

**ECKERT
SEAMANS**
ATTORNEYS AT LAW

RECEIVED
2018 JUL -2 PM 2:53
Eckert Seamans Cherin & Mellott, LLC
518 Market Street
8th Floor
Harrisburg, PA 17101

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

PA PUC
SECRETARY'S BUREAU
FRONT DESK

Daniel Clearfield
717.237.7173
dclearfield@eckertseamans.com

July 2, 2018

Via Hand Delivery

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: PA PUC v. Pittsburgh Water and Sewer Authority
Docket Nos. R-2018-3002645 and R-2018-3002647

Dear Secretary Chiavetta:

On behalf of the Pittsburgh Water and Sewer Authority ("PWSA") enclosed for filing is its Petition for Waiver of Statutory Definition of Fully Projected Future Test Year with regard to the above-referenced matters. Copies served in accordance with the attached Certificate of Service.

Sincerely,



Daniel Clearfield

DC/lww
Enclosure

cc: Certificate of Service w/enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

V.

PITTSBURGH WATER AND SEWER
AUTHORITY

:
: Docket No. R-2018-3002645
: R-2018-3002647
:
:
:
:
:

**PETITION OF
THE PITTSBURGH WATER AND SEWER AUTHORITY
FOR WAIVER OF STATUTORY DEFINITION OF
FULLY PROJECTED FUTURE TEST YEAR**

RECEIVED
2018 JUL -2 PM 2:54
PA PUC
SECRETARY'S BUREAU
FRONT DESK

Pursuant to Section 3202(b) of the Public Utility Code and 52 Pa. Code § 5.41, The Pittsburgh Water and Sewer Authority ("PWSA" or "Authority") respectfully submits this Petition requesting that the Public Utility Commission ("PUC" or "the Commission") waive the application of the statutory definition of the fully projected future test year ("FPFTY") so as to permit PWSA to use a FPFTY beginning on January 1, 2019 in the above-captioned proceedings.

Simultaneously with the filing of this Petition, PWSA has filed a base rate case pursuant to 66 Pa. Code § 1308(d). Consistent with its mandatory budget process, the base rate case is using a historic test year ("HTY") ending December 31, 2017, a future test year ("FTY") comprised of the period from January 1, 2018 through December 31, 2018, and a FPFTY comprised of the period from January 1, 2019 through December 31, 2018. However, the statutory definition of FPFTY¹ would require that the FPFTY commence in April 1, 2019² and continue for 12 months.

¹ See Paragraph 4 of this Petition.

Use of the FPFTY commencing on January 1, 2019 (as opposed to April 1, 2019) is reasonable because (a) it comports with PWSA's fiscal year and budgetary requirements; (b) would result in ease of administration as it would eliminate the potential confusion of having projections and data that span more than one forecasted fiscal year of the Authority; and (c) would reduce the Authority's administrative costs of compliance.

I. Background

1. PWSA is a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania that is now regulated as a public utility by the Commission.³ PWSA is responsible for producing and supplying water along with maintaining and operating the water and sewage infrastructure in much of Pittsburgh, Pennsylvania. PWSA also manages stormwater that is conveyed both through its combined sewer systems and separate storm sewer systems.

2. The names, addresses and telephone number of PWSA's counsel are:

Daniel Clearfield, Esq.
Carl R. Shultz, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
717.237.6000

dclearfield@eckertseamans.com
cshultz@eckertseamans.com

² The rate case was filed on July 2, 2018. The application of the full suspension period (60 days plus 9 months) will end on March 31, 2019. Since rates not could be placed into effect before the end of March 2019, the first month that rates could be placed in effect is April 2019. See 66 Pa.C.S. § 315(e).

³ See 66 Pa.C.S. §§ 102, 3201, 3202(a).

3. On February 14, 2012, Act 11 was signed into law. That Act, *inter alia*, allows utilities to utilize a FPFTY as its baseline for setting new base rates.⁴ The key provisions regarding the use of a FPFTY were codified in Chapters 3 and 13 of the Public Utility Code.⁵

4. Certain statutory definitions are included in Act 11. Specifically, it defines the FPFTY as “the 12-month period beginning with the first month that the new rates will be placed in effect after application of the full suspension period permitted under section 1308(d) (relating to voluntary changes in rates).”⁶ The Commission has stated that, under this approach, the new rates will be consistent with the test year used to establish those rates for at least the first year.⁷

5. Simultaneously with this Petition, PWSA is filing a general rate case pursuant to 66 Pa.C.S. § 1308(d). The statutory suspension period for this filing will end on March 31, 2019.

6. PWSA’s filing is based on a FPFTY that begins on January 1, 2019. This date is consistent with PWSA’s existing and historical fiscal years.

⁴ 66 Pa.C.S. § 315(e).

⁵ 66 Pa.C.S. §§ 315(e), 1350 - 1360. On August 2, 2012, the Commission issued its Final Implementation Order establishing procedures and guidelines to carry out the ratemaking provisions of Act 11. *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611, Final Implementation Order entered Aug. 2, 2012 (“Final Implementation Order”). The Final Implementation Order is a policy statement setting forth how the Commission intends to interpret Act 11 in future adjudications and rulemakings. See *Petition of PPL Electric Utilities Corporation For Approval of a Distribution System Improvement Charge*, PUC Docket No. P-2012-2325034, Recommended Decision dated July 25, 2014 at 18-19, modified (on other grounds) in part by Opinion and Order entered April 9, 2015. With respect to the FPFTY, the Final Implementation Order provides that the Commission will initiate a separate rulemaking proceeding to promulgate regulations regarding the use of a FPFTY.

⁶ 66 Pa.C.S. § 315(e).

⁷ Final Implementation Order at p. 5.

7. Under Section 3202(b) of the Public Utility Code, “Upon request of [PWSA], the Commission may suspend or waive the applicability of any provision of [the Public Utility Code] to [PWSA], except for this section [Section 3202].”⁸

II. The Requested Waiver

8. For the reasons set forth herein, pursuant to Section 3202(b) of the Public Utility Code, PWSA requests a waiver of the application of the statutory definition of FPFTY so as to permit PWSA to use a FPFTY beginning on January 1, 2019 in this proceeding.⁹ Strict application of the requirements of Section 315(e) would require that the FPFTY begin in April 2019 rather than January 2019, as PWSA is proposing.

9. PWSA operates on a fiscal year (FY) basis with years running (operating) from January through December.

10. Use of the FPFTY comprised of the period from January 1, 2019 through December 31, 2019, is reasonable because: (a) it is consistent with PWSA’s fiscal year and the data required for budgetary and other purposes for municipal regulatory purposes; (b) would result in ease of administration and facilitate review and comparison of the test year information with the data submitted in other forums; and (c) would avoid the potential confusion of having projections and data that span more than one forecasted fiscal year of the Authority.

⁸ 66 Pa.C.S. § 3202(b).

⁹ Consistent with this request, PWSA is also seeking a waiver of Commission regulations that would conflict with this requested relief. *See* 52 Pa.Code § 1.91. The regulations to be waived are: 52 Pa.Code § 53.52(b)(2), which relates to the 120/180 day rule; and, 52 Pa.Code § 53.53(b), which relates to the definitions of HTY and FTY.

11. Recalculation of the FPPTY to commence on April 1, 2019 (as opposed to January 1, 2019) would increase PWSA's administrative costs by requiring the Authority to draw data from more than one forecasted FY of the Authority. The expense of reconfiguring data that spans more than one forecasted FY, and casting new projections, would be excessive and unnecessary.

12. Permitting PWSA to utilize a FPPTY that begins in January 2019 rather than in April 2019 will not prejudice any party. The intent of requiring that the FPPTY begin in the month that the base rate increase suspension ends was to reduce regulatory lag. A difference of four months in the beginning of the FPPTY will not have a material impact on PWSA's financial projections, or make them materially less current. Moreover, "regulatory lag," if any, would inure to the detriment of PWSA.

13. The Commission has previously employed the discretion the Legislature has afforded it under Section 2212 of the Public Utility Code¹⁰ in regulating Philadelphia Gas Works (PGW) in order to waive other sections of the Public Utility Code that plainly did not fit for PGW's operations as a city natural gas distribution operation.¹¹ PWSA respectfully submits

¹⁰ Under Section 2212 of the Public Utility Code, the Commission "upon request of [PGW], may suspend or waive the application to [PGW] of any provision of [the Public Utility Code], including any provision of [Chapter 22 (relating to Natural Gas Competition)] other than [Section 2212]." 66 Pa.C.S. § 2212.

¹¹ *See, e.g., Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges*, Docket No. P-2015-2501500, Opinion and Order entered January 28, 2016; *PUC v. PGW*, PUC Docket No. R-2008-2073938, Reconsideration Opinion and Order entered March 26, 2009 (relating to the grant of several waivers, including waiver of portions of 66 Pa.C.S. § 1308(e), to the extent necessary to give full effect to the rate relief, conditions and directives set forth in the Commission's prior order).

that the circumstances are similar here.¹² In addition, PWSA notes that the Commission, as part of a settlement, accepted the non-conforming FPFTY of Ambler Borough.¹³

14. It is, therefore, reasonable to waive the application of the statutory definition of FPFTY so as to permit PWSA to use a FPFTY beginning on January 1, 2019 in this proceeding.

III. Expedited Approval

15. PWSA is proposing that the Commission grant the requested waiver in an expedited manner. This relief is integral to the rate case, which PWSA anticipates will be subject to extensive informal and/or formal discovery and if a suspension and investigation order is issued must be fully decided before March 31, 2019.¹⁴

16. Alternatively, if the Commission for some reason does not choose to grant authority, PWSA respectfully requests that the Commission to permit PWSA to revise its financial presentation. Much of the data to do this will already be in the record. Such a revision, while requiring the expenditure of extensive time and resources, will not make a material change to PWSA's financial statistics nor change its revenue requirement.

17. PWSA has served copies of this Petition on the following: the Pennsylvania Office of Consumer Advocate, the Pennsylvania Office of Small Business Advocate, the

¹² See, e.g., *PUC v. PGW*, Docket No. R-2017-2586783, Prehearing Order #1 dated March 30, 2017, noting that Petition of Philadelphia Gas Works for Waiver of Statutory Definition of Fully Projected Future Test Year, being unopposed, was granted.

¹³ See *PUC v. Borough of Ambler Water Department*, R-2014-2400003, Opinion and Order entered December 4, 2014 adopting Recommended Decision dated October 17, 2014 (the Borough's HTY ended June 30, 2013, its FTY ended June 30, 2014, and its FPFTY ended June 30, 2015. But, under Act 11, the FPFTY should have commenced November 2014 - the 12-month period beginning with the first month the new rates would have been placed in effect following the application of the full suspension period - and extended through November 2015. The rate case was filed on January 31, 2014 so the suspension period ended on October 31, 2014).

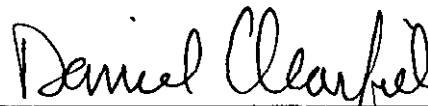
¹⁴ See footnote 2.

Commission's Bureau of Investigation and Enforcement, the Commission's Office of Special Assistants, the Commission's Bureau of Technical Utility Services, and to each of the Commissioners. If the Commission concludes that additional notice is necessary, PWSA will provide such additional notices as the Commission may direct.

IV. Conclusion

WHEREFORE, PWSA respectfully requests that the Commission (1) waive the application of the statutory definition of FPFTY so as to permit PWSA to use a FPFTY beginning on January 1, 2019, in this proceeding; and (2) take any other action deemed to be in the public interest.

Respectfully submitted,



Daniel Clearfield, Esq.
(PA Attorney ID No. 26183)

Carl R. Shultz, Esq.
(PA Attorney ID No. 70328)

Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
717.237.6000
717.237.6019 (fax)
dclearfield@eckertseamans.com
cshultz@eckertseamans.com

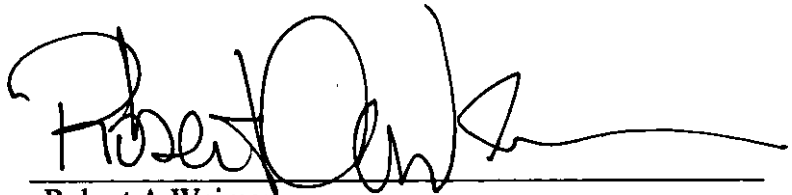
Dated: July 2, 2018

Counsel for
The Pittsburgh Water and Sewer Authority

RECEIVED
2018 JUL -2 PM 2:54
PA PUC
SECRETARY'S BUREAU
FRONT DESK

VERIFICATION

I, Robert A Weimar, am the Executive Director for The Pittsburgh Water and Sewer Authority ("PWSA" or "Authority"), and I hereby state that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief and that I expect the Authority to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to sworn falsification to authorities).

A handwritten signature in black ink, appearing to read 'Robert A. Weimar', written over a horizontal line.

Robert A Weimar
Executive Director
The Pittsburgh Water and Sewer Authority

RECEIVED
2018 JUL -2 PM 2:54
PA PUC
SECRETARY'S BUREAU
FRONT DESK

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PWSA's Petition for Waiver of Statutory Definition of Fully Projected Future Test Year upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Hand Delivery

John R. Evans, Esq.
Office of Small Business Advocate
300 North Second St., Suite 202
Harrisburg, PA 17101
jorevan@pa.gov

Tanya McCloskey, Esq.
Office of Consumer Advocate
555 Walnut St., 5th Fl., Forum Place
Harrisburg, PA 17101-1923
tmccloskey@paoca.org

Richard Kanaskie, Esq.
Bureau of Investigation & Enforcement
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265
rkanaskie@pa.gov

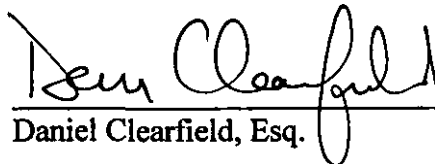
Hon. Charles E. Rainey, Jr.
Chief Administrative Law Judge
Office of Administrative Law Judge
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265
crainey@pa.gov

Paul Diskin, Director
Bureau of Technical Utility Services
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265
pdiskin@pa.gov

Via First Class Mail

Elizabeth R. Marx, Esq.
The Pennsylvania Utility Law Project
118 Locust St.
Harrisburg, PA 17101
pulp@palegalaid.net

Dated: July 2, 2018


Daniel Clearfield, Esq.

RECEIVED
2018 JUL -2 PM 2:54
PA PUC
SECRETARY'S BUREAU
FRONT DESK