

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :

:

v.

:

Docket No. R-2018-3002645

:

R-2018-3002647

Pittsburgh Water and Sewer Authority :

:

PETITION TO INTERVENE AND ANSWER OF

PITTSBURGH UNITED

PENNSYLVANIA UTILITY LAW PROJECT

Co-Counsel for Pittsburgh UNITED

Elizabeth R. Marx, Esq.

John W. Sweet, Esq.

Patrick M. Cicero, Esq.

Kadeem G. Morris, Esq.

118 Locust Street

Harrisburg, PA 17101

Tel.: 717-236-9486

Fax: 717-233-4088

Email: pulp@palegalaid.net

NATURAL RESOURCES DEFENSE COUNCIL

Co-Counsel for Pittsburgh UNITED

Dimple Chaudhary, Esq.

Peter J. DeMarco, Esq.

Cecilia Segal, Esq.

1152 15th Street, NW, Ste. 300

Washington, DC 20005

Tel.: 202-513-2267

Fax: (415) 795-4799

Email: dchaudhary@nrdc.org

pdemarco@nrdc.org

csegal@nrdc.org

July 13, 2018

Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§ 5.61-5.76, Pittsburgh UNITED, through its legal counsel at the Pennsylvania Utility Law Project (PULP) and Natural Resources Defense Council (NRDC), hereby petitions the Commission to intervene in the above-captioned proceeding. In support thereof, Pittsburgh UNITED states as follows:

Petition to Intervene

1. On July 2, 2018, in compliance with the statutory mandate set forth in Chapter 32 of the Public Utility Code,¹ Pittsburgh Water and Sewer Authority (PWSA) filed a base rate case pursuant to 66 Pa. C.S. § 1308(d). In the filing, PWSA sets forth a proposed tariff, which outlines the rates, policies, programs, and procedures which will govern the distribution of water services to its customers. PWSA's proposed tariff seeks approval to substantially increase its distribution rates for all customer classes.

2. Eligibility to intervene in Commission proceedings is governed by 52 Pa. Code § 5.72, which provides in relevant part that “[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.” 52 Pa. Code § 5.72(a).

3. Section 5.72 further provides that the right or interest may be one “which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.” 52 Pa. Code. § 5.72(a)(2).

¹ See 66 Pa. C.S. § 3204. Act 65 of 2017, codified in Chapter 32 of the Public Utility Code, was signed into law on December 21, 2017. The effect of the Act was to bring the Pittsburgh Water and Sewer Authority under the jurisdiction of the Commission. To facilitate the transition to Commission oversight, the Act explicitly required PWSA to file a tariff with PUC within 90 days of the effective date of the Act. See id.

4. Even though Section 5.72 speaks of the rights of a “person” to intervene, the Commonwealth Court has consistently stated that “an association may have standing as a representative of its members . . . as long as an organization has at least one member who has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged action, [i.e., is aggrieved, the organization] has standing.” Energy Cons. Council of Pa. v. Pa. PUC, 995 A.2d 465, 476 (Pa. Commw. Ct. 2010) (alteration in original) (citing Tripps Park v. Pa. PUC, 415 A.2d 967 (Pa. Commw. Ct. 1980); Parents United for Better Schools v. School Dist. of Phila., 646 A.2d 689 (Pa. Commw. Ct. 1994)).

5. Pittsburgh UNITED is a coalition of community, labor, faith, and environmental organizations committed to advancing the vision of a community and economy that works for all people.

6. Pittsburgh UNITED members work collectively to build a community whereby all workers are able to care for themselves and raise their families, sharing in the prosperity generated by economic growth and development.

7. Pittsburgh UNITED is located at 841 California Ave., Pittsburgh, PA 15212.

8. Pittsburgh UNITED has a critical interest in ensuring, on behalf of its members, that PWSA’s transition to Commission oversight is conducted in a timely and organized manner to protect the interests of Pittsburgh’s residents, particularly low-income Pittsburgh families who struggle most to connect to and maintain water service.

9. Pittsburgh UNITED, its member organizations, and the individuals and families those organizations serve are located within PWSA’s service territory and will be directly affected by the outcome of this proceeding. Particularly, this proceeding will affect the price that Pittsburgh

UNITED members pay for water service, as well as the safety, reliability, and quality of that service.²

10. Pittsburgh UNITED has standing to intervene because several of its members have or will suffer a direct, immediate, and substantial injury to an interest as a result of this proceeding. See Energy Cons. Council of Pa., 995 A.2d at 476.

11. Pittsburgh UNITED is represented in this proceeding by co-counsel at the Pennsylvania Utility Law Project and the Natural Resources Defense Council:

Pennsylvania Utility Law Project
Elizabeth R. Marx, Esquire
John W. Sweet, Esquire
Patrick M. Cicero, Esquire
Kadeem G. Morris, Esquire
118 Locust Street
Harrisburg, PA 17101
Telephone: 717-236-9486
Fax: 717-233-4088
Email: pulp@palegalaid.net

Natural Resources Defense Council
Dimple Chaudhary, Esquire, (*Pro Hac Vice pending*)³
Peter J. DeMarco, Esquire
Cecilia Segal, Esquire, (*Pro Hac Vice pending*)
1152 15th Street, NW, Ste. 300
Washington, DC 20005
Telephone: 202-513-2267
Fax: (415) 795-4799
Email: dchaudhary@nrdc.org
pdemarco@nrdc.org
csegal@nrdc.org

12. The Pennsylvania Utility Law Project and Natural Resources Defense Council consent to the service of documents by electronic mail, as provided in 52 Pa. Code § 1.54(b)(3).

² A list of Pittsburgh UNITED's member organizations is available at <http://pittsburghunited.org/>. (Several member organizations are PWSA customers.)

³ Motions for the Pro Hac Vice admission of Dimple Chaudhary, Esq. and Cecilia Segal, Esq. were filed simultaneously with this Petition to Intervene and Answer.

Answer

13. Pittsburgh UNITED has preliminarily reviewed PWSA's tariff filing, and generally objects thereto. PWSA's tariff filing could result in unjust and unreasonable terms, conditions, and rates for critical water services that would impose severe hardship on the health, safety, and economic stability of Pittsburgh residents.

14. Terms, conditions, and rates for water service are not just and reasonable if they are not appropriately designed and implemented to ensure that all consumers are able to access safe and affordable water service, consistent with the laws and policies of the Commonwealth.

15. PWSA's rate proposal would increase residential rates by 16.7%. (PWSA St. No. 1 at 23.) A steep increase in rates such as the increase proposed by PWSA will have a disproportionate harmful impact on low-, fixed-, and moderate-income households, who already struggle to afford all of life's most essential needs.

16. Not only does rate unaffordability threaten individual households, it can also have a lasting impact on the health and vibrancy of our communities. Preliminary review of PWSA's filing suggests that PWSA's proposed Customer Assistance Program (CAP) is insufficient to remediate widespread rate and long-term rate unaffordability. (PWSA St. No. 4 at 2-4.) Before any rate increase is approved, further inquiry is needed to assess the need for additional water rate assistance and arrearage management and to ensure that PWSA's CAP is adequately designed to meet the needs of the communities it serves.

17. PWSA's proposed rate design is likewise troublesome, as it would increase PWSA's minimum charge for residential water service 19.4% from \$23.25 to \$27.77 each month – or \$54.24 per year. (PWSA St. No. 5 at 17-19; see Sched. HJS-10W.) Additionally, PWSA proposes to raise its minimum residential customer charge for wastewater service by 46.3% from \$7.71 to

11.28 – or \$42.84 per year. (PWSA St. No. 5 at 27-29; see Sched. HJS-10WW.) Effectively, this means a minimum increase of \$97.08 per year for residential customers, regardless of whether the customer consumes one or one thousand gallons of water.⁴ (PWSA St. No. 5 at 18, 28; see Sched. HJS 9-W; see also Sched. HJS-9WW). Increasing the fixed charge portion of a customer's bill would undercut the ability of consumers to mitigate the impact of the rate increase through the adoption of water conservation and efficiency measures. (PWSA St. No. 5 at 12.) Further investigation is necessary to determine whether PWSA's rate design will disproportionately harm vulnerable consumers or otherwise detract from the consumer's ability to remediate the impact of the rate increase through water conservation and efficiency efforts.

18. Preliminary review of PWSA's filing also reveals that the terms and conditions for service described in the tariff filing may not be consistent with the billing, collections, and termination standards contained in Title 66, Chapter 14 of the Public Utility Code or Title 52, Chapter 56 of the Commission's regulations. See 66 Pa. C.S. Chapter 14; 52 Pa. Code Chapter 56. Further scrutiny is necessary to ensure that services are provided to PWSA's customers in a manner that is fully consistent with the laws and prevailing public policy of the Commonwealth.

19. In addition to affordability issues, preliminary review of PWSA's filing suggests that its lead remediation program lacks adequate funding to ensure that the drinking water of PWSA's 799,240 (see Sched. HJS-15W) residential customers is safe and properly controls for the release of lead from PWSA's infrastructure.

20. Lead is a devastating neurotoxin and particularly harmful to young children. PWSA estimates that it had 15,000 lead service lines in its system in 2016 (PWSA St. 1 at 9), though more recent figures indicate that number may be as high as 19,000. (See In the Matter of PWSA,

⁴ Charges based on 5/8" meter.

Violations of the Pennsylvania Safe Drinking Water Act, Consent Order and Agreement, □ T (Nov. 2017).) Yet PWSA's filing suggests that its service line replacement program will end in 2019, leaving nearly 80% of its lead service lines in the ground. (See PWSA St. 1, Ex. RAW-3 at 7 (projecting replacement of about 20% of PWSA's lead service lines between 2017 and 2019).) An ongoing commitment to lead service line replacement is necessary to ensure that consumers are safe from harm.

21. PWSA also does not consider that it may be required by state and federal drinking water law to continue its lead service line replacement program if it cannot reduce the high concentrations of lead in its drinking water moving forward. See Pennsylvania Safe Drinking Water Act, 35 Pa. C.S. § 721.1 et seq.; Safe Drinking Water Act, 42 U.S.C. § 300f et seq. Nor does PWSA describe how it will adjust the funding and scope of its service line replacement work if its current efforts to reduce lead levels through chemical treatment are not immediately effective. (See PWSA St. 1 at 8-10.) Further investigation is necessary to determine whether PWSA's lead remediation plan will provide PWSA customers with access to safe water.

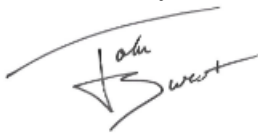
22. Water safety and affordability are of paramount concern, and must remain in the forefront of the Commission's decision of whether to approve PWSA's proposed tariff. Pittsburgh UNITED intends to explore these paramount issues throughout this proceeding to ensure that its members, and the individuals and families they represent, are protected from harm.

23. Pittsburgh UNITED asserts that the affordability and safety issues identified above, along with any future modifications presented by intervening parties, must be thoroughly reviewed to ensure that all customers are able to access safe, affordable utility services within the PWSA service territory.

WHEREFORE, Pittsburgh UNITED respectfully requests that the Commission enter an order granting Pittsburgh UNITED full status as an intervener in this proceeding with active party status.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
Co-Counsel for Pittsburgh UNITED



Elizabeth R. Marx, Esq., PA ID: 309014
John W. Sweet, Esq., PA ID: 320182
Patrick M. Cicero, Esq., PA ID: 89039
Kadeem G. Morris, Esq., PA ID: 324702
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
Email: pulp@palegalaid.net

NATURAL RESOURCES DEFENSE COUNCIL
Co-Counsel for Pittsburgh UNITED



Dimple Chaudhary, Esq., Pro Hac Vice Pending
Peter J. DeMarco, Esq., PA ID: 319087
Cecilia Segal, Esq., Pro Hac Vice Pending
1152 15th Street, NW, Ste. 300
Washington, DC 20005
Tel.: 202-513-2267
Fax: (415) 795-4799
Email: dchaudhary@nrdc.org
pdemarco@nrdc.org
csegal@nrdc.org

Date: July 13, 2018

Verification

I, Aly Shaw, on behalf of Pittsburgh UNITED, hereby state that the facts contained in the foregoing *Petition to Intervene and Answer of Pittsburgh UNITED* are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect 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 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

On behalf of Pittsburgh UNITED

A handwritten signature in black ink, appearing to read 'Aly Shaw', written in a cursive style.

Aly Shaw
Environmental Justice Organizer
Pittsburgh UNITED
aly@pittsburghunited.org
724-809-9014

Date: July 13, 2018

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2018-3002645
	:	R-2018-3002647
Pittsburgh Water and Sewer Authority	:	
	:	

Certificate of Service

I hereby certify that I have this day served copies of the **Petition to Intervene and Answer of Pittsburgh UNITED** upon the parties of record in the above-captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

VIA FIRST CLASS MAIL AND EMAIL

Christine M Hoover, Esq.
Erin L. Gannon, Esq.
Lauren M. Burge, Esq.
Office of Consumer Advocate
555 Walnut Street 5th Floor
Forum Place
Harrisburg, PA 17101
choover@paoca.org
egannon@paoca.org
lburge@paoca.org

Daniel Clearfield, Esq.
Carl R. Schultz, Esq.
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com

Gina L. Miller, Esq.
John M. Coogan, Esq.
Richard A Kanaskie, Esq.
Bureau of Investigation and Enforcement
400 North Street 2nd Floor West
Harrisburg, PA 17120
ginmiller@pa.gov
jcoogan@pa.gov
rkanaskie@pa.gov

Debbie Marie Lestitian, Esq.
Pittsburgh Water and Sewer Authority
Penn Liberty Plaza 1
1200 Penn Aveune
Pittsburgh, PA 15222
dlestitian@pgh2o.com

John R. Evans
Elizabeth Rose Triscari, Esq.
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
Co-Counsel for Pittsburgh UNITED

A handwritten signature in black ink, appearing to read "John W. Sweet". The signature is stylized with a large, sweeping "J" and "S".

John W. Sweet, Esq., PA ID: 320182
118 Locust Street
Harrisburg, PA 17101
717-236-9486
pulp@palegalaid.net

July 13, 2018