

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Greater Hazleton Community	:	
Area New Development Organization Inc. t/a	:	
CAN DO, INC., Pursuant to Section 1102(a)	:	
of the Code, for Approval of (1) the Right to	:	
Offer, Render, Furnish or Supply Waster Service	:	
to the Public in an Additional Portion of Hazle	:	
Township, together with portions of Sugarloaf	:	A-2026-3059809
Township and West Hazleton Borough,	:	
Luzerne County, Pennsylvania and	:	
(2) Abandonment of Portions of its Water	:	
Service Territory in Hazle Township, Luzerne	:	
County, Pennsylvania and East Union Township,	:	
Schuylkill County, Pennsylvania	:	

INTERIM ORDER #4
DISMISSING PRELIMINARY OBJECTION OF GREATER HAZLETON
COMMUNITY AREA NEW DEVELOPMENT ORGANIZATION INC. T/A CAN DO,
INC. (WATER DIVISION) TO
THE PROTEST OF PATRICIA KISENWETHER

This Interim Order denies the preliminary objection of Greater Hazleton Community Area New Development Organization Inc., t/a CAN DO, INC. (CAN DO) to the Protest of Patricia Kisenwether.

HISTORY OF THE PROCEEDING

On January 13, 2026, CAN DO filed an application with the Pennsylvania Public Utility Commission (Commission), pursuant to Section 1102(a) of the Public Utility Code (Code), 66 Pa.C.S. § 1102(a), for approval of (1) the right to offer, render, furnish or supply water service to the public in an additional portion of Hazle Township, together with portions of Sugarloaf Township and West Hazleton Borough, Luzerne County, Pennsylvania and (2)

abandonment of portions of its water service territory in Hazle Township, Luzerne County, Pennsylvania and East Union Township, Schuylkill County, Pennsylvania.¹

Notice of the application was published in the January 31, 2026 edition of the *Pennsylvania Bulletin*, 56 Pa.B. 737. The notice specified a protest deadline of February 16, 2026.

On February 12, 2026, Patricia Kisenwether (Ms. Kisenwether) filed a protest in opposition to the application.

On February 25, 2026, the Commission issued an initial telephonic prehearing conference notice to alert the parties that a prehearing conference would be held on March 25, 2026. Also on February 25, 2026, the undersigned issued a prehearing order.

On March 4, 2026, CAN DO filed a preliminary objection to Ms. Kisenwether's Protest. A notice to plead accompanied the preliminary objection.

No responsive pleading to the preliminary objection was filed.

CAN DO's preliminary objection is ripe for disposal and is denied for the reasons set forth herein.

DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa. Code § 5.101(a). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice with respect to preliminary objections. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). Commission regulations provide as follows:

¹ On January 22, 2026, CAN DO filed an amended application to correct an administrative error related to Exhibit 6.

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a)(1)-(7).

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the non-moving party, recovery or relief is possible. *Dep't of Auditor General v. State Emps.' Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002). All of the non-moving party's averments must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emps' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

Ms. Kisenwether avers in her protest (Kisenwether Protest) that she is a property owner and that the “proposed expansion and abandonment directly affect water availability, service reliability, land use, and public safety in my community.” Kisenwether Protest at 1.

In its preliminary objection, CAN DO argues that Ms. Kisenwether lacks standing to protest the application. CAN DO asserts: Ms. Kisenwether’s property is not located within the service area proposed for expansion or abandonment; Ms. Kisenwether is not a customer of CAN DO; and that Ms. Kisenwether’s water will not be affected by approval of the application. Accordingly, CAN DO argues that Ms. Kisenwether failed to demonstrate the “direct, immediate, and substantial interest” required for standing and, consequently, her protest should be dismissed with prejudice.

The Commission’s Rules of Practice and Procedure permit protests under Section 5.51, 52 Pa. Code § 5.51. Under this section, a person objecting to the approval of an application filed with the Commission may file a protest to the application.

There are three requirements for a party to have standing: (1) the party must have a substantial interest in the subject matter of the litigation; (2) the interest must be direct; and (3) the interest must be immediate and not a remote consequence. *George v. Pa. Pub. Util. Comm’n*, 735 A.2d 1282 (Pa. Cmwlth. 1999) (citing *Ken R. ex rel. C.R. v. Arthur Z.*, 682 A.2d 1267 (Pa. 1996)).

A ‘substantial’ interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A ‘direct’ interest requires a showing that the matter complained of caused harm to the party’s interest. An ‘immediate’ interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question.

Id., quoting *S. Whitehall Twp. Police Serv. v. S. Whitehall Twp.*, 555 A.2d 793, 795 (Pa. 1989).

In accepting as true the material averments in the Protest, as we must do in ruling on the preliminary objection, Ms. Kisenwether's property is in Sugarloaf Township and the service expansion proposed in the application has the potential to affect the quality and reliability of her water source. The proposed service expansion and abandonment may impact the water availability, service reliability, land use, and public safety in Ms. Kisenwether's community. We find that these concerns certainly confer upon Ms. Kisenwether the requisite standing to protest the application, and she must be given an opportunity to prove these allegations at a hearing.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Greater Hazleton Community Area New Development Organization Inc., t/a CAN DO, INC. to the Protest of Patricia Kisenwether is denied.

Date: March 20, 2026

/s/
Steven K. Haas
Administrative Law Judge

/s/
Emily A. Farren
Administrative Law Judge

**A-2026-3059809 - EXPANSION OF ITS SERVICE TERRITORY TO INCLUDE AN
ADDITIONAL PORTION OF HAZLE TOWNSHIP, TOGETHER WITH PORTIONS OF
SUGARLOAF TOWNSHIP AND WEST HAZLETON BOROUGH, ALL IN LUZERNE
COUNTY, PENNSYLVANIA**

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