**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :

:

v. : R-2017-2595853

:

Pennsylvania-American Water Company :

**ORDER DENYING THE REQUEST OF THE**

**PENNSYLVANIA-AMERICAN WATER COMPANY TO**

**DISMISS THE COMPLAINT OF THE PENNSYLVANIA-AMERICAN**

**WATER COMPANY LARGE USERS GROUP**

PROCEDURAL HISTORY

On April 28, 2017, the Pennsylvania-American Water Company (PAWC) filed a request at Docket No. R-2017-2595853 with the Pennsylvania Public Utility Commission (Commission) to increase its base distribution water and wastewater revenues by $107.9 million. The Commission subsequently suspended the effective date of that proposed increase and instituted an investigation.

On May 24, 2017, the Pennsylvania-American Water Large Users Group (PAWLUG) filed a Complaint at Docket No. C-2017-2606016 against the rate increase filed by PAWC.

On June 12, 2017, PAWC filed an Answer and New Matter to the PAWLUG Complaint, questioning whether PAWLUG is an association as at the time of the filing of the Complaint, PAWLUG had only one member, GlaxoSmithKline (GSK). PAWC, therefore, questioned the “representational capacity,” of PAWLUG.

In its New Matter, PAWC also cited the Commission’s regulation at 52 Pa. Code

§ 1.36, arguing that the affidavit submitted by PAWLUG with its Complaint does not comply with the requirements of that regulation. Specifically, PAWC questions whether counsel for PAWLUG may execute the affidavit as PAWC argues that counsel may not be called as a witness in this case to testify.

PAWC asked that the Complaint of PAWLUG be dismissed.

On June 30, 2017, PAWLUG filed both a Reply to the New Matter of PAWC and an amendment of Appendix A to PAWLUG’s Complaint indicating that GSK has now been joined in PAWLUG by Ellwood Group, Inc., and Universal Stainless & Alloy Products, Inc.

In its Reply, PAWLUG also contends that PAWC’s New Matter lacks merit and should be “rejected.” In support of this argument, PAWLUG argues that because PAWC did not address Rule 3.7 of the Pennsylvania Rules of Professional Conduct, Pa. R.P.C. 3.7, in PAWC’s original pleading, PAWC’s Answer should be dismissed. PAWLUG also contends that the averments in PAWLUG’s Complaint have no probative value in the rate case, and do not constitute evidence, hence it is “unlikely” that PAWLUG’s counsel would testify with respect to those averments.

PAWLUG next argues that, as a practical matter, other parties in this proceeding have filed pleadings wherein affidavits and/or verifications have been executed by counsel, specifically the Office of Small Business Advocate (OSBA) and AK Steel Corporation. PAWLUG points out that PAWC did not oppose either of those pleadings.

With respect to 52 Pa. Code § 1.36, PAWLUG argues that because the term "employee" is not defined in the Commission’s regulations, it should be interpreted broadly to include counsel employed by a party.

Finally, PAWLUG argues that dismissal of its Complaint would not be in the public interest because PAWLUG has participated in prior PAWC rate cases, and PAWLUG’s participation has, “ . . . furthered the public interest by providing insight into the impacts of PAWC’s rate filing upon large industrial customers within its service territory.” Reply at Page 3.

PAWLUG asks that the presiding officers deny the relief requested by PAWC.

DISCUSSION

First, we question whether it would be procedurally appropriate to dismiss PAWLUG’s formal Complaint solely on the basis of an Answer and New Matter without a hearing. We note that PAWC did not file a Motion to Dismiss the Complaint, and so the usual analysis with respect to a preliminary objection under the Commission’s procedural rules and regulations would be of questionable applicability in resolving this matter. We also note that the request to dismiss the Complaint was very narrowly drawn. Thus, for the reasons stated below, we conclude that the PAWC request for dismissal on the grounds set forth in its Answer and New Matter is no longer based on present facts and is not legally supportable, and therefore must be denied.[[1]](#footnote-1)

The PAWLUG Complaint is a four page *pro forma* rate case complaint that primarily calls into question whether the rates proposed by PAWC are just, reasonable, and nondiscriminatory, as required by Sections 1301 and 1304 of the Public Utility Code. 66 Pa. C.S. §§ 1301 and 1304. PAWLUG Complaint at ¶ 6. The nearest statement of a factual averment in the Complaint is the contention that PAWLUG members require substantial volumes of water in their operations, and the proposed rate increase may have an adverse impact upon their production processes. PAWLUG Complaint at ¶ 5.

With respect to the issue raised by PAWC as to the membership of PAWLUG, since the filing of PAWC’s Answer, Appendix A of PAWLUG has been amended to reflect the membership of a total of three corporate entities. As the sole membership of GSK at the time of the filing of the PAWC Answer seems to have been the only concern of PAWC in this respect, it appears that the issue of membership and representational capacity as set forth in the PAWC Answer and New Matter is now moot.

With respect to the issue raised by PAWC as to affidavits and/or verifications executed by counsel, we agree with PAWC that the Commission's rules of administrative practice and procedure speak to the matter of verification of formal complaints. However, on May 23, 2008, the Commission amended its regulations in, *Final Rulemaking to Permit Electronic Filing*, Docket No. L-00070187 (Order entered, May 23, 2008) (*Final Rulemaking Order*). In the Commission’s *Final Rulemaking Order* adopting the revised regulations, the Commission expanded 52 Pa. Code § 1.36 to include the following pertinent language:

**§ 1.36. Verification.**

(a) Applications, petitions, formal complaints, motions and answers thereto containing an averment of fact not appearing of record in the action or containing a denial of fact must be personally verified by a party thereto or by an authorized officer or other authorized employee of the party if a corporation or association. Verification means a signed written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). *When a verification is filed electronically, the verification shall be executed by a filing user*, or if the verification is signed by an individual who is not a filing user, a filing user *may* file the verification electronically by scanning the original verification and submitting it as an attachment to a filing . . . . (emphasis added)

The Final Rulemaking Order defines a “filing user,” as “A person who has registered to use the electronic filing system in accordance with the registration instructions available on the Commission's web site . . . .” *Final Rulemaking Order* at 46. In the instant case, the formal Complaint of PAWLUG was electronically filed by Adeolu A. Bakare, Esquire, counsel for PAWLUG, and an e-filing user.

Based on the foregoing, the request of PAWC to dismiss the Complaint of PAWLUG must be denied.

THEREFORE,

IT IS ORDERED:

1. That the request of the Pennsylvania-American Water Company at Docket Nos. R-2017-2595853 and C-2017-2606016 to dismiss the Complaint of the Pennsylvania-American Water Company Large Users Group is denied.

Date: July 7, 2017

Dennis J. Buckley

Administrative Law Judge

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Benjamin J. Myers

Administrative Law Judge

**R-2017-2595853 – Pennsylvania Public Utiltiy Commission v Pennsylvania American Water Company**

***Revised 6/30/17***

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1. Given that PAWC’s request for dismissal of PAWLUG’s Complaint cannot be sustained on its face, we do not address PAWLUG’s contentions with respect to the definition of “employee,” nor do we interpret the applicability of the Pennsylvania Rules of Professional Conduct to this issue. [↑](#footnote-ref-1)