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September 4, 2018

Via Electronic Filing

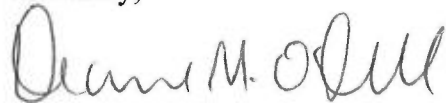
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Pittsburgh Water and Sewer Authority's ("PWSA") Answer to the Bureau of Investigation and Enforcement's ("I&E") Motion To Dismiss Objections and Compel Responses to Interrogatories Identified as I&E-RE-40 through I&E-RE-44 and I&E-RS-12, with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Mark Hoyer, w/enc.
Hon. Conrad Johnson w/enc.
Certificate of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PWSA's Answer to I&E's Motion To Dismiss Objections and Compel Responses to Interrogatories Identified as I&E-RE-40 through I&E-RE-44 and I&E-RS-12 upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Deanne M. O'Dell, Esq.

Dated: September 4, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	Docket No. R-2018-3002645, <i>et al.</i>
	:	
Pittsburgh Water and Sewer Authority - Water	:	
	:	
Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	Docket No. R-2018-3002647, <i>et al.</i>
	:	
Pittsburgh Water and Sewer Authority -	:	
Wastewater	:	

**PITTSBURGH WATER AND SEWER AUTHORITY’S ANSWER TO THE BUREAU
OF INVESTIGATION AND ENFORCEMENT’S MOTION TO DISMISS
OBJECTIONS AND COMPEL RESPONSES TO INTERROGATORIES
IDENTIFIED AS I&E-RE-40 THROUGH I&E-RE-44 AND I&E-RS-12**

Pursuant to 52 Pa. Code § 5.342(g)(1) and the July 20, 2018 Prehearing Order, the Pittsburgh Water and Sewer Authority (“PWSA”) submits this answer in opposition to the Motion to Dismiss Objections and Compel Responses (“Motion”) filed by the Bureau of Investigation & Enforcement (“I&E”) requesting: (1) the dismissal of PWSA’s objections to Interrogatories I&E-RE-40 through 44 and I&E-RS-12 (“Interrogatories”) served on August 23, 2018 and compelling responses to those interrogatories; and (2) requesting a ruling on the Motion in an expedited manner. The interrogatories were served on PWSA on August 23, 2018 and the answers to the interrogatories are due on Friday, September 7, 2018. It should be noted that PWSA has been responding to discovery requests from the parties since July. To date, PWSA has responded to approximately 1,600 requests (inclusive of subparts and notwithstanding its objections related to some of the propounded requests). Including the discovery requests that are the subject of these pleadings, PWSA is in the process of preparing responses to almost 100 more outstanding requests.

Consistent with this cooperation, PWSA clearly stated in its Objections served on August 28, 2018, that, despite the fact that the questions relate to subjects that are going to be investigated in PWSA's Compliance Filing and are thus irrelevant, as a gesture of cooperation, it will attempt to answer the Interrogatories to the extent that PWSA has the data available or can reasonably obtain the data. This is consistent with the manner in which PWSA has responded to discovery requests from other parties related to subject matter that it deems objectionable.¹ Accordingly, I&E's Motion is effectively moot and an unfortunate diversion of critical resources given PWSA's commitment to respond and its established pattern of providing requested information notwithstanding its objections (subject to PWSA's right to object to the admission into evidence of testimony related to these topics).

If Your Honors find that the Motion is not deemed moot, PWSA urges you to deny the Motion on the basis that the Interrogatories are beyond the scope of this proceeding, irrelevant and unreasonably burdensome. At the core, the issues addressed in I&E's Interrogatories are already on track to be evaluated in a separate Compliance Plan proceeding consistent with both the Public Utility Code and the Commission's directive in its Final Implementation Order.² Section 3204 of the Public Utility Code mandated that PWSA be subject to a two part procedure for bringing PWSA under the Public Utility Code – a Tariff Proceeding and a separate

¹ PWSA Objections to Pittsburgh UNITED Interrogatories, Set II served on August 6, 2018; PWSA Objections to Pittsburgh UNITED Interrogatories, Set IV served on August 20, 2018.

² 66 Pa.C.S. § 3204; *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, Docket Nos. M-2018-2640802 and M-2018-2640803, Final Implementation Order (entered on March 15, 2018) ("Final Implementation Order" or "FIO").

Compliance Plan.³ PWSA's Tariff Proceeding was contemplated to be a proceeding in which PWSA's initial PUC Tariff and rates would be reviewed and determined to be just and reasonable.⁴ The Legislature contemplated that the separate Compliance Plan would entail a careful review of PWSA's overall operations, contracts and arrangements and a plan to be established to bring those contracts and service arrangements into compliance with "rules, regulations and orders of the commission."⁵ The Commission, in its Final Implementation Order, reinforced this bifurcated approach and acknowledged that some issues will be "deferred for development in the compliance plans."⁶ In line with Section 3204 of the Public Utility Code and the Commission's FIO, PWSA committed in its direct testimony to including each of the issues raised in the Interrogatories in its Compliance Plan.⁷ Thus, there is a Commission contemplated proceeding to fully evaluate the various issues which are a part of I&E's Interrogatories. As a practical matter, this has required PWSA personnel who have been processing and responding to the 1,700 discovery requests received over the past two months to also engage in the time-consuming process of developing the Compliance Plan which must be filed by September 28, 2018. Permitting these issues into this proceeding (before PWSA has even submitted its proposals for how to address them) will dramatically change the focus of this

³ 66 Pa.C.S. § 3204.

⁴ 66 Pa.C.S. § 3204(a)

⁵ 66 Pa.C.S. § 3204(b).

⁶ FIO at 32, 44-45 (Ordering Pars. 3, 6).

⁷ PWSA St. No. 1 at 22.

proceeding while depriving the Commission of the full review directed for the Compliance Plan process. Such a result is not consistent with that contemplated by the Legislature or the Commission nor is it one that is in the best interests of PWSA's ratepayers.

As explained more fully below, there is: (1) no basis to compel PWSA to respond to the Interrogatories as it will respond as fully as it reasonably can by the discovery response deadline of Friday, September 7, 2018, as indicated in its Objections; and (2) no basis upon which to grant the Motion as the Interrogatories are beyond the scope of this proceeding and irrelevant and are unreasonably burdensome.

I. I&E'S MOTION TO DISMISS OBJECTIONS AND COMPEL DISCOVERY SHOULD BE DENIED

A. I&E's Motion to Dismiss Objections and Compel Discovery Responses is Moot

PWSA indicated that, without waiver of its Objections to the Interrogatories, it intended to provide responses to the extent that they could reasonably be provided.⁸ It is unclear why I&E filed its Motion as PWSA committed to answer the Interrogatories to the best of its ability. This is fully consistent with PWSA's established pattern in this proceeding of fully and timely responding to discovery requests to the best of its ability. Concerns about the information provided in response to the data requests could have been addressed by I&E at the time it received the responses PWSA is able to provide. Expecting PWSA to state within three days of receiving the data requests the exact information that it would provide in response is simply not reasonable. As an entity that has never been regulated by the Commission, never filed a PaPUC

⁸ Objections at 1, 5.

rate case before and – in addition to this rate case – is attempting to pull together a Compliance Plan that pulls together its current operations and brand new Commission requirements, PWSA’s course of conduct in the discovery process has been both understandable and reasonable. In light of this, PWSA submits that I&E’s Motion is effectively moot.

I&E complains that PWSA’s commitment to attempt to answer the Interrogatories to the extent that they can reasonably be responded to “casts significant doubt about the type of information that PWSA will provide.”⁹ PWSA submits that I&E’s demands for a detailed discussion about what exactly PWSA will provide in responses shortly after service of the requests is unreasonable. PWSA never suggested that, due to its objection, it would provide less than full answers, to the extent that it is in a position to do so. Perhaps I&E found objectionable the fact that PWSA could not provide a detailed description that it will provide in answer to these questions. PWSA is not in a position to immediately extract the information I&E is requesting as, in addition to responding to six other sets of discovery last week and six sets of discovery responses due this week, PWSA is preparing for public input hearings and preparing its Compliance Plan filing, which will address the issues I&E raised in its Interrogatories. In short, I&E has elected to file its Motion prior to receiving the responses that PWSA is able to provide rather than to allow a reasonable timeframe for PWSA to determine exactly what information is available and can be provided.

⁹ Motion at 8.

As never being regulated as a public utility before, the vast majority of the interrogatories received request data that has never been collected and/or presented by PWSA. While other utilities maintain data in specific formats and utilize certain methods to track information in anticipation of being asked the information in the course of a rate proceeding, PWSA does not have those processes in place. For I&E to expect that PWSA's processes are as streamlined as utilities that have been regulated for decades is unfair and unreasonable.

In accordance with the July 20, 2018 Prehearing Order, the ALJs directed that discovery responses be provided within 15 calendar days of service but that the parties make best efforts to provide responses within 10 calendar days of service. The Interrogatories were served on August 23, 2018, so PWSA has until Friday, September 7, 2018 to respond to the inquiries. As PWSA indicated in its oral and written objections, it will respond to the Interrogatories to the extent feasible. The only limitation on answering the questions posed will be if PWSA simply does not have the data demanded, or cannot reasonably obtain the data without a costly study that would take an inordinate amount of time to produce.

For all these reasons, I&E's Motion should be denied as moot.

B. I&E's Discovery Requests All Involve Issues That Are to be Investigated in the Soon to be Filed Compliance Plan Proceeding

If I&E's Motion is not deemed moot, PWSA urges Your Honors to find that there is no basis for dismissal of PWSA's objections as the Interrogatories are beyond the scope of this proceeding and irrelevant and are unreasonably burdensome.

The gravamen of PWSA's Objections is that the Interrogatories inquire into subjects and issues that are already earmarked to be addressed in the Company's Compliance Plan proceeding. I&E seeks detailed information regarding: (1) Allegheny County Sanitary Authority ("ALCOSAN") charges and collections; (2) the rate subsidy to Pennsylvania-American Water Company ("PAWC"); (3) the Cooperation Agreement between PWSA and the City of Pittsburgh

(“City”); and (4) unmetered and/or unbilled water, including public fire protection costs that are not being charged to the City as well as subsidies of development projects. All of these issues have to do with long term arrangements and policies of PWSA which will be investigated in the Compliance Plan proceeding that the General Assembly has mandated and that the Commission has directed be filed on September 28, 2018. Indeed, as I&E is fully aware, PWSA has committed in its direct testimony to including each of these issues in its Compliance Plan.¹⁰ Accordingly, detailed inquiries about these complicated and long standing relationships and contracts are properly objectionable as irrelevant to this proceeding.

Section 3204 of the Public Utility Code mandated that PWSA be subject to a two part procedure for bringing PWSA under the Public Utility Code.¹¹ First PWSA was directed to file a “Tariff Proceeding.” Through the “Tariff Proceeding,” which is this instant proceeding, the Commission was directed to: “conduct a rate proceeding in accordance with the commission’s procedures for tariff filings.”¹² Subsequent to the Tariff proceeding, Section 3204 mandates that PWSA file a “Compliance Plan.” The Compliance Plan is to: “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

¹⁰ PWSA St. No. 1 at 22.

¹¹ 66 Pa.C.S. § 3204.

¹² 66 Pa.C.S. § 3204(a).

commission....”¹³ The Commission, in its FIO, reinforced this bifurcated approach by stating that it will provide “stakeholders with flexibility to coordinate issues between the tariff filings and compliance plans” and that it expects “the parties to harmonize the two proceedings.”¹⁴ In reiterating a directive in its Tentative Implementation Order, the PUC provides that “in its compliance plans, PWSA will propose plans to achieve full regulatory compliance for matters not addressed in its July 2018 tariff filings.”¹⁵

Thus it is clear that both the Legislature and the PUC contemplated a two-step process for making PWSA subject to PUC regulation: (1) a proceeding in which PWSA’s initial PUC Tariff and rates was reviewed and determined to be just and reasonable; and (2) a second proceeding in which PWSA’s overall operations, contracts and arrangements would be carefully reviewed and a plan would be established to bring those contracts and service arrangements into compliance with “rules, regulations and orders of the commission.”¹⁶

Despite I&E’s protestation that answers to the Interrogatories are somehow necessary for it to analyze traditional base rate issues – the nature, scope and granularity of the questions belie that argument. I&E’s questions do not simply go to identifying the amount of expense or revenue level in the fully forecasted future test year to determine if it is calculated correctly and consistent with past levels – they clearly contemplate challenging the underlying nature of the

¹³ 66 Pa.C.S. § 3204(b).

¹⁴ FIO at 32.

¹⁵ FIO at 31.

¹⁶ 66 Pa.C.S. § 3204(b).

contract or arrangement and whether the arrangements are consistent with established PUC policies and orders as well as the Public Utility Code. If permitted, I&E's discovery threatens to divert this proceeding from its proper scope and scale – i.e., an examination of proposed base rates in the Tariff – and convert it into an entirely different, larger and unsustainable case that attempts to review and revise the many issues to be addressed in PWSA's Compliance Plan proceeding. PWSA's contention that I&E's Interrogatories are unreasonably burdensome is directly tied to I&E's unwarranted move to expand the scope of this proceeding.

Moreover, each of the questions for which I&E is demanding information has to do with a long standing contract or arrangement which, given the timeframe and plethora of other issues, cannot possibly be properly vetted in this proceeding. They also involve a number of additional parties i.e., PAWC, ALCOSAN, the City of Pittsburgh, all of which have vested interests in the existing contract or arrangement. Only PAWC is presently a party. A full and fair opportunity for review of those issues will exist in PWSA's Compliance Plan proceeding and PWSA intends to make its compliance filing on September 28, 2018 in accordance with the Commission's Final Implementation Order ("FIO").¹⁷ While the issues addressed in I&E's Interrogatories may be evaluated in future rate proceedings, no constructive or useful purpose is achieved by attempting to address them here **before** PWSA has submitted its initial proposals to the Commission on how to move forward. It should be emphasized that PWSA is not contending that I&E is foreclosed from examining the issues suggested by its Interrogatories. To the contrary, PWSA has

¹⁷ FIO at 8.

repeatedly noted that the separate proceeding the Commission has directed to address compliance issues will provide the opportunity for a more focused inquiry and examination of those matters. Cramming those issues into this base rate proceeding, within the time constraints imposed on a rate proceeding, will result in neither traditional base rate issues nor compliance issues getting the attention they deserve.

PWSA responds below to I&E's Motion as it applies to each Interrogatory:

1. I&E-RS-12

In I&E-RS-12 I&E sought a breakdown of public fire protection costs that are not being charged to the City as well as a monthly estimate of public fire protection usage and revenue that are not being charged to the City. I&E asserts in its Motion that its inquiry is relevant to the rate proceeding because monies not being charged to the City may be subsumed by PWSA's ratepayers.¹⁸ As explained in its Objections, PWSA did not make a charge for public fire protection service as part of this rate case filing due to various outstanding issues, including the: (1) enforceability of charges and guarantee of payment from the City of Pittsburgh ("City"); (2) evolving relationship with the City; (3) expedited timeline for submission of the rate filing; and (4) lack of clarity as to whether the public fire protection services that PWSA currently provides meet the requirements for imposing such a charge.¹⁹

¹⁸ Motion at 12.

¹⁹ Objections at 2-3.

This request is properly objected to as irrelevant because bringing PWSA into compliance with PUC policies, regulations and orders (as well as the Public Utility Code) having to do with charges to the City will be addressed in detail in PWSA's Compliance Plan proceeding. Its proposed tariff includes a placeholder for charges to be imposed on public fire protection service once the above-referenced issues have been resolved. Currently, the existing agreement between PWSA and the City does not allow for such a charge. Consequently, a detailed analysis and review of public fire protection costs would not be practical due to the contractual limitations imposed on PWSA and its commitment to address this issue in its Compliance Plan proceeding.

In addition to the practicality of the matter, the FIO directed that PWSA's Compliance Plan contain a "metering plan identifying unmetered accounts and plans to meter all customers."²⁰ The FIO further provided that "the Commission will direct PWSA to develop and file a metering plan that identifies all unmetered accounts and sets forth plans and timeframes in which it will meter all customers. PWSA shall file its metering plans as part of its September 2018 compliance plans."²¹ It is unreasonably burdensome for I&E to request in this proceeding the precise information that the Commission directed that PWSA file with its Compliance Plan, especially as PWSA committed to addressing unmetered and/or unbilled water in its Compliance

²⁰ FIO, pg. 45, Ordering Paragraph 6.

²¹ FIO at 35.

Plan. In light of the practicality of the matter and the FIO's directive, PWSA will address the issue raised in I&E-RS-12 in its Compliance Plan proceeding.

2. I&E-RE-40

I&E-RE-40 demands a detailed analysis of ALCOSAN charges and collection that are subject to a contractual arrangement between ALCOSAN and the City. This issue will be fully addressed in the Compliance Plan and is properly objectionable as irrelevant. In its FIO, the Commission directed that PWSA's Compliance Plan include "plans to fully comply with the billing, collection, complaint, and termination rules of Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations..." FIO, pg. 45, Ordering Paragraph 6. The ALCOSAN charges and collection are beyond the scope of this rate proceeding as the issues will be addressed head on in PWSA's Compliance Plan proceeding, as indicated in PWSA's direct testimony.²² To conduct a detailed inquiry on the ALCOSAN charges and collection at this time would be unreasonably burdensome and futile (and potentially deny ALCOSAN due process).

3. I&E-RE-41

I&E suggested that detailed inquiries regarding the PAWC rate subsidy (with one subsection requesting data from 2008 forward) is necessary to determine whether the subsidy is reasonably and prudently incurred.²³ The PAWC rate subsidy will be a subject of PWSA's

²² PWSA St. No. 1 at 22.

²³ Motion at 15.

Compliance Plan, as committed to in PWSA's direct testimony,²⁴ and thus the detailed inquiry of I&E-RE-41 is properly objectionable as irrelevant. PWSA has a current contractual arrangement with PAWC to partially cover the charges for certain PAWC customers who are Pittsburgh residents. An analysis of the PAWC/PWSA arrangement would be futile at this time as the arrangement will be addressed in its Compliance Plan, which was designed to include "provisions to bring [the Authority's]...accounting, billing, collection and other operating systems and procedures into compliance...."²⁵

4. I&E-RE-42

I&E explained in its Motion that it requested the information in I&E-RE-42 to determine if there are any "updates regarding negotiation of the subsidies and other payments that PWSA is seeking to recover through rates as part of this proceeding."²⁶ As discussed more fully above, PWSA maintains that a detailed inquiry regarding the Cooperation Agreement between PWSA and the City is not appropriate for this rate proceeding. PWSA is in the process of renegotiating the Cooperation Agreement with the City and has committed to addressing the Cooperation Agreement in its Compliance Plan proceeding, which was designed to include "provisions to

²⁴ PWSA St. No. 1 at 22.

²⁵ 66 Pa.C.S. § 3204(b).

²⁶ Motion at 16. I&E previously inquired about the status of the negotiation of the Cooperation Agreement between PWSA and the City in I&E-RR-3 and I&E-RE-24, all of which were answered. PWSA also addressed the status of negotiations in its response to OCA-IV-26(b).

bring [the Authority's]...accounting, billing, collection and other operating systems and procedures into compliance....”²⁷

I&E also mentioned that it served I&E-RE-42 to determine whether “recommendations of the PWSA Performance Audit Report of the Auditor General are incorporated into the goals and metrics that PWSA plans to adopt.”²⁸ An analysis of PWSA’s goals and metrics to come into compliance with the Commission’s regulations plainly are for the Compliance Plan proceeding and not this rate proceeding. As indicated in PWSA’s direct testimony, PWSA will provide for a more focused inquiry and examination of compliance matters, such as concerns with the Cooperation Agreement, in its Compliance Plan proceeding.²⁹

5. I&E-RE-43

This question asked PWSA to provide invoices received for City-provided services undertaken pursuant to a Cooperation Agreement. PWSA has supported its claim in this rate proceeding by providing a copy of the Cooperation Agreement between PWSA and the City, pursuant to which PWSA will pay the City \$7.15 million in 2019. The more detailed inquiry demanded in this question is properly the subject of the Compliance Filing and thus is properly objectionable as irrelevant. PWSA is in the process of renegotiating the Cooperation Agreement and has committed to addressing the Cooperation Agreement in its Compliance Plan proceeding.

²⁷ 66 Pa.C.S. § 3204(b).

²⁸ Motion at 16.

²⁹ PWSA St. No. 1 at 22.

The Legislature envisioned PWSA's Compliance Plan as establishing "provisions to bring [the Authority's]...accounting, billing, collection and other operating systems and procedures into compliance...."³⁰ PWSA intends to follow this statutory framework by addressing its Cooperation Agreement with the City in its Compliance Plan proceeding, as committed to in its direct testimony.³¹

6. I&E-RE-44

I&E submits that it served I&E-RE-44 to determine whether "recommendations of the Mayor's Blue Ribbon Panel are incorporated into the goals and metrics that PWSA plans to adopt."³² All of the questions asked by I&E relate to issues that are going to be addressed in the Compliance Plan: (1) elimination of the PAWC subsidy; (2) City Cooperation Agreement; (3) provision of unmetered and/or unbilled water; and (4) ALCOSAN billing and collection.

In its FIO, the Commission directed that PWSA's Compliance Plan include "plans to fully comply with the billing, collection, complaint, and termination rules of Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations...."³³ In addition, it specifically directed that PWSA "develop and file a metering plan that identifies all unmetered accounts and sets forth plans and timeframes in which it will meter all customers" in its

³⁰ 66 Pa.C.S. § 3204(b).

³¹ PWSA St. No. 1 at 22.

³² Motion at 18.

³³ FIO, pg. 45, Ordering Paragraph 6.

September 2018 Compliance Plan.³⁴ The language in the FIO clearly means that the Commission contemplated that the issues raised in I&E-RE-44 are for the Compliance Plan. It follows that the recommendations of an entity such as the Blue Ribbon Committee can and will be examined in the Compliance Plan proceeding.

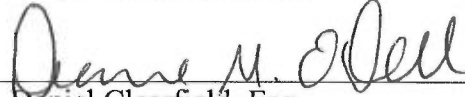
II. CONCLUSION

If permitted, I&E's discovery embodied in Interrogatories I&E-RE-40 through 44 and I&E-RS-12 would dramatically increase the scope and scale of this base rate proceeding. The practical difficulties of such an expansion are apparent. More importantly, there is no valid basis for importing compliance issues into this rate case. There are other proper, better suited opportunities to address such issues in the Compliance Plan proceeding which is specifically designed and intended for that purpose. Aside from the clear practical difficulties of expanding the scope of this rate proceeding, I&E's Motion is moot as PWSA indicated that it would respond to I&E's Interrogatories while maintaining its objections.

³⁴ FIO at 35.

WHEREFORE, PWSA respectfully requests that I&E's Motion to dismiss PWSA's objections to Interrogatories I&E-RE through I&E-RE-44 and I&E-RS-12 and to compel responses to those Interrogatories be denied.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Daniel M. Clearfield", is written over a horizontal line.

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Dated: September 4, 2018

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