

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

	3042213-OSA Docket Nos.
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 Ciecuch;	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

MOTION OF COMMISSIONER KATHRYN L. ZERFUSS

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

Since August 2023, twenty *pro se* complainants have filed Formal Complaints against PAWC alleging that they have experienced a significant rate increase for wastewater service due to PAWC. On November 3, 2023, PAWC filed a Motion for Judgment on the Pleadings alleging that (1) the Commission lacks jurisdiction over these matters because the *pro se* complainants are not PAWC customers, (2) the Commission does not have jurisdiction over the municipal authority that controls the rates and services for the *pro se* complainants, and (3) the Commission does not have jurisdiction to revise or change PAWC's approved rates. On January 4, 2024,

Administrative Law Judge (ALJ) Marta Guhl issued an Interim Order denying PAWC's Motion for Judgement on the Pleadings (*January 2024 Interim Order*). On January 24, 2024, PAWC filed the instant Petition seeking interlocutory review of the *January 2024 Interim Order* and requesting that the Commission answer the Material Question in the negative. PAWC also separately filed a Brief in Support on February 5, 2023 (Brief).

In the Petition, PAWC presented the following Material Question and requested that the Commission answer it in the negative:

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.

Here, the Petitioner alleges that “[r]esolution of this Material Question will prevent substantial prejudice to [the Petitioner] and will greatly streamline the proceedings by providing the parties clarity on the scope of the Commission’s jurisdiction over the Complainants, if not resolving the proceedings.” *Id.* at 3; PAWC Br. at 4

I take this opportunity to highlight that 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.”¹ 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.²

I believe that the Petitioner has not shown that granting interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings. In my 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, I 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

¹ 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-201903915173 (Order entered August 31, 2020).

² *Id.*; see *Mobilfone of Northeastern PA, Inc. v. Paul Kelly d/b/a American Teletronix*, Docket Nos. C-87112, C-87578 (Order entered May 24, 1988).

answered but that should be addressed in a formal hearing. *See January 2024 Interim Order* at 5. I 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.* Accordingly, I submit that the Petition does not meet the applicable standard and this matter should be returned to the presiding officer. For this reason, the Commission should decline to answer the Petitioner's Material Question.

THEREFORE, I MOVE THAT:

1. 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, is denied.
2. The matter is returned to the Office of Administrative Law Judge for such proceedings as may be necessary.
3. The Office of Special Assistants prepare an Opinion and Order consistent with this motion.

DATE: February 16, 2024

A handwritten signature in black ink that reads "Kathryn L. Zarfuss". The signature is written in a cursive, flowing style.

Kathryn L. Zarfuss, Commissioner