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November 3, 2023

RCVD PUC SEC BUR
NOV 3 2023 AM 11:00

Via Hand Delivery

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

RE: *Salvatore and Elizabeth Galante, et al, v. Pennsylvania-American Water Company*
Docket Nos. C-2023-3042213, Docket No. C-2023-3043734, C-2023-3043677, C-2023-3043676, C-2023-3043459, C-2023-3043458, C-2023-3043222, C-2023-3043135, C-2023-3042588, C-2023-3042545, C-2023-3042488, C-2023-3042487, C-2023-3042486, C-2023-3042377, C-2023-3042348, C-2023-3042343, C-2023-3042334, C-2023-3042332, C-2023-3042295, and C-2023-3042822

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Pennsylvania-American Water Company is its Motion for Judgment on the Pleadings in the above-referenced consolidated matter. Copies have been served on the Complainants in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE


Michael A. Gruin

Enc.

cc: Administrative Law Judge Marta Guhl (via Federal Express)

Allentown • Bergen County • Bala Cynwyd • Fort Lauderdale • Harrisburg • Lancaster • New York
Philadelphia • Princeton • Reading • Rochester • Scranton • Valley Forge • Wilkes-Barre • Wilmington
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11/03/2023 SL1 1958883v1 101575.00851

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SALVATORE AND ELIZABETH GALANTE;	:	Docket No. C-2023-3042213
LOUISE SPINELLI;	:	Docket No. C-2023-3043734
SANDRA GRZYBICKI;	:	Docket No. C-2023-3043677
LANA GRZYBICKI;	:	Docket No. C-2023-3043676
JOSEPH PETROSKY;	:	Docket No. C-2023-3043459
FRANK SERAFINI;	:	Docket No. C-2023-3043458
ADRIAN J. MIHALKO;	:	Docket No. C-2023-3043222
RYAN R. MCBRIDE;	:	Docket No. C-2023-3043135
DAVID AND JEAN WADAS;	:	Docket No. C-2023-3042588
LAURIE CIECIUCH;	:	Docket No. C-2023-3042545
PATRICK AND ANDREA FRICCHIONE;	:	Docket No. C-2023-3042488
PATRICK DUNLEAVY;	:	Docket No. C-2023-3042487
MICHAEL KOWALSKI;	:	Docket No. C-2023-3042486
DOMINICK YORK;	:	Docket No. C-2023-3042377
RAJAB DASTGIR;	:	Docket No. C-2023-3042348
RICHARD POLACHEK;	:	Docket No. C-2023-3042343
JAMES H. SNYDER;	:	Docket No. C-2023-3042334
PORNTIPA MUKDASATIT;	:	Docket No. C-2023-3042332
MARK AND EILEEN LYONS;	:	Docket No. C-2023-3042295
PAUL KOBIERECKI;	:	Docket No. C-2023-3042822
Complainants	:	
	:	
v.	:	
	:	
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

To: *Salvatore and Elizabeth Galante*
Louise Spinelli
Sandra Grzybicki
Lana Grzybicki
Joseph Petrosky
Frank Serafini
Adrian J. Mihalko
Ryan R. McBride
David and Jean Wadas
Laurie Ciecuch
Patrick and Andrea Fricchione
Patrick Dunleavy
Michael Kowalski
Dominick York
Rajab Dastgir

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Richard Polachek
James H. Snyder
Porntipa Mukdasatit
Mark and Eileen Lyons
Paul Kobierecki

You are hereby notified to file a written response to the attached Motion for Judgment on the Pleadings of Pennsylvania-American Water Company within twenty (20) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed Motion within twenty (20) days of service, the facts set forth by Pennsylvania-American Water Company may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings, such as responses to Motions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

You must also serve a copy of your response on the undersigned counsel for Pennsylvania-American Water Company. Failure to respond to this Motion for Judgment on the Pleadings could result in the dismissal of your case.

STEVENS & LEE



Michael A. Gruin, (I.D. No. 78625)
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Tel. (717) 255-7365
Fax (610) 988-0852
COUNSEL FOR PENNSYLVANIA
AMERICAN WATER COMPANY

DATE: November 3, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SALVATORE AND ELIZABETH GALANTE;	:	Docket No. C-2023-3042213
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PAUL KOBIERECKI;	:	Docket No. C-2023-3042822

Complainants

v.

PENNSYLVANIA-AMERICAN
WATER COMPANY

Respondent

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**MOTION FOR JUDGMENT ON THE PLEADINGS OF RESPONDENT,
PENNSYLVANIA-AMERICAN WATER COMPANY**

AND NOW, comes Pennsylvania-American Water Company (“PAWC” or “Company”), by and through its attorneys Stevens & Lee, P.C., and files this Motion for Judgment on the Pleadings pursuant to 52 Pa. Code § 5.102(a) and respectfully requests

that your Honorable Commission dismiss the above-referenced Complaints as a matter of law. The pleadings in this case clearly demonstrate that the Complainants lack standing to request the relief they are seeking, and that the relief they seek is beyond the jurisdiction of the Commission to grant. For these reasons, the Complaint should be dismissed as a matter of law.

I. INTRODUCTION

1. Between August 15, 2023 and October 20, 2023 the Company was served with the Formal Complaints (“Complaint”) filed by the Complainants against the Company.

2. The Formal Complaints are nearly identical in substance, with most incorporating a common, uniform template of allegations and requested relief.

3. Copies of the Formal Complaints filed by the Complainants are included in **Exhibits 1-A through 1-T** and incorporated herein by reference.

4. In each case, the Company filed an Answer and New Matter, to the Complaint, copies of which are included in **Exhibits 1-A through 1-T** and incorporated herein by reference.¹

5. In each case, the Company’s New Matter stated, in paragraph 13 that the Complainants are not now, and never have been, customers of the Company’s for wastewater service at the service address listed in the Complaint.

6. In each case, the Company’s New Matter, in paragraphs 14 and 15, explained that the Complainants receive wastewater service from the Lackawanna River

¹ In the interest of efficiency and ease of review, only one copy of PAWC’s Exhibit I to its Answer and New Matter is being provided, in Exhibit 1-A. Each of PAWC’s Answers contained the identical Exhibit I.

Basin Sewer Authority (“LRBSA”), and the Company provides bulk wastewater acceptance, conveyance, treatment and disposal services to LRBSA.

7. In each case, the Company’s New Matter, in paragraphs 22 and 23, explained that the Company does not bill the Complainants for wastewater service, and the Company does not own the collection lines used by LRBSA to provide LRBSA’s wastewater service.

8. None of the Complainants’ submitted Answers to New Matter that denied the averments of the Company’s New Matter. As such, the averments in PAWC’s New Matter may be deemed admitted. See 52 Pa. Code 5.63 (b).

II. LEGAL STANDARD

9. The Commission’s regulation at 52 Pa. Code 5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing. The presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

10. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406(Pa. Super. 1983).

11. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the

resolution of the case exists, a hearing is unnecessary. *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d. 557 (Pa. Cmwlth. 1989).

III. ARGUMENT

12. The pleadings in this case reveal that PAWC is entitled to judgment as a matter of law because the Complainants lack standing to file their Formal Complaints regarding PAWC's wastewater service, and because the relief sought by the Complainants is not within the Commission's jurisdiction to award.

A. The Complainants Are Not Customers of PAWC for Wastewater Service and Therefore Have No Standing to File a Formal Complaint Regarding PAWC's Wastewater Rates or Service

13. In order to bring a complaint before a tribunal, a complainant must first demonstrate that he or she has standing to maintain the action. *Nye v. Erie Insurance Exchange*, 470 A.2d 98, 100 (Pa. 1983).

14. The Commission has held that, in general, a complainant must be the respondent's customer in order to have standing to file a complaint about its utility service. In other words, a complainant which is not a customer of a utility generally does not have the requisite substantial, direct, and immediate interest necessary to confer standing to bring the complaint about the service of that utility. *See, Coggins v PPL Electric Utilities Corp.*, Docket No. C-2012-2312785 (Opinion and Order entered July 18, 2013), *Re: Pennsylvania American Water Company*, 85 Pa. P.U.C. 548 (1995); and *Pa. P.U.C. v. Marietta Gravity Water Company*, 87 Pa. P.U.C. 864 (1997).

15. The pleadings in this clearly establish that none of Complainants are customers of PAWC's for wastewater service.

16. In each case, Paragraph 13 of PAWC's New Matter confirms that that the Complainants are not now, and never have been customers of the Company's for wastewater service at the service address listed in their Complaints. None of the Complainants' Answer to New Matter deny this fact.

17. Furthermore, in each case the Exhibits to the Formal Complaints clearly reflect that the Complainants are customers of LRBSA for wastewater service. Nearly all of the Complainants attached exhibits that include a notice from LRSBA of a rate change to its customers, and bills from LRSBA to the Complainants for wastewater service.

18. Exhibit 1 to PAWC's Answer and New Matter is a copy of the Bulk Service Agreement which establishes that PAWC provides bulk wastewater acceptance, conveyance, treatment and disposal services to LRBSA on a wholesale basis, and confirms that LRBSA operates the Montage Sewer System and provides the wastewater service to end-users customers.

19. Because the Complainants are not customers of the Company's for wastewater service, and have not alleged that they are applying for service or were denied service by the Company, the Complainants does not possess the requisite standing to file a formal complaint against the Company with respect to PAWC's wastewater service or rates. Therefore, the Complaint should be dismissed for lack of standing.

B. The Commission Does Not Have Jurisdiction Over LRBSA's Rates or Services

20. It is clear from the Complaint that the Complainants receive wastewater service from LRBSA and that the Complainants are disputing the rates they pay to LRBSA for wastewater service. *See* Exhibits A, B and C to the Complaints. This dispute is not within the Commission's jurisdiction, because it is well settled that the

Commission does not have jurisdiction over the rates or services provided by municipal authorities.

21. LRBSA is a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania. See Exhibit 1 to PAWC's Answer and New Matter, at page 2.

22. Although it has general jurisdiction over service disputes between public utilities operating in Pennsylvania and their customers, the Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. See, *Terminato v. Pa. National Insurance Co.*, 645 A.2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); and *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

23. A complaint against a public utility must allege a violation of the Public Utility Code or a regulation or Order of the Commission in order to be legally sufficient. 66 Pa. C.S. §701.

24. In the instant Complaint, the pleadings establish that the Complainants are not customers of PAWC's and do not receive service from PAWC, but rather receive their wastewater service from LRBSA, which is not an entity that is regulated by the Commission. See generally, PAWC's New Matter, and Exhibits A,B, and C to the Complaint.

25. The appellate courts of this Commonwealth have consistently held only courts of common pleas have jurisdiction over municipal authorities providing water service. *Borough of Sewickley Water Authority v. Mollica*, 118 Pa. Commonwealth Ct. 241, 544 A.2d 1122 (1988); *Graver v. Pa. P.U.C.*, 79 Pa. Commonwealth Ct. 528, 469 A.2d 1154 (1984).

26. The Commission has reached this same conclusion. See *Ransom v. Pennsylvania American Water Company*, Docket No. C-903045, Order entered April 11, 1991. In that case, the Commission confirmed that a municipal authority rendering utility service is not subject to this Commission's jurisdiction, and that instead, the Legislature has directed that the Courts of Common Pleas shall have exclusive jurisdiction over the rates and service such authorities render, and billing disputes between customers and authorities.

27. Because the Complaint seeks to challenge the rates charged by LRBSA for wastewater service, and because Commission does not have jurisdiction over LRBSA's rates or services, the Complaint must be dismissed.

28. To the extent the Complainants wish to challenge LRBSA's rates, such a challenge must be brought in the Court of Common Pleas.

C. PAWC's Wastewater Rates Were Previously Approved by the Commission And Therefore Are Not Subject to Revision.

29. To the extent that the Complaint seeks to challenge or overturn the Company's current wastewater rates, the Complaint should be dismissed because there is no genuine issue of material fact and the pleadings clearly show that the Company is entitled to judgment as a matter of law.

30. PAWC's current rates for wastewater services to individual customers are reflected in the Company's wastewater tariff, and those rates were formally approved by the Commission by Order issued on December 8, 2022 in Docket Nos. R-2022-3031672 and R-2022-3031673. As such, the rates are deemed to be lawful and have the force and effect of law.

31. Once approved by the Commission, a utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin Consolidated Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

32. With PAWC's wastewater rates having been approved by the Commission and reflected in the Company's tariff, there is no genuine issue of material fact regarding the Company's rates, and any allegation that the rates are improper or should be adjusted should be dismissed as a matter of law.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, Respondent Pennsylvania-American Water Company respectfully requests that your Honorable Commission grant the within Motion and dismiss the Formal Complaints, with prejudice.

Respectfully submitted,
STEVENS & LEE



Michael A. Gruin, (I.D. No. 78625)
17 N. 2nd St., 16th Fl.
Harrisburg, PA 17101
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COUNSEL FOR PENNSYLVANIA
AMERICAN WATER COMPANY

DATE: November 3, 2023

**BEFORE THE
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Complainants

v.

PENNSYLVANIA-AMERICAN
WATER COMPANY

Respondent

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Motion for Judgment on the Pleadings upon the party listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA First Class U.S. Mail

Salvatore and Elizabeth Galante 4103 Austen Close Moosic, PA 18507	Adrian J. Mihalko 2004 Robinson Close 20-D Moosic, PA 18507
Louise Spinelli 228 Thoreau Drive Moosic, PA 18507	Ryan R. McBride 6 Beckett Close Moosic, PA 18507
Sandra Grzybicki 1062 Beaumont Road Berwyn, PA 18507	David and Jean Wadas 29 Alpine Drive Moosic, PA 18507
Lana Grzybicki 16 Alpine Drive Moosic, PA 18507	Laurie Cicciuch 1601 Robinson Close Moosic, PA 18507
Joseph Petrosky 237 Thoreau Drive Moosic, PA 18507	Patrick and Andrea Fricchione 110 Glenmaura Drive Moosic, PA 18507
Frank Serafini 603 Main Street Moosic, PA 18507	Patrick Dunleavy 801 O'Henry Close Moosic, PA 18507
Michael Kowalski 24 Emerson Drive Moosic, PA 18507	James H. Snyder 904 O'Henry Close Moosic, PA 18507
Dominick York 9 Kipling Drive Moosic, PA 18507	Pornnipa Mukdasatit 2005 Robinson Close Moosic, PA 18507
Rajab Dastgir 25 Alpine Drive Moosic, PA 18507	Mark and Eileen Lyons 325 Glenmaura Drive Moosic, PA 18507
Richard Polacheck 1905 Robinson Close 19-6 Moosic, PA 18507	Paul Kobierecki 109 Glenmaura Drive Moosic, PA 18507



DATED: November 3, 2023

Michael A. Gruin