



COMMONWEALTH OF PENNSYLVANIA

February 6, 2018

**E-FILED**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**Re: Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water And Sewer Authority / Docket Nos. M-2018-2640802 & M-2018-2640803**

Dear Secretary Chiavetta:

I am delivering for filing today the Comments of the Office of Small Business Advocate ("OSBA"), pursuant to the Tentative Implementation Order issued in the above-captioned proceedings.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Rose Triscari".

Elizabeth Rose Triscari  
Deputy Small Business Advocate  
Attorney ID No. 306921

***Enclosures***

cc: Mr. Brian Kalcic

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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)  
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**COMMENTS OF THE OFFICE  
OF SMALL BUSINESS ADVOCATE**

**I. INTRODUCTION**

On January 18, 2018, the Pennsylvania Public Utility Commission (“Commission”) adopted a Tentative Implementation and Order (“Order” or “TIO”) to address the addition of language to the Public Utility Code relating to the Commission’s recently acquired jurisdiction over, and regulatory deadlines relating to, the provision of utility water, wastewater, and storm water service by entities created by Pennsylvania cities of the second class under the Municipal Authorities Act. Governor Wolf signed Act 65 of 2017 on December 21, 2017. Act 65 provides for the addition of a new Chapter 32 to the Public Utility Code (“Code”) consisting of Sections 3201 through 3209. Currently the City of Pittsburgh is the only city of the second class within the Commonwealth of Pennsylvania. As such, pursuant to Act 65 of 2017, the Commission will have jurisdiction over the Pittsburgh Water and Sewer Authority (“PWSA”).

The Office of Small Business Advocate (“OSBA”) is authorized to represent the interests of small business consumers of utility services before the Pennsylvania Public Utility Commission pursuant to the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§399.41 – 399.50 (“the Act”). Section 3206 of Code, explicitly

incorporates the OSBA's jurisdiction to represent the interests of consumers of an authority.  
66 Pa. C.S. §3206.

In response to the Commission's invitation, the OSBA offers the following comments, which address the issues raised by the Commission as well as other related issues the OSBA deems relevant. It should be noted that the OSBA's comments are preliminary and reflect a limited understanding of PWSA's facilities and operations given the recent change of jurisdiction.

## **II. COMMENTS**

1. On page 5 of the TIO, the Commission states that it will initially require PWSA to file two separate tariffs, one for water service and one for wastewater service. However, the Commission also seeks comment on whether PWSA shall instead be required to file three separate tariffs, with the third tariff applying to stormwater service. The OSBA supports the third tariff scenario. Just as the Commission does not consider water and wastewater service "like" services, to be offered under a single tariff, the OSBA finds that wastewater and stormwater service are too dissimilar to be offered under a combined wastewater/stormwater tariff. Doing so would likely result in wastewater/stormwater rates deviating from PWSA's underlying cost to serve stormwater customers, which would violate the Commonwealth Court's directive in *Lloyd*.<sup>1</sup>

2. On page 6 of the TIO, the Commission asks for commenters to discuss whether, as to PWSA, Act 65 effectively repealed the jurisdictional exclusion of stormwater collected in a

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<sup>1</sup> The Commonwealth Court has unambiguously decided that cost of service should be the "polestar" criterion for rate-setting. In *Lloyd v. Pa. PUC*, the Court held that other rate-making concerns could not trump cost of providing service. *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006).

separate storm sewer system. The OSBA submits that it did, but limited the exclusion only to municipal authorities in cities of the second class. The definition of "Authority" in Section 3201, as the Commission notes, carefully defines which authorities transition to Commission oversight under Act 65. Specifically, Act 65 only grants Commission jurisdiction over municipal authorities established by cities of the second class, which own or operate equipment or facilities for providing water, wastewater and most importantly for this jurisdictional question, storm water service. The OSBA agrees with the TIO that currently the only Authority to which this section applies, is PWSA. By specifically listing storm water service in the definition of Authority, the legislature effectively granted Commission authority over PWSA's separate storm water systems. The OSBA reiterates, however, that Act 65 did not grant Commission oversight over any other separate storm water systems.

3. On page 11 of the TIO, the Commission raises the issue of disputes that arise before Commission approval of a new PWSA tariff, whereby the Prior Tariff was controlling at the time of events, but no longer does so, and where the application of the Public Utility Code, Commission Regulations, or precedent may produce results that would conflict with the Prior Tariff. The OSBA is sensitive to PWSA's likely concern over certainty of what law, rules and regulations apply at any given point of time. The OSBA agrees that as of April 1, 2018, Commission processes and procedures should apply to any pending or new disputes, but that PWSA's current tariff should be controlling until a new one is approved. It would be inappropriate to retroactively apply the Public Utility Code, Commission Regulations, or

precedent to incidents arising before Commission oversight begins on April 1, 2018, or even arguably prior to approval of a new tariff.<sup>2</sup>

4. On page 14 of the TIO, the Commission proposes to interpret the effective date of 66 Pa. C.S. Chapter 32 to be April 1, 2018, which would require PWSA to submit its tariff filings by July 2, 2018. Establishing April 1, 2018 (rather than December 21, 1017) as the effective date is intended to provide sufficient time for (i) PWSA to prepare and support its tariff filings and (ii) stakeholders to perform a thorough review of PWSA's submissions. The OSBA supports this approach to establishing Chapter 32 filing deadlines.

5. The TIO on page 18 seeks comment on whether PWSA should be required to segregate its stormwater specific assets from its other regulated assets for purposes of its water and wastewater rate proceedings. As previously noted, the OSBA supports requiring PWSA to file three separate tariffs for water, wastewater and stormwater service. The OSBA finds that the segregation of stormwater specific assets from water and wastewater assets is a necessary first step toward the development of a cost-base stormwater tariff.

6. On page 24 of the TIO, the Commission seeks comment on the future structure and submission of PWSA's LTIP and DSIC mechanism filings. The OSBA supports the submission of a single LTIP, only if the filing includes a strict segregation of PWSA's planned water, wastewater and stormwater infrastructure improvements. Similarly, separate DSICs should apply to PWSA's water, wastewater, and stormwater activities.

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<sup>2</sup> With the caveat that the OSBA has no objection to PWSA being required to follow rules regarding residential payment arrangements and termination procedures pursuant to Chapters 14 and 56 of the Public Utility Code.

### **III. CONCLUSION**

The OSBA respectfully requests that the Commission consider its comments above when finalizing the implementation order in this matter.

Respectfully submitted,



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For:

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Dated: February 6, 2018