



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

February 6, 2018

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17105

Re: Implementation of Chapter 32 of the Public Utility
Code Re Pittsburgh Water and Sewer Authority
Docket No. M-2018-2640802 (Water)
Docket No. M-2018-2640803 (Wastewater)

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E)
Comments in this proceeding.

Copies are being served on all active parties of record as evidenced in the attached
Certificate of Service. If you have any questions, please contact me at 717-787-8754.

Sincerely,

Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 313863

GLM/wsf
Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the	:	Docket Nos.
Public Utility Code Re Pittsburgh	:	M-2018-2640802 (Water)
Water and Sewer Authority	:	M-2018-2640803 (Wastewater)

**COMMENTS OF THE
BUREAU OF INVESTIGATION & ENFORCEMENT**

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Dated: February 6, 2018

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I. INTRODUCTION

A. Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority

On December 21, 2017, pursuant to Act 65 of 2017 (“Act 65”), the Pennsylvania Public Utility Commission (“Commission”) was granted jurisdiction over the provision of utility water, wastewater, and stormwater service by entities created by Pennsylvania cities of the second class under the Municipal Authorities Act.¹ For impacted entities, Act 65 represents a departure from the Pennsylvania Supreme Court’s prior determination that the reasonableness of municipal authority rates and services could be addressed solely through the Municipal Authorities Act.² In accordance with Act 65, the Pennsylvania Public Utility Code (“Code”) was amended to establish regulatory deadlines, requirements, and obligations for subject entities, and those amendments are now codified in Chapter 32 of the Code. Chapter 32 not only prescribes a plan under which the rates and service of subject utilities, including Pittsburgh Water and Sewer Authority (“PWSA”), will transition to Commission jurisdiction, but it also addresses the replacement and improvement of aging infrastructure and environmental compliance for those entities.³

Consistent with Chapter 32, the Commission will have jurisdiction over PWSA effective on April 1, 2018.⁴ In preparation for the transition, on January 18, 2018, the

¹ At present, Pittsburgh is Pennsylvania’s sole city of the second class.

² *Calabrese v. Collier Twp. Mun. Auth.*, 430 Pa. 289, 240 A.2d 544, 548 (1968); *Elizabeth Twp. v. Mun. Auth. of McKeesport*, 498 Pa. 476, 447 A.2d 245, 246 (1982); *Graver v. Pa. Pub. Util. Com.*, 469 A.2d 1154, 1157 (Pa. Cmwlth. Ct. 1984).

³ *Tentative Implementation Order*, Docket Nos. M-2018-2640802 and M-2018-2640803, p. 3 (Order entered January 18, 2018) (“Tentative Implementation Order”).

⁴ 66 Pa. C.S. § 3202(a)(1).

Commission issued its Tentative Implementation Order seeking stakeholder comments to facilitate PWSA's orderly transition to regulation under the Code and to the Commission's jurisdiction. The Commission's Bureau of Investigation and Enforcement ("I&E") appreciates the opportunity to offer its input into these matters, as it recognizes the benefits of the additional guidance and clarity that refined PWSA procedures and filing requirements would provide to all stakeholders.

I&E serves as the Commission's prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and in enforcing compliance with the Public Utility Code.⁵ I&E hopes that its experience in these arenas will assist the Commission as it moves forward with finalizing the procedures and requirements that will apply to PWSA. Additionally, I&E's perspective in this matter is also unique in that I&E has been at the forefront of recent Commission cases that have dealt with the novel issue of stormwater treatment in jurisdictional rate proceedings and acquisition cases. I&E's experience with stormwater issues is of special import here because of the nature of PWSA's system. Specifically, the PWSA system is comprised of sanitary, dedicated stormwater, and combined sewers, but its collection system is primarily a combined system that collects both sewage and stormwater.⁶ This means that, during storm events, PWSA treatment plant is treating additional volumes than traditional water or wastewater systems due to the addition of stormwater. Notably,

⁵ 66 Pa.C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

⁶ *Performance Audit Report of the Pittsburgh Water and Sewer Authority*, Commonwealth of Pennsylvania Department of the Auditor General, p. 10 (November 2017).

several of the areas for which the Commission is seeking comments focus on the issues surrounding stormwater, and I&E hopes that its prior experience in stormwater matters may also serve to inform the Commission.

Finally, at the outset, it is important to note that I&E's comments are being made with the limited information available, and without the benefit of a comprehensive review of PWSA's operations. With this in mind, I&E is cognizant of the possibility that PWSA may face practical limitations in implementing certain recommendations, and that some recommendations may impose burdens that I&E could not have anticipated. To that end, I&E looks forward to reviewing PWSA's comments and to participating in the process of ensuring that PWSA's transition to the Commission's jurisdiction is not only feasible but that it occurs in a manner that is conducive to ensuring its long-term viability.

Accordingly, I&E appreciates the opportunity to submit the following comments for the Commission's consideration as it moves forward with developing the processes and procedures related to its regulation of PWSA.

II. COMMENTS IN RESPONSE TO COMMISSION IDENTIFIED TOPICS

A. Effective Dates of 66 Pa. C.S. Chapter 32 and Issues Implicated

1. The Commission's Interpretation of the Effective Date is Consistent with the Tenets of Legislative Intent

Through its Tentative Implementation Order, the Commission concludes that its jurisdiction over qualifying authorities will begin on April 1, 2018, and that the requirements existing under Chapter 32 will also be triggered on April 1, 2018.⁷ The

⁷ Tentative Implementation Order at 13.

Commission's conclusion is predicated on the fact that although Section 4 of Act 65 contained language directing that it take immediate effect on December 21, 2017, Section 2 provides that the Act will not begin to apply until April 1, 2018.⁸ Establishing April 1 as the effective date for the application of Chapter 32, the Commission calculates that PWSA's tariff filing and compliance filing deadlines will be 90 days and 180 days from the effective date, respectively.⁹ Therefore, pursuant to the timeline construed by the Commission, PWSA must make its initial tariff filing by no later than July 2, 2018 and its compliance filing by no later than September 28, 2018.¹⁰ Importantly, the practical reality is that the Code requires PWSA to submit a well-prepared tariff with supporting materials and testimony to enable stakeholders to perform the comprehensive review envisioned by the General Assembly. Additionally, PWSA must also abide by the Commission's procedures for that process. Taking into account this information, the Commission's plan to enforce Chapter 32 is guided by the premise that its legislative intent is remedial and intended to achieve long-term viability and sustainability under the Code. With this in mind, the Commission opines that the later effective date of April 1 furthers those ends and therefore should be adopted.

I&E concurs with the Commission that April 1, 2018, and not December 21, 2017, was intended to serve as the effective date of Chapter 32. The reality of adopting the December 21, 2017 date as operative produces a result that would require PWSA to file a tariff on or by March 21, 2018, which precedes the effective date of the Commission's

⁸ This provision of Act 65 is memorialized in 66 Pa. C.S. §3202(a).

⁹ 66 Pa. C.S. §§3204 (a)-(b).

¹⁰ *Tentative Implementation Order* at 14, 18.

jurisdiction. Such a result is not only impractical, but it also contravenes the tenet of legislative intent that the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.¹¹ I&E submits that interpreting Chapter 32 to require PWSA to file a tariff with the Commission when the Commission has no jurisdiction to review and adjudicate the tariff filing at that time would be impossible and unreasonable. Similarly, requiring PWSA to abruptly make a complex tariff filing, which it would be undertaking for the first time and without the benefit of timely regulatory guidance, would not only be unreasonable, but may jeopardize the public interest because the integrity, completeness, and accuracy of the information it contains could be compromised. Accordingly, I&E opines that the Commission's approach to establishing PWSA's other Chapter 32 deadlines in conjunction with the April 1 effective date is reasonable and is best suited to further PWSA's long-term viability and sustainability under the Code.

2. Timing of Tariff and Compliance Plan Filings

From a logistical standpoint, I&E notes that the statutory deadlines for PWSA's tariff filing and compliance filing may present a practical challenge for both PWSA and its stakeholders. Specifically, I&E's concern is the sequence of the filings because the information that PWSA must submit through its compliance plan, due on September 28, 2018, could greatly inform its tariff filing, which is due almost three months in advance

¹¹ 1 Pa C.S. § 1922(1).

on July 2, 2018. This dilemma is best illustrated by an examination of the required contents of PWSA's compliance plan, as set forth in Chapter 32:

[w]ithin 180 days of the effective date of this section, an authority shall file a compliance plan with the commission which **shall include provisions to bring an authority's existing information technology, accounting, billing, collection and other operating systems and procedures into compliance with the requirements applicable to jurisdictional water and wastewater utilities under this title and applicable rules, regulations and orders of the commission.** The compliance plan shall also include a long-term infrastructure improvement plan in accordance with Subchapter B of Chapter 13 (relating to distribution systems).¹²

As explained above, PWSA's compliance plan must identify the processes that it will use to update its technology, accounting, and other operating systems to comply with the Code requirements that it must meet for the first time. As PWSA identifies these processes, it may realize a need to purchase additional equipment and software and it may need to spend additional money to provide training to its employees and to otherwise come into compliance with the Code.

Unfortunately, when PWSA files its required tariff on April 1, 2018, it may not have had an opportunity to understand, yet alone to identify the costs of implementing its compliance plan. Because PWSA's tariff filing will trigger a rate investigation,¹³ it would be ideal for PWSA's tariff to reflect the costs that it will expend to carry out its compliance plan. Absent the opportunity to do this, PWSA may be in the precarious

¹² 66 Pa. C.S. § 3204(b) (emphasis added).

¹³ 66 Pa. C.S. § 1308(d) ("Section 1308").

position of being required to expend funds to comply with the Code and with Commission regulations and orders, without being able to timely recover those costs through its rates. Depending on the nature of the compliance costs and PWSA's financial condition, any inability for PWSA to timely recover presently unknown and unidentified compliance costs could jeopardize its ability to fulfill its obligation to provide safe, adequate, and reliable service and facilities for its customers.¹⁴

After identifying this issue, I&E identified two possible solutions. The first solution, which may present challenges for PWSA, is for PWSA to file its compliance plan on or by July 2, 2018, alongside its tariff filing. Although it would be ideal to have the compliance plan available with the tariff so that the filing could be informed by anticipated compliance costs, this process would likely be burdensome for PWSA to compile and stakeholders to review. At the outset, I&E believes that it is unlikely that PWSA could develop and propose a comprehensive compliance plan by July 2, 2018. Even assuming, *arguendo*, that PWSA could prepare a comprehensive compliance plan by July 2, 2018, PWSA would not have enough time to incorporate any valuable feedback that may result from the Commission's Bureau of Audits and its Bureau of Consumer Services ("BCS") baseline performance analyses of PWSA's operations.¹⁵ For these reasons, shortening its compliance plan filing deadline by three months to make it coincide with the July 2, 2018 tariff deadline may not be a viable solution.

¹⁴ 66 Pa. C.S. § 1501.

¹⁵ As part of its Tentative Implementation Order, the Commission asks stakeholders to address whether the Bureau of Audits and BCS should perform baseline performance analyses of PWSA's financial billing, and customer service operations as an agreed upon procedures engagement. I&E answers this question affirmatively and in depth later in this Comment.

The second resolution that I&E has identified to help ensure that PWSA's tariff filing is informed by its compliance plan is for PWSA to consider voluntarily extending the suspension period. Specifically, PWSA will have the authority to extend the seven-month suspension period for the Commission's investigation arising under Section 1308(d) of the Code by an amount of time it deems necessary to incorporate the costs it will incur as detailed in its compliance plan. Under this scenario, PWSA will use its best efforts to prepare a tariff with rates that reflect estimated compliance costs. Afterward, once its compliance plan has been filed, to the extent necessary, PWSA can adjust its estimated compliance costs to an amount that is consistent with its obligations under the compliance plan. Of course, under this scenario, all parties involved in PWSA's rate investigation would retain their opportunity to review and challenge these costs as they deem appropriate. At the same time, PWSA will not be foreclosed of its opportunity to claim compliance costs. While this option may need to be further developed as more information regarding the reality of PWSA's operations becomes available, I&E believes this may present a viable solution to the problem imposed by the timing of PWSA's required tariff and compliance plan filings.

3. Potential Tariff and Compliance Plan Issues

To facilitate its review of PWSA's operations, I&E requests that the Commission order PWSA to provide information concerning the issues identified below in its tariff filing and compliance plan. These issues are unique to PWSA operations and will likely have a significant impact on rates; therefore, providing this information in the filing rather than requiring parties to chase the information through the discovery process will

help ensure that parties have timely access to information needed to recommend just and reasonable rates. I&E has identified the following novel issues that it would like the Commission to require PWSA to address in its tariff filing and compliance plan:

- (1) Health or Education Property Rate: PWSA's current tariff contains a "Health or Education Property" customer classification whose usage rate is higher than its residential, commercial and industrial counterparts. I&E would like a description of who comprises this customer classification, why this classification exists and detailed description of why those customers pay more under the current tariff to be included in PWSA's tariff filing.
- (2) Direct and overhead expenses for services provided by the City of Pittsburgh ("City"): It is I&E's understanding that PWSA annually pays the City approximately \$7 million for various direct and overhead services. A detailed description of the services provided and the actual cost of those services provided would greatly assist I&E's review of PWSA's tariff filing.
- (3) Pennsylvania-American Water ("PAWC") subsidy: It is I&E's understanding that the City's southern neighborhoods take water service from Pennsylvania American Water Company and that those rates are higher than PWSA's. The City decided that those PAWC customers should not pay more than what PWSA charges; therefore, PWSA has been paying the difference between the two rates to PAWC. I&E would like a detailed description of the reason for the subsidy and actual cost of the subsidy to be included in PWSA's tariff filing.

- (4) City water subsidy: It is I&E's understanding that PWSA is required to provide 600 million gallons of free water to the City annually under the 1995 co-op agreement between the City and PWSA. However, PWSA does not actually know how much water the City uses because PWSA does not have a list of all City owned properties and not all of the City properties are metered. A detailed description of this agreement, how PWSA will obtain a list of City owned properties, how many City owned properties are not metered and an estimate of how much free water the City receives annually would greatly assist I&E's review of this issue.
- (5) Unaccounted for water: It is I&E's understanding that PWSA likely has a very high unaccounted for water percentage, but does not track it because water coming into its system is unmetered and a significant portion of the water used on its system unmetered. I&E would like a detailed description of unaccounted for water and an estimate of unaccounted for water with assumptions used to be included in PWSA's tariff filing or compliance filing.

4. PWSA's Pending Rate Increases for 2019 and 2020

On November 8, 2017, PWSA's Board of Directors approved a multi-year rate increase that was intended to provide an additional \$163 million to operate and maintain the PWSA system.¹⁶ Pursuant to the terms of this increase, PWSA's average residential

¹⁶ <http://www.pgh2o.com/rates>

customers were subject to a \$15 increase in their monthly PWSA water charges on January 1, 2018.¹⁷ Additionally, the Board of Directors also approved future rate increases, which are slated to increase by ten percent in 2019 and by eleven percent in 2020.¹⁸ While the \$15 increase has already taken effect as of January 1, 2018, I&E notes that the future rate increases set to take place in 2019 and 2020 raise issues of applicability because they were incorporated into PWSA's tariff prior to the effective date of Commission's jurisdiction but they memorialize rate increases set to attach after the Commission's jurisdiction has attached. I&E has not conducted a full review of PWSA's current tariff; however, to the extent that the 2019 and 2020 increases are incorporated therein they may become effective even though they are not Commission approved rates. To resolve this issue, I&E looks directly to the plain language of Chapter 32:

An authority shall continue to provide service to the authority's customers **in accordance with a prior tariff until the effective date of a commission's order approving a new tariff.** If the effective date of a commission's order approving a new tariff has been stayed by a court of competent jurisdiction, the prior tariff shall remain in effect until the stay has been dissolved.

Disputes or conflicts.--In accordance with section 3208 (relating to power of authority), the commission shall resolve all disputes or conflicts arising under a prior tariff.¹⁹

¹⁷ <http://www.pgh2o.com/rates>

¹⁸ <http://www.pgh2o.com/rates>

¹⁹ 66 Pa. C.S. § 3203(a)-(b) (emphasis added) ("Section 3203").

The above language, as applied to PWSA, provides that PWSA's tariff will be operative until the Commission approves its new tariff, absent resolution of certain conflicts. In I&E's view, this guidance is determinative, and, along with practical implications of timing, it serves as the basis for I&E's conclusion that while the ten percent rate increase for 2019 will likely be operative because it will predate the Commission's approval of PWSA's tariff, the January 1, 2020 increase of eleven percent will likely be preempted by the Commission's order approving PWSA's new tariff.

More specifically, PWSA must file a tariff on July 2, 2018. As it is I&E's position that the tariff filing will trigger a rate investigation, I&E is guided by the statutory deadline contemplated for such a proceeding. Taking this into account, if the full nine-month statutory period is used for the rate investigation, I&E estimates that the earliest that the Commission may approve PWSA's tariff would be in March of 2019.²⁰ Under this scenario, PWSA's ten percent rate increase set to take place on January 1, 2019 would have already gone into effect under the terms of its current tariff, even as the Commission's rate investigation was pending. This is true because Section 3203 makes it clear that PWSA's prior tariff governs until such time as the Commission approves its new tariff. There would be no conflict to resolve, because until the Commission approves a new tariff, PWSA's current tariff is the only existing tariff. On the other hand, provided that the Commission approves a new tariff prior to January 1, 2020, the rate increase contemplated in PWSA's current tariff would be preempted by the terms of

²⁰ I&E notes that this date is an estimate, and that it could be impacted by Commission action or by PWSA's potential agreement to an additional suspension period for the rate investigation.

the tariff approved by the Commission. Under this scenario, while PWSA would certainly be free to advocate for any rate increase it deems necessary, the Commission would not be bound by PWSA's former tariff and the terms of the Commission approved tariff would govern.

While I&E's analysis here is intended to honor the terms of Section 3203, I&E nonetheless remains concerned about the result of PWSA implementing a ten percent rate increase in January of 2019 when it is possible that the result of its July 2, 2018 tariff filing could be that a second increased may be imposed upon its ratepayers on or around March of 2019. Depending upon the amount, the implementation of a second increase could lead to rate shock as PWSA and its customers are transferred to the Commission's jurisdiction, and this is not a result that I&E supports. To that end, if PWSA implements a ten percent rate increase on January 1, 2019, I&E notes that PWSA and stakeholders involved in the Commission's tariff investigation must be cognizant of the of the unique situation presented by this timeline and be prepared to tailor their request and recommendations to this reality.

B. Stormwater Issues

1. Act 65 Repealed the Jurisdictional Exclusion for Stormwater on a Very Limited Basis

The Tentative Implementation Order invites parties to comment upon whether Act 65 effectively repealed the Commission's jurisdictional exclusion of stormwater collected in a separate storm sewer system. In considering this question, I&E finds that the definition of "authority" as contained in Chapter 32 is determinative:

A body politic or corporate established by a city of the second class, except a joint authority established by a city of the second class and a county of the second class, under 53 Pa.C.S. Ch. 56 (relating to municipal authorities), under the former act of June 28, 1935 (P.L. 463, No. 191), known as the Municipality Authorities Act of one thousand nine hundred and thirty-five, or under the former act of May 2, 1945 (P.L. 382, No. 164), known as the Municipality Authorities Act of 1945, which owns or operates equipment or facilities for any of the following purposes: (1) Diverting, developing, pumping, impounding, distributing or furnishing water to customers for compensation. (2) Wastewater collection, conveyance, treatment or disposal to customers for compensation. (3) **Storm water collection, conveyance, treatment and disposal.**²¹

As illustrated, the plain text definition of authority includes an eligible entity engaged in stormwater collection, conveyance, treatment, and disposal. Importantly, the definition of authority is operative because, absent limited exceptions, Chapter 32 provides for the Code to apply to an authority in the same manner as it applies to public utilities.²² In I&E's view this statutory guidance, taken to its logical extension, leads to the conclusion that just as the Commission has jurisdiction over public utilities, it has jurisdiction over an eligible authority engaged in operating a separate storm sewer system. Therefore, I&E answers the question of whether Act 65 effectively repealed the jurisdictional exclusion of stormwater collected in a separate storm sewer system affirmatively, but only to the extent that this question pertains to an authority within the meaning of Chapter 32. Importantly, I&E notes that there is no basis to construe Commission jurisdiction over

²¹ 66 Pa. C.S. § 3201 (emphasis added).

²² 66 Pa. C.S. § 3202. By way of further explanation, the limited exceptions include Chapters 11 (relating to certificates of public convenience) and 21 (relating to relations with affiliated interests.).

stormwater collected in a separate storm sewer system outside of the context of Chapter 32 because no authority exists to establish such jurisdiction.

2. PWSA Should File a Separate Stormwater Tariff

In its Tentative Implementation Order, the Commission indicates that it will require PWSA to file at least two tariffs, one for water and another for wastewater, and that it will treat PWSA offerings as separate utilities under 66 Pa. C.S. § 1311(c).²³ I&E fully supports this plan. Additionally, the Commission requests comments on whether PWSA should be required to file a third tariff for stormwater service. I&E answers this question in the affirmative, and supports requiring PWSA to submit a separate tariff for its provision of stormwater service for several reasons. More specifically, the nature of stormwater service, the customer misalignment resulting from integrating stormwater service into wastewater tariffs, and the need to honor principles of fair ratemaking all support the need for PWSA to provide a separate tariff for stormwater service. Finally, as will be explained in more detail below, I&E recommends that PWSA institute a municipal stormwater rate (“MSWR”) for stormwater service, and that it exclusively bill the City for such service; accordingly, employing a separate tariff for stormwater service would best facilitate this course of action.

First, the very nature of stormwater service, and the vast difference between it and PWSA’s water and wastewater services, support a need for PWSA to file a separate tariff

²³ *Tentative Implementation Order* at 5: hereinafter, 66 Pa. C.S. § 1311(c) will be referred to as “Section 1311(c).”

for stormwater service. I&E has had opportunities to inform the Commission of these substantial differences in the context of three cases involving combined sewer and stormwater systems: Pennsylvania American Water Company's ("PAWC's") acquisition of the Sewer Authority of the City of Scranton,²⁴ PAWC's acquisition of the Municipal Authority of the City of McKeesport²⁵ and PAWC's 2017 base rate case.²⁶ As I&E explained in these cases, a system's classification as a combined system means that stormwater-specific costs and services will be implicated. Examples of these additional costs include capital plant costs for stormwater catch basins, storm sewer mains prior to the combination with sanitary sewers, and overflows for when the volumes exceed the capacity of the treatment facility. Further related costs include maintenance expenses for cleaning the catch basins, repairing mains, and additional chemical expenses for the higher volumes that are treated during storm events. These costs and obligations do not exist in traditional water or wastewater service and are not attributable to any item other than stormwater. Accordingly, I&E opines that addressing these costs in PWSA's water or wastewater tariff would complicate those tariff filings because stormwater service, costs, obligations, and processes are so vastly different that a separate tariff is warranted.

²⁴ *Joint Application of Pennsylvania American Water Company and the Sewer Authority of the City of Scranton for Approval of PAWC's Acquisition of the Wastewater System Assets of the City of Scranton*, Docket No. A-2016-2537209 ("Scranton acquisition case").

²⁵ *Application of Pennsylvania American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Municipal Authority of the City of McKeesport*, Docket No. A-2017-2606103 ("McKeesport acquisition case").

²⁶ *Pa PUC v. Pennsylvania American Water Company*, Docket No. R-2017-2595853 ("PAWC rate case").

Along similar lines, integrating stormwater service into PWSA's water or wastewater tariff would produce a misalignment. As noted in the Implementation Order, the Commission does not consider water and wastewater service offered by one utility as a joint service offering requiring only one tariff.²⁷ Similarly, stormwater service should not be considered as a companion service warranting it being combined with another tariffed service. Aside from the novel costs and obligations that are unique to stormwater, it must also be remembered that stormwater service is a standalone jurisdictional service that will need to have its own service terms and processes that do not necessarily translate to the contents of any other type of tariff. This lack of translation is further highlighted by the fact that the Commission's sole jurisdiction over separate stormwater service pertains only to PWSA, meaning that the realities of this type of service are still unknown. With this in mind, requiring PWSA to confine stormwater service to a separate tariff will allow the Commission to review it with a singular focus and for customers and stakeholders to easily understand the terms and costs that pertain to pure stormwater service.

Finally, principles of fair ratemaking support confining stormwater to a separate tariff because stormwater cost causation must be measured by a yardstick that will not exist in the context of water or wastewater tariffs. As I&E witness Kubas explained in PAWC's 2017 base rate case, stormwater is unique in that it is a function of land area, surface material, topography, and locations. As an example, a customer with a large

²⁷ *Implementation Order* at 5.

parking lot where stormwater drains into the system may only have one restroom, thus a low wastewater bill, but contribute a fair amount of stormwater to the system. On the other hand, in a tall office or apartment building, consumers may use a large amount of water and have a high wastewater bill, but may contribute little or no stormwater to the system. Including the cost of stormwater in the tall office or apartment building's usage rate would be unfair, since that type of customer contributes little to the stormwater function, while the customer with the large parking lot would benefit substantially due to its low water usage relative to the amount of stormwater run-off it generates. As these examples illustrate, stormwater charges and terms will need to be fundamentally different than those associated with water or wastewater; therefore, stormwater should not be tariffed in conjunction with water or wastewater. Further, there may be undeveloped properties, warehouses, or parking lots that receive no water or wastewater service yet contribute substantially to stormwater volumes. These property owners would receive no assessment for stormwater service if stormwater did not have a separate tariff; thus, these type of property owners would receive free stormwater service through subsidization to wastewater ratepayers. As a final consideration, it is important to realize that wastewater service is not metered but is generally based on metered water usage, and there is clearly no relationship between ratepayer water consumption and stormwater cost contribution.

Notably, in the past, the Commission has recognized the importance of segregating stormwater costs, an outcome that would be furthered by requiring a separate tariff for stormwater. By way of further explanation, in the Scranton acquisition case, PAWC sought to acquire the Scranton Sewer Authority ("SSA") and to begin to provide

combined wastewater and storm water service to SSA's customers, which presented an issue of first impression for the Commission. In that case, I&E recommended, in part, that if PAWC's application to acquire the SSA was approved, PAWC should be required to provide cost of service studies to separate sanitary sewer and stormwater flows, capital expenses, and operating costs in its next base rate proceeding.²⁸ Ultimately, noting that complexity of assessing stormwater cost recovery, the Commission ordered PAWC to perform a cost of service study that fully separated the costs of providing stormwater services in the Scranton service area.²⁹ Aside from the cost of service study, the Commission also required PAWC to address the pros and cons of designing stormwater rates on this separated basis in its next base rate case.³⁰ As explained below, I&E is recommending that PWSA develop a separate stormwater rate, and to that end, requiring PWSA to file a separate tariff for its stormwater service would be conducive to that process.

3. PWSA's Stormwater-Specific Property Should be Segregated in its Base Rate Filings

In its Tentative Implementation Order, the Commission invites comment on whether the Commission should segregate stormwater-specific property from its other regulated assets for purposes of water and wastewater rate proceedings.³¹ In posing this question, the Commission also asks commenters to consider whether a mechanism

²⁸ Scranton Acquisition Case, Docket No. A-2016-2537209, I&E Main Brief, p. 1.

²⁹ Scranton Acquisition Case, Docket No. A-2016-2537209, pp. 86-87 (Order entered October 19, 2016.)

³⁰ Id. I&E notes that PAWC failed to adhere to the Commission's mandate that it address the pros and cons of designing separate stormwater rates in its next base rate case in 2017, but that the stormwater issues implicated in that case were resolved through a comprehensive global settlement.

³¹ *Tentative Implementation Order* at 18.

similar to Section 1311(c) should be applied to segregate PWSA's stormwater specific assets. Consistent with I&E's position above regarding the need to separate stormwater service and property from other services and their corresponding property, I&E answers both of these questions affirmatively.

In I&E's view, combining stormwater-specific property with other regulated assets in water and wastewater rate proceedings would violate principles of fair ratemaking and fail to respect the longstanding ratemaking tenet of cost causation. Historically, Section 1311(c) of the Public Utility Code aligned with these principles by requiring a utility that provides more than one type of utility service to segregate the property used and useful in providing each type of service for ratemaking purposes. However, Act 11, which was signed into law by Governor Tom Corbett on February 14, 2012, amended that section of the Code and now exempts a utility that provides water and wastewater service from this requirement:

Segregation of property. --When any public utility furnishes more than one of the different types of utility service, the commission shall segregate the property used and useful in furnishing each type of such service, and shall not consider the property of such public utility as a unit in determining the value of the rate base of such public utility for the purpose of fixing base rates. A utility that provides water and wastewater service shall be exempt from this subsection upon petition of a utility to combine water and wastewater revenue requirements. The commission, when setting base rates, after notice and an opportunity to be heard, may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest.³²

³² 66 Pa. C.S. § 1311(c) (emphasis added).

I&E acknowledges that Section 1311(c) clearly permits a utility to petition the Commission for permission to commingle water and wastewater revenue requirements and to, upon certain conditions, request approval to allocate a portion of the wastewater revenue requirement to its combined water and wastewater customer base, when it was enacted in 2012. However, a review of Act 11 makes it clear that Section 1311(c) did not contemplate the commingling of stormwater service, and that it certainly did not contemplate it for an entity of the size and customer base of PWSA.

Specifically, a review of the Commonwealth of Pennsylvania's Legislative Journal reveals that the focus of Section 1311(c)'s cost spreading mechanism was to provide relief for failing wastewater systems, and stormwater service was not a factor considered.

Finally, this bill will allow the PUC to approve combined rates for a utility that provides both water and wastewater service. **This change is necessary to balance the "economies of scale" that have come about due to some of our larger water utilities taking over – with the encouragement of the PUC and DEP (Department of Environmental Protection) – failing wastewater systems.** As a result of these acquisitions, the water company must make investments to bring the wastewater system into compliance with Federal and State DEP and PUC mandates. The customers of these systems are often faced with large rate increases as a result of the improvements and maintenance necessary to bring the wastewater system into compliance. **Utility wastewater systems (as opposed to a municipal system or authority) generally serve small communities and are made up of fewer customers than utility water systems.** As a result, rate increases are difficult for wastewater utility customers to absorb because there are fewer customers to share in the costs. HB 1294 will permit utilities providing both water and wastewater services to charge combined rates, subject to PUC approval, **to help consumers of communities who cannot absorb the cost**

associated with the system upgrades and necessary costs of service.³³

As explained above, the cost-spreading mechanism was intended to aid utility wastewater systems, and not municipal systems or authorities like PWSA, as utility wastewater systems tended to serve much smaller communities. Here it, is worth noting that PWSA is an authority that serves approximately 82,000 wastewater customers throughout the City, placing it in direct opposition to the small wastewater utilities that the legislature sought to assist under Section 1311(c). Finally, the legislature's articulated goal of using cost-spreading to help consumers of communities who cannot absorb the cost of wastewater system upgrades and cost of service would not translate to stormwater, because as an authority operator, all of PWSA's wastewater customers are within the same community. Accordingly, the legislature did not intend for the cost-spreading mechanism of Section 1311(c) to apply to stormwater systems and especially not to stormwater within the scope of PWSA's operations.

Instead, the segregation of property mandate of Section 1311(c) should apply to PWSA's stormwater-specific property. The mandate requires the segregation of property that is used and useful in furnishing each type of such service, and stormwater-specific property, is not useful to the provision of water or wastewater service. As an example, PWSA's system contains more than 25,000 catch basins that are used solely to collect stormwater from precipitation.³⁴ The catch basins are not used and useful in the

³³ Pennsylvania Legislative Journal. No. 62, p. 1956 (October 4, 2011).

³⁴ *Performance Audit Report of the Pittsburgh Water and Sewer Authority*, Commonwealth of Pennsylvania Department of the Auditor General, p. 10 (November 2017).

provision of water or wastewater service and therefore it is not appropriate to combine them with water or wastewater property. The fact that PWSA's system has such a high number of catch basins only serves to further exemplify the need to segregate stormwater-specific property in PWSA's base rate filings; therefore, I&E submits that this segregation is necessary.

4. PWSA Should Develop A Municipal Stormwater Charge

Because stormwater service is a fundamentally distinct service from water and wastewater service, I&E recommends that PWSA develop and assess a municipal stormwater rate ("MSWR") for the provision of stormwater service. For purposes of context, and as I&E explained in the 2017 PAWC rate case, the Commission has wide latitude in determining a basis for how stormwater costs are allocated or recovered, as the Code does not dictate any methodology.³⁵ I&E opines that establishing a MSWR is not only consistent with the Commission's authority, but it is the best way to ensure that PWSA's customers pay rates that are just and reasonable.³⁶ This is true because stormwater service, unlike water or wastewater service, cannot be measured under the traditional basis of usage. Instead, a customer's stormwater production is a function of land area, surface material, topography, and location. This distinction alone serves to illustrate the impracticability of treating stormwater like any other regulated utility service, where costs of service are fundamentally based on usage. Because stormwater

³⁵ 2017 PAWC rate case, I&E St. No. 6, pp. 51-52.

³⁶ I&E is aware, on a general basis, that PWSA may face practical obstacles in imposing a municipal stormwater rate and charging it to the City. To that end, I&E recognizes the need to consider and address any such obstacles, once they are identified. However, for the reasons articulated herein, I&E believes that its recommendation is necessary to protect the public interest.

cost causation is inextricably linked to the unique location and surface of customers' property, attempting to fairly assign stormwater costs to customers would require that the Commission undertake an analysis of each individual property within PWSA's jurisdiction. The complexity of this scenario is only further compounded by the fact that there are stormwater contributors within PWSA's service territory who are not currently billed for water or wastewater service and may not be identifiable to the Commission as it assumes jurisdiction. While the exact number of these stormwater contributors has not yet been determined, I&E understands this number is significant.

It is worth noting that the City of Philadelphia, while not a jurisdictional utility, has successfully implemented a stormwater charge that is assessed to both residents and nonresidents.³⁷ The charge is known as the stormwater management service charge ("SWMS charge"), and according to the City of Philadelphia, it is assessed "to recover the costs the City incurs in providing stormwater management services to create a healthy living environment and to comply with State and Federal regulations."³⁸ The SWMS charge is assessed based on surface area of the property served. More specifically, residential customers pay a standard amount that is based both on the average surface area of impervious cover³⁹ on their properties and the average square footage throughout

³⁷ <http://www.phila.gov/water/wu/stormwater/Pages/default.aspx>

³⁸ <http://www.phila.gov/water/wu/stormwater/Pages/NonResidentialStormwaterBilling.aspx>

³⁹ The City of Philadelphia defines an "impervious area" as the total square footage of any surfaces on the property which are compacted or covered with material that restricts the infiltration of water, including semi-pervious surfaces such as compacted clay, most conventionally hard-scaped surfaces such as streets, driveways, roofs, sidewalks, parking lots, attached and detached structures, and other similar surfaces.

the city.⁴⁰ However, the SWMS charge for commercial customers is calculated somewhat differently, as it is based on both the specific square footage of impervious area covering the property and the total square footage of the property.⁴¹ In each case, the customers' SWMS charge is included in their monthly water bills.⁴² The SWMS charge funds the City of Philadelphia's estimated stormwater management costs that are estimated to exceed \$110 million annually.⁴³

I&E recommends that PWSA institute a MSWR that is similar to the SWMS charge, but with one key distinction. I&E recommends that the MSWR for stormwater costs be billed to the City. As explained above, it would be impracticable, if not impossible, for the Commission to undertake the type of analysis necessary to fairly assign stormwater costs to customers, since stormwater production is primarily based on land surface and topography. However, the City would be in a better position to do this since it has access to real estate and tax records that would be helpful in identifying the parcels and the owners of those parcels. Although I&E recognizes that it may initially be burdensome for the City to undertake such an analysis, it may be helpful to research the methods that the City of Philadelphia employed when it began assessing its SWMS charge.

In summary, the nuances of stormwater service and the fact that it so distinct from any other fixed utility service that the Commission regulates support the need to develop

⁴⁰ <http://www.phila.gov/water/wu/stormwater/Pages/default.aspx>

⁴¹ Id.

⁴² Id.

⁴³ <http://www.phila.gov/water/wu/stormwater/Pages/NonResidentialStormwaterBilling.aspx>

a cost recovery mechanism that is also distinct. I&E submits that for PWSA, establishing an MSWR presents the best resolution. Additionally, because the City is in the best position to identify stormwater contributors and to perform the parcel analysis that is necessary to facilitate the fair assessment of stormwater fees, the PWSA should bill the MSWR solely to the City. Accordingly, I&E recommends that PWSA be required to establish an MSWR that is collected from the City.

C. Ratemaking Methodology and Implementation

In its Tentative Implementation Order, the Commission asks stakeholders to comment on which ratemaking method would be best suited to PWSA and how PWSA should implement the recommended method in its July 2, 2018 tariff filing.⁴⁴ The two identified possibilities include the rate base/rate of return model that is typically used by Commission regulated utilities and the cash flow method, which is used solely by Philadelphia Gas Works as it is the only Commission regulated utility permitted to use this methodology. Although I&E will provide more context below, I&E's ultimate recommendation is two-pronged. First, I&E recommends that PWSA be permitted to make its initial tariff filing using the cash flow method, which is consistent with current PWSA operations and which will be practical for several reasons. However, after its initial tariff is filed, I&E recommends that PWSA begin developing a plan to transition its accounts in a manner that is conducive to the rate base/rate of return method and that it use that methodology in any base rate case filed after 2025.

⁴⁴ *Tentative Implementation Order* at 16.

1. PWSA Should Use the Cash Flow Method for Its Initial Tariff

At the outset, I&E recommends that PWSA use the cash flow ratemaking methodology for its July 2, 2018 tariff filing, which is consistent with the Commission's recommendation in the Tentative Implementation Order. I&E's makes this recommendation for two reasons: (1) based on I&E's understanding, the cash flow method is consistent with PWSA's current operations and (2) the cash flow method will best address PWSA's debt service obligations at this time. First, from a merely practical standpoint, as I&E understands that PWSA currently operates on a cash flow basis, it would be impracticable, if not impossible, for it to convert its accounting and procedures in a manner necessary to facilitate the rate base/rate of return method in time to make a July 2, 2018 tariff filing. To require such a quick conversion would likely impose a substantial and avoidable burden upon PWSA at a time when it faces many new statutory obligations.

Additionally, the rate base/rate of return method will not directly take into account PWSA's debt service obligations, but the cash flow method will do so. The cash flow approach is useful for municipal utilities, like PWSA, because it takes into account debt service coverage, such as bond obligations. Specifically, the cash flow method assumes that utility revenues must be sufficient to cover all of the utility's cash needs during the test period, including debt obligations. Generally, the basic components considered under the cash flow revenue requirement approach generally include operating and maintenance expenses, debt service coverage, and a margin expressed as a percent of debt service. The margin provides for capital expenditures not financed by debt, debt pay

down, equity build up and dividends to the municipality. On a practical basis, the cash flow methodology provides for the return of and the return on capital in two components: the debt service and the margin. Thus, the cash flow method will best account for PWSA's debt service obligations as PWSA transitions to the Commission's jurisdiction, providing reassurance to PWSA and other stakeholders.

I&E also agrees with the Commission that the cash flow method used by PGW, alongside the similar ratemaking procedures that the Commission established for PGW, could also be applied to PWSA.⁴⁵ Although PGW's use of the cash flow method is a regulatory mandate and PWSA is not subject to such a mandate, I&E believes that similar processes and procedures should be used by PWSA as it prepares its initial tariff. Specifically, the ratemaking procedures indicate that in determining just and reasonable rate levels for PGW, the Commission will consider the following: (1) PGW's test year-end and (as a check) projected future levels of non-borrowed year-end cash; (2) available short term borrowing capacity and internal generation of funds to fund construction; (3) debt to equity ratios and financial performance of similarly situated utility enterprises; (4) level of operating and other expenses in comparison to similarly situated utility enterprises; (5) level of financial performance needed to maintain or improve PGW's bond rating thereby permitting PGW to access the capital markets at the lowest reasonable costs to customers over time; (6) PGW's management quality, efficiency and effectiveness; (7) service quality and reliability; and (8) effect on universal service. In

⁴⁵ 52 Pa. Code § 69.2703, *Ratemaking Procedures and Considerations Applicable to PGW*.

I&E's view, the above processes and procedures would translate well to the context of PWSA's tariff filing under its current accounting methodology and would serve to ensure that PWSA could meet its debt obligations and its service and compliance obligations under the Code.

2. Any Rate Filings Made After 2025 Should Use a Rate Base/Rate of Return Methodology

After PWSA's makes its July 2, 2018 tariff filing, I&E recommends that it begin to transition its operations and accounting methods in a manner that will enable it to make future filings in accordance with the rate base/rate of return ratemaking method. As explained earlier, the rate base/rate of return method is the primary method used for Commission regulated utilities, including municipal utilities. Using this method, a utility's revenue requirement includes operating and maintenance expenses, depreciation expense and a return on rate base, which provides for capital expenditures and debt service coverage. The rate base/rate of return methodology primarily differs from the cash flow methodology in how the return of and return on capital are provided for. When referring to recovery of capital, in the most simple of terms, there are two components for rate base/rate of return; depreciation expense and a return on rate base.

I&E's recommendation that PWSA transition to the rate base/rate of return methodology for any tariff filing after 2025 is appropriate for several reasons. First, it is anticipated that by the end of 2025, PWSA will have an established rate base, as the City of Pittsburgh's ownership of water and sewer property is expected to terminate at that time. More specifically, in July 1995, PWSA entered into a 30-year lease agreement with

the City whereby PWSA paid the City approximately \$101.4 million for an option to acquire all water and sewer property for \$1 (one dollar) at the expiration of the lease in 2025.⁴⁶ As PWSA will likely exercise this option, once the transaction is consummated, PWSA will own the water and sewer and stormwater assets and they will be part of its rate base. As PWSA acquires these assets, it will present a substantial change to PWSA's financial picture. At that point, PWSA can undertake a study to determine the value of its newly-acquired assets for use as it moves toward the rate base/rate of return method. In I&E's view, under these circumstances, the rate base/rate of return method would yield a more fair and reasonable determination. At the same time, waiting until after 2025 to convert to the rate base/rate of return method will not only be tied to PWSA's acquisition of assets, but it will also provide a reasonable amount of time for PWSA to plan for the transition to this method and establish asset valuation.

Second, unlike PGW, there is no statutory mandate requiring PWSA to continue to use the cash flow method; therefore, it should utilize the rate base/rate of return methodology like all other Commission regulated utilities. The Commission assumed jurisdiction over PGW in 2000 and, per Section 2212(e) of the Code, in determining PGW's revenue requirement and approving overall rates and charges, the Commission "shall follow the same ratemaking methodology and requirements that were applicable" to PGW before the Commission assumed jurisdiction over its operations.⁴⁷ PGW utilized the cash flow method prior to coming under Commission jurisdiction; therefore, it

⁴⁶ *Performance Audit Report of the Pittsburgh Water and Sewer Authority*, Commonwealth of Pennsylvania Department of the Auditor General, p. 8 (November 2017).

⁴⁷ 66 Pa.C.S. §2212(e).

continues to use that ratemaking methodology in rate proceedings before the Commission. However, there is no similar statutory language obligating the Commission to use a particular ratemaking methodology for PWSA. As use of the cash flow method was a statutory exception only for PGW, PWSA should eventually transition to and utilize the rate base/rate of return methodology like all Commission regulated entities.

As I&E makes this recommendation, it recognizes that under the rate base/ rate of return method, PWSA must still account for and meet its debt service obligations. To that end, I&E is partly guided by the fact that other municipal entities that provide jurisdictional service have employed the rate base/rate of return ratemaking method without jeopardizing their debt service coverage. As an example, the City of Bethlehem-Bureau of Water is a municipal utility that provides service to customers outside of its jurisdiction, and therefore must make a tariff filing with the Commission to establish rates for its outside customers. Although the City of Bethlehem is a municipal entity with debt service obligations, when it made its 2014 rate filing, it did so using the rate base/rate of return method with a check for debt service coverage.⁴⁸ In that case, I&E demonstrated that its equity recommendation supported the financial integrity principle as shown by the debt service coverage ratio. Similarly, in the recent City of DuBois rate case, I&E utilized the rate base/rate of return methodology but also demonstrated that under I&E's recommended increase the debt service coverage ratio was 1.56, which is considered "strong" by Standard & Poor's for a municipally-owned utility.⁴⁹ I&E is

⁴⁸ Pa. PUC v. City of Bethlehem, R-2013-2390244, Statement No. 5.

⁴⁹ Pa. PUC v. City of DuBois- Bureau of Water, R-2016-2554150, Statement No. 1, p. 6-7.

encouraged that the rate filings made by the City of Bethlehem and the City of DuBois demonstrate the ability to employ the rate base/rate of return method and can serve as a guide for PWSA.

D. PWSA's DSIC and LTIP Filings

1. Base Rate Case Requirement

As the Commission considers the process that PWSA may undertake to recover costs through a distribution system improvement charge ("DSIC"), it poses the question of whether PWSA's initial tariff filing will serve to comply with the Code's prerequisites for DSIC recovery. Pertinent to this discussion, the Code requires that in order to be eligible to recover costs through a DSIC, PWSA must either file a base rate case or certify that it has filed a base rate case under 1308(d) (relating to voluntary changes in rates) within five years of petitioning for DSIC recovery.⁵⁰ Considering this prerequisite, the Commission asks whether PWSA's filing of its required tariff will be sufficient to establish its DSIC eligibility.

In response, I&E first addresses the question regarding whether PWSA's initial tariff filing will operate as a base rate case to satisfy the requirement of Section 1353. I&E answers this question affirmatively, and is guided by the plain language of Chapter 32, as it appears below:

- (a) Filing. -- An authority shall file a tariff and supporting data with the commission within 90 days of the effective date of this section. **The commission shall conduct a rate proceeding in accordance with the commission's procedures for tariff filings.** To the extent practical,

⁵⁰ 66 Pa. C.S. § 1353 (b) (4)-(b)(5). This section will hereinafter be referred to as "Section 1353."

public hearings on the tariff filing shall be held within the boundaries of an authority.⁵¹

As the above language makes clear, when PWSA files its tariff, the filing will trigger a rate proceeding. Although PWSA's tariff filing is statutorily required, it will nonetheless function as a base rate case, subject to the Commission's procedures and the litigation process. With this in mind, I&E opines that PWSA tariff filing satisfies the base rate case requirement under Section 1353.

However, I&E recognizes that an argument can be made that PWSA's tariff filing may not satisfy the Section 1308(d) requirement. Specifically, one can argue that the tariff filing is not voluntary a rate increase under Section 1308 given that PWSA has been mandated to make the tariff filing under Section 3204.

Second, Section 1308(d) applies to general rate increases and, at this time, I&E does not know with certainty that PWSA's July 2018 tariff filing will request to increase rates as it may simply seek Commission approval of its current tariff rates. A possible remedy to this defect is that PWSA may file a request to waive the 1308(d) base rate filing prerequisite for its DSIC recovery by invoking Chapter 32. Specifically, Chapter 32 contains the following provision: [u]pon request of an authority, the commission may suspend or waive the applicability of any provision of this title [Title 66] to the authority, except for this section [Section 3202, *Application of provisions of title*].⁵²

⁵¹ 66 Pa. C.S. § 3204 (emphasis added).

⁵² 66 Pa. C.S. § 3202(b). This section will hereinafter be referred to as "Section 3202(b)."

To provide further context, Section 3202(b) gives qualified authorities the same ability to seek suspension or waivers of the Code that Section 2212(c)⁵³ gives to city natural gas distribution operations like PGW. In construing the waiver standard for PGW, the Commission has indicated that while the waiver is not automatic, the Commission will grant it if it determines that the requested waiver is “just and reasonable and in the public interest.”⁵⁴ I&E submits that the same standard could apply if PWSA invokes Section 3202(b) to seek a waiver of the Section 1308(d) base rate filing requirement. Applying this standard, the Commission can evaluate the information contained in PWSA’s petition to determine whether granting the waiver of the 1308(d) filing requirement in light of the mandated July 2018 tariff filing would be just, reasonable, and in the public interest.

By way of example that is particularly relevant here, in 2016, the Commission granted PGW’s Petition for Waiver of Provisions of Act 11 to Increase the DSIC CAP and to Permit Levelization of DSIC Charges (“PGW’s DSIC Petition”) despite the fact that PGW did not provide an LTIP to support its petition.⁵⁵ Although the Commission’s approval somewhat hinged on the fact that PGW’s DSIC Petition was not its initial DSIC filing and upon its determination that Act 11 did not require that a revised LTIP as a precondition for receiving the waiver of the 5% DSIC cap that PGW requested, other

⁵³ 66 Pa. C.S. § 2212(c).

⁵⁴ *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2008-2073938 (Order entered March 26, 2009) at 14.

⁵⁵ *Pa. PUC v. Philadelphia Gas Works*, Docket No. P-2015-2501500 (Order entered January 28, 2016) at 44-45.

factors were also considered relevant.⁵⁶ The other factors that were considered included the unique circumstances of the case, as imposed by the high number of aged cast iron mains that existed as part PGW's underground infrastructure, and the other safeguards built PGW's request and imposed by the Commission.

I&E has not had an opportunity to become acquainted with the condition of PWSA's infrastructure and the realities of its need for DSIC funding. However, I&E recognizes that PWSA will soon be subject to all obligations arising under the Code, and the integrity of its infrastructure will be a factor in whether it can meet those obligations. Accordingly, I&E recommends that PWSA not be automatically foreclosed from seeking the necessary DSIC funding until a Section 1308(d) rate increase is filed given its ability to request waiver of that requirement and the fact that it will make a tariff filing on or before July 2, 2018.

2. Structure of PWSA's LTIP and DSIC Filings

(a) LTIP Filings

As part of the Tentative Implementation Order, the Commission asks stakeholders to comment as to whether PWSA should have the ability to file one unified LTIP.⁵⁷ Specifically, the unified LTIP would encompass water, wastewater, and stormwater infrastructure improvement, but would be organized in a manner that would best segregate the infrastructure by service category. Although I&E has consistently

⁵⁶ Id. at 45. I&E notes that PGW did not invoke its authority under 2212(c) in an attempt to waive Section 1352's LTIP requirement, although it could have elected to do so. Because it did not, a waiver of the LTIP requirement was not properly before the Commission.

⁵⁷ Tentative Implementation Order at 24.

recommended the segregation of stormwater service and property throughout its comments, I&E supports the unified LTIIP filing simply because it will conserve PWSA's costs and resources in the preparation of the filing and also conserve the Commission's resources. At the same time, if the LTIIP is prepared in such a manner that water, wastewater, and stormwater are comprehensively segregated, parties and stakeholders should not be prejudiced.

I&E notes that the Commission's Tentative Implementation Order invites stakeholders to comment on how PWSA may segregate stormwater-specific property from its other regulated assets for LTIIP purposes. Because I&E is without sufficient information regarding the extent and types of PWSA's stormwater assets at this juncture, I&E cannot provide a detailed recommendation at this time. However, I&E is aware that PWSA operates a municipal separate storm sewer system ('MS4 system'). On a preliminary basis, I&E opines that all property associated with the MS4 system be segregated into a stormwater only section of PWSA's LTIIP. Additionally, infrastructure in the combined system that is stormwater specific should be included in the stormwater only section as well as a demand allocated share of any combined system infrastructure that is shared with wastewater. Once PWSA makes its tariff filing, and I&E is more informed of the extent and types of PWSA's stormwater specific property, I&E would be better positioned to make a specific recommendation regarding the segregation of stormwater-specific property in its LTIIP filing. Additionally, as explained below, I&E believes that the challenges that PWSA will face in developing an LTIIP should not serve to bar it from requesting recovery of a DSIC if circumstances otherwise merit recovery.

(b) DSIC Filings

Similarly, as to the Commission's request for whether PWSA's DSIC filings should follow, to the best extent possible, the distinct segments of PWSA's operation and eligible property, I&E answers affirmatively.⁵⁸ Requiring that PWSA follow the distinct segments of its operation and eligible ensures that its DSIC filings will accurately identify eligible property and avoid commingling property between operations. To that end, I&E opines that PWSA should make a separate DSIC filing for its stormwater. Although I&E recognizes that requiring a separate filing for stormwater may impose an administrative burden, consistent with I&E's other comments, stormwater should be separated from all other PWSA operations.

E. PWSA Should Adopt the Uniform System of Accounts

An additional question posed in the Tentative Implementation Order is whether, as part of its compliance plan, PWSA should adopt a system of accounts in accordance with 52 Pa. Code § 65.16(a).⁵⁹ Specifically, the referenced regulation requires a public utility that has an annual operating revenue of \$750,000 or more (average of the last 3 consecutive years) to keep its accounts in conformity with the most recent *Uniform System of Accounts for Class A Water Utilities* prescribed by the National Association of Regulatory Utility Commissioners ("NARUC").

I&E recommends that PWSA keep its accounts in conformity with NARUC's most recent *Uniform System of Accounts for Class A Water Utilities*. Specifically,

⁵⁸ Tentative Implementation Order at 24.

⁵⁹ Tentative Implementation Order at 19.

PWSA's adoption of this system of accounts would promote order, certainty, and consistency for all Commission staff members and stakeholders who must assess PWSA's rate filings in the future. Additionally, PWSA's adoption of NARUC's system of accounting would bring PWSA into compliance with Commission regulations. However, I&E is uncertain of whether PWSA would be able to convert its current system of accounts to NARUC's system by the compliance plan deadline of September 28, 2018.

Because I&E is not privy to all the practical challenges regarding the timing, logistics, or costs that PWSA may face in converting its current accounting system, I&E opines that PWSA is in the best position to determine whether it could convert to the NARUC accounting system on or by September 28, 2018. Therefore, I&E will defer to PWSA's response to this question, with one caveat. To the extent that PWSA cannot convert its accounting system in time to meet the September 28, 2018 compliance plan filing deadline, I&E recommends that PWSA make arrangements to begin the conversion as soon as it is practicable. To facilitate the conversion, as part of its compliance plan, PWSA should be required to provide the Commission with a report that outlines its plan to convert to the NARUC system of accounting, an estimated timeline for the conversion, and a date certain for compliance with 52 Pa. Code § 65.16(a).

F. PWSA's Compliance with Chapter 56 Should Be Addressed in Its Compliance Plan

As part of its Implementation Order, the Commission asks stakeholders to comment on whether PWSA's plans to comply with billing, collection, and termination

procedures arising under Chapter 56⁶⁰ should be addressed in its tariff filing or in within its compliance plan. I&E recommends that PWSA address the Chapter 56 procedures in its compliance plan for several reasons. First, consistent with I&E's remarks throughout this Comment regarding the timing and complexity of PWSA's tariff filing, I&E believes that it would be impracticable and overly burdensome for PWSA to develop and file a comprehensive plan for compliance with the numerous and important customer protections outlined in Chapter 56 by July 2, 2018.

Additionally, requiring PWSA to include its Chapter 56 compliance plan in its tariff would deprive it of the opportunity to incorporate any valuable feedback that may result from the Commission's Bureau of Audits and BCS baseline performance analyses of PWSA's operations.⁶¹ The opportunity would be lost because while PWSA's tariff must be filed no later than July 2, 2018, the Commission will not have jurisdiction to conduct its baseline reviews until after April 1, 2018. Even assuming, *arguendo*, that the Commission's staff could effectively conduct a comprehensive baseline analysis of PWSA's operations in time to yield results by July 2, 2018, PWSA would not have an opportunity to meaningfully incorporate that feedback into its tariff filing. Under this scenario, the value of the Commission's baseline analyses of PWSA's operations would be diminished.

⁶⁰ 52 Pa. Code §§ 56.1-56.461, *Standards and Billing Practices for Residential Utility Service*.

⁶¹ As part of its Tentative Implementation Order, the Commission asks stakeholders to address whether the Bureau of Audits and BCS should perform baseline performance analyses of PWSA's financial billing, and customer service operations as an agreed upon procedures engagement. I&E answers this question affirmatively and in depth later in this Comment.

On the other hand, permitting PWSA to detail its plan to comply with Chapter 56 in its compliance plan due on September 28, 2018 would be beneficial in several ways. First, PWSA would have an additional three months to become acquainted with its new obligations arising under Chapter 56, to determine what new internal policies and procedures must be implemented, and to develop a compliance plan that will enable it to meet these new obligations. Considering this additional time, I&E believes that it would be possible not only for PWSA to develop a more informed and streamlined plan, but it also increases the likelihood that PWSA will have the opportunity to incorporate the lessons learned from the Commission's baseline performance analyses of its operations. In this manner, the value of the additional time and the Commission's analyses will be fully realized. Therefore, I&E recommends that PWSA should address Chapter 56 compliance as part of its Chapter 32 compliance plan.

G. Review by the Commission's Bureau of Audits

As part of the Tentative Implementation Order, the Commission has asked parties to comment upon whether it should establish as baseline performance analysis of the PWSA by directing its Bureau of Audits to conduct a review of PWSA's financial operations, processes, and billing system.⁶² By way of further information, the Bureau of Audits serves the Commission by performing audits of utility books, accounts and management.⁶³ In a similar vein, the Commission also seeks guidance on whether BCS

⁶² *Tentative Implementation Order* at 28.

⁶³ *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) citing 66 Pa. C. S. § 308.2(a).

should conduct an audit of PWSA customer service operations and consumer complaint handling process.⁶⁴ BCS serves the Commission by investigating consumer complaints regarding utility service, serving as a liaison between consumers and utilities, and assisting the Commission in developing its policy regarding consumers, billing, and service matters.⁶⁵ I&E recommends that both the Bureau of Audits and BCS conduct preliminary reviews of PWSA, as described in the Tentative Implementation Order, for several reasons.

First, undertaking these two levels of review are necessary to inform the Commission of the reality of PWSA's financial and customer service operations and complaint handling processes as they exist at the outset of the Commission's assumption of regulatory jurisdiction. Considering the complexity and timeframe of PWSA's transition to the Commission's regulatory jurisdiction, it imperative that the Commission gains a first-hand and timely understanding of PWSA's operations as quickly as possible. With this in mind, the Commission's in-house experts in the Bureau of Audits and in BCS are in the best position to assess PWSA operations and to inform the Commission. Additionally, once the Commission assesses the results from the Bureau of Audits and BCS reviews, it can identify any financial issues, areas of noncompliance, customer service concerns, and other matters that are implicated and target those areas for remediation.

⁶⁴

Id.

⁶⁵

Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011) citing 66 Pa. C. S. § 308(d).

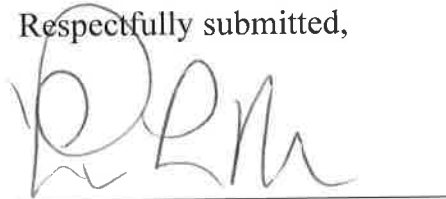
Once matters that warrant remediation have been identified, PWSA will be able to work with the Bureau of Audits and BCS to devise a plan to address those matters. Additionally, Bureau of Audits and BCS can assist the Commission by measuring and tracking the progress that PWSA is making. Moreover, depending on the timing of their review, the input offered by the Bureau of Audits and BCS may greatly assist PWSA as it prepares its compliance plan. More specifically, PWSA is required to set forth a compliance plan which must include provisions that will bring its existing operating systems and procedures, including but not limited to accounting, billing, and collection, into compliance with the requirements applicable to jurisdictional water and wastewater utilities.⁶⁶ Because the Bureau of Audits and BCS review contemplated in the Tentative Implementation Order would examine PWSA's financial operations and customer service matters, including billing, its review would address several of the factors that are required to be addressed in PWSA's compliance plan. Accordingly, I&E submits that establishing a baseline performance analysis of PWSA's financial and customer service operation will benefit the Commission, PWSA, and its customers by helping PWSA to comply with the Code, establish best practices, and enhance customer service. Because these are all outcomes that are in the public interest, I&E supports both a preliminary review of PWSA's financial operations by the Bureau of Audits and a preliminary review of its customer service operations and complaint handling by BCS.

⁶⁶ 66 Pa. C.S. § 3204(b).

III. CONCLUSION

I&E appreciates the opportunity to comment upon the complex issues implicated by Chapter 32, and the practical and regulatory hurdles that the Commission and all stakeholders face as the Commission prepares to assume regulatory jurisdiction over the Pittsburgh Water and Sewer Authority. I&E wishes to conclude its comments with the recognition that it, like other stakeholders and the Commission, does not have a full and accurate picture of the reality of PWSA operations at this time; therefore, its comments were made using only the information available. To that end, I&E looks forward to PWSA's comments and to continually serving the Commission as PWSA transitions to its jurisdiction.

Respectfully submitted,



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Dated: February 6, 2018

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Chapter 32 of the : Docket Nos.
Public Utility Code Re Pittsburgh : M-2018-2640802 (Water)
Water and Sewer Authority : M-2018-2640803 (Wastewater)

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Comments** dated
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the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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