apply that language – and only that language – to determine the rates permitted by the tariff. *PPL Electric*, 912 A.2d at 400-01. It may not look at any evidence to interpret the tariff other than the plain language itself. *Id.* 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. *Id.* Finally, 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. *Id.*, 912 A.2d at 403.

Here, 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. 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. This language could not be any clearer. As a result, there is no need for the PUC to consider any evidence extrinsic to the four corners of the Tariff.

Under the Tariff, wastewater bills can be based either on metered water usage or metered wastewater usage. To determine which metered usage may 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.”

The question presented in this matter is not one of interpretation. The language of the rate tariff is clear and unambiguous so no interpretation is necessary. The question presented here, instead, 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 average monthly metered water flows are significantly higher than the average monthly metered wastewater flows? What PAWC or any other utility does elsewhere is irrelevant. As a result, the Company may not introduce any evidence as an aid to interpreting the Tariff.

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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