

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Salvatore and Elizabeth Galante, et.al.,	C-2023-3042213
Louise Spinelli;	C-2023-3043734
Sandra Grzybicki;	C-2023-3043677
Lana Grzybicki;	C-2023-3043676
Joseph Petrosky;	C-2023-3043459
Frank Serafini;	C-2023-3043458
Adrian J. Mihalko;	C-2023-3043222
Ryan R. McBride;	C-2023-3043135
David and Jean Wadas;	C-2023-3042588
Laurie Ciecich;	C-2023-3042545
Patrick and Andrea Fricchione;	C-2023-3042488
Patrick Dunleavy;	C-2023-3042487
Michael Kowalkski;	C-2023-3042486
Dominick York;	C-2023-3042377
Rajab Dastgir;	C-2023-3042348
Richard Polachek;	C-2023-3042343
James H. Snyder;	C-2023-3042334
Porntipa Mukdasatit;	C-2023-3042332
Mark and Eileen Lyons;	C-2023-3042295
Paul Kobierecki;	C-2023-3042822

Complainants,

v.

Pennsylvania-American Water Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Interlocutory Review and Answer to Material Question (Petition) filed on January 24, 2024, by Pennsylvania-American Water Company (PAWC or Petitioner).

Based upon the Interim Order Denying the Motion for Judgment on the Pleadings issued by Administrative Law Judge (ALJ) Marta Guhl on January 4, 2024 (*January 2024 Interim Order*), the Petitioner seeks interlocutory review and an answer in the negative by the Commission to the Material Question, summarized as follows:

Does the Commission have jurisdiction over complaints brought by wastewater customers of a non-jurisdictional municipal authority against a jurisdictional public utility which provides bulk wastewater acceptance, conveyance, treatment, and disposal services to the municipal authority, where the complainants allege that their high wastewater rates are directly impacted by the bulk wastewater rates and service provided by the jurisdictional public utility to the municipal authority?

PAWC Pet. at 2.

For the reasons discussed more fully below, based on our review of the Petition and applicable legal standard, we shall deny the Petition, and, thereby, return the proceedings to the Office of Administrative Law Judge for such further proceedings as deemed necessary, in accordance with this Opinion and Order. *See*, 52 Pa. Code § 5.303(a)(relating to Commission action on petition for interlocutory review and answer).

## **I. History of the Proceeding**

Since August 2023, twenty consumers (Complainants) have filed Formal Complaints (Consolidated Complaints, or Complaints), against Pennsylvania-American Water Company (PAWC, Respondent, or Company), alleging they have experienced a significant rate increase for wastewater service due to the Company. They requested a reduction of their rates.

The Company filed Answers and New Matters to the Formal Complaints. The Company indicated that the consumer Complainants were not customers of PAWC and that the Commission does not have jurisdiction in this matter.

On October 27, 2023, via a Hearing Change Notice, the matters were scheduled for a prehearing conference on November 20, 2023 at 10:00 a.m. and the matter was assigned to ALJ Guhl.

On October 31, 2023, ALJ Guhl issued a Prehearing Conference Order to the Parties.

On November 3, 2023, the Company filed a Motion for Judgment on the Pleadings. The Company alleged that the Commission lacked jurisdiction over the matters filed by the Complainants because the consumers were not customers of PAWC. The Company also contended that the Commission does not have jurisdiction over the Lackawanna River Basin Sewer Authority (LRBSA) which controls the rates and service for the Complainants. Lastly, the Company maintains that the Commission does not have the jurisdiction to revise or change its previously approved rates.

The Motion for Judgment on the Pleadings contained a Notice to Plead directing the Complainants to file a response within twenty (20) days of service. No responses were filed.

On January 4, 2024, ALJ Guhl issued the *January 2024 Interim Order* denying PAWC's Motion for Judgment on the Pleadings.

As previously noted, on January 24, 2024, PAWC filed the instant Petition seeking interlocutory review of the ALJ's *January 2024 Interim Order* and requesting that the Commission answer the Material Question in the negative.

### **III. Discussion**

#### **A. Legal Standards**

As a preliminary matter, we note that any issue we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

During a proceeding and pursuant to the provisions of 52 Pa. Code § 5.302, a party may seek interlocutory review and answer to a material question which has arisen or is likely to arise. The standards for interlocutory review are well established. *See*, 52 Pa. Code § 5.302(a). Section 5.302(a) of the Commission's Regulations requires that the petitioning party "state . . . the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding." The pertinent consideration is whether interlocutory review is necessary to prevent substantial prejudice

– that is, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process. *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002, *et al.* (Opinion and Order entered June 14, 1999) (*Jt. Application of Bell Atlantic Corp.*); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Opinion and Order entered February 11, 1999) (*Pa. PUC v. Frontier*); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985) (*Knights Limousine*).

Pursuant to 52 Pa. Code § 5.303(a), the Commission may take one of the following courses of action on requests for interlocutory review and answer to a material question:

- (1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties.
- (2) Determine that the petition was improper and return the matter to the presiding officer.
- (3) Decline to answer the question.
- (4) Answer the question.

Generally, Petitions for Interlocutory Review are not favored, as the preferred approach is to permit proceedings to move forward in the normal course to provide all parties, the presiding officer, and the Commission with a full opportunity to develop the record, brief issues, and present arguments at each stage. *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Opinion and Order entered October 23, 2009) at 3 (*Re: Philadelphia Gas Works*).

Under case law construing Section 5.302(a), the “compelling reasons” for interlocutory review are the reasons establishing that such review is *necessary* to either

prevent substantial prejudice or to expedite the conduct of the proceeding. In other words, a petition under Section 5.302(a) must allege compelling reasons why any alleged prejudice flowing therefrom could not be rectified during the normal Commission review process. *Joint Application of Bell Atlantic Corp.; Pa. PUC v. Frontier; Knights Limousine Service, Inc.*

The Commission stated that it does not routinely grant interlocutory review except upon a showing by the petitioner of extraordinary circumstances or compelling reasons. Such a showing may be made by a petitioner by establishing that, without such interlocutory review, some harm would result which would not be reparable through normal avenues, that the relief sought should be granted now, rather than later, and that granting interlocutory review would prevent substantial prejudice or expedite the proceeding. *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. P-2009-2097639 and R-2009-2139884 (Opinion and Order entered April 15, 2010).

In a petition for interlocutory review involving the scope and admissibility of evidence in a proceeding, the Commission will consider the presiding ALJ's authority to oversee and rule on the scope of and admissibility of evidence in a proceeding, as set forth in statute at Section 331(d)(3) of the Public Utility Code, 66 Pa. C.S. § 331(d)(3) (pertaining to authority of the presiding officer), and Commission Regulations, including: Section 5.483 (pertaining to authority of presiding officer); Section 5.403 (pertaining to control of receipt of evidence); Section 5.103 (pertaining to authority to rule on motions); Section 5.222 (pertaining to prehearing conference in non-rate proceedings to oversee evidentiary matters for orderly conduct and disposition of the proceeding and furtherance of justice); and Section 5.223 (pertaining to authority of presiding officer at conferences). 52 Pa. Code §§ 5.483, 5.403, 5.103, 5.222, and 5.223.

As noted, generally, petitions for interlocutory review regarding evidentiary matters within the ALJ's authority are not favored. The Commission will generally leave

questions regarding the relevance and admission of evidence to the sound discretion of the ALJ to provide all parties, the presiding officer, and the Commission, with a full opportunity to develop the record, brief issues, and present arguments at each stage. *See, Re: Philadelphia Gas Works; See, Jo Anna Warren Williamson v. Duquesne Light Company*, Docket No. C-2009-2138578 (Opinion and Order entered February 10, 2011) (“[T]he admission of evidence is generally a matter within the sound discretion of the ALJ, and the ALJ’s rulings thereon will not be reversed in the absence of a clear abuse of discretion or error of law.”)

**B. The ALJ’s *January 2024 Interim Order***

The ALJ’s *January 2024 Interim Order* denied PAWC’s Motion for Judgment on the Pleadings based upon the ALJ’s conclusion that, under Section 5.102 of Commission Regulations, viewing the record in a light most favorable to the *pro se* Complainants, as the non-moving party, there remained genuine issues of fact which may be relevant to the Complainants’ assertion that the rates charged by LRBSA, which are not under the Commission’s jurisdiction, are directly impacted by the circumstances of PAWC’s provision of utility service to LRBSA. *January 2024 Interim Order* at 3-4 (citing 52 Pa. Code § 5.102(a), (d)(1) and (d)(2); *First Mortgage Co. of Pennsylvania v. McCall*, 313 Pa. Superior Ct. 54, 56, 459 A. 2d 406, 408(1983)) The ALJ also found it relevant that the Complainants are acting *pro se*, and found that therefore, it would be in the interests of the Complainants’ due process rights to afford them with a “meaningful opportunity to be heard” at a hearing, so that they may fully explain the basis for their Complaints against PAWC. *January 2024 Interim Order* at 1-4.

The ALJ concluded that the *pro se* Complainants had standing to bring the Complaints against PAWC because the Complainants had established the requisite substantial, direct, and immediate interest in the matters alleged, where they allege their utility rates were directly impacted by PAWC’s charges to LRBSA. In viewing the

“service” provided by PAWC to LRBSA, as defined under the Public Utility Code (Code), the ALJ concluded that PAWC’s provision of service to LRBSA, could provide the basis for finding a violation of the Company’s duty under the Code which directly impacted the Complainants. *Id.* at 4.

The ALJ noted that, under the Code, “service” is broadly construed. Section 102 of the Code provides, in pertinent part:

“Service” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . .

66 Pa. C.S. §102. Under the broad definition of service, the ALJ concluded there are genuine factual issues relevant to the Complainants’ claims, *i.e.*, regarding how the LRBSA charges the Complainants in relation to how PAWC charges LRBSA, as well as how PAWC interacts with other municipal authorities such as the LRBSA. Accordingly, the ALJ denied PAWC’s motion for judgment on the pleadings and directed that the matter be scheduled for prehearing conference. *January 2024 Interim Order* at 4-6.

### **C. PAWC’s Petition<sup>1</sup>**

In support of its Petition, PAWC asserts the same basis upon which it sought judgment on the pleadings. PAWC asserts that the Commission may not assert proper jurisdiction over the Complaints because the Complainants are not customers of PAWC, and the Complaints involve the rate charged to the Complainants as customers of

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<sup>1</sup> None of the *pro se* Complainants have filed a brief in this matter.

LRBSA, a municipal authority not subject to the Commission's jurisdiction. Petition at 2-3.

PAWC asserts that the Commission lacks jurisdiction over the Complaints because the pleadings establish that: (1) the Complainants are not customers of PAWC's for wastewater service and therefore lack standing to bring a complaint against PAWC; (2) the Commission does not have jurisdiction over the rates and service of a municipal authority, LRBSA; and, (3) PAWC's wastewater rates were previously approved by the Commission and therefore not subject to revision. PAWC Brief at 4-10.

In its summary of argument, PAWC avers that the Commission grant interlocutory review and answer the material question in the negative, *i.e.*, to conclude the Commission lacks jurisdiction over the Complaints, that doing so 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." *Id.* at 4. PAWC maintains, contrary to the ALJ's finding, that the pleadings demonstrate that there are no facts in dispute. Therefore, PAWC asserts it is appropriate to resolve the threshold question of jurisdiction immediately, rather than proceeding through discovery and evidentiary hearings on the twenty consolidated complaints. *Id.* at 2.

Finally, PAWC avers that because PAWC's wastewater rates are Commission-approved tariff rates, there can be no genuine issue of material fact regarding the Company's rates. Further, PAWC asserts that any allegation that PAWC's rates are improper or should be adjusted should be dismissed as a matter of law. PAWC Brief at 11.

## D. Disposition

Upon review, as discussed more fully *infra.*, we shall deny the Petition. The standard for granting a petition for interlocutory review is a high one. “Generally, Petitions for Interlocutory Review are not favored, as the preferred approach is to permit proceedings to move forward in the normal course in order to provide all parties, the presiding officer, and the Commission with a full opportunity to develop the record, brief issues, and present arguments at each stage.”<sup>2</sup> The Commission will not grant interlocutory review unless a petitioner provides a compelling basis as required in 52 Pa. Code § 5.302(a). Significantly, the Commission has found that the time, effort and expense associated with having to litigate a case does not typically amount to substantial prejudice for purposes of granting interlocutory review.<sup>3</sup>

Here, the Petitioner has not shown that granting interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings. Upon review of the Petition and Brief, PAWC has not alleged with any specificity any harm which would not be reparable through normal avenues, such that the relief sought should be granted now, rather than later. Furthermore, we agree with ALJ Guhl that it is not appropriate to dismiss these complaints on a preliminary basis because there remain factual questions in this case that have not yet been answered but that should be addressed in a formal hearing. *See, January 2024 Interim Order* at 5. We agree with the ALJ that it would be premature to dismiss the matters without allowing the Complainants in these cases to further develop the record. *Id.*

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<sup>2</sup> *See, Application of Aqua Pennsylvania Wastewater, Inc., pursuant to Sections 507, 1103, and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority*, Docket No. A-2019-3015173 (Order entered August 31, 2020).

<sup>3</sup> *Id.*; *see, Mobilfone of Northeastern PA, Inc. v. Paul Kelly d/b/a American Teletronix*, Docket Nos. C-00871182, C-00871578 (Order entered May 24, 1988).

Accordingly, because we conclude that the Petitioner has failed to satisfy the standard for interlocutory review, we shall deny the Petition and return the matter to the presiding officer.

#### **IV. Conclusion**

Based on our review of the Petition and the applicable law, we find that the Petition fails to satisfy the standard for interlocutory review, therefore we shall deny the Petition and return the matter to OALJ for such further proceedings as deemed necessary; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Petition for Interlocutory Review and Answer to Material Question filed on January 24, 2024, by Pennsylvania American Water Company, at Docket No. C-2023-3042213, et al., is denied.
2. That the matter is returned to the Office of Administrative Law Judge for such further proceedings as deemed necessary.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: February 20, 2024

ORDER ENTERED: February 20, 2024