



April 23, 2013

VIA Hand Delivery

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

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

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned docket on behalf of Respondent Pennsylvania-American Water Company, please find *Pennsylvania-American Water Company's Response to the Motion in Limine of GSP Management Co.* as well as a brief in support.

Please do not hesitate to contact me should you have any questions or require additional information. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR


Michael D. Klein

Enclosure

cc: Certificate of Service

RECEIVED
GENERAL & BUSINESS

2013 APR 23 PM 1:33

RECEIVED

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GSP MANAGEMENT CO.

v.

PENNSYLVANIA AMERICAN
WATER COMPANY

:
:
:
:
:
:
:

Docket No. C-2012-2336436

**PENNSYLVANIA AMERICAN WATER COMPANY'S
BRIEF IN SUPPORT OF ITS OPPOSITION TO
GSP'S MOTION IN LIMINE**

In support of its *Response to the Motion in Limine of GSP Management Co.*, and in accordance with 52 Pa. Code, Subch. G, Respondent Pennsylvania American Water Company ("Respondent," "PAWC" or "Company") hereby files the following brief:

Counter-Statement of the Case

This proceeding cannot be reduced to a facial interpretation of potentially applicable legal provisions, but requires the Commission to consider the facts and circumstances supporting PAWC's reasonable decision to bill Complainant for sewer service based on metered water usage. As a result, granting Complainant's motion *in limine* would prevent the Commission from hearing facts relevant to the case and is therefore inappropriate.

Argument

As discussed below, GSP's *Motion in Limine* must be denied for two reasons. First, GSP waived its right to object to certain of the facts to which it stipulated in the *Joint Stipulations*. Second, the question at bar relates to the reasonable exercise of PAWC's managerial discretion. The legal framework upon which GSP is basing its motion, indeed its case, does not govern the billing action taken by PAWC as challenged by GSP. As a result, standard sewerage industry

billing practices and the methods used by PAWC to bill its other wastewater ratepayers will be relevant to the Commission's determination in this matter.

I. GSP Has Waived in Part Its Right to Object to the Joint Stipulations

GSP Management Co. ("GSP") waived its ability to challenge the relevance of PAWC's use of water meter readings to calculate wastewater invoices for its other wastewater ratepayers in its Claysville wastewater system, including without limitation the facts contained in Joint Stipulations paragraphs 52-54. Although the parties expressly agreed at paragraph 57 of the Joint Stipulations that GSP reserved the right to challenge the relevance of the wastewater billing practices of other utilities presented at paragraphs 55 and 56, no such reservation was requested by GSP or otherwise included in the Joint Stipulations with respect to PAWC's practice of billing its other Claysville wastewater ratepayers based on water meter readings as discussed in paragraphs 52-54. GSP is a sophisticated entity with experienced counsel. Clearly GSP understood the importance of expressly reserving objections to facts jointly stipulated. It is therefore solely responsible for its failure to expressly reserve that right with respect to other jointly stipulated facts. As a result GSP has waived any right not expressly reserved to object to the relevance of jointly stipulated facts.

II. The Billing Customs of the Sewerage Industry and PAWC's Billing of Other Ratepayers Are Relevant Considerations

The question before the Commission is whether PAWC committed an abuse of discretion when it determined that, under the circumstances, GSP's Interstate Village property should be billed for sewer services based on metered water usage. As such, consideration by the Commission of standard sewerage industry billing practices and the methods used by PAWC to bill its other wastewater ratepayers is appropriate.

Pennsylvania courts have long held that the Commission must not interfere with the management of jurisdictional public utilities absent a showing of an abuse of discretion or arbitrary action adversely impacting the public interest. Pennsylvania Public Utility Commission v. Philadelphia Electric Company, 561 A.2d 1224, 1226-27 (Pa. 1989) (citing Metropolitan Edison v. Pennsylvania Public Utility Commission, 437 A.2d 76 (Pa. Cmwlth. 1981)); see also Pickford v. Pennsylvania Public Utility Commission, 4 A.3d 707, 715 (Pa. Cmwlth. 2010) (PAWC's election to use one treatment method over another within the company's discretion).

In the *Pickford* case, PAWC had decided to switch water treatment methods at certain of its facilities. Both treatment methods were allowed under federal and Pennsylvania law. Because both methods were permitted by law, petitioners bore the burden of demonstrating that the Company's decision was an abuse of discretion or an arbitrary decision which adversely affected the public.

Here, the Tariff provides PAWC the operational flexibility to rely on either a water or sewer meter when applying the usage charge. PAWC intends to introduce, through the *Joint Stipulations* and testimony to be provided at hearing, evidence of the facts and circumstances influencing the Company's decision to bill GSP's Interstate Village property based on metered water usage. To support a conclusion that its decision to base GSP's sewer bills on metered water usage was not an abuse of discretion or arbitrary action, PAWC should be allowed to introduce evidence that basing sewer bills upon metered water usage is standard sewerage industry practice in Pennsylvania with both Commission-regulated and non-regulated wastewater systems.

By moving to exclude this evidence from the case, GSP seeks to have the Commission act in a vacuum, without the benefit of the fact that: (i) all other Commission-regulated

wastewater utilities with tariffs to which the Commission's website links do not allow billing for sewer service based on a wastewater meter; (ii) all of the other wastewater ratepayers in the Claysville wastewater system are billed based on water meters, and (iii) a large wastewater authority in western Pennsylvania, the Allegheny County Sanitary Authority, bases its sewer bills on the metered water usage of its ratepayers. This very relevant evidence is necessary to show that the decision made by PAWC was neither arbitrary nor an abuse of discretion. This is the evidence that GSP seeks to preclude.

III. The Legal Framework on which GSP Relies Is Not Applicable

It is correct that a utility's Commission-approved rates have the force and effect of law. However, GSP's attempt to narrow the scope of this proceeding to a facial interpretation of provisions contained in the Tariff and the Public Utility Code relies on faulty analysis.

Section 1303 of the Public Utility Code, 66 Pa. C.S. § 1303, upon which GSP principally relies, only applies where a public utility has "more than one rate applicable to service rendered to a patron." In this case, there is a single usage charge under the Tariff that is applicable to GSP's Interstate Village property and all other wastewater ratepayers in the Claysville system. The usage charge was \$1.686 for calendar year 2012; the usage charge is \$2.118 for calendar year 2013. See "Appendix A" hereto for relevant excerpts from the Tariff. The single usage charge is assessed per 100 gallons of metered usage. The single usage charge is uniformly applied to all bill classes (residential, commercial and municipal) that are serviced by the Claysville system. That a customer's usage can be determined under the Tariff using either a water or sewer meter reflects the practical need for operational flexibility, not an entirely separate rate. Because the Tariff contains only a single rate applicable to usage at GSP's Interstate Village property, Section 1303 is not applicable.

Nevertheless, Section 1303 “[does not impose] an affirmative duty upon the public utility to continually monitor its customer’s accounts for the purpose of computing the most advantageous rate.” Springfield Twp. v. Pennsylvania Public Utility Commission, 676 A.2d 304 (Pa. Cmwlth. 1996). To do so “would be unreasonable.” Id. Moreover, a mere examination of a customer’s account would not be sufficient. As such, and to the extent that the Commission considers Section 1303 to be applicable, a consideration of how PAWC and the sewerage industry account for usage and bill their customers would be nonetheless relevant.

As a result, and contrary to GSP’s assertion, this is not merely a matter of interpreting PAWC’s Tariff or Section 1303. Whether the Company reasonably exercised its discretion in accordance with the Tariff when determining that, under the circumstances, GSP’s Interstate Village property should be billed for sewer services based on metered water usage is a fact-dependent consideration.

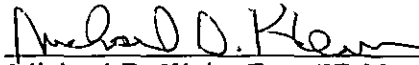
Conclusion

Because PAWC has the ability under the Tariff and applicable law to reasonably exercise discretion whether or not to rely upon a ratepayer’s sewer meter for billing purposes, it is both necessary and appropriate for the Commission to consider all of the relevant evidence of sewerage industry billing practices, including the way PAWC bills its other wastewater ratepayers. None of the evidence challenged by GSP should be precluded from admission.

WHEREFORE, for the foregoing reasons, PAWC respectfully requests that GSP’s *Motion in Limine* be denied.

Respectfully submitted,

COZEN O'CONNOR



By: Michael D. Klein, Esq. (ID No. 23854)
Tel: (717) 703-5903
Joshua L. Belcher, Esq. (ID No. 313129)
Tel: (202) 912-4826
Cozen O'Connor
305 North Front Street, Suite 400
Harrisburg, PA 17101
*Counsel for Pennsylvania-American Water
Company*

APPENDIX A

Part I: Rates - The rates as set forth below will be in effect from
January 1, 2012 through December 31, 2012.

Schedule of Rates Applicable to Claysville Wastewater Operations

Metered Rates

Service Charges:

All metered customers shall be subject to a monthly service charge per equivalent dwelling unit.

<u>Bill Class</u>	<u>Monthly Service Charge</u>
Residential	\$ 7.50
Commercial	20.00
Municipal	20.00

Usage Charge For All Bill Classes:

Per 100 gallons of metered water or wastewater usage \$1.686 (I)

Flat Rates

Residential Flat Rate of \$61.89 per month shall be billed to each unmetered customer. (I)

Part I: Rates - The rates as set forth below will be in effect from
January 1, 2013 through December 31, 2013.

Schedule of Rates Applicable to Claysville Wastewater Operations

Metered Rates

Service Charges:

All metered customers shall be subject to a monthly service charge
per equivalent dwelling unit.

<u>Bill Class</u>	<u>Monthly Service Charge</u>
Residential	\$ 7.50
Commercial	20.00
Municipal	20.00

Usage Charge For All Bill Classes:

Per 100 gallons of metered water or wastewater usage \$2.118 (I)

Flat Rates

Residential Flat Rate of \$75.83 per month shall be billed to each
unmetered customer. (I)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GSP MANAGEMENT CO.

v.

PENNSYLVANIA AMERICAN
WATER COMPANY

:
:
:
:
:
:

Docket No. C-2012-2336436

ORDER

AND NOW, this 24th day of April, 2013, upon consideration of Complainant GSP Management Co.'s *Motion in Limine* and Respondent Pennsylvania American Water Co.'s filings in response, it is hereby ORDERED that the motion is DENIED.

..J

SECRETARY'S OFFICE
PA PUC

2013 APR 23 PM 1:33

RECEIVED

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GSP MANAGEMENT CO.

v.

PENNSYLVANIA AMERICAN
WATER COMPANY

:
:
:
:
:
:

Docket No. C-2012-2336436

**PENNSYLVANIA AMERICAN WATER COMPANY'S
RESPONSE TO THE MOTION IN LIMINE OF
GSP MANAGEMENT CO.**

Pursuant to Rule 5.103(c) of the Public Utility Commission's Rules, 52 Pa. Code § 5.103(c), Respondent Pennsylvania-American Water Company ("Respondent," "PAWC" or "Company"), by its undersigned attorneys, hereby responds to the *Motion in Limine* filed by GSP Management Co. ("GSP" or "Complainant"), which seeks to preclude consideration of evidence that GSP argues is irrelevant. In support of its response, PAWC states as follows:

GSP Has Waived in Part Its Right to Object to the Joint Stipulations

1. As an initial matter, GSP has waived its ability to challenge the relevance of PAWC's use of water meter readings to calculate wastewater invoices for its other wastewater ratepayers in its Claysville wastewater system, including without limitation the facts contained in *Joint Stipulations* paragraphs 52-54.

2. The parties specifically agreed at paragraph 57 of the *Joint Stipulations* that GSP's right to challenge the relevance of the wastewater billing practices of other utilities presented at paragraphs 55 and 56 shall be preserved.

RECEIVED
2013 APR 23 PM 1:33
SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

3. By contrast, the parties did not agree to preserve, nor did GSP indicate at the time its intent to assert, a challenge to the relevance of PAWC's practice of billing its other wastewater ratepayers in its Claysville wastewater operations based on water meter readings as discussed in paragraphs 52-54 of the *Joint Stipulations*.

4. As a result, GSP should be considered to have waived its right to challenge the relevance of jointly stipulated facts for which it did not expressly reserve that right.

**The Billing Customs of the Sewerage Industry and
PAWC's Billing of Other Ratepayers Are Relevant Considerations**

5. The question before the Commission is whether PAWC committed an abuse of discretion when it determined that, under the circumstances, GSP's Interstate Village property should be billed for sewer services based on metered water usage.

6. Pennsylvania courts have long held that the Commission must not interfere with the management of jurisdictional public utilities absent a showing of an abuse of discretion or arbitrary action adversely impacting the public interest. Pennsylvania Public Utility Commission. v. Philadelphia Electric Company, 561 A.2d 1224, 1226-27 (Pa. 1989) (citing Metropolitan Edison v. Pennsylvania Public Utility Commission, 437 A.2d 76 (Pa. Cmwlth. 1981)); see also Pickford v. Pennsylvania Public Utility Commission, 4 A.3d 707, 715 (Pa. Cmwlth. 2010) (PAWC's election to use one disinfectant method over another within the company's discretion).

7. PAWC intends to introduce, through the *Joint Stipulations* and testimony to be provided at hearing, evidence of the facts and circumstances influencing the Company's decision to bill GSP's Interstate Village property based on metered water usage. To support a conclusion

that its decision to base GSP's sewer bills on metered water usage was not an abuse of discretion or arbitrary action, PAWC should be allowed to introduce evidence that basing sewer bills upon metered water usage is standard sewerage industry practice in Pennsylvania with both Commission-regulated and non-regulated wastewater systems. By moving to exclude this evidence from the case, GSP seeks to have the Commission act in a vacuum, without the benefit of the fact that: (i) all other Commission-regulated wastewater utilities with tariffs to which the Commission's website links do not allow billing for sewer service based on a wastewater meter; (ii) all of the other wastewater ratepayers in the Claysville wastewater system are billed based on water meters, and (iii) a large wastewater authority in western Pennsylvania, the Allegheny County Sanitary Authority, bases its sewer bills on the metered water usage of its ratepayers. This very relevant evidence is necessary to show that the decision made by PAWC was neither arbitrary nor an abuse of discretion. This is the evidence that GSP seeks to preclude.

8. While GSP argues correctly that a utility's Commission-approved rates have the force and effect of law, GSP's attempt to narrow the scope of this proceeding to a facial interpretation of provisions contained in the Tariff and the Public Utility Code relies on faulty analysis.

9. Section 1303 of the Public Utility Code, 66 Pa. C.S. § 1303, upon which GSP principally relies, only applies where a public utility has "more than one rate applicable to service rendered to a patron."

10. There is a single usage charge under the Tariff that is applicable to GSP's Interstate Village property and all other wastewater ratepayers in the Claysville system. The single usage charge is assessed per 100 gallons of metered usage. The single usage charge is

uniformly applied to all bill classes (residential, commercial and municipal) that are serviced by the Claysville system. That usage can be determined under the Tariff using either a water or sewer meter reflects the practical need for operational flexibility, not an entirely separate rate.

11. Because the Tariff contains only a single rate applicable to usage at GSP's Interstate Village property, Section 1303 is not applicable.

12. Nevertheless, Section 1303 “[does not impose] an affirmative duty upon the public utility to continually monitor its customer’s accounts for the purpose of computing the most advantageous rate.” Springfield Twp. v. Pennsylvania Public Utility Commission, 676 A.2d 304 (Pa. Cmwlth. 1996). To do so “would be unreasonable.” Id.

13. As a result, and contrary to GSP's assertion, this is not merely a matter of interpreting PAWC's Tariff or Section 1303. The matter to be considered is fact-dependent, i.e., whether the Company reasonably exercised its discretion in accordance with the Tariff when determining that, under the circumstances, GSP's Interstate Village property should be billed for sewer services based on metered water usage.

Conclusion

14. Because PAWC has the ability under the Tariff and applicable law to reasonably exercise discretion whether or not to rely upon a ratepayer's sewer meter for billing purposes, it is both necessary and appropriate for the Commission to consider all of the relevant evidence of sewerage industry billing practices, including the way PAWC bills its other wastewater ratepayers. None of the evidence challenged by GSP should be precluded from admission.

WHEREFORE, for the foregoing reasons, PAWC respectfully requests that GSP's *Motion in Limine* be denied.

Respectfully submitted,

COZEN O'CONNOR



By: Michael D. Klein, Esq. (ID No. 23854)
Tel: (717) 703-5903
Joshua L. Belcher, Esq. (ID No. 313129)
Tel: (202) 912-4826
Cozen O'Connor
305 North Front Street, Suite 400
Harrisburg, PA 17101
*Counsel for Pennsylvania-American Water
Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GSP MANAGEMENT CO.

v.

PENNSYLVANIA AMERICAN
WATER COMPANY

:
:
:
:
:
:

Docket No. C-2012-2336436

CERTIFICATE OF SERVICE

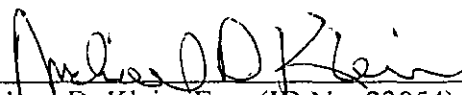
I hereby certify that I have this day served a true and correct copy of the *Pennsylvania-American Water Company's Response to the Motion in Limine of GSP Management Co.* upon the persons and in the manner indicated below in accordance with the requirements of § 1.54 (relating to service by a party):

Via Electronic and Overnight Delivery:

Daniel F. Schranghmer, General Counsel
GSP Management Co.
800 W. Fourth Street, Suite 200
Williamsport, PA 17701
Tel: (570) 567-7261
dschranghmer@gmail.com
Counsel for Complainant

Honorable Dennis J. Buckley
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Front Street, 2 West
P.O. Box 3265
Harrisburg, PA 17105-3265
debuckley@pa.gov

RECEIVED
2013 APR 23 PM 1:33
PA. PUB. UTIL. COM.
SECRETARY'S BUREAU



Michael D. Klein, Esq. (ID No. 23854)
Tel: (717) 703-5903
mklein@cozen.com

Cozen O'Connor
305 North Front Street, Suite 400
Harrisburg, Pennsylvania 17101

*Counsel for Pennsylvania-American Water
Company*

DATED: April 23, 2013