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February 5, 2024

VIA ELECTRONIC FILING

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, 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 Brief in Support of its Petition for Interlocutory Review and Answer to a Material Question in the above-referenced matter. A copy has 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: Certificate of Service
Administrative Law Judge Marta Guhl, via email

Allentown • Bergen County • Bala Cynwyd • Fort Lauderdale • Harrisburg • Lancaster • New York
Philadelphia • Princeton • Reading • Rochester • Scranton • Valley Forge • Wilkes-Barre • Wilmington
A PROFESSIONAL CORPORATION

**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
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MARK AND EILEEN LYONS;	:	Docket No. C-2023-3042295
PAUL KOBIERECKI;	:	Docket No. C-2023-3042822
Complainants	:	
	:	
v.	:	
	:	
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

**BRIEF OF
PENNSYLVANIA-AMERICAN WATER COMPANY IN SUPPORT OF
PETITION FOR INTELUCUTORY REVIEW AND ANSWER TO A MATERIAL
QUESTION**

AND NOW, pursuant to 52 Pa. Code §§ 3.10 and 5.305, comes

Pennsylvania-American Water Company (“PAWC” or “Company”), by and through its attorneys Stevens & Lee, P.C., and submits this brief in support of its Petition for Interlocutory Review and Answer to a Material Question in this matter. For the reasons

set forth below, PAWC respectfully submits that the Pennsylvania Public Utility Commission (“Commission”) answer the Material Question in the negative, and confirm that the Commission does not possess jurisdiction over complaints brought by customers of a municipal authority against a public utility regarding the municipal authority’s wastewater rates and billing practices, when the public utility only provides bulk wastewater acceptance, conveyance, treatment and disposal services to the municipal authority and when the customers do not receive any wastewater service from the public utility.

I. BACKGROUND AND SUMMARY OF ARGUMENT

Between August 15, 2023 and October 20, 2023 PAWC was served with the Formal Complaints (“Consolidated Complaints”) filed by the Complainants against the Company. The Consolidated Complaints are nearly identical in substance, with most incorporating a common, uniform template of allegations and requested relief.

In each case, the Company filed an Answer and New Matter to the Consolidated Complaints. 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. In each case, the Company’s New Matter, in paragraphs 14 and 15, explained that the Complainants receive wastewater service from the Lackawanna River Basin Sewer Authority (“LRBSA”), and the Company provides bulk wastewater acceptance, conveyance, treatment and disposal services to LRBSA. In each case, the Company’s New Matter explained in paragraphs 22 and 23 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. None of the Answers to New Matter filed by

any of the Complainants denied those averments from 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).

After the pleadings were closed, PAWC filed a Motion for Judgment on the Pleadings, seeking dismissal of the Consolidated Complaints on the grounds that:

- a. The Complainants are not customers of PAWC's for wastewater service and therefore lack standing to bring a complaint against PAWC,
- b. The Commission does not have jurisdiction over LRBSA's rates or services, because LRBSA is a municipal authority, and
- c. PAWC's wastewater rates were previously approved by the Commission and therefore not subject to revision.

By Interim Order issued on January 4, 2024, Administrative Law Judge Marta Guhl ("Judge Guhl") denied PAWC's Motion for Judgment on the Pleadings, reasoning that "in this case, the Complainants have seen a substantial increase in their rate due to PAWC charges to LRBSA" and therefore they have a substantial, direct and immediate interest that provides them with standing to bring a complaint before the Commission. Judge Guhl also identified two factual questions for determination by the Commission: 1) how LRBSA is charging its customers related to PAWC's charges and 2) how PAWC interacts with other entities such as LRBSA. See Interim Order, at p. 5.

PAWC filed its Petition for Interlocutory Review and Answer to a Material Question on January 24, 2024, which presented the following Material Question for Commission review and requested that the material Answer be answered in the negative:

Does the Commission have jurisdiction over complaints brought by customers of a municipal authority against a public utility regarding the municipal authority's wastewater rates and billing practices, when the public utility only provides bulk wastewater acceptance, conveyance, treatment and disposal services to the municipal authority and when the customers do not receive any wastewater service from the public utility?

Suggested Answer: No

As set forth below, the undisputed facts as established in the pleadings make it clear that the Commission does not have jurisdiction over the Consolidated Complaints, because the Consolidated Complaints seek to challenge the wastewater rates charged to the Complainants by a municipal authority, LRBSA, over which the Commission lacks jurisdiction. Accordingly, it is appropriate for the Commission to grant PAWC's Petition for Interlocutory Review and Answer the Material Question in the negative. Resolution of this Material Question will prevent substantial prejudice to PAWC and will greatly streamline the proceeding by providing the parties clarity on the scope of the Commission's jurisdiction over the Complaints, if not resolving the proceeding in its entirety. With the pleadings demonstrating that there are no facts in dispute, it is appropriate to resolve this threshold jurisdictional now, rather than proceeding through discovery and evidentiary hearings with 20 separate complainants before addressing the threshold jurisdictional issue.

II. ARGUMENT

A. The Pleadings Established That 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

The Interim Order denying PAWC's Motion for Judgment on the Pleadings reasoned that "the Complainants have indicated that they have seen a substantial increase in their rates due to **PAWC charges to the LRBSA**. It appears that the Complainants therefore, have the requisite substantial, direct and immediate interest in these matters to provided them with sufficient standing in these cases." Interim Order, at p. 4 (emphasis added). However, it is well-settled that 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). 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).

In each of the Consolidated Complaints, the Complainants take issue with a rate increase communicated to them by the LRBSA, and the Complainants seek “relief from the 120% rate increase granted PAWC for wastewater treatment”. However, the pleadings in this matter clearly establish that none of Complainants are customers of PAWC’s for wastewater service. 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. Furthermore, in each case the Exhibits to the Consolidated Complaints clearly reflect that the Complainants are **customers of LRBSA** for wastewater service. All of Consolidated Complaints attached exhibits that included a notice from LRBSA of a rate change to its customers, and/or an invoice from LRSBA to the Complainants establishing that LRBSA is the Complainants’ wastewater service provider, not PAWC.

The pleadings confirm that PAWC does not bill any of the Complainants for any aspect of wastewater, collection, conveyance, treatment or disposal. Indeed, none of the Complainants are customers of PAWC's for wastewater service in any capacity. Rather, PAWC bills LRBSA for bulk wastewater acceptance, conveyance, treatment and disposal pursuant to an Agreement for the Acceptance, Conveyance, Treatment, and Disposal of Wastewater From the Montage, Inc. Wastewater Collection System at the Scranton Wastewater Collection System and Wastewater Treatment Plant ("Bulk Service Agreement"), which was attached to PAWC's Answers to the Consolidated Complaints as Exhibit 1. PAWC's Answers explained that the Bulk Service Agreement was originally executed on July 24, 2003 by and between the Sewer Authority of the City of Scranton, the City of Scranton, Lackawanna County, Moosic Borough, and LRBSA. Then, in 2016, PAWC entered into an agreement to purchase substantially all of the sewer and wastewater treatment assets of the Sewer Authority of the City of Scranton. The Commission approved PAWC's acquisition of the assets of the Sewer Authority of the City of Scranton ("Scranton Sewer Authority") by Order entered on October 19, 2016 in Docket No. A-2016-2537209. The acquisition closed on December 29, 2016, and at that time, PAWC took over the provision of bulk services to LRBSA under the Bulk Service Agreement, but PAWC did not acquire any customers of LRBSA.

Under the express terms of the Bulk Service Agreement, LRBSA operates and maintains the sewer system and collection lines which service portions of Moosic Borough, and LRBSA discharges wastewater to PAWC for treatment and disposal. Under the terms of the Bulk Service Agreement, LRBSA bills individual users of the Montage Sewer System located outside the City of Scranton at a rate equal to the PAWC metered consumption rate for conveyance, treatment and disposal services by PAWC, plus a

service fee established by LRBSA. The Bulk Sales Agreement and the Exhibits attached to the Consolidated Complaints confirm that PAWC does not bill the Complainants individually for wastewater, and PAWC does not own the wastewater collection lines used by LRBSA service to provide LRBSA's wastewater collection service. PAWC does not bill the Complainants for wastewater service, instead, it only issues bills to LRBSA. If PAWC does not receive payment for the bulk wastewater services it provides, its only recourse is with LRBSA, because only LRBSA is PAWC's customer, and PAWC has no recourse with respect to any Complainant. Similarly, if a Complainant had an issue with a bill for their wastewater service, PAWC would not even be aware much less have any involvement, because the Complainants receive their bills from LRBSA and make payments to LRBSA, and the Complainants are not PAWC customers for wastewater service.

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 bulk wastewater service or rates to LRBSA. Therefore, the Complaint should be dismissed for lack of standing.

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

The Interim Order also justified the dismissal of PAWC's Motion for Judgment on the Pleadings on the grounds that "there are questions regarding how LRBSA are charging their customers related to their PAWC charges." See Interim Order, at p. 5. However, it is well settled that the Commission does not have jurisdiction over how a municipal authority charges its customers, and that principle is not altered by the fact that

the municipal authority receives bulk service from a public utility or that the municipal authority bases its rates to its customers on the bulk rates charged to the authority by the public utility. There is no precedent for permitting customers of a municipal authority who are not customers of a public utility, to have standing to challenge the public utility's rates for bulk service to that municipal authority. Permitting such a complaint to proceed would effectively expand the Commission's jurisdiction to include municipal authorities in every situation where a municipal authority receives bulk service from a public utility. Such an expansion of jurisdiction is not authorized, because the Courts of Common Pleas have exclusive jurisdiction over the rates and services of municipal authorities.

As explained above, it is clear from the Consolidated Complaints and Exhibits thereto 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 Consolidated 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.

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. 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). 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. 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 Consolidated Complaints.

The appellate courts of this Commonwealth have consistently held that 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). 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.

The fact is that the Consolidated Complaints seek to challenge the rates charged by LRBSA for wastewater service, and because Commission does not have jurisdiction over LRBSA's rates or services, the Consolidated Complaints must be dismissed for the reasons explained herein. 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, and The Complaints Do Not Allege that PAWC Did Not Comply With its Bulk Sale Agreement with LRBSA.

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.

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.

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).

As the second ground for denying PAWC’s Motion for Judgment on the Pleadings, the Interim Order held that “Further, there are questions regarding how the Company interacts with other entities such as the LRBSA.” Interim Order, at p. 5. However, PAWC’s interactions with LRBSA are governed by the Bulk Sales Agreement. The Commission approved PAWC’s acquisition of the Scranton Sewer Authority, including PAWC’s assumption of the Bulk Sales Agreement with LRBSA, by Order entered October 19, 2016 in in Docket No. A-2016-2537209, at Ordering Paragraph 8.e.

The Consolidated Complaints include no allegation that PAWC has not complied with the Bulk Sales Agreement or the Commission's Order approving the assignment of the Bulk Sales Agreement. Furthermore, as non-customers of PAWC, the Complainants would not have the requisite standing to bring such a complaint that would include such allegations, for the same reasons explained in Section A, above.

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 Petition for Interlocutory Review, Answer the Material Question in the negative, and dismiss the Consolidated Complaints, with prejudice.

Respectfully submitted,
STEVENS & LEE



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DATE: February 5, 2024

**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	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Brief in Support of Petition for Interlocutory Review and Answer to a Material Question 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

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DATED: February 5, 2024

Michael A. Gruin